

**CITY OF MERCER ISLAND
ORDINANCE NO. 23C-14**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
AMENDING MICC 15.09, 15.10, AND 15.11 RELATING TO
STORMWATER MANAGEMENT STANDARDS; PROVIDING FOR
SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the Washington State Department of Ecology (Ecology) issued the Western Washington Phase II Municipal Stormwater Permit (NPDES Permit) on July 1, 2019, with an effective date of August 1, 2019, pursuant to the requirements of the Federal Clean Water Act – National Pollutant Discharge Elimination System (NPDES); and

WHEREAS, the NPDES Permit requires the City to adopt the 2019 Stormwater Management Manual for Western Washington (Stormwater Manual), or equivalent, and update stormwater definitions for consistency with the NPDES Permit and Stormwater Manual; and

WHEREAS, the City is required to amend Mercer Island City Code (MICC) to meet the requirements of the NPDES Permit, including revisions to Chapters 15.09, 15.10, and 15.11; and

WHEREAS, the City recognizes the need to periodically modify its stormwater regulations within Title 15 MICC, in order to conform to state and federal law, codify administrative practices, and improve efficiency of regulations; and

WHEREAS, an Environmental Declaration of Non-Significance (DNS) was issued for the proposed code amendments pursuant to the State Environmental Policy Act (SEPA) on September 11, 2023.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. MICC 15.09 Amended. MICC 15.09, Storm Water Management Program, is amended to adopt the 2019 Stormwater Manual, update stormwater definitions for consistency with the NPDES Permit and Stormwater Manual and allow for business/site source control inspections as provided in Exhibit A to this Ordinance. Exhibit A is incorporated herein by this reference as though set forth in full.

Section 2. MICC 15.10 Amended. MICC 15.10, Storm and Surface Water Utility, is amended to update stormwater definitions for consistency with the NPDES Permit and Stormwater Manual and allow for business/site source control inspections as provided in Exhibit B to this Ordinance. Exhibit B is incorporated herein by this reference as though set forth in full.

Section 3. MICC 15.11 Amended. MICC 15.11, Fee In Lieu of Stormwater Detention, is amended to update stormwater definitions for consistency with the NPDES Permit and Stormwater Manual as provided in Exhibit C to this Ordinance. Exhibit C is incorporated herein by this reference as though set forth in full.

Section 4. Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property, or circumstance, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance or its application to any other person, property, or circumstance.

Section 5. Publication and Effective Date of Ordinance. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five days after adoption and publication.

ADOPTED by the City Council of the City of Mercer Island, Washington, at its meeting on the 7th day of November 2023 and signed in authentication of its passage.

CITY OF MERCER ISLAND

Salim Nice, Mayor

APPROVED AS TO FORM:

ATTEST:

Bio Park, City Attorney

Andrea Larson, City Clerk

Date of Publication: _____

EXHIBIT A

Chapter 15.09 STORM WATER MANAGEMENT PROGRAM

15.09.010 Establishment of a storm water management program.

- A. There is hereby created and established, by the adoption of this chapter and the provisions therein, a city storm water management program, hereinafter referred to as "the program." The program shall set forth the primary authority and responsibility for carrying out the Action Agenda for Puget Sound including, but not limited to, responsibilities for planning; establishment of requirements for new development and redevelopment; public education efforts to educate citizens; design, construction, maintenance, administration, operation and improvement of the city's storm and surface water system; as well as establishing standards for design, construction, source control, and maintenance of improvements and related activities on public and private property where these may affect storm and surface water and/or water quality.
- B. The city manager or their/his/her appointed designee shall be the administrator of the program.

15.09.020 Applicability.

- A. The provisions of this chapter and the program shall apply to all property and all projects within the limits of the city of Mercer Island. The provisions of this chapter and the program shall control all storm water management practices; provided, however, if other provisions of this Code or any other city ordinance provides more protection of the quality of surface or ground water, it shall control.
- B. Applicants for construction projects which involve land disturbing activity shall provide a construction storm water pollution prevention plan (SWPPP) prior to the issuance of any permits.
- C. The city manager or their/his/her designee is authorized to adopt written policies and procedures for the purpose of implementing the program and the provisions of this chapter.

15.09.030 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

2019~~2012~~ *manual (as amended in 2014)* means the Stormwater Management Manual for Western Washington prepared by the Washington State Department of Ecology in 2019~~2012~~ and amended in 2014.

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

Applicable manual means the 2019 Stormwater Management Manual for Western Washington (~~2012 manual as amended in 2014~~) prepared by the Washington State Department of Ecology in 2019 and amended in 2014.

Best management practices (BMPs) means the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by the Washington Department of Ecology that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State.

City manager or their/his/her designee means the city's active appointed manager or an employee of the city that acts on their/his/her behalf.

Development means new development, redevelopment, or both.

Ground water means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

Hard surface means an impervious surface, a permeable pavement, or a vegetated roof.

EXHIBIT A

Hazardous materials means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls (PCBs), or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any federal, state, county, or municipal statutes or laws.

Hyperchlorinated means water that contains a chlorine concentration exceeding ten milligrams per liter.

Illicit connection means any infrastructure connection, manmade conveyance that is connected to the city's storm and surface water system that is not intended, without a permit, or used for collecting and conveying storm water or non-storm water discharges allowed as specified in MICC 15.09.040, excluding roof drains and other similar type connections.

Illicit discharge means any discharge to the city's storm and surface water system that is not composed entirely of storm water or of non-storm water except discharges allowed as specified in MICC 15.09.040 pursuant to any nonmunicipal NPDES permit and discharges from fire-fighting activities.

Impervious surface means a non-vegetated surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of determining whether the thresholds for application of Minimum Requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.

Land disturbing activity means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, demolition, construction, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered land disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening, are not considered land disturbing activity. Storm water facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.

Low impact development or *LID* means a storm water and land use management strategy that strives to mimic predisturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed storm water management practices that are integrated into a project design.

Low impact development best management practices or *LID BMPs* means distributed storm water management practices, integrated into a project design, that emphasize predisturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated roofs, minimum excavation foundations, and water reuse.

New development means land disturbing activities; structural development, including construction or installation of a building or other structure; creation of hard surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in RCW Chapter 58.17. Projects meeting the definition of "redevelopment" shall not be considered new development.

New impervious surface means a surface that is:

- changed from a pervious surface to an impervious surface (e.g., resurfacing by upgrading from dirt to gravel, a bituminous surface treatment ("chip seal"), asphalt, concrete, or an impervious structure); or
- upgraded from gravel to chip seal, asphalt, concrete, or an impervious structure; or

EXHIBIT A

- upgraded from chip seal to asphalt, concrete, or an impervious structure.

Note that if asphalt or concrete has been overlaid by a chip seal, the existing condition should be considered as asphalt or concrete.

NPDES means the National Pollutant Discharge Elimination System, a national program for permitting and imposing pretreatment requirements related to the discharge of pollutants to surface waters of the state from point discharges. The permits are administered by the Washington Department of Ecology.

On-site storm water management BMPs are synonymous with LID BMPs.

Pollutant means any liquid, gaseous, solid, radioactive or other substance that when introduced into waters of the state will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Pollution-generating impervious surface (PGIS) means impervious surfaces considered to be a significant source of pollutants in storm water runoff. Such surfaces include those which are subject to: vehicular use; industrial activities (as further defined in the applicable manual); storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall; metal roofs unless they are coated with an inert, nonleachable material (e.g., baked-on enamel coating); or roofs that are subject to venting significant amounts of dusts, mists, or fumes from manufacturing, commercial, or other indoor activities.

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

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

Storm and surface water system means the entire system within the city, both public and private, naturally existing and manmade, for the drainage, conveyance, detention, treatment and storage of storm and surface waters.

Storm water means runoff during and following precipitation and snowmelt events, including surface runoff, drainage or interflow.

Storm water facility means a constructed component of a storm water system, designed or constructed to perform a particular function, or multiple functions. Storm water facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.

Storm water pollution prevention plan (SWPPP) means a plan prepared for a site in accordance with applicable manual to control pollutants generated on the site that could enter waters of the state.

Storm water treatment and flow control BMPs/facilities means detention facilities, permanent treatment BMPs/facilities, bioretention, vegetated roofs, and permeable pavements that help meet Minimum Requirement No. 6 (Runoff Treatment), Minimum Requirement No. 7 (Flow Control), or both according to the applicable manual.

(Ord. 17C-09 § 1; Ord. 09C-09 § 1)

15.09.040 Discharges to storm and surface water system and ground waters.

- A. *Prohibited discharges.* No person shall throw, drain, or otherwise discharge, cause or allow others under their/his/her control to throw, drain, or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than storm water. Examples of prohibited discharges include

EXHIBIT A

but are not limited to the following: trash or debris, construction materials, silt, sediment, cement, concrete, gravel, petroleum products, antifreeze and other automotive products, metals, flammable or explosive materials, radioactive material, batteries, paints, stains, resins, lacquers, varnishes, degreasers, solvents, drain cleaners, pesticides, herbicides, fertilizers, steam cleaning wastes, soaps, detergents, ammonia, dyes, chlorine, bromine, disinfectants, swimming pool or spa filter backwash, interior floor drainage, commercial car wash discharge, heated water, domestic animal waste, sewage, carcasses, food wastes, bark, lawn clippings or leaves, any process-associated discharge except as otherwise allowed in this section, any hazardous material or waste not listed above, and any chemical not normally found in uncontaminated water.

- B. *Allowable discharges.* The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the city manager or their/his/her designee determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water: storm water runoff, diverted stream flows, springs, flows from riparian habitats and wetlands, rising ground waters, uncontaminated ground water infiltration (as defined in 40 CFR 35.2005(b)(20)), uncontaminated pumped ground water, foundation drains, footing drains, uncontaminated water from crawl space pumps, air conditioning condensation, irrigation water from agricultural sources that is commingled with urban storm water, and discharges from emergency firefighting activities.
- C. *Conditional discharges.* The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the city manager or their/his/her designee determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or ground water:
1. Potable water, including but not limited to water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 parts per million or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the storm water system;
 2. Lawn watering and other irrigation runoff are permitted, but the city discourages use in excessive amounts through its public involvement program;
 3. Dechlorinated swimming pool, spa, and hot tub discharges. These discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 parts per million or less, pH-adjusted and reoxygenated, if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the storm water system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the storm water system;
 4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted, but the city discourages use in excessive amounts through its public involvement program;
 5. Non-storm water discharges covered by another NPDES or state waste discharge permit; 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, that written approval has been granted for any discharge to the storm water system;
 6. Other non-storm water discharges. The discharge shall be in compliance with the requirements of a pollution prevention plan reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.
- D. *Prohibition of illicit connections.* The construction, use, maintenance, or continued existence of illicit connections to the storm drain or surface water system is prohibited. This prohibition expressly includes illicit connections made in the past, regardless of whether the connection was permissible under the law at

EXHIBIT A

the time of the connection. A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the storm and surface water system or allows such a connection to continue.

15.09.050 Standards for new development and redevelopment.

- A. The thresholds, definitions, minimum requirements and exceptions, adjustment, and variance criteria found in Appendix I of the NPDES Phase II municipal storm water permit, including the mandatory incorporated provisions of the [applicable 2012](#) manual (~~as amended in 2014~~) and any amendments thereto are hereby adopted by the city of Mercer Island as the minimum standards for storm water management. Furthermore, Minimum Requirement No. 5: On-site Stormwater Management of the aforementioned [applicable2012](#) manual is amended as follows:
1. Minimum Requirement No. 5 applies to projects that:
 - a. Result in 2,000 square feet, or greater, of new plus replaced hard surface area; or
 - b. Have a land disturbing activity of 7,000 square feet or greater; or
 - c. Result in a net increase of impervious surface of 500 square feet or greater.
 2. For implementing Minimum Requirement No. 5, the on-site detention BMP is added to List ~~#No.~~ 1 and List ~~#No.~~ 2 for evaluation on all projects as follows:

If all of the on-site storm water management BMPs included on List #1 and List #2 are determined to be infeasible for roofs and/or other hard surfaces, on-site detention shall be required when applicable. On-site detention is required when the drainage from the site will be discharged to a storm and surface water system that includes a watercourse or there is a capacity constraint in the system. The on-site detention system shall be sized using the city's standard on-site detention sizing table or other method approved by the city engineer. On-site detention is not required if the project discharges directly to Lake Washington ([and uses List #3](#)) or if findings from a ¼ mile downstream analysis confirm that the downstream system is free of capacity constraints. However, the ~~storm water~~~~stormwater~~ must still be conveyed to an existing storm and surface water system in an approved manner.
- B. *Additional passive spill control is required.* Projects that replace, modify, or construct a new driveway or parking area shall provide passive spill control for that area that receives runoff from pollution-generating impervious surfaces (PGIS) prior to discharge from the site or into a natural on-site drainage feature. The intent of this device is to temporarily detain oil or other floatable pollutants before they enter the downstream storm water system in the event of an accidental spill or illegal dumping. It shall consist of a tee section in a manhole or catch basin (or elbow when allowed by the city engineer). Note that in addition to this spill control requirement, other spill control requirements may be required for projects that exceed certain thresholds in the applicable manual.
- C. All storm water site plans shall include an analysis of off-site storm water runoff and water quality impacts and shall mitigate these impacts as necessitated by the applicable manual. The analysis shall extend, where possible, a minimum of one-fourth of a mile downstream from the project. The existing and potential impacts to be evaluated and mitigated include but are not limited to the following:
1. Excessive sedimentation;
 2. Streambank erosion;
 3. Discharges to ground water and/or their potential;
 4. Violations of water quality standards;
 5. Discharges of pollutants;
 6. Erosion;
 7. Flooding;

EXHIBIT A

8. Slope instability; and
 9. Other adverse impacts to water quality.
- D. Adopted drainage basin plans may be used to modify and/or add to any or all of the minimum requirements for storm and surface water runoff. Basin plans may include requirements for additional runoff detention, retrofitting measures, BMPs, or other measures in order to achieve basin-wide pollutant, flooding, erosion or sedimentation reduction. Standards developed from basin plans shall not modify any of the above requirements until the basin plan has been formally adopted by the Mercer Island city council.

15.09.060 Exceptions.

Exceptions to the minimum requirements of the applicable manual may be granted prior to permit approval and construction. An exception may be granted by staff; provided, that a written finding of fact is prepared, that meets the following criteria:

- A. The exception provides equivalent water quality protection and complies with the public interest; and that the objectives of safety, function, water quality protection and facility maintenance, based upon sound engineering principles, are fully met;
- B. There exist special physical circumstances or conditions affecting the property such that the strict application of the provisions of the applicable manual would deprive the applicant of all economic use of the parcel of land in question, and every effort to find creative ways to meet the intent of the minimum standards has been made;
- C. That the granting of the exception will not be detrimental to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state and city; and the exception is the least possible exception that could be granted to comply with the intent of the minimum requirements of the applicable manual.

15.09.070 Maintenance and inspection requirements.

- A. All public and private storm water facilities required by the applicable manual to provide permanent storm water treatment and/or flow control shall be inspected and maintained in accordance with the standards contained in the applicable manual.
- B. All storm water treatment and flow control facilities shall be inspected annually but may be reduced based on inspection records. Owners of private facilities shall be responsible for maintenance, inspections and corrections. Records of facility inspections and maintenance actions shall be retained for a period of at least five years. These maintenance records are to be provided to the city upon request.
- C. All storm water treatment and flow control facilities shall be cleared of debris, sediment and vegetation as conditions warrant, when they threaten to affect the functioning and/or design capacity of the facility, but not less than annually.
- D. Where the lack of maintenance is causing or contributing to a violation of water quality criteria, property damage or threatens the welfare or safety of the public, actions shall be taken to correct the problem as soon as reasonably feasible.
- E. When an inspection identifies an exceedance of the maintenance standard, maintenance shall be performed within the following time period:
 1. Within one year for typical maintenance of facilities, except catch basins;
 2. Within six months for catch basins;
 3. Within two years for maintenance that requires capital construction of less than \$25,000.00; and
 4. Within the time frame determined by the city manager or ~~their~~his/her designee for maintenance that requires capital construction greater than \$25,000.00.

EXHIBIT A

The city manager or ~~their/his/her~~ designee may order corrective maintenance to occur within a specific time period.

- F. Operational and structural source control BMPs at businesses/sites shall be inspected and maintained per the requirements of the applicable manual. Operational and structural source control BMPs are required to be repaired or brought up to applicable standards by the property owner or the person responsible for the business/site.
- G. Sediment, oil, street or parking lot sweepings and any material containing pollutants shall be properly disposed of at an approved waste facility or, if appropriate, in accordance with the provisions of WAC Chapters 173-303 and 173-304.
- H. The city manager or ~~their/his/her~~ designee shall design and develop an inspection program for facilities and systems for both public and private systems in accordance with the goals and objectives and intent of the applicable manual.
- I. Any failure of a storm water system, BMPs, erosion and sedimentation control, or water quality protection measures in any new development or redevelopment shall be repaired and/or retrofitted in accordance with the applicable manual.

(Ord. 17C-09 § 1; Ord. 09C-09 § 1; Ord. 95C-118 § 1. Formerly 15.09.050)

15.09.080 Administration.

- A. The city manager or ~~their/his/her~~ designee shall have the authority to develop and implement administrative procedures to administer and enforce this chapter and the program. The city manager or ~~their/his/her~~ designee shall approve, conditionally approve or deny an application for activities regulated by this chapter.
- B. Prior to the commencement of any construction on a project or "land disturbing activity," the applicant shall obtain a storm water permit from the city. A bond may be required by the city engineer in an amount sufficient to cover cost of construction of the system in accordance with approved plans and anticipated city inspection. Upon completion of the work inspection and approval of the storm water facilities by the city, 70 percent of the bond shall be released. At the one-year inspection, the remaining 30 percent shall be released. A two-year bond may be required for vegetated storm water facilities.
- C. All activities regulated by this chapter shall be subject to inspection. Projects shall be inspected at various stages of the work requiring approval to determine that adequate control is being exercised and enforcement actions taken as necessary. These inspections will include, but not be limited to, the following:
 - 1. Prior to site clearing and construction to assess site erosion potential on sites with a high potential for sediment transport;
 - 2. During construction to verify proper installation and maintenance of required erosion and sediment control BMPs;
 - 3. Upon completion of construction and prior to final approval or occupancy to ensure proper installation of permanent storm water facilities and verify that a maintenance plan is completed and responsibility for maintenance is assigned for storm water facilities;
 - 4. All permanent storm water facilities and catch basins in new residential developments that are part of a larger common plan of development or sale, every six months during the period of heaviest house construction (i.e., one to two years following subdivision approval to identify maintenance needs and enforce compliance with maintenance standards as needed);
 - 5. Pollutant generating sources at publicly and privately owned institutional, commercial, and industrial sites.

When required, special inspections and/or testing may be required to be performed at the expense of the applicant.

EXHIBIT A

- D. The city manager or their/his/her designee may order the correction or abatement of any storm and surface water facility or condition thereof, operational or structural source control BMPs, a prohibited discharge, or illicit connection constituting a violation of this Code or of the applicable manual when such facility or condition thereof has been declared to be a public nuisance. Whenever such a public nuisance is declared, a notice by certified mail shall be made to the violator directing abatement within 30 days of the receipt of the notice. If the required corrective work is not completed within the time specified, the city may proceed to abate the violation as a public nuisance. Summary abatement may be commenced without notice or a stop work order issued when the violation is of such a nature that it is an immediate hazard to life and/or property. Notwithstanding the exercise or use of any other remedy, the city manager or their/his/her designee may seek legal or equitable relief to enjoin any act or acts or practices which constitute a violation of this chapter.
- E. *Civil penalty.* In addition to or as an alternative to any other penalty provided herein, or by law, any person who violates the provisions of this chapter, the applicable manual, or an approved storm water management plan shall incur a cumulative civil penalty in the amount of \$50.00 per day from the date set for correction, until the violation is corrected. In lieu of a civil penalty, the city manager or their/his/her designee may issue a warning notice and provide educational information on discharge practices when the violation is a first violation of this chapter, is not an intentional violation, and the discharge is determined by the city manager or their/his/her designee as minor. Any subsequent violation of this chapter by the same person shall not be eligible for a warning notice and shall result in a civil penalty.
- F. *Notice of violation and assessment of penalty.* Whenever the city manager or their/his/her designee has found or determined that a violation is occurring or has occurred they are he/she is authorized to issue a notice of violation directed to the violator, the property owner, or the occupant. The following provisions shall apply and notice of violation shall contain:
1. The name and address of the violator, if known;
 2. The street address when available or a legal description sufficient for identification of the building, construction, premises, or land upon which the violation is occurring;
 3. A statement of the nature of such violation(s);
 4. A statement of action required to be taken as to be determined by the city manager or their/his/her designee and a date of correction.
- G. The notice shall notify the owner and/or violator that:
1. The owner and/or violator has 14 days to notify the city manager or their/his/her designee of a proposed schedule of repair or maintenance action;
 2. The owner and/or violator has 30 days after the time of notification set forth in subsection (G)(1) of this section to comply with the notice, unless, for good cause shown, the period of compliance is extended.
- H. In the event the owners and/or violators fail to comply with the notice, work may be done by and under the authority of the city, at the expense of the owner and/or violator and the expense shall be charged to the owner and/or violator and shall become a lien on the property.

15.09.090 Appeals process.

Any person aggrieved by the decision of the city manager or their/his/her designee in administering this chapter may appeal the decision to the hearing examiner. Appeals shall follow the process described in MICC 19.15.130.

EXHIBIT B

Chapter 15.10 STORM AND SURFACE WATER UTILITY

15.10.010 Purpose.

The purpose of this chapter is to separate the existing storm and surface water utility function from the combined sewer utility and to provide for the planning, design, construction, use, inspection and maintenance of the storm water systems; to minimize flooding; and to provide for an effective system for the control and prevention of storm water runoff and water quality problems. This chapter supplements other city regulations regarding protection of the storm and surface water system, including the storm water management program, chapter 15.09 MICC, and the interim critical area regulations.

15.10.020 Construction—Intent—Definitions.

A. This chapter is enacted as an exercise of the police power of the city of Mercer Island to protect and preserve the public health, safety and welfare and its provisions shall be construed accordingly. The obligation of compliance with storm water regulations is upon the owner or operator of each private system, until such time as the city accepts the private system into the city drainage network under the provisions of this chapter. Nothing contained in this chapter is intended to be or shall be construed to create or form the basis of liability on the part of the city of Mercer Island, this utility, its officers, employees or agents, for any injury or damage resulting from the failure of the owner or operator of any private system to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter by the city of Mercer Island, its utility, officers, employees or agents.

B. For purposes of this chapter, the following definitions shall apply:

City or public storm water system means those elements of the storm and surface water system of the city that are located on property owned by the city or in the public right-of-way, or are located on property on which the city has an easement, license or the right of use for utility purposes.

Low impact development or LID means a storm water and land use management strategy that strives to mimic predisturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed storm water management practices that are integrated into a project design.

Low impact development best management practices or LID BMPs means distributed storm water management practices, integrated into a project design, that emphasize predisturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated roofs, minimum excavation foundations, and water reuse.

On-site storm water management BMPs are synonymous with LID BMPs.

Private system or private storm water facility means any element of the storm and surface water system which is not part of the public storm water system as defined in this chapter.

Storm and surface water system means the entire system within the city, both public and private, naturally existing and manmade, for the drainage, conveyance, detention, treatment and storage of storm and surface waters.

Storm water treatment and flow control BMPs/facilities means detention facilities, permanent treatment BMPs/facilities, bioretention, vegetated roofs, and permeable pavements that help meet Minimum Requirement No. 6 (Runoff Treatment), Minimum Requirement No. 7 (Flow Control), or both.

Utility means the storm and surface water utility of the city of Mercer Island.

EXHIBIT B

15.10.030 Storm and surface water utility authority.

The storm and surface water utility shall have the authority, by and through the city manager or their/his/her designee, to plan and implement storm and surface water programs and improvements in the areas described below, and to take such other actions as are deemed necessary and are consistent with the intent of this chapter to control and manage storm water runoff and water quality. The utility shall have the authority to determine the priorities for working on each of the programs, based on utility funds available and a determination of which programs require primary attention to protect the public health, safety and welfare:

- A. Develop, adopt and carry out procedures to implement this chapter, including the collection and spending of revenue for operations, maintenance and capital improvements. Fund capital project planning, administration, and public education functions of utility. Incur debt and pay debt service for utility functions.
- B. Prepare engineering standards to establish minimum requirements for the design and construction of storm water facilities and their maintenance, consistent with the standards established in chapter 15.09 MICC.
- C. Administer and enforce procedures relating to the planning, acquisition, design, construction and inspection of storm water facilities.
- D. Enter into any contract for the construction of storm water facilities with owners of real estate and to accept the facilities as municipal storm water facilities, with the right to recover costs and expenses, pursuant to RCW Chapter 35.91.
- E. Accept, reject, or take other appropriate action with regard to easements offered to the utility or city.
- F. Prepare and enforce standards for the maintenance of storm water facilities, including retrofit measures, consistent with the standards in chapter 15.09 MICC.
- G. Develop a program for inspection of private storm water facilities and businesses/sites with pollutant generating sources, consistent with the standards in chapter 15.09 MICC.
- H. Advise commissions, the city council, city manager and other city departments on matters relating to the utility.
- I. Prepare comprehensive drainage plans for individual drainage basins for adoption by the city council.
- J. Establish and implement programs to protect and maintain water quality and to control the duration of storm water flows.
- K. Perform or direct the performance of financial review and analysis of the utility's revenues, expenses, indebtedness, rates and accounting, and recommend budgets, rates, and financial policy for adoption by the city council.
- L. Conduct public education programs related to protection and enhancement of storm water and surface water and the municipal storm water system.

15.10.040 Studies and basin plans.

The utility may conduct studies and may develop basin plans for adoption by the city council. Basin plans shall be developed according to the engineering standards in chapter 15.09 MICC. Once a basin plan has been adopted and implemented, it may be modified as authorized by chapter 15.09 MICC; provided the basin plan and basin-specific policies and requirements provide an equal or greater level of water quality and runoff-control protection.

15.10.050 Capital improvement and planning program.

- A. The city manager or their/his/her designee shall develop a six-year capital improvement and planning program for improvements to or modifications of the public storm water system, including the incorporation

EXHIBIT B

or extension of storm water systems and facilities and the acceptance of drainage easements and private drainage facilities.

- B. The city manager or their/his/her designee shall provide the proposed six-year capital improvement and planning program to the city council prior to the adoption of the biennial budget.
- C. The city manager or their/his/her designee shall provide to the city council a draft of storm and surface water rules and regulations on inspection and maintenance, basin planning, and acceptance of private systems for review and comment prior to adoption by the city manager or their/his/her designee of the rules and regulations.

15.10.060 Maintenance of drainage facilities.

- A. The utility is responsible for maintaining public storm water systems and facilities.
- B. Owners of private storm water systems and facilities, including but not limited to on-site storm water management (low impact development) BMPs, flow control (detention) facilities, treatment facilities and conveyance systems, are responsible for their operation and maintenance.
- C. In new subdivisions and short plats, maintenance responsibility for private drainage facilities shall be specified on the face of the subdivision or short plat.
- D. If a private drainage facility serves multiple lots, then maintenance responsibility rests with the properties served by the facility, unless there is a legal document placing responsibility on some other entity.

15.10.070 Storm and surface water rates.

- A. *General.* The city council shall establish by resolution service rates for use of the storm water system and related drainage services; such rates are in addition to connection charges and fees for specific services. The city may establish classifications of customers or service and rate structures, using any method or methods authorized by law.
- B. *Rate basis.* Drainage rates shall be based on revenue requirements to cover all costs of the utility, as authorized by the city council by the adoption of the biennial budget and subsequent amendments.
- C. *Rate adjustments.* The sufficiency of rates shall be evaluated periodically as part of the review and adoption of the annual budget. Rate adjustments shall be recommended as needed to meet revenue requirements. The recommendation shall consider equity, adequacy, costs and other factors allowed by law.
- D. *Billing and collection.* The utility shall develop and implement procedures and systems pertaining to the billing and collection of drainage service charges and fees in accordance with state [law, and law and](#) shall provide an appeal process for the review of utility bills.
- E. *Rate relief.* The city council may establish drainage rate relief measures for specific customer classes as authorized by law.

15.10.080 Liability.

The city manager, their/his/her designee, or any other employee charged with the enforcement of this chapter, acting for the utility in good faith and without malice in the discharge of their/his/her duties shall not be liable personally for any damages which may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of such duties.

EXHIBIT C

Chapter 15.11 FEE IN LIEU OF STORM WATER DETENTION

15.11.010 Definitions.

For the purposes of this chapter, the following definitions shall apply:

Applicable manual means the version of the Stormwater Management Manual for Western Washington (2012 manual as amended in 2014) prepared by the Washington State Department of Ecology adopted in chapter 15.09 MICC in 2012 and amended in 2014.

Developer means the owner or builder of the property to be developed.

Development means new development, redevelopment, or both.

Hard surface means an impervious surface, a permeable pavement, or a vegetated roof.

Impervious surface means a nonvegetated surface area that either prevents or retards the entry of water into the soil mantle ~~as~~ under natural conditions prior to development. A nonvegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the purposes of determining whether the thresholds for application of Minimum Requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.

Land disturbing activity means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, demolition, construction, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered land disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening, are not considered land disturbing activity. Storm water facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.

New development means land disturbing activities; structural development, including construction or installation of a building or other structure; creation of hard surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in RCW Chapter 58.17. Projects meeting the definition of "redevelopment" shall not be considered new development.

New impervious surface means a surface that is:

- changed from a pervious surface to an impervious surface (e.g., resurfacing by upgrading from dirt to gravel, a bituminous surface treatment ("chip seal"), asphalt, concrete, or an impervious structure); or
- upgraded from gravel to chip seal, asphalt, concrete, or an impervious structure; or
- upgraded from chip seal to asphalt, concrete, or an impervious structure.

Note that if asphalt or concrete has been overlaid by a chip seal, the existing condition should be considered as asphalt or concrete.

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

EXHIBIT C

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

Storm water detention facility means an above or below ground facility, such as a pond or tank, that temporarily stores stormwater runoff and subsequently releases it at a slower rate than it is collected by the drainage facility system. There is little or no infiltration of stored stormwater.

Subdivision shall mean the division of, or the act of division of, land into two or more lots for the purposes of building development including short subdivisions and long subdivisions.

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