

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE TITLE 7, PUBLIC PEACE, MORALS AND SAFETY; TITLE 12, SURFACE WATER; AND TITLE 15, PUBLIC IMPROVEMENTS, TO COMPLY WITH FEDERAL AND STATE REGULATIONS REGARDING WATER QUALITY.

WHEREAS, the Oregon Department of Environmental Quality requires that the City of Albany adopt, through an ordinance, a Post-Construction Stormwater Quality Program for new development and redevelopment projects; and

WHEREAS, the program must identify and implement best management practices (BMPs) and ensure long-term operations and maintenance of those BMPs in order to comply with the Willamette Basin Total Maximum Daily Load; and

WHEREAS, the City of Albany's approved Willamette Basin Total Maximum Daily Load Implementation Plan identifies that the City of Albany will implement a Post-Construction Stormwater Quality Program for new development and redevelopment projects in fiscal year 2014-15; and

WHEREAS, the proposed Post-Construction Stormwater Quality Program will meet Willamette Basin Total Maximum Daily Load requirements; and

WHEREAS, the proposed Post-Construction Stormwater Quality Program will also meet anticipated National Pollutant Discharge Elimination System (NPDES), Municipal Separate Storm Sewer System (MS4), Phase II permit requirements; and

WHEREAS, the proposed Post-Construction Stormwater Quality Program will help protect the water quality of Albany's lakes, rivers, and streams; and

WHEREAS, the City of Albany created a Post-Construction Stormwater Quality web site and conducted several public outreach efforts to discuss the proposed program, including a kick-off meeting with the development community, draft program review with the development community, a public open house, a presentation to the Albany Area Chamber of Commerce, and review meetings with the Planning Commission and City Council; and

WHEREAS, in addition to the identified public outreach efforts, the Albany City Council held a public hearing on September 10, 2014, on the proposed Albany Municipal Code revisions creating the Post-Construction Stormwater Quality Program.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Albany Municipal Code text for Titles 7, 12, and 15 is hereby amended as shown in bold type for additions and strikethrough text for deletions, in the following Sections 2 through 4 respectively.

Section 2: Amending Title 7 Sections 7.84.140 and 7.98.080:

7.84.140 Drainage of surface waters.

It is unlawful for the owner, lessee, or occupant of any building or structure to suffer or permit rainwater, ice, or snow to fall from any such building or structure upon any street or sidewalk or to flow across any such sidewalk, and every such owner, lessee, or occupant shall at all times keep and maintain in a proper state of repair adequate drainpipes or a drainage system sufficient to carry to the street, **or other approved drainage facility**, any overflow water accumulating on the roof or about such building. (Ord. 5211 § 1, 1995)

7.98.080 Planting in roadways having no gutter or curb.

No trees, shrubs, or plantings more than 18 inches in height **above the adjacent grade** shall be planted in the public right-of-way abutting roadways having no established curb or gutter, **unless approved by the City Engineer.** (Ord. 5495 § 1, 2001; Ord. 5096 § 2, 1993. Formerly 7.98.130)

Section 3: Amending Title 12, Section 12.01.040 and adding new Chapter 12.45:

12.01.040 Definitions.

(1) "Agricultural activity" means private or commercial activities directly engaged in the production of nursery stock, sod, fruits, vegetables, forages, cover crops, field crops (grain, corn, oats, beans, etc.), timber, and livestock, or other related activities determined by the Director to conform to this definition; but shall not include construction or other activities for structures associated with agricultural activities.

(2) "Best management practices (BMPs)" means schedules of activities; prohibitions of deleterious practices; general good housekeeping practices; physical, structural, or chemical interventions; pollution prevention and educational activities; maintenance activities; and other management practices that prevent or minimize to the greatest extent practicable the discharge of pollutants directly or indirectly to public rights-of-way, the municipal stormwater system, receiving waters, or Waters of the State.

(3) "City" means the City of Albany, a municipal corporation of the State of Oregon.

(4) "City Manager" means the person chosen by the Albany City Council to meet the requirements of Section 22 of the Albany Charter or such person as may be designated by the City Manager to act in his/her name and capacity.

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

(6) "Construction activity" means activities related to any land development or construction project including but not limited to clearing and grubbing, grading, excavating, and demolition.

(7) "Director" means the person designated by the City Manager to supervise the Public Works Department and who is charged with certain duties and responsibilities by this title, or the duly authorized representative.

(8) "Discharger" means any person who discharges or causes to be discharged any pollutant onto public rights-of-way or into the municipal stormwater system, receiving waters, or Waters of the State.

(9) "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.

(10) "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.

(11) "Illegal discharge" means any direct or indirect pollutant-bearing discharge to the municipal stormwater system, receiving waters, or Waters of the State, except as exempted by AMC 12.10.010.

(12) "Illicit connection" is defined as either of the following:

(a) 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 non-stormwater 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

(b) 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.

(13) "Impervious surface" means an improved, altered, or constructed surface which generally prevents infiltration of surface water including, but not limited to, paved streets, graveled or paved areas such as parking lots and driveways, oiled, macadam or other treated surfaces, walkways, roof surfaces, and patios.

(14) "Land-disturbing activity" means any activity that exposes the soil to erosion.

(15) "National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit" means a permit issued by the Environmental Protection Agency or the State of Oregon that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(16) "New Development" means a project that creates and/or expands the area of impervious surfaces, including, but not limited to:

(a) Structural development, including construction of a new building or other structure;

(b) Expansion or alterations of an existing structure that results in an increase in the area of impervious surfaces;

(c) Construction of new parking lots, roads, alleys, pathways, and other impervious surfaces;

and

(d) Expansion or alterations of parking lots, roads, alleys, pathways, and other impervious surfaces that results in an increase in the area of impervious surfaces.

(1517) “Nonpoint source” means any source of water pollution that is not associated with point sources. Generally, a nonpoint source is a diffuse or unconfined source of pollution that can either enter into or be conveyed by the movement of water into the municipal stormwater system, receiving waters, or Waters of the State.

(1618) “Non-stormwater discharge” means any discharge to the stormwater system that is not composed entirely of stormwater.

(1719) “Person” means any individual, partnership, co-partnership, 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.

(1820) “Point source” means any ~~discernable~~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(s).

(1921) “Pollutant” means any material or substance which may alter the chemical, physical, biological, and/or radiological condition of the Waters of the State.

(2022) “Pollution” means the human-made or human-induced contribution of any pollutant into the municipal stormwater system, receiving waters, or Waters of the State.

(23) “Post-construction stormwater quality” means the quality of stormwater runoff, after construction is complete, from a development or redevelopment project.

(24) “Post-construction stormwater quality facility” means permanent stormwater infrastructure incorporated into a development or redevelopment project designed to reduce pollutant loads and runoff velocity from impervious surfaces, and which may also include improvements constructed to reduce the quantity of stormwater runoff leaving the site.

(2125) “Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(26) “Property owner (owner)” means the person(s) or entity(ies) holding legal title to the subject property.

(27) “Redevelopment” means a project that alters or improves the “footprint” of an existing site and/or building. Redevelopment includes the replacement, alteration, or upgrade of an impervious surface that is not part of a routine maintenance activity.

(2228) “Stormwater system” means any watercourse or facility by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems or ditches, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures. The municipally owned portion of the stormwater system may also be referred to as a municipal separate storm sewer system (MS4).

(2329) “Stormwater” means any surface flow, runoff, and drainage consisting entirely of water from precipitation events.

(2430) “Toxic” means any substance or combination of substances listed as toxic in regulations promulgated by the Environmental Protection Agency in Section 307(a)(1) of the Clean Water Act or Title III Section 313 of the Superfund Amendments and Reauthorization Act.

(31) “Vegetated post-construction stormwater quality facility” means a post-construction stormwater quality facility wherein the primary means of stormwater treatment is by filtration through soil and plant material. This may also be referred to as a low impact development (LID) facility.

(2532) “Water or Waters of the State” means all natural waterways, intermittent streams, constantly flowing streams, lakes, wetlands, and all other navigable and nonnavigable bodies of water which are wholly or partially within or bordering the State or within its jurisdiction.

(2633) “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. 5727 § 1, 2010; Ord. 5498 § 1, 2001).

Chapter 12.45 POST-CONSTRUCTION STORMWATER QUALITY

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12.45.010 Design and construction standards.

The Engineering Standards and Construction Standards adopted under AMC 15.06.050 provide the design and construction criteria for private and public post-construction stormwater quality facilities required under this chapter. In the event that any provisions of the Engineering Standards and/or Construction Standards are in conflict with any section of this chapter, the provisions of this chapter will govern.

12.45.020 Applicability of post-construction stormwater quality requirements.

Property owners engaged in development or redevelopment projects, or who have said projects occurring on their property, that require a post-construction stormwater permit in this chapter shall install permanent post-construction stormwater quality facilities.

12.45.030 Permit required.

A post-construction stormwater quality permit shall be obtained for all new development and/or redevelopment projects on a parcel(s) equal to or greater than 1 acre, including all phases of the development.

12.45.040 Permit exemptions.

(1) A development may be exempted from the requirement of 12.45.030 when one or more of the following conditions exist:

(a) The development is for the construction of not more than three single-family or duplex dwelling(s) on an existing lot(s) of record.

(b) The development creates and/or replaces less than 8,100 square feet of impervious surface, cumulatively.

(c) The Director has determined that physical characteristics of the site (including current development) make effective on-site construction of the facilities impractical; and that an off-site post-construction stormwater quality fee has been paid per AMC 12.45.100.

(d) The Director has determined that the site topography or soils makes it impractical or ineffective to construct the facilities on site or within planned improvements in the public right-of-way; and that an off-site post-construction stormwater quality fee has been paid per AMC 12.45.100.

(e) The proposed development activity is being constructed under a valid land use approval where the application for said development activity was submitted prior to January 1, 2015.

12.45.050 Application for a permit.

To obtain a permit, the property owner shall apply to the City of Albany Public Works Department. Every such application shall:

- (1) Identify and describe the work to be covered by the permit; and

- (2) Describe the land on which the proposed work is to be done by legal description, street address, or similar description that will readily identify and definitively locate the proposed work; and
- (3) Be accompanied by a post-construction stormwater quality plan conforming to the requirements of AMC12.45.080; and
- (4) Identify the person(s) or entity(ies) performing the development activity and constructing the post-construction stormwater quality facilities; and
- (5) Provide a 24-hour emergency contact person and phone number; and
- (6) Be signed by the owner of the property upon which the development activities will occur; and
- (7) Contain a statement of financial responsibility for damages resulting from noncompliance with post-construction stormwater quality permit requirements, should any such occur; and
- (8) Be accompanied by the applicable fees described in AMC 12.45.100.

12.45.060 Permit transfer.

Post-construction stormwater quality permits shall be obtained by the property owner for the property upon which the development activities will occur.

(1) A post-construction stormwater quality permit may not be transferred to any person(s) or entity except upon transfer of title for the property.

(2) The person(s) or entity obtaining title to a property with an active post-construction stormwater quality permit shall apply for transfer of the existing permit, or shall obtain a new post-construction stormwater quality permit.

(3) The property owner transferring title for a property with an active post-construction stormwater quality permit shall notify the new owner(s) of the requirements of subsection (2) of this section.

(4) The most recent post-construction stormwater quality permit for a property will supersede all other post-construction stormwater quality permits that apply to that property.

12.45.070 Permit duration.

(1) Post-construction stormwater quality permits issued under this title will be valid for a period of one year.

(2) Prior to the expiration of a post-construction stormwater quality permit, the permit holder may present a written request for an extension to the Director. If the Director determines an extension is warranted, up to a 12-month extension may be granted. Extensions will be subject to the applicable fees described in AMC 12.45.100.

12.45.080 Post-construction stormwater quality plan required.

Applicants for a post-construction stormwater quality permit shall submit as a part of their permit application a post-construction stormwater quality plan. Each plan shall comply with the minimum standards outlined in the Engineering Standards, Construction Standards, and the provisions of this chapter. Each post construction stormwater quality plan shall be reviewed, approved, and stamped by a professional licensed in Oregon as a civil or environmental engineer or landscape architect.

12.45.090 Relationship to AMC 15.06 private construction of public improvements.

Permits issued under this chapter to construct post-construction stormwater quality facilities that will be public shall be subject to the requirements for private construction of public improvements as contained in AMC 15.06.090 through AMC 15.06.180.

Where the privately constructed post-construction stormwater quality facilities will be public and constructed coincident with other privately constructed public improvements under AMC 15.06, a separate post-construction stormwater quality facilities permit will not be required if the requirements of this chapter are incorporated into the AMC 15.06 permit.

12.45.100 Permit fees required.

Fees applied under this title shall be as adopted by resolution of the Albany City Council.

12.45.110 Transfer of landscaping responsibility to City

Where vegetated post-construction stormwater quality facilities will be public, the owner may make a request to the Director for the City to take responsibility for planting and establishing vegetation.

Approval of this request is at the sole discretion of the Director and, where applicable, must be compatible with the planting option selected for any street trees per the Albany Development Code. If approved, the owner shall pay a fee to the City in-lieu of planting per AMC 12.45.100.

12.45.120 Authorization for private stormwater facilities operation and maintenance agreements.

(1) The Director is authorized to develop standard private stormwater facilities operation and maintenance agreements and accompanying standard maintenance requirements for incorporation into the Engineering Standards.

(2) The Director is authorized to enter into private stormwater facilities operation and maintenance agreements on the City's behalf.

12.45.130 Private stormwater facilities operation and maintenance agreements required.

(1) Private stormwater facilities operation and maintenance agreements are required for all private post-construction stormwater quality facilities that require a permit under this chapter.

(2) Private stormwater facilities operations and maintenance agreements shall be recorded at the applicable County Recorder's Office and shall run with the land.

(3) Redevelopment of a property already operating under a private stormwater facilities operation and maintenance agreement will require execution of a new agreement if the Director determines, in the exercise of reasonable discretion, that the redevelopment is likely to have a material impact upon the operation, maintenance, or effectiveness of the previously approved facilities.

12.45.140 Completion of construction.

(1) A requirement to construct stormwater quality facilities shall not be satisfied until the facilities have been determined to be in compliance with all requirements and specifications and formally accepted by the Director.

(2) Unless an exception is granted pursuant to subsection (3) below, plats, partitions, certificates of occupancy, or other City permits or approvals which are conditioned upon the completion of post construction stormwater quality facilities will not be given prior to completion and acceptance by the Director of said facilities.

(3) The Director may, in the exercise of reasonable discretion, waive the requirement of subsection (2) above and execute plats, partitions, certificates of occupancy, or other City permits or approvals prior to the completion of post construction stormwater quality facilities if he/she determines that the public interest so requires. In such an event, the owner shall be required to provide an improvement assurance satisfactory to the Director and the City Attorney guaranteeing timely completion of the aforesaid facilities. Nothing in this subsection shall excuse the requirement that the owner provide a duly executed private stormwater facilities operations and maintenance agreement per AMC 12.45.130 prior to the issuance of any of the approvals enumerated herein.

12.45.150 Right of entry – inspection and testing.

The Director shall be authorized and have the right to inspect all premises, sites, and/or activities covered under an approved post-construction stormwater permit or private stormwater facilities operation and maintenance agreements required under this chapter to determine compliance with this chapter and any rules or orders adopted by the Council or issued pursuant to this chapter.

(1) The Director shall have the right to locate or install on the owner's property, or require installation of, such devices as are necessary to conduct sampling, inspection compliance, and/or monitoring operations.

(2) Where an owner has security measures in force that require proper identification and clearance before entry into its premises, the owner shall make necessary arrangements so, upon presentation of suitable identification, the Director shall be permitted to enter without delay for the purposes of performing specific responsibilities.

(3) Owner shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under conditions of post-construction stormwater quality permit or private stormwater facilities agreement, and the performance of any additional duties as defined by State and Federal law.

(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly modified or removed by the owner at the written or verbal request of

the Director and shall not be replaced without the consent of the Director. The costs of clearing such access shall be borne by the owner.

(5) Unreasonable delay in allowing the Director access to a facility being developed under a post-construction stormwater quality permit or a facility operating under a private stormwater facilities operation and maintenance agreement is a violation of this title. Any person who denies the Director reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this title commits an offense punishable under the general penalty.

12.45.160 Continuing obligations of owners and entities using, occupying, or controlling subject property.

It is unlawful for any entity which exercises control or authority over the maintenance of land and, or, improvements thereto, to fail to comply with the terms of a private stormwater facilities operation and maintenance agreement concerning the property over which they have such rights and/or responsibilities. Any provision of this chapter that creates a responsibility, duty, or obligation on the part of the owner also applies to any entity using, occupying, or in control of the subject property.

12.45.170 Unlawful conduct.

(1) It is unlawful to use land for any purpose for which development approval was conditioned, or permitted, upon the operation and maintenance of a private stormwater facilities operation and maintenance agreement without strict compliance with all terms of such agreement.

(2) It is unlawful to alter, damage, or interfere with any public or private post-construction stormwater quality facility without prior written approval from the Director.

(3) Violation of this section is a misdemeanor punishable under the general penalty and a public nuisance which may be enjoined by the City.

Section 4: Amending Title 15, Sections 15.06.100:

15.06.100 Warranty guarantee.

The owner/developer and contractor shall stipulate, on a form(s) provided by the City, that 100 percent of the work performed in relation to the project shall be warranted and that a warranty guarantee(s) shall be provided during the ~~one-year~~ **two-year establishment and warranty period for plantings and the one year warranty period for all other infrastructure**, as defined in the City of Albany Standard Construction Specifications. The warranty guarantee(s) shall insure prompt corrective work on all or any part of the public facility which requires repair, reconstruction, or replacement (at the option of the City), or which does not continue to meet the requirements of the City of Albany Standard Construction Specifications during the ~~one year~~ **warranty period(s)**. The ~~one-year~~ **warranty period(s)** shall begin at the time of written acceptance of the public facility by the City and shall continue for an additional **year** ~~warranty period~~ **of equivalent length** following City acceptance of any warranty repair. The warranty guarantee(s) for the 100 percent warranty shall reference the approved plans, specifications, and permit requirements, and the warranty period beginning at the time of written acceptance by the City. ~~The~~ **For plantings, the warranty guarantee shall be in the amount of 100 percent of the approved estimated cost of construction, or the actual final construction cost if it exceeds the original estimated amount. For all other infrastructure, the warranty guarantee shall be in the amount of 10 percent of the approved estimated cost of construction, or the actual final construction cost if it exceeds the original estimated amount. The warranty guarantee(s) shall take one of the following forms:**

(1) ~~A 100 percent~~ **warranty guarantee incorporated with the payment and performance guarantee.**

(2) ~~A warranty maintenance bond in the amount of 10 percent of the approved estimated cost of construction, or the actual final construction cost if it exceeds the original estimated amount.~~

(3) ~~Cash deposit with the City. Written evidence in a form and of a content approved in writing by the City Attorney guaranteeing repair, reconstruction, or replacement of all or any part of the public facilities (at the option of the City) during the warranty period beginning at the time of written acceptance of the public facility by the City and providing monetary assurance therefor.~~

If at any time the provided warranty guarantee(s) is insufficient to cover the required warranty work, the City will be entitled to the necessary additional funds from the owner/developer 30 days following written demand. If the additional funds are not received by the City within 30 calendar days of written request, the

City may file an action at law for the collection of the additional amounts plus all attorney fees and legal costs. (Ord. 5044 § 1, 1993; Ord. 4924 § 1, 1990).

Section 5: This Ordinance shall be effective on January 1, 2015.

Passed by the Council: Sept 24, 2014

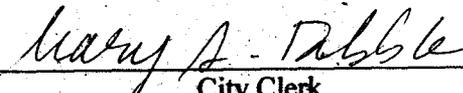
Approved by the Mayor: Sept 24, 2014

Effective Date: Jan 1, 2015



Mayor

ATTEST:



City Clerk