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06/08/09
06/15/09

ORDINANCE NO. _____

AN ORDINANCE relating to municipal stormwater control and pollution prevention, as required by the January 17, 2007, Washington State Department of Ecology Western Washington Phase II Municipal Stormwater Permit issued to the City of Vancouver under the National Pollutant Discharge Elimination System (NPDES) program; repealing in its entirety Ordinance M-3196 as last amended by Sections 16, 17, and 33t of Ordinance M-3638, and as codified as Chapter 14.24 VMC, and replacing it with a new Chapter 14.24 VMC; repealing in its entirety Ordinance M-3195 as last amended by Section 18 of Ordinance M-3638, and as codified as Chapter 14.25 VMC, and replacing it with a new Chapter 14.25 VMC; repealing in its entirety Ordinance M-3600, and as codified as Chapter 14.26 VMC, and replacing it with a new Chapter 14.26 VMC; amending enforcement provisions of Section 32 of Ordinance M-3638, as last amended by Section 1 of Ordinance M-3857, and as codified as VMC 22.01.030; amending enforcement provisions of Section 32 of Ordinance M-3638, as last amended by Section 3 of Ordinance M-3857, and as codified at VMC 22.02.020.E.1; amending enforcement provisions of Section 8 of Ordinance M-3857, and as codified at VMC 22.02.070.D; providing for severability; and establishing an effective date.

WHEREAS, in order to meet requirements of the Federal Clean Water Act and its National Pollutant Discharge Elimination System (NPDES) program, the State of Washington Department of Ecology has been given the authority to issue municipal stormwater permits to designated communities throughout the state that discharge stormwater into surface water bodies; and

WHEREAS, on January 17, 2007, the Washington State Department of Ecology issued the City of Vancouver a Western Washington Phase II Municipal Stormwater Permit (Permit) under the National Pollutant Discharge Elimination System (NPDES) program; and

WHEREAS, the Permit requires that the City of Vancouver adopt stormwater control and pollution prevention measures, with the goal of improving waters of the state; and

WHEREAS, the City Council of the City of Vancouver considered this matter at four (4) Council workshops on November 24, 2008; January 5, 2009; January 26, 2009; and Jun1, 2009; received public comments on drafts of this ordinance posted on the City of Vancouver's website beginning on December 3, 2008; obtained additional stakeholder and public participation through nine (9) weekly stakeholder meetings beginning on April 8, 2009 and continuing through June 2, 2009 and through a public open house on June 2, 2009; and considered this matter at two (2) duly advertised public City Council hearings on March 2, 2009 and June 15, 2009; and

WHEREAS, the City Council finds that inadequately controlled stormwater runoff and untreated stormwater runoff detrimentally affect the public health, safety and general welfare; and

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WHEREAS, the City Council finds that adoption of this ordinance for municipal stormwater control and pollution prevention prevents harm to the health or safety of the public, and promotes the public health, safety and general welfare; and

WHEREAS, the City Council finds that it is within the police power of the City Council of the City of Vancouver to adopt this ordinance for these purposes; and

WHEREAS, it is therefore the purpose of this ordinance to adopt ordinances and other enforceable mechanisms as required for compliance with the City of Vancouver's January 17, 2007 National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Legislative Findings. The recitals set forth above are adopted as the legislative findings of the City Council of the City of Vancouver in support of adoption of this ordinance.

Section 2. Ordinance M-3196 as last amended by Sections 16, 17, and 33t of Ordinance M-3638, and as codified as Chapter 14.24 VMC, is hereby repealed in its entirety and replaced with a new Chapter 14.24 VMC to read as follows:

Chapter 14.24 EROSION PREVENTION AND SEDIMENT CONTROL

Sections:

14.24.010 Findings.

14.24.020 Purpose.

14.24.030 Applicability.

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- 14.24.035 Adoption of Manuals.**
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- 14.24.080 Enforcement.**
- 14.24.090 Liability.**

Section 14.24.010 Findings.

A. Erosion and sedimentation from land-disturbing activities detrimentally affects the public health, safety and general welfare in the following ways:

1. Increases the risk of flooding because streams and stormwater facilities that receive excessive sediment have a reduced capacity to convey water;
2. Damages fisheries when siltation clogs spawning gravel and when excessive turbidity impairs the feeding ability of aquatic animals;
3. Increases public expenditures for maintenance of stormwater facilities that receive excessive amounts of sediment;
4. Damages adjacent properties, including public rights-of-way, when sediment is deposited on these properties;
5. Increases public expenditures for cleaning and maintaining roadway

surfaces that receive excessive sediment;

6. Promotes transport of nutrients to lakes, causing algal blooms and oxygen depletion; and

7. Causes detrimental water quality problems to Burnt Bridge Creek, Vancouver Lake Lowlands and water quality impacts to the Columbia River.

B. Erosion prevention and sediment control is important to prevent harm to the public health or safety.

C. Erosion can best be prevented through the implementation of best management practices (BMPs).

Section 14.24.020 Purpose.

A. It is the purpose of this chapter to prevent harm to the health or safety of the public, and to promote the public health, safety and general welfare by providing for the minimization of erosion from land development and land-disturbing activities, in order to:

1. Prevent erosion and sedimentation of creeks, streams, ponds, lakes, wetlands, and other water bodies;

2. Prevent damage to property from increased erosion rates and volumes;

3. Protect the quality of land for recreation, fishing and other beneficial use;

4. Establish sound development policies which protect and preserve the City's land resources;

5. Protect roads and rights-of-way from damage due to inadequately controlled erosion;

6. Preserve and enhance the aesthetic quality of land resources; and
7. Protect the health, safety and welfare of the inhabitants of the City.

B. It is the purpose of the 2009 amendments to this chapter to adopt ordinances and other enforceable mechanisms required for compliance with the most current version of the City of Vancouver's January 17, 2007 National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit, and for compliance with the federal Underground Injection Control (UIC) program, through application of best management practices (BMPs) for stormwater management. The regulatory basis requiring the 2009 amendments is as follows:

1. To meet requirements of the Federal Clean Water Act, the State of Washington Department of Ecology has been given the authority to issue municipal stormwater permits to designated communities throughout the state that discharge stormwater into surface water bodies. On January 17, 2007, the Washington State Department of Ecology issued the City of Vancouver a Western Washington Phase II Municipal Stormwater Permit under the National Pollutant Discharge Elimination System (NPDES) program. The permit requires that the City of Vancouver adopt stormwater control and pollution prevention measures, with the goal of improving waters of the state.

Section 14.24.030 Applicability.

A. Provisions of this chapter apply to land-disturbing activities, as defined herein and as regulated by the most current version of the City's January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater

Permit and its mandatory incorporated provisions of the 2005 Stormwater Management Manual for Western Washington, specifically Volumes I and II.

B. All land-disturbing activities shall comply with this chapter; with the most current version of the City's January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit, with the Permit's Minimum Requirements and its mandatory incorporated provisions of the 2005 Stormwater Management Manual for Western Washington; and with the City's General Requirements; provided that exceptions to the Minimum Requirements may be granted under criteria and procedures set forth in this chapter.

C. Exemptions from the provisions of this chapter are those set forth in Appendix 1, Section 1 of the most current version of the City's January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit.

Section 14.24.035 Adoption of Manuals.

A. For purposes of regulation of activities subject to this chapter, the City hereby adopts by reference as its Stormwater Manual the 2005 Stormwater Management Manual for Western Washington.

B. For purposes of regulation of activities subject to this chapter, the City hereby adopts by reference the most current version of the "City of Vancouver Engineering Services General Requirements and Details for the Design and Construction of Water, Sanitary Sewer and Surface Water Systems" (General Requirements). The General Requirements are intended to supplement and clarify the Stormwater Manual to provide

guidance for and tailor to local conditions. The General Requirements may also adopt measures that are deemed equivalent by the Washington State Department of Ecology.

C. At least one copy of each manual adopted in this section shall be filed in the Office of the City Clerk for use and examination by the public. The manuals may also be made available for use and examination by the public at the Office of the Director, and on the City website.

D. Where provisions of this chapter or manuals adopted under this section conflict with other provisions of the Vancouver Municipal Code, the more stringent requirements, which have the most protective effect on water quality, shall apply.

Section 14.24.036. Cross References.

Any reference to “Stormwater Management Manual” or “Puget Sound Erosion Control Manual” or "Washington Department of Ecology's Stormwater Management Manual for the Puget Sound" or "Puget Sound Water Quality Manual" or "BMP's approved by the Western Washington Stormwater Manual" or “Department of Ecology alternative paving Best Management Practices,” wherever found within the Vancouver Municipal Code, shall refer to this chapter and to the equivalent manuals as adopted in this chapter.

Section 14.24.040 Definitions.

For the purpose of this chapter, the following definitions shall apply. Any terms not defined herein are used as defined in the most current version of the City’s January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II

Municipal Stormwater Permit and its mandatory incorporated provisions of the 2005 Stormwater Management Manual for Western Washington.

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

“City” means the City of Vancouver.

"Director" means the director of the City of Vancouver public works department or designee.

“General Requirements” means the most current version of the “City of Vancouver Engineering Services General Requirements and Details for the Design and Construction of Water, Sanitary Sewer and Surface Water Systems”.

"Land-disturbing activity" means any activity that results in a movement of earth or a change in the existing soil cover (both vegetative and nonvegetative) and/or existing soil topography. Land-disturbing activities include, but are not limited to clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land-disturbing activity.

“Minimum Requirements” means the Minimum Technical Requirements for New Development and Redevelopment as set forth in Appendix 1 of the most current version of the City’s January 17, 2007 National Pollutant Discharge Elimination System

(NPDES) Western Washington Phase II Municipal Stormwater Permit. The Minimum Requirements are identified as follows:

1. Preparation of Stormwater Site Plans. This Minimum Requirement is addressed in VMC Chapter 14.25 and VMC Title 20 procedures.

2. Construction Stormwater Pollution Prevention Plan (SWPPP). This Minimum Requirement is addressed in VMC Chapter 14.24 and General NPDES Permit for Stormwater Discharges Associated with Construction Activities.

3. Source Control of Pollution. This Minimum Requirement is addressed in VMC Chapters 14.25 and 14.26.

4. Preservation of Natural Drainage Systems and Outfalls. This Minimum Requirement is addressed in VMC Chapter 14.25 and in VMC 20.740, Critical Areas.

5. On-site Stormwater Management. This Minimum Requirement is addressed in VMC Chapter 14.25.

6. Runoff Treatment. This Minimum Requirement is addressed in VMC Chapter 14.25.

7. Flow Control. This Minimum Requirement is addressed in VMC Chapter 14.25.

8. Wetlands Protection. This Minimum Requirement is addressed in VMC Chapter 14.25 and 20.740 Critical Areas.

9. Operation and Maintenance. This Minimum Requirement is addressed in VMC Chapter 14.25.

“National Pollutant Discharge Elimination System” or “NPDES” means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring

and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington State Department of Ecology.

“Permit” means the most current version of the City of Vancouver’s National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit.

“Pollution” or “pollutants” means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as 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.

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

"Stormwater facility" means a constructed component of a stormwater drainage system, designed and constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to: pipes, swales, ditches, open channels, culverts, street gutters, detention ponds, retention ponds, constructed wetlands,

storage basins, infiltration devices, catch basins, manholes, dry wells, oil/water separators, biofiltration swales, and sediment basins.

“Stormwater Manual” means the 2005 Stormwater Management Manual for Western Washington, which is the 5-volume technical manual (Publication Nos. 05-10-29 through 05-10-33) prepared by the Washington State Department of Ecology for use by local governments that contains BMPs to prevent, control, or treat pollution in stormwater.

Section 14.24.050 Persons responsible for compliance.

Meeting the requirements of this chapter is the responsibility of the property owner on whose parcel the land-disturbing activity occurs and the person undertaking such activities. In addition, if the land-disturbing activity involves a City-issued permit, the permit holder is also responsible for meeting the requirements of this chapter.

Section 14.24.060 Specific compliance requirements.

A. Inspection. Prior to commencement of land disturbing activities, the City shall be contacted to obtain a City site inspection. Contacting the City to obtain the site inspection is the responsibility of the property owner on whose parcel the land-disturbing activity occurs and the person undertaking such activities. In addition, if the land-disturbing activity involves a city-issued permit, the permit holder is also responsible for meeting this requirement.

B. Mark Clearing Limits. Prior to beginning land disturbing activities, including clearing and grading, clearly mark all clearing limits for critical areas and their buffers, and trees that are to be preserved within the construction area. Clearing limits for critical

areas and their buffers, and for tree conservation, shall be in compliance with all applicable requirements set forth in relevant chapters of the Vancouver Municipal Code.

C. Construction Access Route. Construction vehicle access shall be limited to one route, unless additional access is approved by the Director. Access points shall be installed as required by the Stormwater Manual and the General Requirements to minimize the tracking of sediment, mud or debris onto paved surfaces, public and private roads.

D. Sediment Removal from Roadways, Paved and Impervious Surfaces. If sediment, mud or debris is transported onto a road, paved or impervious surface, the roads, paved and impervious surfaces shall be cleaned thoroughly at the end of each workday, or more often if necessary. Significant soil deposits shall be removed from roads, paved and impervious surfaces by shoveling and sweeping and shall be transported to a controlled sediment disposal area. Street washing is not allowed unless approved by the Director and only after sediment is removed in the manner described above.

E. Stabilization of Denuded Areas. All exposed soils shall be stabilized in a timely manner, by suitable application of BMPs, including but not limited to sod or other vegetation, plastic covering, mulching or crushed aggregate on areas to be paved. All exposed and disturbed soils shall be stabilized by the appropriate BMP. During the period from October 1st to April 30th no soil shall be exposed for more than two days. From May 1st to September 30 no soil shall be exposed more than seven days. All BMPs shall be selected, designed and maintained in accordance with the Stormwater Manual and the General Requirements.

F. Protection of Water Bodies and Adjacent Properties. Water bodies and adjacent properties shall be protected from sediment deposition by appropriate use of vegetative filter strips, sediment barriers or filters, dikes or mulching, or by a combination of these measures and other appropriate BMPs.

G. Sediment Traps or Ponds. Stormwater runoff from disturbed areas shall pass through a sediment pond, sediment trap, or other approved BMP system.

H. Storm Drain Inlet Protection. All storm drain inlets shall be protected by approved BMPs which shall be operable, properly installed, and maintained according to the Stormwater Manual and the General Requirements.

I. Stormwater Facility Protection. Permanent stormwater facilities shall be isolated and protected from sedimentation by approved BMPs which shall be operable, properly installed and maintained according to the Stormwater Manual and the General Requirements. Permanent facilities may be approved by the Director for temporary use during construction in compliance with the Stormwater Manual. Temporary erosion ponds shall be placed, operated, and maintained as specified in the General Requirements and approved plans.

J. Maintenance. All erosion prevention and sediment control BMPs shall be regularly inspected and maintained to ensure continued performance of their intended function.

K. Maintenance Log. A log of erosion prevention and sediment control BMP maintenance shall be provided and kept as a permanent record. The maintenance log shall be kept in a designated on-site location. Construction sites shall be inspected at least once a week and after each rainfall event.

L. Removal of Temporary BMPs. All temporary erosion and sediment control BMPs shall be removed within thirty (30) days after final site stabilization. Disturbed soil areas resulting from BMP removal shall be properly stabilized.

M. Contractor Certification. Effective July 1, 2009 all land-disturbing activities shall be supervised by an individual who shall have successfully completed formal training in erosion and sediment control by a recognized organization acceptable to the Washington State Department of Ecology. A certification of successful completion of such training shall be submitted at the pre-construction conference. This certification requirement shall not apply to single-family homeowners acting as their own contractor and engaging in development or land disturbing activity on their own property.

N. Underground Utility Construction. For construction of underground utility lines, excavated material shall be properly managed in accordance with the Stormwater Manual and shall be subject to the following additional requirements:

1. The length of trench opened at one time shall be minimized.
2. Trenches shall be topped and maintained with clean rock until paving occurs.
3. Trench dewatering devices shall discharge into an approved, operating, and properly maintained BMP.

O. Financial Liability. Performance bonding, or other appropriate financial instruments, may be required for all development, redevelopment projects that include the creation or addition of five thousand square feet, or greater, of new impervious surface area, and/or land-disturbing activity of one acre or greater.

P. Construction Stormwater Pollution Prevention. Compliance with Minimum Requirement #2, Construction Stormwater Pollution Prevention Plan, shall be achieved for an individual site of land-disturbing activities if the site is covered under the Washington State Department of Ecology's *General NPDES Permit for Stormwater Discharges Associated with Construction Activities* and is fully implementing the requirements of that permit.

Q. If the BMPs applied to a site are insufficient to prevent sediment from reaching water bodies, adjacent properties, or public right-of-way, then the Director shall require additional BMPs.

Section 14.24.070 Erosion prevention and sediment control plans.

A. An erosion prevention and sediment control plan shall be submitted to and approved by the Director prior to commencement of any of the following:

1. Any project that meets the applicability threshold of VMC 14.25.
2. Any project that requires a City grading permit.
3. Any application that the Director determines poses a high risk of erosion impacting adjacent properties, water bodies, public rights of way, or stormwater facilities.
4. Those activities described in the Stormwater Manual.

B. The erosion prevention and sediment control plan shall be prepared in conformance with the City's General Requirements and the Stormwater Manual. The erosion prevention and sediment control plan shall be submitted to and approved by the Director prior to issuance of City permits or approval involving a land-disturbing activity.

C. An erosion prevention and sediment control plan is required unless the site is required to prepare a Construction Stormwater Pollution Prevention Plan (SWPPP) for submission to the Washington State Department of Ecology, as determined by Appendix 1, Section 3 of the most current version of the City's National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit. If a SWPPP is required, a copy of the SWPPP shall be provided to the City.

D. If the erosion prevention and sediment control plan is deemed insufficient to prevent sediment from reaching water bodies, adjacent properties, or public rights-of-way, then the Director is authorized to require additional modifications to the erosion prevention and sediment control plan.

Section 14.24.075 **Adjustments**

An Adjustment is a technical variation in the application of a Minimum Requirement to a particular project. The City may grant Adjustments to Minimum Requirement #2, only, under this section. Adjustments are not authorized under this section for other Minimum Requirements.

A. Adjustment Approval Process.

1. Permit procedural requirements. Adjustments to the Minimum Requirements may be granted by the City, as Permittee, provided that a written finding of fact is prepared showing compliance with the specified criteria.

2. City process. A request for an Adjustment shall be administratively processed in accordance with procedures specified in the General Requirements. The Director may grant an Adjustment upon demonstration by the applicant of compliance

with the approval criteria contained in Subsection B. below. The Director shall maintain a record of such decisions and associated findings.

B. Adjustment Approval Criteria. The City may grant an Adjustment to Minimum Requirement #2, only, under the following circumstances:

1. Compliance with the approval criteria must be documented with written findings of fact.

2. The Adjustment provides substantially equivalent environmental protection.

3. Based on sound engineering practices, the objectives of safety, function, environmental protection and facility maintenance are met.

4. The Adjustment will not result in non-compliance with other Minimum Requirements.

5. No Adjustment shall be used in place of an Exception procedure under VMC 14.24.076, where such procedure is applicable.

Section 14.24.076 Exceptions.

The City may grant Exceptions to Minimum Requirement #2 under this section.

A. Exception Approval Process.

1. Permit procedural requirements. Exceptions to Minimum Requirement #2 may be granted by the City, as Permittee, following legal public notice of an application for an exception or variance, legal public notice of the City's decision on the application, and written findings of fact that documents the City's determination to grant an exception.

The City shall keep records, including the written findings of fact, of all local exceptions

to the Minimum Requirements. Project-specific design exceptions based on site-specific conditions do not require prior approval of the Washington State Department of Ecology.

2. City process. Applications for Exceptions shall be processed according to the procedures for Type III applications under VMC 20.210.060. A fee shall be imposed in the amount of the fee for a Type III variance as established under VMC 20.180.060. The Hearings Examiner may grant an Exception upon demonstration by the applicant of compliance with the approval criteria contained in Subsection B below. Hearings under VMC 14.25.330 relating to Exceptions shall be consolidated with any open record hearing or appeal related to the underlying new development or redevelopment application, where such open record hearing or appeal is required.

B. Exception Approval Criteria. The City may grant exceptions to Minimum Requirement #2 if application of the Minimum Requirement imposes a severe and unexpected economic hardship on a project applicant.

1. The following must be documented with written findings of fact:
 - a. The current (pre-project) use of the site, and
 - b. How the application of the Minimum Requirement(s) restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the Minimum Requirements; and
 - c. The possible remaining uses of the site if the exception were not granted; and
 - d. The uses of the site that would have been allowed prior to the adoption of the Minimum Requirements; and

e. A comparison of the estimated amount and percentage of value loss as a result of the Minimum Requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the Minimum Requirements; and

f. The feasibility for the owner to alter the project to apply the Minimum Requirements.

2. In addition any exception must meet the following criteria:

a. The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and

b. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements. This criteria is met by evidence that the owner/operator has employed measures to avoid and minimize impacts, such as:

1. limiting the degree or magnitude of the regulated use or activity;
2. implementing best management practices;
3. phasing or limiting implementation;
4. changing the timing of activities; or
5. revising site plans.

Section 14.24.080 Enforcement.

It shall be unlawful to violate the provisions of this chapter. Enforcement of this chapter shall be governed by VMC title 22.

Section 14.24.090 Liability.

Nothing in this chapter shall be deemed to impose any liability upon the City of Vancouver or upon any of its officers or employees, or to relieve the owner or occupant of any property from the duty to keep their property in a safe and healthy condition.

Section 3. Ordinance M-3195, as last amended by Section 18 of Ordinance M-3638, and as codified as Chapter 14.25 VMC, is hereby repealed in its entirety and replaced with a new Chapter 14.25 VMC to read as follows:

Chapter 14.25 STORMWATER CONTROL

Sections:

14.25.00A Article I. Introduction

14.25.010 Findings.

14.25.020 Purpose.

14.25.100 Applicability.

14.25.105 Adoption of Manuals.

14.25.106 Cross References.

14.25.110 Definitions.

14.25.120 Enforcement.

14.25.130 Liability.

14.25.199A Article II. Standard Requirements

14.25.200 Stormwater site plan submittal requirements.

14.25.210 Runoff treatment.

- 14.25.215** **Source control of pollution.**
- 14.25.220** **Flow control.**
- 14.25.225** **Low Impact Development.**
- 14.25.227 Wetlands Protection.
- 14.25.230** **Ownership and maintenance.**
- 14.25.240** **Bonds and insurance.**
- 14.25.299A** **Article III. Exceptions and Special Cases**
- 14.25.300** **Basin planning.**
- 14.25.315** **Adjustments.**
- 14.25.320** **Exceptions.**

Section 14.25.00A Article I. Introduction

Section 14.25.010 Findings.

A. Stormwater runoff detrimentally affects the public health, safety and general welfare in the following ways:

1. Inadequately controlled stormwater runoff results in increased stormwater runoff volumes, peak flow rates and duration of peak flows in streams and roadways, thereby causing flooding and safety hazards, and erosion, scouring and deposition of sediment.

2. Untreated stormwater runoff discharges nutrients, metals, oil and grease, toxic materials, and other forms of pollution to the City's surface and groundwater resources, thereby endangering their use for recreation, drinking water and fisheries.

B. Stormwater problems from new development should be prevented and corrected at the time that such development occurs and that the governmental approval to proceed with new development should be so conditioned.

C. The most financially sound and most equitable method for financing the improvements necessary to correct existing problems from stormwater runoff and to provide and maintain surface and groundwater quantity and quality within drainage basins is for the owners and occupiers of existing properties and future developments within such basins to share the financial burden for such facilities and corrections with other funding sources when available.

D. The most technically and financially efficient method of addressing problems caused by stormwater runoff is through basin plans.

E. Stormwater control is important to prevent harm to the public health or safety.

Section 14.25.020 Purpose.

A. The purpose of this chapter is to prevent harm to the health or safety of the public, and to promote the public health, safety and general welfare by providing standards in stormwater runoff in order to:

1. Prevent surface and groundwater quality degradation and prevent erosion and sedimentation of creeks, streams, ponds, lakes, wetlands, and other water bodies;
2. Prevent damage to property from increased runoff rates and volumes;
3. Protect the quality of waters for drinking water supply, contact recreation, fishing and other beneficial uses;

4. Establish sound developmental policies which protect and preserve the City's water resources;

5. Protect the roads and rights-of-way from damage due to inadequately controlled runoff and erosion;

6. Preserve and enhance the aesthetic quality of water resources;

7. Protect the health, safety and welfare of the inhabitants of the City;

8. Maintain existing groundwater levels, in-stream flows, and available water supply volumes; and

9. Further the goals of no net change in the quantity of runoff entering streams and no net negative change in the quality of runoff entering streams through the implementation of best management practices.

B. It is the purpose of the 2009 amendments to this chapter to adopt ordinances and other enforceable mechanisms required for compliance with the most current version of the City of Vancouver's National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit, and for compliance with the federal Underground Injection Control (UIC) program, through application of best management practices (BMPs) for stormwater management. The regulatory basis requiring the 2009 amendments is as follows:

1. To meet requirements of the Federal Clean Water Act, the State of Washington Department of Ecology has been given the authority to issue municipal stormwater permits to designated communities throughout the state that discharge stormwater into surface water bodies. On January 17, 2007, the Washington State Department of Ecology issued the City of Vancouver a Western Washington Phase II

Municipal Stormwater Permit under the National Pollutant Discharge Elimination System (NPDES) program. The permit requires that the City of Vancouver adopt stormwater control and pollution prevention measures, with the goal of improving waters of the state.

2. The Underground Injection Control (UIC) program was created by Congress to protect underground sources of drinking water from discharges of fluids to the ground. Chapter 173-218 WAC was adopted by the Washington State Department of Ecology to regulate stormwater discharges to groundwater through drywells and other types of underground infiltration systems that are not regulated under the NPDES permit.

Section 14.25.100 Applicability.

A. Provisions of this chapter apply to new development and redevelopment activities, as defined herein and as regulated by the most current version of the City's January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit and its mandatory incorporated provisions of the 2005 edition of the Stormwater Management Manual for Western Washington.

B. All new development and redevelopment activities shall comply with this chapter; with the most current version of the City's January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit, with the Permit's Minimum Requirements and its mandatory incorporated provisions of the 2005 Stormwater Management Manual for Western Washington; and with the City's General Requirements; provided that exceptions to the Minimum Requirements may be granted under criteria and procedures set forth in this chapter.

C. Exemptions from the provisions of this chapter are those set forth in Appendix 1, Section 1 of the most current version of the City's January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit.

Section 14.25.105 Adoption of Manuals.

A. For purposes of regulation of activities subject to this chapter, the City hereby adopts by reference the 2005 Stormwater Management Manual for Western Washington (Stormwater Manual).

B. For purposes of providing technical guidance concerning Low Impact Development for activities subject to this chapter, the City hereby adopts the most current edition of the Low Impact Development Technical Guidance Manual for Puget Sound (LID Manual). New development and redevelopment projects utilizing low impact development practices shall refer to the LID Manual and the Stormwater Manual for design recommendations.

C. For purposes of regulation of activities subject to this chapter, the City hereby adopts by reference the most current version of the "City of Vancouver Engineering Services General Requirements and Details for the Design and Construction of Water, Sanitary Sewer and Surface Water Systems" (General Requirements). The General Requirements are intended to supplement and clarify the Stormwater Manual to provide guidance for and tailor to local conditions. The General Requirements may also adopt measures that are deemed equivalent by the Washington State Department of Ecology.

D. For purposes of providing technical assistance concerning City operations, the City hereby adopts by reference the most current version of "The City of Vancouver's Best Management Practices for the Operation and Maintenance of Publicly-owned Property".

E. At least one copy of each manual adopted in this section shall be filed in the Office of the City Clerk for use and examination by the public. The manuals may also be made available for use and examination by the public at the Office of the Director, or on the City website.

F. Where provisions of this chapter or manuals adopted under this section conflict with other manuals adopted under this section, or with other provisions of the Vancouver Municipal Code, the more stringent requirements, which have the most protective effect on water quality, shall apply.

Section 14.25.106 Cross References.

Any reference to "Stormwater Management Manual" or "Puget Sound Erosion Control Manual" or "Washington Department of Ecology's Stormwater Management Manual for the Puget Sound" or "Puget Sound Water Quality Manual" or "BMP's approved by the Western Washington Stormwater Manual" or "Department of Ecology alternative paving Best Management Practices," wherever found within the Vancouver Municipal Code, shall refer to this chapter and to the equivalent manuals as adopted in this chapter.

Section 14.25.110 Definitions.

For the purposes of this chapter, the following definitions shall apply. Any terms not defined herein are used as defined in the most current version of the City's January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit and its mandatory incorporated provisions of the 2005 Stormwater Management Manual for Western Washington.

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

"Basin plan" means a plan that assesses, evaluates, and proposes solutions to existing and potential future impacts to the beneficial uses of, and the physical, chemical, and biological properties of waters of the state within a basin.

"City" means the City of Vancouver.

"Collection and conveyance system" means the drainage facilities, both natural and man-made, which collect, contain, and provide for the flow of surface and stormwater to a receiving water or infiltration facility. The natural elements of the conveyance system include, but are not limited to, small drainage courses, streams, rivers, lakes, and wetlands. The human-made elements of the collection and conveyance system include, but are not limited to, gutters, inlets, ditches, pipes, channels, and retention/detention facilities.

"Director" means the director of the City of Vancouver public works department or designee.

"Flow control facility" means a drainage facility designed to mitigate the impacts of increased surface and stormwater runoff flow rates generated by development. Flow control facilities are designed either to hold water for a considerable length of time and then release it by evaporation, plant transpiration, and/or infiltration into the ground, or to hold runoff for a short period of time, releasing it to the conveyance system at a controlled rate.

"General Requirements" means the most current edition of the "City of Vancouver Engineering Services General Requirements and Details for the Design and Construction of Water, Sanitary Sewer and Surface Water Systems".

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

"Land-disturbing activity" means any activity that results in a movement of earth or a change in the existing soil cover (both vegetative and nonvegetative) and/or existing soil topography. Land-disturbing activities include, but are not limited to, clearing, grading, filling and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices are not considered land-disturbing activity.

"Low Impact Development" or "LID" means a stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions.

"Minimum Requirements" means the Minimum Technical Requirements for New Development and Redevelopment as set forth in Appendix 1 of the most current version

of the City's January 17, 2007 Western Washington Phase II Municipal Stormwater Permit. The Minimum Requirements are identified as follows:

1. Preparation of Stormwater Site Plans. This Minimum Requirement is addressed in VMC Chapter 14.25 and VMC Title 20 procedures.

2. Construction Stormwater Pollution Prevention Plan (Construction SWPPP). This Minimum Requirement is addressed in VMC Chapter 14.24 and in General NPDES Permit for Stormwater Discharges Associated with Construction Activities.

3. Source Control of Pollution. This Minimum Requirement is addressed in VMC Chapters 14.25 and 14.26.

4. Preservation of Natural Drainage Systems and Outfalls. This Minimum Requirement is addressed in VMC Chapter 14.25 and in VMC 20.740 Critical Areas.

5. On-site Stormwater Management. This Minimum Requirement is addressed in VMC Chapter 14.25.

6. Runoff Treatment. This Minimum Requirement is addressed in VMC Chapter 14.25.

7. Flow Control. This Minimum Requirement is addressed in VMC Chapter 14.25.

8. Wetlands Protection. This Minimum Requirement is addressed in VMC Chapter 14.25 and 20.740 Critical Areas.

9. Operation and Maintenance. This Minimum Requirement is addressed in VMC Chapter 14.25.

“National Pollutant Discharge Elimination System” or “NPDES” means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring

and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington State Department of Ecology.

“New development” means land disturbing activities, including Class IV-general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

"Non-endangerment Standard" means to prevent the movement of fluid containing any contaminant into the groundwater if the contaminant may cause a violation of the water quality standards for groundwaters of the state of Washington, Chapter 173-200 WAC or may cause health concerns.

“Operations and maintenance manual” means a document prepared to explain the proper specific operational and maintenance details of facilities installed as required by the Stormwater Manual.

“Permit” means the most current version of the City of Vancouver’s National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit.

“Pollution” or “pollutants” means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in

temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as 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.

“Redevelopment” means, on a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious 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 impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

"Registered soil scientist" means a person who is qualified to evaluate and interpret soils and soil-related data for the purpose of understanding soil resources as they affect environmental quality and who is certified with the American Registry for Certified Professionals in Soil Science.

“Runoff” means water that travels across the land surface and discharges to water bodies either directly or through a collection and conveyance system.

“Source control BMP” means a structure or operation that is intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. The Stormwater Manual separates source control BMPs into two types. Structural Source Control BMPs are physical, structural, or mechanical devices, or facilities that are intended to prevent

pollutants from entering stormwater. Operational BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater. See Volume IV of the 2005 Stormwater Management Manual for Western Washington for details.

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

"Stormwater facility" means a constructed components of a stormwater drainage system, designed and constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to: pipes, swales, ditches, open channels, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, storage basins, infiltration devices, catch basins, manholes, dry wells, oil/water separators, biofiltration swales, and sediment basins.

“Stormwater Manual” means the 2005 Stormwater Management Manual for Western Washington, which is the 5-volume technical manual (Publication Nos. 05-10-29 through 05-10-33) prepared by the Washington State Department of Ecology for use by local governments that contains BMPs to prevent, control, or treat pollution in stormwater.

“Stormwater site plan” means the comprehensive report containing all of the technical information and analysis necessary for regulatory agencies to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements. Contents of the Stormwater Site Plan will vary with the type and size of the project, and individual site characteristics. It includes a Construction Stormwater Pollution Prevention Plan (Construction SWPPP) that must be submitted to and approved by the Washington Department of Ecology, and a Permanent Stormwater Control Plan

(PSC Plan). Guidance on preparing a Stormwater Site Plan is contained in the Stormwater Manual, Chapter 3 of Volume I. Modified submittals of stormwater site plans are permitted as specified in the General Requirements

“Total Maximum Daily Load” or “TMDL” means a water cleanup plan. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards, and an allocation of that amount to the pollutant’s sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. The calculation must include a margin of safety to ensure that the water body can be used for the purposes the state has designated. The calculation must also account for seasonable variation in water quality. Water quality standards are set by states, territories, and tribes. They identify the uses for each water body, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. The Clean Water Act, section 303, establishes the water quality standards and TMDL programs.

"Treatment BMP" means a BMP that is intended to remove pollutants from stormwater. A few examples of treatment BMPs include, but are not limited to, wetponds, oil/water separators, biofiltration swales, and constructed wetlands.

“Underground Injection Control” or “UIC” well means a manmade subsurface fluid distribution system designed to discharge fluids into the ground, consisting of an assemblage of perforated pipes, drain tiles, or other similar mechanisms, or a dug hole that is deeper than the largest surface dimension. Subsurface infiltration systems include drywells, pipe or french drains, drain fields, and other similar devices.

"Wetlands" means those areas defined as wetlands under the City of Vancouver Critical Areas Protection ordinance, VMC 20.740.

Section 14.25.120 Enforcement.

It shall be unlawful to violate the provisions of this chapter. Enforcement of this chapter shall be governed by VMC Title 22.

Section 14.25.130 Liability.

Nothing in this chapter shall be deemed to impose any liability upon the City of Vancouver or upon any of its officers or employees, or to relieve the owner or occupant of any property from the duty to keep their property in a safe and healthy condition.

Section 14.25.199A Article II. Standard Requirements

Section 14.25.200 Stormwater site plan submittal requirements.

A. A stormwater site plan complying with the requirements of this chapter and Manuals adopted hereunder shall be submitted to the City for all activities subject to regulation under this chapter.

B. Stormwater site plans involving engineering principles, such as plans including construction of treatment facilities or flow control facilities, structural source control BMPs, or drainage conveyance systems, shall be prepared by or under the direction of a licensed engineer registered in the State of Washington.

C. A stormwater site plan shall be submitted in a standard format as detailed in the City's General Requirements.

Section 14.25.210 Runoff treatment.

A. Runoff treatment in new development and redevelopment shall follow the requirements of the City's General Requirements and the Stormwater Manual.

B. Stormwater treatment BMPs shall be selected, sited, designed and constructed in accordance with the requirements detailed in the City's General Requirements and the Stormwater Manual.

Section 14.25.215 Source control of pollution.

Source control BMPs shall be applied to all projects. Source control BMPs shall be selected, designed and maintained in compliance with the Stormwater Manual, the City's General Requirements, and VMC 14.26.

Section 14.25.220 Flow control.

A. Flow control in new development and redevelopment shall follow the requirements of Appendix 1 of the Permit.

B. Natural drainage flow routes of surface water shall be maintained, and discharges from the site shall occur at the natural location and elevation, to the maximum extent practicable. The manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters and down gradient properties. All outfalls require energy dissipation.

C. Flow control facilities shall be selected, sited, designed and constructed in compliance with the Stormwater Manual and with the City's General Requirements.

D. UIC wells used to manage stormwater for flow control shall meet the non-endangerment standard (Chapter 173-218WAC); which means the UIC well shall be designed, constructed, operated, maintained, and decommissioned in a manner that protects groundwater quality (Chapter 173-200WAC).

E. Design of stormwater collection and conveyance systems shall be in accordance with the City's General Requirements.

F. Hydrologic and hydraulic analysis shall be in accordance with the Stormwater Manual and with the General Requirements.

G. Every new development and redevelopment must demonstrate that sufficient downstream conveyance capacity exists to accommodate the increased flows from the project. Hydrologic and hydraulic analysis will be required when sufficient capacity has not been established.

Section 14.25.225 Low Impact Development.

It is recommended that new development and redevelopment projects utilize Low Impact Development practices. LID practices shall refer to the Low Impact Development Technical Guidance Manual for Puget Sound, the Stormwater Manual, and the General Requirements for design recommendations. All uses of LID practices shall meet applicable regulations and requirements.

Section 14.25.227 Wetlands Protection.

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Wetlands Protection required under Minimum Requirement #8 may also be addressed in VMC Chapter 20.740, Critical Areas. Where provisions of this chapter or manuals adopted under this chapter conflict with other manuals adopted under this section, or with other provisions of the Vancouver Municipal Code, the more stringent requirements, which have the most protective effect on water quality and wetland function shall apply.

Section 14.25.230 Ownership and maintenance.

A. Ownership

1. City Ownership of Stormwater Facilities. Stormwater systems and facilities that collect, convey, treat and/or infiltrate runoff from public rights-of-way will be owned and maintained by the City, unless it is demonstrated to the satisfaction of the Director that the stormwater facilities can be adequately maintained by private parties.

2. Private Ownership of Stormwater Facilities. Owners of private stormwater systems and facilities that collect, convey, treat and/or infiltrate runoff from private properties are responsible for the operation and maintenance of those facilities.

3. Ownership and maintenance responsibility for stormwater facilities shall be specified on a recorded plat, short plat, or covenant.

B. Maintenance standards. All stormwater facilities shall be inspected and maintained so that they operate as designed. Inspection and maintenance shall comply with the “Maintenance Standards for Drainage Facilities” as specified in Volume V-Runoff Treatment BMPs in the Stormwater Manual, and with an approved operations and maintenance manual.

C. Short-term Maintenance.

1. To insure satisfactory operation of new private stormwater facilities, the applicant constructing the facility shall maintain it for two years after completion of the project.

2. For stormwater facilities within a public road right-of-way or on land owned by the City, the applicant, after satisfactory completion of the stormwater facilities, shall post and maintain a maintenance bond or other security acceptable to the director. The two-year maintenance bond will cover the cost of design defects or failures in workmanship of the facilities. The amount of the maintenance bond shall be ten percent of the construction cost of the stormwater facilities.

D. City Long-Term Maintenance.

1. The City is responsible for long-term maintenance of new stormwater facilities under any of the following situations:

- a. Facilities located in public road rights-of-way; or
- b. Facilities dedicated to the City; or
- c. City-owned facilities that collect, convey, treat and/or infiltrate runoff from public rights-of-way.

2. If the City provides long-term maintenance of a stormwater facility, all the following requirements shall be met before the City becomes responsible for maintenance:

a. The facilities shall be inspected and approved by the Director prior to acceptance.

b. All necessary ownerships and easements to properly access the facility shall be conveyed to the City and recorded with the county auditor.

E. Private Long-Term Maintenance.

1. For private stormwater facilities, the applicant shall make arrangements requiring that the existing or future occupants or owners assume maintenance responsibilities. Such arrangements shall be approved prior to approval of the stormwater site plan or prior to the time of recording a required plat, short plat, or covenant.

2. The City shall have the authority to inspect private facilities for compliance. If the responsible party fails to maintain the facilities in compliance with maintenance standards for drainage facilities as specified in the Stormwater Manual, and in compliance with an approved operations and maintenance manual, the City may take enforcement action under VMC Title 22.

Section 14.25.240 Bonds and Insurance.

A. Maintenance Security. In cases identified in Section 14.25.230.C, a maintenance bond or other security acceptable to the Director shall be posted and maintained throughout the two-year initial maintenance period for a stormwater facility.

B. Other Governmental Agency Projects. The bonding and insurance requirements of Section 14.25.240.A may be waived for development activities and drainage projects undertaken by governmental agencies.

Section 14.25.299A Article III. Exceptions and Special Cases

Section 14.25.300 Basin plans.

A. As allowed by Appendix 1, Section 7 of the Permit, Basin/Watershed planning may be used by the City as an available option to tailor Minimum Requirement #6 Runoff Treatment, Minimum Requirement #7 Flow Control, and/or Minimum Requirement #8 Wetlands Protection. Basin planning may be used to support alternatives to treatment, flow control, and/or wetland protection requirements contained in Section 4 of Appendix 1 of the Permit. Basin planning may also be used to demonstrate an equivalent level of treatment, flow control, and/or wetland protection through the construction and use of regional stormwater facilities.

B. In order for a basin plan to serve as a means of modifying the Minimum Requirements, the following conditions must be met:

1. The plan must be formally adopted by all jurisdictions with responsibilities under the plan; and
2. All ordinances or regulations called for by the plan must be in effect; and
3. The basin plan must be reviewed and approved by the Washington State

Department of Ecology.

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C. Nothing in this section shall be read to require the City to implement Basin Planning.

14.25.315 Adjustments

An Adjustment is a technical variation in the application of a Minimum Requirement to a particular project. The city may grant Adjustments to Minimum Requirements #1, 4, 5, 6, 7 and 9, only, under this section. Adjustments are not authorized under this section for Minimum Requirements #2, 3, and 8.

A. Adjustment Approval Process.

1. Permit procedural requirements. Adjustments to the Minimum Requirements may be granted by the City, as Permittee, provided that a written finding of fact is prepared showing compliance with the specified criteria.

2. City process. A request for an Adjustment shall be administratively processed in accordance with procedures specified in the General Requirements. The Director may grant an Adjustment upon demonstration by the applicant of compliance with the approval criteria contained in Subsection B. below. The Director shall maintain a record of such decisions and associated findings.

B. Adjustment Approval Criteria. The City may grant an Adjustment to Minimum Requirements #1, 4, 5, 6, 7, and 9, only, under the following circumstances:

1. Compliance with the approval criteria must be documented with written findings of fact.

2. The Adjustment provides substantially equivalent environmental protection.

3. Based on sound engineering practices, the objectives of safety, function, environmental protection and facility maintenance are met.

4. The Adjustment will not result in non-compliance with other Minimum Requirements.

5. No Adjustment shall be used in place of an Exception procedure under VMC 14.25.320, where such procedure is applicable.

Section 14.25.320 Exceptions.

The City may grant Exceptions to Minimum Requirements #1, 3, 4, 5, 6, 7, 8 and 9, under this section. Exceptions are not authorized under this section for Minimum Requirement #2. Exceptions to Minimum Requirement #2 are addressed under VMC 14.24.075. Exceptions to Minimum Requirement #3 that are unrelated to new development or redevelopment are addressed under VMC 14.26.155.

A. Exception Approval Process.

1. Permit procedural requirements. Exceptions to the Minimum Requirements may be granted by the City, as Permittee, following legal public notice of an application for an exception or variance, legal public notice of the City's decision on the application, and written findings of fact that documents the City's determination to grant an exception. The City shall keep records, including the written findings of fact, of all local exceptions to the Minimum Requirements. Project-specific design exceptions based on site-specific conditions do not require prior approval of the Department of Ecology.

2. City process. Applications for Exceptions shall be processed according to the procedures for Type III applications under VMC 20.210.060. A fee shall be imposed in the amount of the fee for a Type III variance as established under VMC 20.180.060. The Hearings Examiner may grant an Exception upon demonstration by the applicant of compliance with the approval criteria contained in Subsection B below. Hearings under VMC 14.25.330 relating to Exceptions shall be consolidated with any open record hearing or appeal related to the underlying new development or redevelopment application, where such open record hearing or appeal is required.

B. Exception Approval Criteria. The City may grant exceptions to Minimum Requirements #1, 3, 4, 5, 6, 7, 8 and 9 if application of the Minimum Requirements imposes a severe and unexpected economic hardship on a project applicant.

1. The following must be documented with written findings of fact:
 - a. The current (pre-project) use of the site, and
 - b. How the application of the Minimum Requirement(s) restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the Minimum Requirements; and
 - c. The possible remaining uses of the site if the exception were not granted; and
 - d. The uses of the site that would have been allowed prior to the adoption of the Minimum Requirements; and
 - e. A comparison of the estimated amount and percentage of value loss as a result of the Minimum Requirements versus the estimated amount and percentage of

value loss as a result of requirements that existed prior to adoption of the Minimum Requirements; and

f. The feasibility for the owner to alter the project to apply the Minimum Requirements.

2. In addition any exception must meet the following criteria:

a. The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and

b. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements. This criteria is met by evidence that the owner/operator has employed measures to avoid and minimize impacts, such as:

1. limiting the degree or magnitude of the regulated use or activity;
2. implementing best management practices;
3. phasing or limiting implementation;
4. changing the timing of activities; or
5. revising site plans.

Section 4. Ordinance M-3600, as codified as Chapter 14.26 VMC, is hereby repealed in its entirety and replaced with a new Chapter 14.26 VMC to read as follows:

Chapter 14.26 WATER RESOURCES PROTECTION

Sections:

14.26.100 Purpose.

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- 14.26.105 Interpretation.**
- 14.26.110 Definitions.**
- 14.26.112 Authority.**
- 14.26.113 Adoption of manual.**
- 14.26.114 Cross references.**
- 14.26.115 Scope and applicability.**
- 14.26.117 Discharges to water resources.**
- 14.26.120 Minimum standards.**
- 14.26.125 Application of greater standards.**
- 14.26.130 Greater standards for hazardous materials operations.**
- 14.26.135 Restrictions in special protection areas.**
- 14.26.140 Administrative programs.**
- 14.26.145 Enforcement.**
- 14.26.150 Trade secrets and confidential records.**
- 14.26.152 Alternative practices.**
- 14.26.154 Adjustments.**
- 14.26.155 Special exceptions.**
- 14.26.160 Appeals.**
- 14.26.165 Halogenated solvent table.**

Section 14.26.100 Purpose.

A. The purpose of this chapter is to protect water resources in the City by establishing development regulations and minimum standards to reduce the risks of contaminants entering water resources as defined at VMC Section 14.26.110.

B. In furtherance of this purpose, the City prohibits the discharge of contaminants to water resources as set forth in VMC section 14.26.117 and requires certain operations to utilize best management practices as set forth in VMC sections 14.26.120, .125, and .130.

C. The City also recognizes that achieving successful pollution control must include a water resources pollution prevention education component for businesses, industries, and the general public. In implementing this chapter, the City will offer education and technical assistance to businesses, industries, and the general public to explain how to implement water resource protection and pollution control practices. Enforcement actions will normally be implemented when:

1. Education and technical assistance measures are unsuccessful at protecting the public interest;
2. Best management practices are not followed; or
3. Persons willfully contaminate the water resources of the City.

D. It is not the intent of this chapter to have the City pursue enforcement actions against businesses, industries, or persons whose actions or activities result in the discharge of de minimus amounts, as defined at VMC section 14.26.110 herein, of contaminants into the water resources of the City.

E. The City finds this chapter is necessary to protect the health, safety and welfare of the residents of the City and the integrity of the City's water resources for the benefit of all by:

1. Minimizing or eliminating surface and ground water quality degradation;

2. Preserving and enhancing the suitability of waters for recreation, fishing, wildlife habitat, aquatic life and other beneficial uses; and

3. Preserving and enhancing the aesthetic quality and biotic integrity of the water.

F. The City recognizes the importance of maintaining economic viability while providing necessary environmental protection. This chapter helps achieve both goals.

G. It is the purpose of the 2009 amendments to this chapter to adopt ordinances and other enforceable mechanisms required for compliance with the most current version of the City of Vancouver's National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit, and for compliance with the federal Underground Injection Control (UIC) program, through application of best management practices (BMPs) for stormwater management. The regulatory basis requiring the 2009 amendments is as follows:

1. To meet requirements of the Federal Clean Water Act, the State of Washington Department of Ecology has been given the authority to issue municipal stormwater permits to designated communities throughout the state that discharge stormwater into surface water bodies. On January 17, 2007, the Washington State Department of Ecology issued the City of Vancouver a Western Washington Phase II Municipal Stormwater Permit under the National Pollutant Discharge Elimination System (NPDES) program. The permit requires that the City of Vancouver adopt stormwater control and pollution prevention measures, with the goal of improving waters of the state.

2. The Underground Injection Control (UIC) program was created by Congress to protect underground sources of drinking water from discharges of fluids to the ground. Chapter 173-218 WAC was adopted by the Washington State Department of Ecology to regulate stormwater discharges to groundwater through drywells and other types of underground infiltration systems that are not regulated under the NPDES permit.

Section 14.26.105 Interpretation.

The provisions of this chapter shall be liberally construed by the City to serve the purposes of this chapter.

Section 14.26.110 Definitions.

For the purposes of this chapter, the following definitions shall apply. Any terms not defined herein are used as defined in the most current version of the City's January 17, 2007 National Pollutant Discharge Elimination System Western Washington Phase II Municipal Stormwater Permit and its mandatory incorporated provisions of the 2005 Stormwater Management Manual for Western Washington.

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

“Bulk Petroleum Fuel Operation” means an operation that manages a cumulative total of 12,000 gallons or more of petroleum fuel on-site in tanks capable of holding volumes of at least 4,000 gallons.

“Chemical Lagoons and Pits” means any earthen basin or uncovered concrete basin or depression containing hazardous materials.

“City” means the City of Vancouver.

“Closure of Operation” means the cessation of activity such that hazardous materials are no longer managed at the operation. For the purposes of this chapter, an operation is considered closed if it has been non-operational for a continuous period of 2 years.

“Connection” means a link or channel between two otherwise separate conveyance systems whereby there may be flow from one system to the other.

“Container” means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

“Dangerous Waste” means waste designated in the Washington State Dangerous Waste Regulations (WAC 173-303) as dangerous or extremely hazardous due to its physical, chemical or biological properties.

“De Minimus Amounts” means a small or miniscule amount of contaminant in a discharge that is demonstrated to be non-harmful to the environment.

“Direct Infiltration Facility” means, for the purposes of this chapter, any mechanism that is intended to direct stormwater or process wastewater directly into the ground without providing treatment in accordance with VMC chapters 14.10 and 14.25. Examples include, but are not limited to, drywells, ponds, trenches and perforated pipe systems.

"Director" means the director of the City of Vancouver public works department or designee.

"Discharge" means, for purposes of this chapter only, the release of materials such that the materials may enter or be emitted to the air, land, or water resources.

"Disposal" means discharging, discarding, or abandoning materials into or on any land, air, or water resources.

"Disposal Site" means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application site as defined at VMC Section 14.26.110 herein, surface impoundment, injection well, or waste pile.

"Drywell" means a precast concrete manhole with perforations and installed with drain rock or other material for exfiltration of surface water runoff or other drainage to the subsurface.

"Existing Operations, Uses, Activities" means operations, uses, or activities established prior to the effective date of this chapter.

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

"Hard Chrome Plating" means chrome plating applied in a sufficient thickness to provide a hardened protective surface rather than merely a decorative surface. A hard chrome shop is more likely to be a large single-purpose plating shop with higher quantities of hazardous plating materials onsite, whereas facilities which do decorative plating may do so as just one of the steps in their manufacturing process.

"Hazardous Material" means any product, substance, commodity, or waste in liquid, solid or gaseous form that exhibits a characteristic that presents a risk to water

resources. Risk may be due to ignitability, toxicity, reactivity, instability, corrosivity or persistence. This definition extends to all “dangerous wastes” and “hazardous substances” that are defined in WAC 173-303 (State Dangerous Waste Regulations). It also includes the chemicals and/or substances that are defined in the federal Emergency Planning and Community Right to Know Act (EPCRA) and/or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

“Illicit connection” means any man-made conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples include, but are not limited to, sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the stormwater drainage system.

“Illicit discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

“Land Application Site” means a place where wastes such as sludge or gray water are applied to the land.

“Leachable Constituents” means these constituents are determined using the Toxicity Characteristic Leaching Procedure (TCLP), Test Method 1311 in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846.

“Manage” means a general term that includes, but is not limited to, the use, transfer, storage, processing and re-packaging of materials. This does not include the active or immediate transportation of materials.

"Municipal Waste" means general residential and commercial wastes including the waste collected by garbage haulers and the waste delivered to transfer or disposal sites by the waste generators themselves (self-haul).

"Municipal Water Supply Well" means a City or Clark Public Utility (CPU) owned drinking water well meeting the definition of a Group A community water system as defined by WAC 246-290-020. Locations of such wells are depicted on the Water Resources Protection Ordinance Critical Area and Special Protection Area map as maintained by the City.

"National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington State Department of Ecology.

"New development" means land disturbing activities, including Class IV-general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

"New Operations, Uses, Activities" means operations, uses, or activities established on or after the effective date of this chapter on February 3, 2003.

Development or activities requiring a building or other permit are new operations, uses, or activities. In addition, when a change in an operation places that operation into a higher classification per VMC Table 14.26.125A, the operation shall be considered and treated as a new operation.

“Operation(s)” means industrial, commercial, institutional, or residential activity that may be publicly or privately-owned and operated, and may involve the use of stationary facilities, equipment, transport vehicles, or transfer equipment. To the extent allowed by state or federal law, this definition includes all federal, state, or local government entities.

“Outdoor Wood Preservation” means the act of pressure treating wood products for weather resistance and outdoor use, using organic-based preservatives such as creosote or pentachlorophenol, typically used to treat poles or heavy timbers, and inorganic-based preservatives such as chromium, copper and arsenic, typically used to treat dimension lumber.

“Permeable surface” means soil or other ground cover with a sufficiently rapid infiltration rate so as to eliminate surface runoff.

“Permit” means the most current version of the City of Vancouver’s January 17, 2007 National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit.

“Person” means any human being, firm, labor organization, partnership, corporation, unincorporated association, trustee, trustee in bankruptcy, receiver, or any other legally recognized entity.

“Petroleum Fuel” means petroleum-based liquid products that are refined from crude oil specifically for fuel purposes. Fuel includes, but is not limited to, all grades of automotive gasoline, aviation gasoline, diesel, heating oils and kerosene.

“Potentially Harmful Materials” means hazardous materials as defined at VMC Section 14.26.110 as well as other materials including, but not limited to, the following which, if discharged or improperly disposed, may present a risk to water resources:

Petroleum products including but not limited to petroleum fuel and petroleum based coating and preserving materials; oils containing PCBs; antifreeze and other liquid automotive products; metals, either in particulate or dissolved form, in concentrations above established regulatory standards; flammable or explosive materials; radioactive material; used batteries; corrosives, acids, alkalis, or bases; paints, stains, resins, lacquers or varnishes; degreasers; solvents; construction materials; drain cleaners and other toxic liquid household products; pesticides, herbicides, fungicides or fertilizers unless applied in accordance with local, state and federal standards; steam cleaning and carpet cleaning wastes; pressure cleaning wastes; car wash water; laundry wastewater; soaps, detergents, ammonia; swimming pool backwash; chlorine, bromine, and other disinfectants; heated water; domestic animal wastes; sewage; recreational vehicle waste; animal carcasses, excluding salmonids; food wastes; collected lawn clippings, leaves or branches; trash or debris; silt, sediment, or gravel; dyes; and untreated or unapproved wastewater from industrial processes.

“Process Wastewater” means wastewater discharged from one or more industrial processes or industrial cleanup procedures.

“Redevelopment” means, on a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of

impervious 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 impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

“Releasing” or “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including but not limited to the abandonment or discarding of barrels, containers, and other closed receptacles.

“Responsible Government Official” means a person employed by the federal, state, or a local government with authority to protect the public health and safety or water resources. Examples include, but are not limited to, persons employed by the police and fire departments, and employees of the Washington State Department of Ecology, the United States Environmental Protection Agency, Clark County, and Clark County Public Health.

“Sewage Disposal Cesspool” means a lined excavation in the ground which receives the discharge of a drainage system, designed to retain solids and organic matter while permitting liquids to seep through the sides and bottom.

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

“Stormwater Drainage System” means constructed and natural features that function together as a system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat, or filter stormwater.

"Stormwater facility" means a constructed component of a stormwater drainage system, designed and constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to: pipes, swales, ditches, open channels, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, storage basins, infiltration devices, catch basins, manholes, dry wells, oil/water separators, biofiltration swales, and sediment basins.

"Stormwater Manual" means the 2005 Stormwater Management Manual for Western Washington, which is the 5-volume technical manual (Publication Nos. 05-10-29 through 05-10-33) prepared by the Washington State Department of Ecology for use by local governments that contains BMPs to prevent, control, or treat pollution in stormwater.

"Stormwater Treatment Facility" means a stormwater facility that is intended to remove pollutants from stormwater. Stormwater treatment facilities include, but are not limited to, wetponds, oil/water separators, biofiltration swales, and constructed wetlands.

"Surface Water" means water that flows across the land surface, in channels, or is contained in depressions in the land surface, including but not limited to ponds, lakes, rivers, and streams.

"Tank" means a stationary device designed to contain liquids used or stored at an operation which may include hazardous materials, chemicals or dangerous wastes, and which is constructed primarily of non-earthen materials to provide structural support.

"Toxicity" means having properties that cause or significantly contribute to death, injury, or illness in humans or wildlife. A material exhibits the characteristic of toxicity if

it contains certain leachable constituents at sufficient concentrations to be considered dangerous to human health and the environment. Leachable constituents and toxicity concentrations are referenced in the Toxicity Characteristic List of WAC 173-303-090(8) as amended.

“Transfer Warehouse” means any enclosed and covered transportation-related warehouse where shipments of products, which may be hazardous materials but not dangerous wastes, are held in portable containers for transfer.

“Underground Injection Control” or “UIC” well means a manmade subsurface fluid distribution system designed to discharge fluids into the ground, consisting of an assemblage of perforated pipes, drain tiles, or other similar mechanisms, or a dug hole that is deeper than the largest surface dimension. Subsurface infiltration systems include drywells, pipe or french drains, drain fields, and other similar devices.

“Water Resources” means surface water, storm water and groundwater.

Section 14.26.112 Authority.

The City shall retain the authority to require implementation of any portion of this chapter, as defined herein and as necessary to protect water resources and to comply with the City’s January 17, 2007 National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit when the City becomes aware of and documents specific circumstances concerning an operation that demonstrate that the measures are necessary to protect public health and safety. The City may impose additional requirements whenever documented specific circumstances applicable to an operation threaten water resources.

Section 14.26.113 Adoption of Manual.

A. For purposes of regulation of activities subject to this chapter, the City hereby adopts as its Stormwater Manual the 2005 Stormwater Management Manual for Western Washington.

B. At least one copy of the manual adopted in this section shall be filed in the Office of the City Clerk for use and examination by the public. The manual may also be made available for use and examination by the public at the Office of the Director, or on the City website.

C. Where provisions of this chapter or manual adopted under this section conflict with other provisions of the Vancouver Municipal Code, the more stringent requirements, which have the most protective effect on water quality, shall apply.

Section 14.26.114. Cross References.

Any reference to “Stormwater Management Manual” or “Puget Sound Erosion Control Manual” or "Washington Department of Ecology's Stormwater Management Manual for the Puget Sound" or "Puget Sound Water Quality Manual" or "BMP’s approved by the Western Washington Stormwater Manual" or “Department of Ecology alternative paving Best Management Practices,” wherever found within the Vancouver Municipal Code, shall refer to this chapter and to the equivalent manuals as adopted in this chapter.

Section 14.26.115 Scope and applicability.

A. Operations: All operations are subject to the provisions of this chapter. Each operation shall meet the Minimum Standards defined in VMC section 14.26.120. Operations that manage hazardous materials may also be required to meet the Greater Standards for Hazardous Materials Management, as defined in VMC sections 14.26.125 and .130.

B. Designated Areas:

1. Critical Aquifer Recharge Area: The entire area within the boundary of the City of Vancouver (as it exists on the effective date of this chapter and as it may exist in the future) is designated as a Critical Aquifer Recharge Area. The provisions of this chapter shall apply to all areas within the City.

2. Special Protection Areas.

a. Special Protection Areas are defined inside the Critical Aquifer Recharge Area (inside the city boundary), to include property within one thousand nine hundred feet (1900') of any municipal water supply well. The locations of these wells are depicted on the Water Resources Protection Ordinance Critical Area and Special Protection Areas map (or the equivalent update) that is maintained by and available from the City.

b. The City shall apply development restrictions as defined in VMC 14.26.135 to activities inside the Special Protection Areas.

C. Prohibitions: Regardless of operating status or location, the following uses and activities shall be prohibited within the City:

1. Hard Chrome Plating Operations

2. Outdoor Wood Preservation Operations

3. Chemical Lagoons and Pits
4. Sewage Disposal Cesspools
5. Hazardous Material Disposal Sites
6. Radioactive Waste Disposal Sites
7. Municipal Waste Disposal Sites

D. Emergency Response Exclusion: Emergency response activities shall be excluded from the requirements of this chapter, if such an activity is initiated and completed within a timeframe too short to allow for full compliance with this chapter. This exclusion shall only apply to immediate actions that are undertaken in response to an imminent threat to water resources, public health or safety. This exclusion shall not apply unless a responsible government official as defined at VMC Section 14.26.110 is notified and agrees that the event is a qualifying emergency.

Section 14.26.117 Discharges to water resources.

A. Prohibited Discharges: No person or operation shall discharge any potentially harmful materials as set forth at VMC Section 14.26.110 herein into the water resources of the City. Persons or operations shall use all known, available, and reasonable means to prevent the discharge of any potentially harmful materials into the water resources of the City.

B. Illicit Connections:

1. Any connection that could allow conveyance of any solid, liquid, or gas material not composed entirely of surface and storm water directly to water resources is considered an illicit connection and is prohibited, except:

a. Connections conveying allowable discharges as set forth at VMC Section 14.26.117.C and D herein;

b. Connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) permit or a state waste discharge permit; and

c. Connections conveying effluent from permitted or authorized onsite sewage disposal systems to subsurface soils.

2. Floor drains shall not be installed inside an operation which stores or uses hazardous materials unless approved by the City for connection to sanitary sewer. Existing floor drains connected to storm drains or to surface water drains located in or near indoor hazardous material storage or use areas are considered unauthorized connections and shall be sealed or removed to prevent liquid entry, piped to the sanitary sewer (with approval and appropriate shut-off valves), be routed to blind sumps, or be directed to additional containment or treatment systems meeting the standards of this chapter.

C. Allowable Discharges to Stormwater Drainage System: The following types of discharges shall be permitted unless the City determines that these discharges (whether singly or in combination with others) are causing significant contamination of water resources:

1. Uncontaminated water from crawl space pumps or footing drains;

2. Materials placed as part of an approved habitat restoration or bank stabilization project;

3. Natural uncontaminated surface water or ground water;

4. Flows from riparian habitats and wetlands;

5. City-approved dye testing following verbal notification to the City at least one day prior to the date of test. The City and the Clark County Public Works Department are exempt from this requirement;

6. Any discharge allowed by an operation's National Pollutant Discharge Elimination System (NPDES) permit or other authorized discharge permit;

7. Any discharge specifically allowed in writing by a local, state or federal agency for remedial action in an agreed order, a consent decree or in a voluntary cleanup effort.

D. Allowable Discharges to Permeable Surfaces. The following types of discharges shall be permitted onto a permeable surface unless the City determines that these discharges (whether singly or in combination with others) contain greater than de minimus amounts of contaminants:

1. All allowable discharges specified in VMC 14.26.117.C;
2. Potable water;
3. Potable water line flushing;
4. Landscape watering;
5. Residential car and boat washing;
6. Residential swimming pool and spa water;
7. Common discharge practices from water well disinfection.

E. Non-stormwater Discharges to the Stormwater Drainage System Prohibited Unless Conditions Met. The following categories of non-stormwater discharges are prohibited discharges to the Stormwater Drainage System unless the stated conditions are met:

1. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the Stormwater Drainage System.
2. Discharges from landscape watering and other irrigation runoff. These shall be minimized through, at a minimum, public education activities and water conservation efforts.
3. Dechlorinated swimming pool discharges. The discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the Stormwater Drainage System. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the Stormwater Drainage System.
4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. The City shall reduce these discharges through, at a minimum, public education activities and/or water conservation efforts. To avoid washing pollutants into the Stormwater Drainage System, the City must minimize the amount of street wash and dust control water used.

5. Other non-stormwater discharges. The discharges shall be in compliance with the requirements of the stormwater pollution prevention plan received by the City, which addresses control of construction site de-watering discharges.

F. A UIC well may be used to manage stormwater when pollutant concentrations that reach ground water are not expected to exceed Washington state ground water quality standards (chapter 173-200WAC). This section shall not be construed to authorize any discharge to a UIC that does not conform to the requirements of WAC 173-218 – Underground Injection Control Program.

Section 14.26.120 Minimum standards.

A. Operational Best Management Practices (BMPs): All operations shall adopt the following best management practices to ensure their operations minimize potential risks to water resources.

1. Precautions: The owner/operator shall take precautions to prevent accidental releases of hazardous materials. Hazardous materials shall be separated and prevented from entering Stormwater Drainage Systems, septic systems, and drywells.

2. Hazardous Materials Management: Hazardous materials shall be managed so that they do not threaten human health or the environment, or enter water resources.

3. Hazardous Material Releases: All hazardous materials that have been released shall be contained and abated immediately, and the hazardous materials recycled or disposed of properly. The City shall be notified of any release of hazardous materials that clearly impact water resources, as soon as possible but no later than 24 hours after the release. The

Stormwater Manual provides applicable operational BMPs for spills of oils and hazardous substances.

4. Oil/Water Separators: Oil/water separators shall be inspected, cleaned and maintained as stipulated in the Stormwater Manual. The City may allow an operation to modify the regularity of cleanouts if the operation can demonstrate to the City's satisfaction that the separator operates effectively at less frequent cleaning intervals.

5. Pesticide and Fertilizer Management. All pesticides, herbicides, fungicides and fertilizers shall be applied and managed according to the applicable BMPs for landscaping and lawn/vegetation management in the Stormwater Manual, VMC 20.760 Shoreline Management Area, and VMC 20.740 Critical Areas Protection.

6. Stormwater Treatment Systems: Stormwater drainage systems and treatment facilities, including, but not limited to, catch basins, wetponds and vaults, biofilters, settling basins, and infiltration systems, shall be cleaned and maintained by the responsible party designated in VMC 14.25.230 according to the applicable operational BMPs for the maintenance of stormwater, drainage and treatment systems in the Stormwater Manual.

7. Decommissioning Water Wells: Any water well which is unusable, abandoned, or whose use has been permanently discontinued, or which is in such disrepair that its continued use is impractical or is an environmental, safety or public health hazard shall be decommissioned according to the provisions of the Washington Administrative Code WAC 173-160-381.

8. Operation Closure: At the closure of an operation, all hazardous materials shall be removed from the closing portion of the operation and disposed of in accordance with local, state and federal laws.

9. Mobile Washing and Pressure Cleaning: Operations which engage in activities such as pressure washing, carpet cleaning, and equipment and vehicle washing shall apply best management practices according to applicable BMPs for washing and steam cleaning in the Stormwater Manual. Mobile washing operations shall ensure that all of their employees are knowledgeable of proper discharge practices. Washwater from such operations shall be captured and directed to an approved discharge location. Non-approved washwater shall not be discharged into the City's stormwater drainage system.

B. Commercial Operations Requiring Additional BMPs: Operations which engage in the following commercial operations shall implement the applicable source control BMPs from the Stormwater Manual: commercial animal handling, commercial composting, printing operations, fueling stations, log sorting, railroad yards, recyclers, scrap yards, and wood treatment facilities.

C. Specific Activities Requiring Additional BMPs: Operations performing the following activities shall implement the applicable source control BMPs from the Stormwater Manual and shall comply with the requirements of VMC 20.760 Shorelines Management Area and 20.740 Critical Areas Protection: construction/repair/maintenance of boats/ships, airfield/street deicing, dust control, landscaping, loading/unloading of trucks and railcars, repair/maintenance/parking of vehicles/equipment, erosion control at industrial sites, maintenance of utility corridors, maintenance of roadside ditches/culverts, outdoor manufacturing, mobile fueling of vehicles/equipment, painting/coating of vehicles/buildings/equipment, storing dangerous wastes, managing raw materials.

Section 14.26.125 Application of greater standards.

ORDINANCE - 67

H:\CIVIL FORMS\Ordinances\Ordinance form

A. Classifications: Certain non-residential operations present a greater potential risk to water resources because of the volume and type of hazardous materials that are managed. These non-residential operations are classified in VMC Table 14.26.125A and are subject to the stipulated actions defined in this section.

Table 14.26.125A – CLASSIFICATIONS	
Classification	Definition
Class I Operations	<p>Operations that at any time within a year time period will or do manage over 220 pounds in total of the following:</p> <p>A. Hazardous materials, including any mixtures thereof, that contain constituents referenced in the Code of Federal Regulations, 40 CFR 302.4 (referenced in Section 103(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)); or</p> <p>B. Hazardous materials, including any mixtures thereof, that contain constituents from the lists specified in VMC Table 14.26.125A, Class II (below).</p> <p><u>Concentration Declassification.</u></p> <p>A Class I operation shall no longer be a classified operation if the Class I constituents (40 CFR 302.4) contained in a product or waste are individually present at less than 1% by weight for non-carcinogenic hazardous materials, and less than 0.1% by weight for known or suspected carcinogenic hazardous materials. (Operators should review the Material Safety Data Sheet for the</p>

hazardous materials to make this determination).

Consumer Quantity Declassification.

A Class I operation shall no longer be a classified operation if both of the following conditions are met:

- A. The operation is focused on research, education, distribution or consumer oriented activities, including but not limited to laboratories, hospitals, schools, cargo handlers, distributors, warehouses, or retailers; and
- B. Products containing Class I or Class II hazardous materials are managed in closed containers or sealed bags with individual capacities of no more than 10 gallons for a liquid material and no more than 80 pounds for a dry or solid material.

Metal and Metal Alloy Declassification.

Solid metals and solid metal alloys, including but not limited to roll stock, bar stock, sheet stock, and manufactured articles such as equipment, parts, building materials, and piping, that contain one or more metals listed in 40 CFR 302.4 or WAC 173-303-090(8) shall be declassified; EXCEPT, that where machining, forming, grinding, cutting, melting, or other activities produce residues such as shavings, grindings, swarf, fume, or other finely divided particulate forms of a listed metal or metal alloy that may present a threat to water resources, such residues shall not be declassified.

Personal and Commercial Vehicle Fuel Tank Declassification.

The greater standards of VMC 14.26.125.B and VMC14.26.130 shall not be applied to personal and commercial vehicles that are designed to or do hold

	<p>quantities of fuel that would otherwise cause them to be classified under this section (VMC 14.26.125.A).</p>
<p>Class II Operations</p>	<p>Operations that at any time within a <u>one</u> year time period will or do manage over 2,200 pounds in total of the following:</p> <p>A. Hazardous materials, including any mixtures thereof, that exhibit the characteristic of toxicity as defined at VMC Section 14.26.110KK because they contain leachable constituents as defined at VMC Section 14.26.110T from the Toxicity Characteristic List of WAC 173-303-090(8) as amended; or</p> <p>B. Hazardous materials, including any mixtures thereof, that contain constituents that are referenced on the Halogenated Solvent List set forth in VMC Table 14.26.165A.</p> <p><u>Site Cleanup Reclassification.</u></p> <p>A Class II operation shall be reclassified as a Class I operation if the primary activity is site remediation or cleanup pursuant to an approved settlement agreement or a remedial action under 70.105B RCW.</p> <p><u>Concentration Reclassification.</u></p> <p>A Class II operation shall be reclassified as a Class I operation if the Class II constituents (from WAC 173-303-090(8) or the Halogenated Solvent List set forth in Table 14.26.165A) are present in the hazardous materials being managed</p>

at concentrations of less than 5% by weight.

Transfer Warehouse Reclassification.

A Class II operation shall be reclassified as a Class I operation if the following conditions are met:

- A. The operation is a transfer warehouse as defined in VMC Section 14.26.110LL; and
- B. Containers of hazardous materials are not opened at the site under any circumstance; and
- C. Products containing Class II hazardous materials are managed in containers with individual capacities of no more than 400 gallons.

Consumer Quantity Declassification.

A Class II operation shall no longer be a classified operation if both of the following conditions are met:

- A. The operation is focused on research, education, distribution or consumer oriented activities, including but not limited to laboratories, hospitals, schools, cargo handlers, distributors, warehouses, or retailers; and
- B. Products containing Class I or Class II hazardous materials are managed in closed containers or sealed bags with individual capacities of no more than 10 gallons for a liquid material and no more than 80 pounds for a dry or solid material.

	<p>Personal and Commercial Vehicle Fuel Tank Declassification.</p> <p>The greater standards of VMC 14.26.125B and VMC14.26.130 shall not be applied to personal and commercial vehicles that are designed to or do hold quantities of fuel that would otherwise cause them to be classified under this section (VMC 14.26.125.A).</p>
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B. Stipulated Actions and Timelines: Class I and II operations shall adopt the Greater Standards for Hazardous Material Operations defined in VMC Section 14.26.130, according to the following stipulations:

1. New Operations: New Class I and Class II operations shall adopt the Greater Standards beginning the date of issuance of certificate of occupancy or as otherwise specified in accordance with the provisions of this chapter.

2. Existing Operations: Existing Class I and Class II operations shall adopt the Greater Standards (or some portion thereof), within a time period specified by the City, if the City becomes aware of and documents specific circumstances which demonstrate that Greater Standards (or some portion thereof) are necessary to protect public health and safety, or reduce the risk of contamination to water resources.

3. Change of Class or Tenant: The City shall be notified as soon as possible and no later than 30 days after:

- a. A change in classification of an operation as defined in VMC Table 14.26.125A.
- b. Occupation of an existing Class I or II operation by a new tenant.

Section 14.26.130 Greater standards for hazardous materials operations.

A. Best Management Practices (BMPs): All new Class I and II operations shall implement the provisions of this section within ninety (90) days after the date of issuance of the certificate of occupancy. Operations that change in classification from unclassified to either Class I or Class II shall implement the provisions of this section within 90 days of change in classification from unclassified to either Class I or Class II.

1. Design and Construction: Operations shall be designed, constructed, maintained and operated to minimize the possibility of an unplanned release of hazardous materials to soil or water resources.

2. Container/Tank Management: A container or tank holding a hazardous material shall always be closed, except to add or remove materials. Hazardous materials shall also be managed so that they do not damage the structural integrity of the operation or devices containing the material.

3. Container/Tank Condition: All containers and tanks shall be maintained in such a manner as to assure effective operation and prevent the release of hazardous materials.

4. Container/Tank Identification: The owner/operator shall label all containers and tanks containing hazardous materials to identify the major risk(s) associated with the contents. This labeling shall conform to applicable sections of the Uniform Fire Code, Occupational Safety and Health standards, and/or the State of Washington's Dangerous Waste Regulations.

5. Ancillary Equipment: Any leaking pipe, pump, or other ancillary equipment shall be repaired or replaced promptly. Ancillary equipment associated with hazardous materials shall be supported and protected against physical damage and excessive stress.

6. Compatibility: The owner/operator shall use a container or tank made of or lined with materials which are compatible with the hazardous materials to be stored.

7. Containment: Container and tank storage areas shall have a containment system that is capable of collecting and holding spills and leaks. This containment shall:

- a. Be constructed of an impervious surface with sealed joints.
- b. Joints between concrete slabs and slab/foundation interfaces should be eliminated or minimized in the operation;
- c. Provide pollution control measures to protect water resources, including run-off collection and discharge from active areas;
- d. Be designed to provide secondary containment of 110% of the container's or tank's capacity; or in areas with multiple tanks, 110% of the largest tank or 10% of the aggregate tank volumes, whichever is larger. Secondary containment shall be provided in all areas where hazardous materials are loaded/unloaded, transferred, accumulated or stored;
- e. Be compatible with the materials that are being handled; and
- f. Be routinely inspected as defined at VMC section 14.26.130C.

8. Loading Areas: Loading and unloading areas shall be designed, constructed, operated and maintained to:

- a. Contain spills and leaks that might occur during loading/unloading;
- b. Prevent releases of hazardous materials to water resources;
- c. Contain wash waters (if any) resulting from the cleaning of contaminated transport vehicles and load/unload equipment; and

d. Allow for removal as soon as possible any collected hazardous materials resulting from spills, leaks, and equipment cleaning.

9. Closure: At closure of an operation, all remaining structures, containers, tanks, liners, and soil containing or contaminated with hazardous materials at concentrations above state and federal regulatory thresholds shall be decontaminated and properly disposed of or managed.

B. Spill and Emergency Response Plan (SERP):

1. All new Class I and II operations shall develop and implement a Spill and Emergency Response Plan (SERP) within 90 days after the date of issuance of the certificate of occupancy. Operations that change in classification from unclassified to either Class I or Class II shall implement the provisions of this section within 90 days of change in classification from unclassified to either Class I or Class II. Other operations may also be required to develop and implement a SERP if the City determines this action will help prevent releases of hazardous materials to water resources.

2. The SERP shall be maintained on site, and shall be made available to the City upon request.

3. The SERP shall be updated at least every 5 years or as needed to reflect significant changes in operation or practices.

4. At a minimum, the SERP shall include the following information:

a. Spill Prevention.

i. Drawings including the layout of the operation, a floor plan, direction of drainage, entrance and exit routes, and areas where hazardous materials are received, stored, transported, handled or used in operations.

ii. Listings of all hazardous materials on site including types, volumes, locations and container types and sizes.

iii. Spill prevention related equipment including equipment which serves to detect releases of potential water resources contaminants.

b. Emergency Response.

i. Chain of command and procedures for spill response.

ii. Phone list of response agencies including federal, state and city emergency contact numbers and environmental cleanup companies.

iii. Procedures for treating and disposing of spilled hazardous materials.

c. Certification.

The SERP shall include a certification signed by an authorized representative of the operation stating: "I certify that the information provided in this document is to the best of my knowledge true and complete, and the spill prevention equipment and emergency response measures described herein are as stated." The signed certificate shall include the authorized representative's name (printed), title, and contact information.

C. Operational Inspections:

1. All new Class I and II operations shall implement the provisions of this section within ninety (90) days after issuance of certificate of occupancy. Operations that change in classification from unclassified to either Class I or Class II shall implement the provisions of this section within 90 days of change in classification from unclassified to either Class I or Class II. Other operations may also be required to implement these

provisions if the city determines this action will help prevent releases of hazardous materials to water resources.

2. Schedule: The owner/operator shall develop a written schedule for inspecting all monitoring equipment, safety or emergency equipment, security devices, and any other equipment that helps prevent, detect, or respond to water resource-related hazards.

3. Regular Inspections: The owner/operator shall perform site inspections to identify malfunctions and deterioration of equipment or containers, operator errors, discharges, or any other condition that may cause or lead to the release of hazardous materials to water resources. The owner/operator shall conduct these inspections often enough to identify problems in time to correct them before they impact water resources. Inspections shall be completed in all areas where hazardous materials are managed and a written record of those inspections made at least annually.

4. Water Resource-Related Hazard Mitigation: The owner/operator shall remedy any problems revealed by the inspection. Where a water resource-related hazard is imminent or has already occurred, remedial action shall be taken immediately.

D. Training Program:

1. All new Class I and II operations shall implement the provisions of this section within ninety (90) days after issuance of certificate of occupancy. Operations that change in classification from unclassified to either Class I or Class II shall implement the provisions of this section within 90 days of change in classification from unclassified to either Class I or Class II. Other facilities also may be required to implement these provisions if the city determines this action will help prevent releases of hazardous materials to water resources.

2. Operations shall develop a training program or amend an existing program that informs employees at least once each year of any possible risks to water resources associated with on-site operations. The owner/operator shall ensure that employees know or understand:

- a. The location of hazardous materials managed at the operation and the associated potential risks to water resources;
- b. The location of material safety data sheets (MSDS) at the operation;
- c. How employees can detect the presence or release of hazardous materials;
- d. How employees can protect themselves through work practices, emergency procedures, and with personal protective equipment;
- e. How to locate and use the operation's Spill and Emergency Response Plan; and
- f. How to prevent the pollution or contamination of water resources.

E. Closure Plan:

1. Each new Class II operation shall prepare and submit to the City a Closure Plan within 6 months of the date of issuance of the certificate of occupancy. Each existing Class II operation shall prepare and submit such a plan within 6 months of a request by the City. Class II operations shall ensure that their facilities are closed in a manner that prevents the release of hazardous materials during closure, protects water resources, and prevents post-closure escape of hazardous materials to water.

2. Plan Requirements: The Closure Plan shall detail the means by which the operation will, upon any closure anticipated to be longer than 2 years, remove and properly

dispose of hazardous materials, and perform an investigation to confirm the presence or absence of hazardous materials in the soil and ground water, if potential contamination is indicated. Specifically, the Closure Plan shall include the following:

a. A listing of the types and quantities of hazardous materials reasonably expected to be present on-site during the operating life of the operation.

b. A description of the plan for removal and disposal of hazardous materials.

c. A description of the plan to decontaminate containment systems and ancillary equipment.

d. An estimate of the cost to implement the Closure Plan, using the assumption that a third party will conduct removal and disposal activities.

e. A certification signed by an authorized representative of the business/industry submitting the Closure Plan stating, "I certify that the information provided in this document is to the best of my knowledge accurate and the closure measures described herein will be implemented as stated." The signed certificate shall include the authorized representative's name (printed), title, and contact information.

3. Report Update. The owner/operator of an operation shall update the Closure Plan every 5 years or re-certify the current information and estimates. The Closure Plan shall also be updated if operating procedures change in such a way that the volume/mass of hazardous material is increased by 25% or more.

F. Engineering and Operating Report: When the City recognizes and demonstrates a need for additional information on an operation's practices, the City may require the operation to submit an engineering and operating report to accommodate the City's review

of operations and to prevent releases of hazardous materials to water resources. If required, the report shall provide the following:

1. The type of industry or business including the kind and quantity of finished products.

2. A process flow diagram illustrating the process flow of water and materials in a normal operating day. This will include details on the operation's plumbing and piping and where specific chemicals are added to processes.

3. A discussion of any discharges to the Stormwater Drainage System.

4. A discussion of any discharges through land applications, including seepage lagoons, irrigation, and subsurface disposal. As applicable, this discussion should also include the depth to ground water and anticipated overall effects of the operations on the quality of water resources.

5. Provisions for any plans for future expansion or intensification.

6. A certification signed and dated by an authorized representative of the operation stating: "I certify that the information provided in this document is to the best of my knowledge true and complete." The signed certificate shall include the authorized representative's name (printed), title, and contact information.

G. Records & Reports:

1. Operations shall maintain records of required inspection, training, cleaning and maintenance events. Where operations are otherwise required by the City or another agency to maintain such records, those records shall satisfy this requirement. All operations shall maintain these records on site for at least 3 years and shall make them available to the City upon request.

2. Plans, reports or other documentation concerning the management of hazardous materials shall also be made available to the City upon request.

3. Information provided to the City will be available to the public. Information may be claimed as confidential by the operation as outlined at VMC section 14.26.150 herein. If no claim is made at the time of submission, the City will make the information available to the public when requested.

H. Protections for Stormwater: All new Class I and II operations shall implement the applicable structural Best Management Practices (BMPs) of the Stormwater Manual prior to the date of issuance of the certificate of occupancy.

Section 14.26.135 Restrictions in special protection areas.

A. Development Limitation:

1. New Operations. The City shall not approve applications for the following in Special Protection Areas as defined in VMC section 14.26.115B2:

a. New bulk petroleum fuel operations as defined by VMC 14.26.110; or

b. New Class II operations as defined in VMC Table 14.26.125A, EXCEPT a new Class II operation may occupy an existing structure or facility appropriate for the use and located between 1,000 and 1,900 feet from a municipal water supply well when:

i. All applicable provisions of this chapter are met; and

ii. The owner or operator provides an Engineering and Operating Report described in VMC section 14.26.130F to the City's satisfaction.

2. Existing Operations.

a. Existing bulk petroleum fuel operations are nonconforming uses. However, existing bulk petroleum fuel operations throughout the Special Protection areas may become conforming by:

- i. Filing such a request with the City; and
- ii. Taking the necessary action(s) to meet all applicable provisions of this chapter to the City's satisfaction.

b. Existing Class II operations are nonconforming uses. However, an existing Class II operation located between 1,000 and 1,900 feet from a municipal water supply well may become conforming by:

- i. Filing such a request with the City; and
- ii. Taking the necessary action(s) to meet all applicable provisions of this chapter to the City's satisfaction.

B. Septic Systems:

1. The City shall accept no application for approval of a project in the Critical Aquifer Recharge Area defined at VMC section 14.26.115B1, including the Special Protection Areas defined at VMC section 14.26.115B2 relying upon installation of a septic system until the system has been approved by Clark County Public Health or a successor agency responsible for permitting of septic systems.

2. New septic systems and replacement of existing septic systems shall not be permitted in Special Protection Areas. An owner/operator may seek relief from this prohibition by filing with the City a request for relief accompanied by an analysis prepared by a qualified professional to the City's satisfaction of the potential for

groundwater contamination at the site. This analysis may include a soils and groundwater evaluation if deemed necessary by the City.

3. The City shall not approve a project relying upon installation of a septic system in a Special Protection Area unless all of the following findings are made:

- a. Connection to an existing sewer line is impossible or impracticable; and
- b. The property cannot be reasonably developed without use of a septic system;

and

c. The septic system design poses no significant risk of groundwater contamination.

4. The City's decision may be appealed to the Hearings Examiner in accordance with VMC section 14.26.160.

C. Heating Oil Tanks:

1. New underground heating oil tanks and replacement of existing heating oil tanks shall not be permitted in Special Protection Areas. An owner/operator may seek relief from this prohibition by filing with the City a request for relief accompanied by an analysis prepared by a qualified professional to the City's satisfaction of the potential for groundwater contamination at the site. This analysis may include a soils and groundwater evaluation if deemed necessary by the City.

2. The City shall not approve the installation of an underground heating oil tank in a Special Protection Area unless the following findings are made:

- a. Connection to another source of fuel or energy is impracticable;

and

b. The proposed underground fuel tank poses no significant risk of groundwater contamination.

3. The City's decision may be appealed to the Hearings Examiner in accordance with VMC Section 14.26.160.

D. Direct Infiltration Facilities:

1. New direct infiltration facilities, and replacement of existing direct infiltration facilities shall not be allowed for Class I and Class II operations in Special Protection Areas. An operation may seek relief from this prohibition by filing with the City a request for relief accompanied by an analysis prepared by a qualified professional to the City's satisfaction of the potential for groundwater contamination at the site. This analysis may include a soils and groundwater evaluation if deemed necessary by the City.

2. The City's decision may be appealed to the Hearings Examiner in accordance with VMC section 14.26.160.

Section 14.26.140 Administrative programs.

A. Educational and Technical Assistance Program.

1. The City will work in conjunction with other agencies to implement an Education and Technical Assistance Program to assist property owners, business and industry owners and managers, residents, and other interested parties in understanding the importance of protecting the City's water resources and in employing best management practices in pursuit of that goal.

2. The program directed toward business and industry will include but not be limited to technical assistance visits, informational fact sheets, self-audits or workshops.

3. Additional education and assistance programs aimed at residences, public institutions and low risk businesses shall include:

a. Education on the proper use of pesticides, herbicides, fungicides, and fertilizers;

b. Discussions of the impacts of unauthorized discharges to drywells, catch basins, storm basins and sanitary sewer; and

c. Activities to explain and promote the proper management and disposal of used oil and other contaminants.

B. Compliance Inspections:

1. City personnel may inspect any operation in the City that is known to manage (or may potentially manage) hazardous materials or is reasonably believed to be a potential source of an illicit discharge.

2. Inspections may be initiated as the result of a complaint or referral, or as defined by a routine schedule for compliance. Inspections will be used to determine if there is any risk to water resources, and to determine if an operation is in compliance with this chapter.

3. Inspections may involve a review of process equipment, structures, and operating practices; records or plan review; interviews with operators; photo documentation and sampling. As such, operators shall allow representatives of the City, upon presentation of credentials, to:

a. Enter the premises where hazardous materials are being managed, or where records may be kept under the provisions of this chapter. The owner/operator

shall make necessary arrangements to allow access without delay. Unreasonable delay may constitute a violation of this chapter;

b. Have access to and copy, at reasonable times, any records that must be kept under the provisions of this chapter;

c. Inspect at reasonable times any facilities, equipment (e.g., safety, monitoring, operating, or other equipment), practices or operations regulated or required under the provisions of this chapter;

d. Sample and monitor at reasonable times, any substances or parameters at any location for the purposes of assuring compliance or as otherwise authorized by the provisions of this chapter. This requirement may involve the City's installation or erection of equipment to conduct sampling, inspection, compliance monitoring or metering operations. As such, at the written or verbal request of the City, operators shall remove any temporary or permanent obstruction to safe and easy access to an operation to be inspected and/or sampled. The operator shall not replace such an obstruction without the City's consent.

Section 14.26.145 Enforcement.

A. Enforcement. It shall be unlawful to violate the provisions of this chapter. Enforcement of this chapter shall be governed by VMC Title 22.

B. Supplemental Enforcement Provisions for Water Resources Protection. In addition to civil and criminal enforcement as authorized under VMC Title 22, enforcement of this chapter may utilize the following authority:

1. The City Council of the City of Vancouver finds that an operation not in compliance with the requirements of this chapter constitutes a public nuisance under RCW 7.48, Nuisances.

2. The City may use field notes, observations, photo documentation, sample logs, analytical results or other information to define risk and to establish that an operation is in violation of this chapter.

3. The City may require the implementation of the operational or structural best management practices, as defined through the provisions of this chapter. The City may also require the operator to sample and analyze any discharge, surface and storm water, ground water and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the City. If the operator is required to complete this sampling and analysis, a copy of the analysis shall be provided to the City.

4. The City may impose additional requirements whenever documented specific circumstances (applicable to the operation) threaten water resources.

5. Notwithstanding any other provisions of this chapter, whenever it appears to the City that conditions regulated by this chapter require immediate action to protect the public health and/or safety, the City is authorized to enter such property for the purpose of inspecting and investigating such emergency conditions.

Section 14.26.150 Trade secrets and confidential records.

A. Records Availability.

1. All surveys, reports, plans, diagrams, permits, and other documents, information, and data submitted to the City pursuant to this chapter, or information and

data obtained by the City through sampling, monitoring, and enforcement activities shall generally be available for public inspection and copying.

2. Such information shall also not be available for public inspection and copying if protected from public disclosure by the provisions of RCW chapter 42.56 as amended or other state and federal laws governing the dissemination of public records and information to the public, including but not limited to patent, trademark, and trade secret laws and regulations.

3. In no case shall an employee or agent of the City be liable to a business, industry or person for the public disclosure of any surveys, reports, plans, diagrams, permits, and other documents, information, and data submitted to the City pursuant to this chapter, or information and data obtained by the City through sampling, monitoring, and enforcement activities; unless such information or data has been marked confidential by the business, industry or person and/or the business, industry or person has requested confidentiality consistent with this section.

B. Exemption from Disclosure Request.

1. Any business, industry or person may request that specific and particular information or data in the possession of the City be exempted from public inspection and copying. The request shall be in writing and addressed to the City, and the business, industry or person shall bear the burden of establishing that the specific and particular information or data sought to be exempted is protected from public disclosure under VMC section 14.26.150A2. The City attorney's office shall determine whether and which portions of such information are protected from public disclosure within 21 days of receipt of a request for confidentiality. The City shall not release for public inspection

and copying that information and data for which a business, industry or person has requested confidentiality until such time as the City has made a determination of whether the information is protected from public disclosure, unless the City determines in good faith that the request for confidentiality is frivolous or without merit.

2. The City may withhold records based on VMC section 14.26.150A2 only if it finds:

a. The record contains information that reflects valuable research data that has been obtained by the City within 5 years of the date of the request and that disclosure would produce private gain and public loss. For purposes of this finding, “research data” means a body of facts and information collected for a specific purpose and derived from close, careful study, or from scholarly or scientific investigation or inquiring; or

b. The record contains trade secret information because it includes a formula, pattern, compilation, program, device, method, technique, or process that:

i. Derives independent economic value, actual or potential, from not being generally known;

ii. The information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and

iii. The information is not readily ascertainable from another source.

3. As an alternative to the procedures specified in VMC section 14.26.150B2, the City attorney’s office may decline to make a determination of whether the record is exempt from public disclosure because it contains trade secret information.

Where the City attorney's office declines to make such a determination, the City shall provide the holder of the trade secret a reasonable amount of time, but in no case more than 21 days to obtain an order from the superior court preventing disclosure of the record.

4. A business, industry or person submitting information or data to the City for which the business, industry or person intends to claim whole or partial confidentiality shall mark those specific pages and sections of information or data asserted to be confidential with a conspicuous and legible marking indicating "TRADE SECRET" and/or "CONFIDENTIAL". The business, industry or person shall then submit a request for trade secret protection to the City for the marked records within 7 days of submitting such marked information or data.

C. Availability of Confidential Information: Surveys, reports, plans, diagrams, permits, and other documents, information, and data submitted to the City pursuant to this chapter, or information and data obtained by the City through sampling, monitoring, and enforcement activities, which the City or a court of competent jurisdiction has determined are trade secrets and exempted from public inspection and copying, shall be available upon written request to local, state, and federal governmental agencies for uses related to this chapter, the NPDES program, state water quality monitoring and enforcement, and other enforcement proceedings involving the business, industry or person.

D. Procedure for Public Records Request: Any person seeking to inspect or copy any surveys, reports, plans, diagrams, permits, and other documents, information, and data submitted to the City pursuant to this chapter, or information and data obtained by the City through sampling, monitoring, and enforcement activities, which are not

exempted from public disclosure, shall do so by written request to the City. The request shall be specific enough to permit the City to identify the particular documents, information, or data sought. The City shall respond to each document request in accordance with RCW 42.56.

Section 14.26.152 Alternative practices.

A. Where appropriate, the City shall accept other local, state or federal approvals, permits or other authorization as satisfying certain provisions defined through this chapter. The City retains the authority to review plans, permits and operating conditions to determine compliance.

B. The City will accept an alternative practice, system, plan or structure only if the owner/operator can demonstrate to the City that the alternative will produce the same or a greater level of water resource protection.

14.26.154 Adjustments

An Adjustment is a technical variation in the application of a Minimum Requirement to a particular project. The City may grant Adjustments to this chapter, only, under this section. No other Adjustments are authorized under this section.

A. Adjustment Approval Process.

1. Permit procedural requirements. Adjustments to the Minimum Requirements may be granted by the City, as Permittee, provided that a written finding of fact is prepared showing compliance with the specified criteria.

2. City process. A request for an Adjustment shall be administratively processed in accordance with procedures specified in the General Requirements. The Director may grant an Adjustment upon demonstration by the applicant of compliance with the approval criteria contained in Subsection B. below. The Director shall maintain a record of such decisions and associated findings.

B. Adjustment Approval Criteria. The City may grant an Adjustment to this chapter, only, under the following circumstances:

1. Compliance with the approval criteria must be documented with written findings of fact.

2. The Adjustment provides substantially equivalent environmental protection.

3. Based on sound engineering practices, the objectives of safety, function, environmental protection and facility maintenance are met.

4. The Adjustment will not result in non-compliance with other Minimum Requirements.

5. No Adjustment shall be used in place of an Exception procedure under VMC 14.26.155, where such procedure is applicable.

Section 14.26.155 Special Exceptions.

The City may grant Special Exceptions to this chapter under this section.

A. Special Exception Approval Process.

1. NPDES Permit procedural requirements. Special Exceptions may be granted by the City following legal public notice of an application for an exception, legal

public notice of the City's decision on the application for special exception, and written findings of fact that documents the City's determination to grant an exception. The City shall keep records, including the written findings of fact, of all exceptions. Project-specific design exceptions based on site-specific conditions do not require prior approval of the Washington State Department of Ecology.

2. City process. Applications for Special Exceptions under this chapter shall be processed according to the procedures for Type III applications under VMC 20.210.060. A fee shall be imposed in the amount of the fee for a Type III variance as established under VMC 20.180.060. The Hearings Examiner may grant a Special Exception upon demonstration by the applicant of compliance with the approval criteria contained in Subsection B below. Hearings under VMC 14.26.155 relating to Special Exceptions shall be consolidated with any required open record hearing or appeal related to any underlying application, where such open record hearing or appeal is required.

B. Exception Approval Criteria. The City may grant Special Exceptions to this chapter, if application of this chapter imposes a severe and unexpected economic hardship on a project applicant.

1. The following must be documented with written findings of fact:
 - a. The current (pre-project) use of the site, and
 - b. How the application of this chapter restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of this chapter; and
 - c. The possible remaining uses of the site if the Special Exception were not granted; and

d. The uses of the site that would have been allowed prior to the adoption of this chapter; and

e. A comparison of the estimated amount and percentage of value loss as a result of the requirements of this chapter versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the requirements of this chapter; and

f. The feasibility for the owner to alter the project to apply the requirements of this chapter.

2. In addition any exception must meet the following criteria:

a. The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and

b. The exception is the least possible exception that could be granted to comply with the intent of this chapter. This criteria is met by evidence that the owner/operator has employed measures to avoid and minimize impacts, such as:

1. limiting the degree or magnitude of the regulated use or activity;
2. implementing best management practices;
3. phasing or limiting implementation;
4. changing the timing of activities; or
5. revising site plans.

Section 14.26.160 Appeals.

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A. Appeals of enforcement of this chapter under VMC 14.26.145 and VMC Title 22 shall be governed by VMC Title 22.

B. Appeals under VMC 14.26.135 relating to special protection areas shall be consolidated with any open record hearing or appeal related to any underlying application, where such open record hearing or appeal is required, and shall be processed according to the procedures for Type II applications in VMC 20.210.020. Where there is no underlying new development or redevelopment application requiring an open record hearing or appeal, appeals under VMC 14.26.135 relating to special protection areas shall be processed according to the procedures set forth in VMC 14.20.070.

C. Appeals under VMC 14.26.155 relating to special exceptions shall be consolidated with any open record hearing or appeal related to the underlying application, where such open record hearing or appeal is required, and shall be processed according to the procedures for Type III applications in VMC 20.210.020. Where there is no underlying application requiring an open record hearing or appeal, appeals under VMC 14.26.155 relating to special exceptions shall be processed according to the procedures set forth in VMC 14.20.070.

Section 14.26.165 Halogenated solvent table.

Solvent	Synonym(s)	CAS No.
Benzyl chloride	Chloromethylbenzene	100-44-7
Bis(2-chloroethyl)ether	Bis(-chloroethyl)ether	111-44-4
Bis(2-chloroisopropyl)ether	Bis(-chloroisopropyl)ether	108-60-1

Bromobenzene	Phenyl bromide	108-86-1
Bromochloromethane	Chlorobromomethane	74-97-5
Bromodichloromethane	Dichlorobromomethane	75-27-4
Bromoethane	Ethyl bromide	74-96-4
Bromoform	Tribromomethane	75-25-2
Carbon tetrachloride	Tetrachloromethane	56-23-5
Chlorobenzene	Benzene chloride	108-90-7
2-Chloroethyl vinyl ether	(2-Chlorethoxy)ethane	110-75-8
Chloroform	Trichloromethane	67-66-3
1-Chloro-1-nitropropane	Chloronitropropane	600-25-9
2-Chlorophenol	o-Chlorophenol	95-57-8
4-Chlorophenyl phenyl ether	p-Chlorodiphenyl ether	7005-72-3
Chloropicrin	Trichloronitromethane	76-06-2
m-Chlorotoluene		108-41-8
o-Chlorotoluene	2-Chloro-1-methylbenzene	95-45-8
p-Chlorotoluene		106-43-4
Dibromochloromethane	Chlorodibromomethane	124-48-1
1,2-Dibromo-3-chloropropane	DPCP	96-12-8
Dibromodifluoromethane	Freon 12-B2	75-61-6
1,2-Dichlorobenzene	o-Dichlorobenzene	95-50-1
1,3-Dichlorobenzene	m-Dichlorobenzene	541-73-1
1,1-Dichloroethane	1,1-DCA	75-34-3

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1,2-Dichloroethane	Ethylene dichloride, 1,2-DCA	107-06-2
1,1-Dichloroethene	Vinylidene chloride 1,1-DCE	75-35-4
trans-1,2-Dichloroethylene	trans-1,2-DCE	156-60-5
1,2-Dichloropropane	Propylene dichloride	78-87-5
cis-1,3-Dichloropropene	cis-1,3-Dichloropropylene	10061-01-5
trans-1,3-Dichloropropene	trans-1,3-Dichloropropylene	10061-02-0
Ethylene dibromide	1,2-Dibromoethane, EDB	106-93-4
Hexachlorobutadiene	HCBD	87-68-3
Hexachlorocyclopentadiene	HCCPD	77-47-4
Methylene chloride	Dichloromethane	75-09-2
Pentachloroethane	Ethane pentachloride	76-01-7
1,1,2,2-Tetrabromoethane	Acetylene tetrabromide	79-27-6
1,1,2,2-Tetrachloroethane	Acetylene tetrachloride	79-34-5
Tetrachloroethylene	Perchloroethylene, PCE	127-18-4
1,2,4-Trichlorobenzene	1,2,4-TCB	120-82-1
1,1,1-Trichloroethane	Methyl chloroform, 1,1,1-TCA	71-55-6
1,1,2-Trichloroethane	1,1,2-TCA	79-00-5
Trichloroethylene	TCE	79-01-6
1,1,2-Trichlorofluoromethane	Freon 11	75-69-4
1,2,3-Trichloropropane	Allyl trichloride	96-18-4
Trichlorotrifluoroethane	Freon 113	76-13-1

Section 5. Section 32 of Ordinance M-3638, as last amended by Section 1 of Ordinance M-3857, and as codified as VMC 22.01.030, are each amended to read as follows:

Section 22.01.030 Applicability.

The enforcement provisions of title 22 shall apply to the following substantive VMC chapters and titles:

VMC chapter 5.62, Commercial recycling;

VMC chapter 5.76, Vehicles for hire.

VMC chapter 6.12, Garbage disposal;

VMC chapter 8.20, Nuisances;

VMC chapter 8.52, False Alarms, for the purposes of criminalizing the violation under 22.02.020 and for purposes of the appeal procedures under VMC chapter 22.03 only;

VMC chapter 11.12, Sidewalk construction;

VMC chapter 11.20, Driveways;

VMC chapter 11.28, Excavations;

VMC chapter 11.36, Protection of pavement;

VMC chapter 11.40, Snow and ice removal;

VMC chapter 11.44, Sidewalk openings;

VMC chapter 11.48, Street oiling permit;

VMC chapter 11.52, Curb, sidewalk, and driveway construction;

VMC chapter 11.80, Street standards – general;

VMC chapter 11.90, Street standards – development regulations;

VMC chapter 12.04, Street trees;

VMC chapter 14.24, Erosion control;

VMC chapter 14.25, Stormwater control;

VMC chapter 14.26, Water resources protection;

VMC chapter 16.04, Firecode;

VMC chapter 16.20, Fireworks;

VMC chapter 16.30, Consumer fireworks;

All chapters in Title 17 of the VMC, but not including VMC chapter 17.32 and chapter 17.39. Title 22 shall not limit any corrective actions or remedies contained in Title 17 of the VMC;

VMC Title 20, Development code, except that title 22 shall not apply to the damages calculations under VMC chapter 20.770, Tree Conservation, but shall apply to 20.770 for the purposes of enforcement procedures under VMC chapter 22.02 and the appeal procedures under VMC chapter 22.03.

Section 6. Section 32 of Ordinance M-3638, as last amended by Section 3 of Ordinance M-3857, and as codified as VMC 22.02.020.E.1, are each amended to read as follows:

E. Criminal prosecution. The city official may refer a violation to the city prosecutor for criminal prosecution.

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1. As specified in this subsection, a violation of the code may be classified as a misdemeanor or gross misdemeanor:

VMC CHAPTER	CRIMINAL CLASSIFICATION
VMC Chapter 5.62, Commercial recycling	Gross misdemeanor
VMC Chapter 5.76, Vehicles for Hire	Misdemeanor
VMC Chapter 6.12, Garbage disposal	Gross misdemeanor
VMC Chapter 8.20, Nuisances	Misdemeanor
VMC Chapter 8.52, False Alarms	Misdemeanor
VMC Chapter 11.12, Sidewalk construction	Misdemeanor
VMC Chapter 11.20, Driveways	Misdemeanor
VMC Chapter 11.28, Excavations	Misdemeanor
VMC Chapter 11.36, Protection of pavement	Misdemeanor
VMC Chapter 11.40, Snow and ice removal	Misdemeanor
VMC Chapter 11.44, Sidewalk openings	Misdemeanor
VMC Chapter 11.48, Street oiling permit	Misdemeanor
VMC Chapter 11.52, Curb, sidewalk and driveway construction	Misdemeanor
VMC Chapter 11.80, Street standards – general	Misdemeanor
VMC Chapter 11.90, Street Standards – development regulations	Misdemeanor
VMC Chapter 12.04, Street Trees	Misdemeanor
VMC Chapter 14.24, Erosion control	Misdemeanor
VMC Chapter 14.25, Stormwater control	Misdemeanor
<u>VMC Chapter 14.26, Water resources protection</u>	<u>Misdemeanor.</u> <u>Gross misdemeanor: when a repeat violation occurs; or when the person acted with malicious intent, reckless indifference to the law, or knew or reasonably should have known that the condition, act, failure to act or omission that prompted enforcement is in violation of the code.</u>
VMC Chapter 16.04, Firecode	Misdemeanor

VMC Chapter 16.20, Fireworks	Misdemeanor
VMC Chapter 16.30, Consumer fireworks	Misdemeanor, for possession of one pound or less of illegal consumer fireworks, exclusive of external packaging; Gross misdemeanor for possession of more than one pound of illegal consumer fireworks, exclusive of external packaging; Misdemeanor for use of illegal consumer fireworks; Misdemeanor for unlawful use or possession of legal consumer fireworks.
All Chapters in title 17 of the VMC, but not including VMC Chapters 17.32 and 17.39	Misdemeanor
VMC Title 20, except that title 22 shall not apply to VMC Chapter 20.770, Tree Conservation	Misdemeanor
Violation of a stop work order issued pursuant to VMC Title 22	Misdemeanor

Section 7. Section 8 of Ordinance M-3857, and as codified as VMC 22.02.070.D, are each amended to read as follows:

D. The monetary penalties for first, second and subsequent violations of the code enforced through this title, within any two (2) year period, shall be as follows:

VMC TITLE	FIRST VIOLATION	SECOND VIOLATION	SUBSEQUENT VIOLATIONS
VMC Chapter 5.62, Commercial Recycling	\$250	\$500	\$1,000
VMC Chapter 5.76, Vehicles for Hire	\$250	\$500	\$1,000
VMC Chapter 6.12, Garbage disposal	\$250	\$500	\$1,000
VMC Chapter 8.20, Nuisances	\$250	\$500	\$500
VMC Chapter 11.12, Sidewalk construction	\$100	\$200	\$200
VMC Chapter 11.20, Driveways	\$100	\$200	\$200
VMC Chapter 11.28, Excavations	\$100	\$200	\$200
VMC Chapter 11.36, Protection of pavement	\$100	\$200	\$200
VMC Chapter 11.40, Snow and ice removal	\$100	\$200	\$200
VMC Chapter 11.44, Sidewalk openings	\$100	\$200	\$200

VMC Chapter 11.48, Street oiling permit	\$100	\$200	\$200
VMC Chapter 11.52, Curb, sidewalk, and driveway construction	\$100	\$200	\$200
VMC Chapter 11.80, Street standards – general	\$100	\$200	\$200
VMC Chapter 11.90, Street standards – development regulations	\$100	\$200	\$200
VMC Chapter 12.04, Street Trees	\$250	\$500	\$1,000
VMC Chapter 14.24, Erosion control	\$250	\$500	\$1,000
VMC Chapter 14.25, Stormwater control	\$250	\$500	\$1,000
<u>VMC Chapter 14.26, Water resources protection</u>	<u>\$250</u>	<u>\$1000</u>	<u>\$5000</u>
VMC Chapter 16.04, Firecode, excluding false alarms under VMC 16.04.140	\$500	\$500	\$1,000
VMC Chapter 16.20, Fireworks	\$500	\$1,000	\$1,000
VMC 16.30.040, Illegal consumer fireworks	\$500	\$1,000	\$1,500
VMC 16.30.050, Legal Consumer Fireworks	\$250	\$500	\$1,000
International Fire Code Section 503.4	\$100	\$100	\$100
All Chapters in Title 17 of the VMC, but not including VMC Chapters 17.32 and 17.39	\$250	\$500	\$1,000
Violation of a stop work order	\$250	\$500	\$1,000
VMC Title 20, except that title 22 shall not apply to VMC Chapter 20.770, Tree conservation except for the purposes of enforcement and the appeal process under VMC 22.02 & 22.03	\$250	\$500	\$1,000
VMC 20.935.030A	\$100	\$100	\$100
VMC Chapter 20.740, Critical Areas Protection Ordinance	\$500	\$1000	\$1,500

Section 8. Severability – Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of

competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Vancouver Municipal Code, this ordinance is deemed to control.

Section 9. Effective Date. This ordinance shall take effect and be in full force sixty (60) days after its passage and approval in accordance with law.

Read first time:

Ayes: Councilmembers

Nayes: Councilmembers

Absent: Councilmembers

Read second time:

PASSED by the following vote:

Ayes: Councilmembers

Nayes: Councilmembers

Absent: Councilmembers

SIGNED this _____ day of _____, 2009.

Royce E. Pollard, Mayor

Attest:

R. Lloyd Tyler, City Clerk
By Carrie Lewellen, Deputy City Clerk

Approved as to form:

Ted H. Gathe, City Attorney