

ORDINANCE NO. 2695

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE OSWEGO AMENDING LOC SECTIONS 38.06.2.c.i, 38.24.5, 50.06.006, 50.60.004, 50.07.003, 50.07.004, 50.10.003.2 AND ADDING ARTICLE 38.25, REGARDING STORMWATER MANAGEMENT; AND ADOPTING FINDINGS (LU 15-0050).

WHEREAS, the regulation of stormwater runoff reduces threats to public health and safety and the environment by decreasing discharge of pollutants to receiving waters; and

WHEREAS, creeks, rivers and streams within the jurisdiction of Lake Oswego experience bank erosion and contribute sediment and sediment-bound pollutants to downstream waters; and

WHEREAS, inadequate surface and subsurface drainage planning and practice can lead to erosion and property damage and risk to life; and is therefore in the public interest; and

WHEREAS, regulation of stormwater runoff is required by the Municipal Separate Storm Sewer System (MS4) permit issued to the City by the Oregon Department of Environmental Quality (DEQ) under the National Pollutant Discharge Elimination System (NPDES) program; and

WHEREAS, stormwater is locally discharged to the subsurface through Underground Injection Control facilities (dry wells); pollutants in this discharge, if present, have the potential to contaminate groundwater without appropriate regulation through the Safe Drinking Water Act and OAR Division 44; and

WHEREAS, surface waters within and adjacent to the City are subject to Total Maximum Daily Loads (TMDLs) that require the City to further reduce sediment discharges; and

WHEREAS, other regulations of stormwater may be applied on a site-specific basis to development activities within waters of the state where compliance with the City's stormwater requirements may be presumed to fulfill all or part of the permit requirements of the regulating agencies; and

WHEREAS, illicit and non-stormwater discharges to the storm drain system can contribute a wide variety of pollutants to waterways, and the control of these discharges is necessary to protect public health and safety, and water quality; and

WHEREAS, the City Council has previously found that absent effective maintenance, operation, regulation, and control, existing surface water drainage conditions in all drainage basins within the City constitute a potential hazard to the health, safety, and property of the citizens of the City (LOC 38.24.505) and for effective facility management to occur, the facility must also be protected from excess sediment;

WHEREAS, notice of the public hearing for consideration of this Ordinance was duly given in the manner required by law; and

WHEREAS, the Planning Commission has recommended that LU 15-0050 be approved by the City Council; and

WHEREAS, a public hearing on LU 15-0050 was held before the City Council of the City of Lake Oswego on February 2, 2016.

The City of Lake Oswego ordains as follows:

Section 1. The City Council hereby adopts the Findings and Conclusions (LU 15-0050) attached as Attachment C.

Section 2. LOC Chapter 50, Articles 50.06.004, 50.06.006, 50.07.003, 50.007.004, and 50.10.003 are hereby amended as shown in Attachment A (new text shown in **bold, double-underlined type**; deleted text shown in ~~strikethrough type~~).

Section 3. LOC Chapter 38, Articles 38.06, 38.24, and 38.26 are hereby amended; and a new Article 38.25 is as added as shown in Attachment B (new text shown in **bold, double-underlined type**; deleted text shown in ~~strikethrough type~~).

Section 4. The City adopts the Lake Oswego Stormwater Management Manual as the primary guidance document for stormwater management.

Section 5. Severability. The provisions of this ordinance are severable. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Enacted at the regular meeting of the City Council of the City of Lake Oswego held on the 16th day of February, 2016.

AYES: Mayor Studebaker, Buck, Gudman, Gustafson, Collins, O'Neill, Manz.

NOES: None.

ABSTAIN: None.

EXCUSED: None.



Kent Studebaker, Mayor

Dated: February 16, 2016

ATTEST:

Anne-Marie Simpson
Anne-Marie Simpson, City Recorder

APPROVED AS TO FORM:

David Powell
David Powell, City Attorney

50.06.004. SITE DESIGN

1. LANDSCAPING, SCREENING, AND BUFFERING

b. Standards for Approval

- viii. Landscaping that is required to be provided under the LOC Article 38.25 Stormwater Management Code is counted towards meeting the landscaping required under this Article / Section.

50.06.006. GEOLOGIC HAZARDS AND DRAINAGE STORMWATER MANAGEMENT

3. DRAINAGE STORMWATER MANAGEMENT STANDARDS

~~a. Drainage Standards for Minor Development Other Than Partitions, Subdivisions and Certain Structures~~

a. Applicability

~~This section shall be applicable to all minor development decisions within the City, except partitions, subdivisions, and construction or alteration of structures as described in LOC 50.07.003.14.a.ii(6).~~

Stormwater management requirements are applicable to all development where:

- i. ≥ 1,000 sq. ft. of impervious surface is created; or
- ii. The sum of impervious surface created and/or replaced is > 3,000 sq. ft.; or
- iii. Maintenance is performed on ≥ 3,000 sq. ft. of existing impervious surface that results in an additional offsite hydrologic impact.

b. Standards for Approval

~~Development shall be conducted in such a manner that alterations of drainage patterns (streams, ditches, swales, and surface runoff) do not adversely affect:~~

~~(1) Other property;~~

~~(2) RC districts on adjacent property; or~~

~~(3) — RP districts on adjacent property.~~

The applicant must demonstrate that, based upon LOC Article 38.25 Stormwater Management Code, the capacity, type, location, feasibility and land area required of the proposed stormwater management system and stormwater disposal facilities as well as any connection to off-site facilities can be provided.

Stormwater management measures and requirements are detailed in LOC 38.25.001 through 38.25.200 and in the current version of the Lake Oswego Stormwater Management Manual.

~~iii. — Standards for Construction and Maintenance~~

~~Same as for drainage standard for subsection 3.b of this section.~~

~~iv. — Site Discharge~~

~~Where conditions permit, individual lots shall be developed to maximize the amount of stormwater runoff which is percolated into the soil and to minimize direct overland runoff into streets, drainage systems, and/or adjoining property. Stormwater runoff from roofs and other impervious surfaces should be diverted into swales, terraces, and/or water percolation devices on the lot when possible.~~

~~b. — Drainage Standard for Major Developments, Partitions, Subdivisions, and Certain Structures~~

~~i. — Applicability~~

~~This section is applicable to:~~

~~(1) — Major developments;~~

~~(2) — Partitions;~~

~~(3) — Subdivisions; and~~

~~(4) — Construction or alteration of structures as described in LOC 50.07.003.14.a.ii(6).~~

~~ii. — Standards for Approval~~

~~(1) — Inspection and Maintenance~~

~~All drainage management measures, whether located on private or public property, shall be accessible at all times for City inspection. When these measures have been accepted by the City for maintenance, access easements shall be provided at such a width to allow access by maintenance and inspection equipment.~~

~~(2) — Stormwater Runoff Quality~~

~~All drainage systems shall include engineering design features to minimize pollutants such as oil, suspended solids, and other objectionable material in stormwater runoff.~~

~~(3) — Drainage Pattern Alteration~~

Development shall be conducted in such a manner that alterations of drainage patterns (streams, ditches, swales, and surface runoff) do not adversely affect:

- ~~(a) Other properties;~~
- ~~(b) RC districts on adjacent property; or~~
- ~~(c) RP districts on adjacent property.~~

~~(4) Stormwater Detention~~

Sufficient stormwater detention shall be provided to maintain runoff rates at their natural undeveloped levels for all anticipated intensities and durations of rainfall and provide necessary detention to accomplish this requirement.

~~(5) Required Stormwater Management Measures~~

The applicant shall provide sufficient stormwater management measures to meet the above stormwater runoff requirements. The applicant shall provide designs of these measures taking into account existing drainage patterns, soil properties (such as erodibility and permeability) and site topography.

~~iii. Standards for Construction~~

~~(1) Landscaping and Topography~~

Detention or retention areas shall, where possible, use natural topography and existing vegetation. In addition to or as replacement for existing vegetation these areas shall be landscaped with ecologically compatible trees, shrubs, and permanent ground cover. Basin or pond side slopes shall be grassed and mulched to prevent erosion.

~~(2) Outlet Structures~~

Outlet control structures shall be designed as simply as possible and shall require little or no attention for proper operation.

~~(3) Sideslopes~~

The sideslopes of all man-made detention or retention basins or retention ponds shall be sufficiently sloped or treated so as not to create a safety hazard, or maintenance problem.

~~(4) Emergency Overflow or Bypass~~

All stormwater storage areas shall be provided with some means of emergency overflow or bypass in accordance with one of the following standards:

~~(a) Emergency Overflow~~

~~An appropriate surface or subsurface drainage system shall be provided as a method of emergency overflow in the event that a storm in excess of the 50-year frequency storm occurs. This emergency overflow system shall be designed to function without attention and shall direct this excess flood water to an appropriate existing drainage pattern.~~

~~(b) Bypass~~

~~(i) A surface or subsurface drainage system shall be installed with adequate capacity to convey around the storage area the stormwater runoff from all upstream tributary areas. This "bypass" channel shall be designed to carry the peak rate of runoff from a 50-year storm.~~

~~(ii) No habitable or storage structures shall be constructed within bypass channels; however, streets and parking or playground areas and utility easements shall be considered compatible uses.~~

Hydraulic Calculations

Shall be submitted to substantiate all design features.

~~(5) Secondary Uses~~

~~Stormwater detention or retention areas may be designed to serve a secondary purpose for recreation, open space, or other types of uses that will not be adversely affected by occasional or intermittent flooding.~~

~~(6) Release Rate Outlet~~

~~The outlet opening controlling the release rate of detained stormwater runoff shall be:~~

~~(a) Sized so as not to exceed the water conveyance capacity of the downstream drainage system;~~

~~(b) Small enough to cause stormwater runoff to be detained from a storm of at least the undeveloped ten-year frequency;~~

~~(c) Designed to prevent siltation or clogging of the outlet opening; and~~

~~(d) Provided with a means of adjusting the size of the outlet openings.~~

~~(7) Required Detention Volume for Developments~~

~~Detention volume shall be the maximum difference between:~~

~~(a) The stormwater runoff produced from the proposed development site by a 50-year storm; and~~

~~(b) The stormwater runoff produced from the pre-development site area by a ten-year storm.~~

~~(8) Detention Basins~~

~~(a) Low Flow~~

~~A positive method of carrying the low flow through detention ponds shall be provided. This method shall have a positive gravity outlet to a downstream drainage system with adequate capacity.~~

~~(b) Maximum Depth~~

~~Maximum depth of detention ponds shall not exceed four ft. unless the existing natural ground contours and other conditions lend to greater storage depth, which may be approved by the City Manager.~~

~~(c) Minimum Sideslopes~~

~~The minimum sideslopes of detention ponds shall be 50 to one (2%) or sufficient to ensure complete drainage of said sideslopes within a reasonable period of time.~~

~~(d) Paved Areas~~

~~If a portion of a detention basin area is to be paved for parking or recreational purposes, the paved surface shall be placed at the highest possible elevation within the storage area. Paved areas shall have minimum grades of 1% and shall be restricted to storage depths of nine in. maximum.~~

~~(9) Retention Ponds~~

~~(a) Shoreline protection shall be provided to prevent erosion from wave action.~~

~~(b) The margins of all retention ponds shall be provided with an underwater shelf having a maximum slope of four to one (25%) to a depth of three ft. Other safety treatments may be allowed as approved by the City Manager.~~

~~(c) To minimize growth of aquatic vegetation, the water depth beyond the underwater shelf shall be at least three to four ft.~~

~~(d) If possible, a method shall be provided to drain retention ponds by gravity flow to allow cleaning and maintenance.~~

~~iv. Joint Drainage Facilities~~

~~Joint development of drainage facilities is encouraged, especially where individual developments cannot feasibly provide on-site facilities. The City may participate in joint drainage facilities.~~

~~v. Detention Options~~

Options for meeting detention requirements include on-site detention areas, joint detention areas shared by several developers, off-site detention in City detention areas shared by several developers, off-site detention in City detention areas, or off-site detention in areas provided by the applicant.

vi. ~~Stormwater Management Measures~~

Examples of stormwater management measures include: French drains, porous pavement, precast concrete lattice blocks and bricks, grass lined channels, dry wells, seepage ditches, and detention areas.

50.07.003. REVIEW PROCEDURES

12. EXEMPT DEVELOPMENT

b. Development Review

i. No development permit pursuant to this Code is required for exempt development.

Note: Projects that are exempt from development permit review under this Chapter may be subject to requirements in other Chapters of Lake Oswego Code.

13. MINISTERIAL DEVELOPMENT DECISIONS

e. Review and Decision

ii. Review Criteria for Ministerial Developments

A ministerial development shall comply with the requirements of the zone, including overlay zones, in which the subject lot or parcel is located, **the Stormwater Management Code (LOC Article 38.25)**, and shall comply with the following sections of the development standards:

14. MINOR DEVELOPMENT DECISIONS

d. Review and Decision

ii. Review Criteria for Minor Developments

A minor development shall comply with:

- (1) The requirements of the zone in which it is located;
- (2) The development standards applicable to minor developments;
- (3) Any additional statutory, regulatory or Lake Oswego Code provisions which may be applicable to the specific minor development application, as provided for in this Community Development Code (LOC Chapter 50), Stormwater Management Code (LOC Article 38.25), streets and sidewalks chapter (LOC Chapter 42), and the tree cutting chapter (LOC Chapter 55); and
- (4) Any applicable condition of approval imposed pursuant to an approved ODPS or prior development permit affecting the subject property.

15. MAJOR DEVELOPMENT DECISIONS

d. Review and Decision

ii. Review Criteria for Major Developments

- (1) **Major Development Other Than Rezoning to FMU in the Foothills Special District Plan Area.** A major development shall comply with:
 - (a) Any applicable regulatory policies of the Lake Oswego Comprehensive Plan;
 - (b) The requirements of the zone in which it is located;
 - (c) The development standards applicable to major developments;
 - (d) Any additional statutory or Lake Oswego Code provisions which may be applicable to the specific major development application, such as the variance provisions, Stormwater Management Code (LOC Article 38.25), the streets and sidewalks chapter (LOC Chapter 42), and the tree cutting chapter (LOC Chapter 55); and
 - (e) Any conditions of approval imposed as part of an approved ODPS or prior development permit affecting the subject property.

50.07.004. ADDITIONAL SUBMISSION REQUIREMENTS

This section contains submission and review criteria for the procedures listed below. Where review criteria are important for an understanding of the substantive requirements of a section or limited in size they have been maintained with the substantive provisions.

1. DRAINAGE STORMWATER MANAGEMENT STANDARDS

~~a. Submissions for All Development~~

The applicant shall submit information as required by the City Manager pursuant to LOC 38.25.120 (see Stormwater Management Manual) for all applicable development where

- a. $\geq 1,000$ sq. ft. of impervious surface is created,
- b. The sum of impervious surface created and/or replaced is $\geq 3,000$ sq. ft., or
- c. $\geq 3,000$ sq. ft. of existing impervious surface is repaired and/or maintained in a manner that results in an additional offsite hydrologic impact.

~~or construction,~~ regarding existing drainage systems, stormwater runoff under existing and proposed development site conditions, and the effect of site runoff on adjoining properties. Such information includes:

~~i. General Information~~

~~Information concerning clearing, grading, vegetation preservation, and drainage improvements.~~

~~ii. Hydraulic Characteristics~~

~~When a watercourse is present on the site, information regarding its hydraulic characteristics shall be submitted.~~

~~b. Additional Submission Requirements for Major Developments~~

~~An analysis of both upstream and downstream impacts that would result from the development. This shall include:~~

- ~~i. Ten-Year Storm: The amount (volume) and rate (in cubic ft. per second) of stormwater generated from the project site during a ten-year frequency storm for the undeveloped condition of the site.~~
- ~~ii. Fifty-Year Storm: The amount and rate of stormwater generated from the project site during a 50-year frequency storm for the proposed development on the site.~~
- ~~iii. Drainage System Impacts: The effects of increased development runoff on existing drainage systems including potential downstream erosion and/or sedimentation, capacities of existing downstream storm conduits and potential flooding areas downstream and upstream.~~

~~c. Stormwater Detention Feasibility~~

~~When, as determined by the City Manager, on-site detention is not feasible, practical or required by the City, the applicant shall:~~

- ~~i. Submit a plan to mitigate any adverse effects (such as erosion and flooding of culverts) resulting from increased runoff; and~~
- ~~ii. Construct these mitigating measures.~~

~~d. Drainage Management Measures~~

All drainage management measures shall be prepared by a registered engineer to meet City standards and specification. These plans must be approved by the City Engineer.

50.10.003. DEFINITIONS

2. DEFINITION OF TERMS

The following terms shall mean:

Replace or Replacement (impervious surface)

The removal of an impervious surface that exposes soil followed by the placement of an impervious surface. See LOC 38.25.120.2.b for specifically exempted roadway maintenance activities.

**Article 38.06
Utility Use.**

38.06.020 UTILITY USER CHARGE.

2. The utility user charge shall be established by resolution of the City Council in an amount reasonable and necessary to fund the administration, planning, design, construction, water quality programming, operation, maintenance and repair of the City's utility systems. The component utility charges shall be based on use of the component utility service, determined as follows:

c. The surface water management utility user charge shall be based upon the amount of impervious surface used by a customer. Owners or occupants of undeveloped property shall not be charged. Each customer using a location for single family residential shall be charged a uniform rate based upon containing one equivalent service unit (ESU). The charge for all other parcels shall be based upon the total amount of measured impervious surface used divided by one ESU and rounded to the nearest whole number. The actual service charge shall be computed by multiplying the amount of ESUs measured for each use by the rate established for each ESU. ~~In addition to establishing the user charge per ESU, the Utility User Charge Resolution shall allow a customer to control or avoid the charge as follows:~~

~~i. On Site Mitigation Credits. A reduction or elimination of the charge shall be granted to a customer who develops on-site facilities designed to retain, detain, or dispose of and/or enhance the quality of runoff in a manner prescribed by the City and accepted engineering principles. An On Site Mitigation Credit shall apply to those program costs which are affected by the customer providing mitigation.~~

~~ii. Non Service Abatement. A customer shall be eligible to apply for abatement of the Surface Water Management Utility service charge if the customer can demonstrate that the program, systems and facilities of the Lake Oswego Surface Water Management Utility neither serve nor incur runoff as a result of the customer's use of the property.~~

Article 38.24
Surface Water Utility.

38.24.520 Catch Basin Maintenance.

1. The City shall adopt and from time to time may amend a Surface Water Management Master Plan. The Plan shall establish an appropriate level of maintenance for surface water facilities, including catch basins and pollution control manholes. The City shall monitor the effectiveness of this level of maintenance, and may adjust the frequency of cleaning or maintenance as necessary.

2. All privately owned catch basins and pollution control manholes that drain to the public surface water management system shall be maintained and cleaned ~~at least as frequently as the publicly owned facilities.~~ The property owner or customer shall be responsible for such maintenance as necessary to ensure operability, ~~or may allow the City to maintain such facilities.~~

Article 38.25
Stormwater Management Code.

Sections:

- 38.25.001 Stormwater Management**
- 38.25.100 Purpose, Applicability, Other Codes and Laws**
- 38.25.105 Development Applications**
- 38.25.110 Stormwater Management Manual**
- 38.25.120 Project Classification Procedures and Requirements**
- 38.25.130 Construction of Permanent Public Stormwater Management Facilities**
- 38.25.140 Maintenance for Private Stormwater Management Facilities**
- 38.25.150 Illicit Discharges**
- 38.25.160 Easements and Dedications**
- 38.25.170 Financial Securities, Fees and Fee-in-Lieu**
- 38.25.180 Enforcement and Penalties**
- 38.25.190 Definitions**

38.25.001 Stormwater Management.

LOC 38.25.001 to 38.25.200 shall be known as the Stormwater Management Code ("Code").

38.25.100 Purpose, Applicability, Other Codes and Laws

1. Purpose and Objectives.

a. Purpose.

i. Establish minimum stormwater management requirements to protect the water quality of receiving waters within the jurisdiction of the City of Lake Oswego;

ii. Require a level of stormwater management to protect downstream parties from the effect of changes to runoff direction or quantity due to development; and

iii. Avoid a net negative impact from certain maintenance activities, development, redevelopment, and stormwater discharges on nearby streams, wetlands, groundwater, and other water bodies.

b. Objectives. The purpose is accomplished by meeting the following objectives:

i. Protect the health, safety, and welfare of the public residing in watersheds in the jurisdiction of the City by controlling the rate, quality and volume of stormwater originating from development and redevelopment sites to the maximum extent practicable, so that surface water and groundwater are protected from pollution and flooding, and so that erosion potential does not increase.

ii. Implement the Federal Clean Water Act (CWA) requirements, the Oregon Dept. of Environmental Quality (DEQ)-issued permit to the City for discharge of stormwater into waters of the State (National Pollutant Discharge Elimination System-Municipal Separate Storm Sewer System [NPDES-MS4] permit), and other regulations and requirements related to stormwater by regulating the contribution of pollutants to the City's stormwater facilities and Waters of the State by stormwater discharges from development and redevelopment sites.

iii. Facilitate compliance by Responsible Parties with state and federal standards and permits for construction sites, development sites, including redevelopment, and permanent stormwater facilities within the City.

iv. Through the facilities, methods, and practices set forth in the Lake Oswego Stormwater Management Manual, manage stormwater in compliance with the NPDES-MS4 permit, and Water Pollution Control Facilities (WPCF) permit or other permits that regulate Underground Injection Control (UIC) systems.

v. Prohibit illicit discharges into the City's Surface Water Management Utility as required by the City's NPDES-MS4 permit.

vi. Provide long-term responsibility for and maintenance of stormwater facilities.

vii. Implement Comprehensive Plan policies and other programs and policies of the City regarding stormwater management and pollution control.

viii. Establish the legal authority to inspect and monitor as necessary to ensure compliance with this Code.

2. Applicability. This Code shall apply to:

a. Development and redevelopment activities that meet the impervious area thresholds in LOC 38.25.120.

b. Earthwork, erosion and sediment-control triggering activities, regardless of whether a City permit is required.

c. Ground-disturbing activities that cause, permit, or allow cuts, excavations, stripping and grading activities, regardless of whether a City permit is required, including removal of vegetation, soils and removal or modification of natural topographic features.

d. Causing, permitting or allowing direct or indirect discharges to a public stormwater management system.

e. Causing, permitting or allowing direct or indirect discharges into receiving waters, including discharges that initially occur outside the City but where the discharge drains into the City.

3. Relationship to Other City Codes and Standards. Where a provision of this Code conflicts with the restrictions by other provisions of the Lake Oswego Code or ordinance, or the provisions of state or federal law, the more restrictive provision applies.

4. Exclusion of Liability.

a. By approving a Drainage Report or Operations and Maintenance Plan for private stormwater facilities [as described in LOC 38.25.120 and the Lake Oswego Stormwater Management Manual], the City does not accept or incur responsibility for the design, installation, and operation and maintenance of private stormwater facilities.

b. This Code shall not form the basis for any claim, action, or liability against officers, employees, or agents of the City.

c. This Code shall not:

i. _____ Create or form the basis for any claim, action, or liability against officers, employees or agents of the City for any:

1. Injury or damage resulting from the failure of third parties to comply with the provisions of this Code,

2. Consequence of any inspection, notice, order, certificate, permission, or approval authorized or issued or done in connection with the implementation or enforcement of this Code, or

3. City action or inaction related in any manner to the enforcement of this Code by its officers, employees or agents.

- ii. Create any liability on the City or any of its officers or employees for cleanup or any harm relating to sites containing hazardous materials, wastes, or contaminated soil;
- iii. Convey property rights of any sort, or any exclusive privilege;
- iv. Authorize any injury to persons or property;
- v. Authorize intrusion of any other private rights, except as permitted by law; or
- vi. Authorize any violation of federal, state, or local laws or regulations.

38.25.105 Development Applications.

An application shall be made on such forms and contain such information as the City Manager may require. If a railroad-highway crossing provides or will provide the only access to land that is the subject of the application, the applicant shall indicate that fact in the application.

38.25.110 Stormwater Management Manual.

The City Manager shall administer this Code, and may furnish additional policy, criteria and information including specifications and procedures for the proper implementation of the requirements of this Code. This information includes the Lake Oswego Stormwater Management Manual (Manual).

The City Manager is delegated authority to adopt, revise, and update the Manual as necessary. The Manual may be modified from time to time, at the discretion of the City Manager, based on improvements in engineering, science, monitoring and local experience. The Manual shall describe the best management practices (BMPs) appropriate for use in the City.

38.25.120. Project Classification Procedures and Requirements.

1. Project Classification and Stormwater Management Minimum Requirements

a. The development project shall use, to the maximum extent practicable, site planning and design technique(s) that reduce post-development runoff rates, volumes, and pollutant loads to match pre-development conditions. Such techniques include, but are not limited to, minimization of impervious surface, use of on-site retention to reduce the volume and rate of runoff entering the stormwater management system, development design that reduces the rate and volume of runoff from impervious surfaces, and distributed stormwater management practices that intercept and treat runoff from developed areas.

b. When Low Impact Development and Green Infrastructure techniques are employed, the design shall comply with the Manual, unless a project is specifically exempted or excepted pursuant to LOC 35.25.120(2) and (3).

c. Stormwater shall be managed in as close proximity to the development site as practicable. Stormwater management shall avoid a net negative impact on nearby streams, wetlands, groundwater, and other water bodies. All local, state, and federal permit requirements related to implementation of stormwater management facilities must be met by the owner/operator prior to facility use. Surface water discharges from onsite facilities shall be discharged to an approved stormwater facility.

d. All stormwater management facilities shall meet the following requirements. For purposes of determining applicability, all applications on a given parcel or contiguous parcels under common ownership conducted within a 3 year period shall be considered cumulatively. All projects subject to this Code shall submit to the City of Lake Oswego for review and approval the reports and plans as provided herein.

i. Small Projects (new impervious area $\geq 1,000$ sq. ft.; $< 3,000$ sq. ft.) All developments that create new impervious area equal to or greater than 1,000 sq. ft. and less than 3,000 sq. ft. shall meet the following minimum requirements:

(1) Site Assessment and Feasibility Analysis. Applicant shall submit a site assessment and feasibility analysis. (See City Manager's additional submittal requirements, as indicated in the Manual). The applicant is encouraged to hold a pre-submittal consultation meeting with the City Engineer to discuss potential approaches for stormwater design and opportunities to use design techniques to reduce runoff rates, volumes, and pollutant loads to pre-development conditions to the maximum extent practicable. In addition, the applicant may

meet on-site with the City Engineer prior to approval of the stormwater management Drainage Plan for the purposes of verifying the conditions of the site and all receiving waterbodies.

(2) Onsite Stormwater Management. Onsite stormwater management facilities shall be sized to infiltrate 100 percent of the stormwater runoff for a 10-year, 24-hour design storm based on location- and depth-specific tested infiltration rates. Facility design shall be based on the Site Assessment and Feasibility Analysis, as approved by the City Engineer.

(3) Erosion and Sediment Control. When development disturbs > 500 sq. ft. or is within 50 ft. of Waters of the State, the project shall obtain an Erosion Control Permit [LOC Ch. 52]. An Erosion Control Permit is issued upon approval of an Erosion Control Plan. The baseline for the 50-ft. measurement is the ordinary high water mark of a stream or the delineated boundary of a wetland or other water body pursuant to Department of State Lands requirements:

(4) Underground Injection Control (UIC) Review with DEQ. The applicant shall demonstrate that any proposed UIC is rule authorized pursuant to OAR 340-44-0018, or has either a DEQ-issued UIC permit associated with the facility or has received a notice of intent to issue a UIC permit. Stormwater shall not be discharged to a UIC that does not meet the above requirements.

(5) Stormwater System Design. Applicant shall submit a stormwater system design (including plans and specifications). (See the Manual for detailed requirements).

(6) Downstream Analysis Required. Applicant shall submit a downstream analysis. (See Manual for detailed requirements).

(7) Drainage Report Required.

(A) Applicant shall submit a Drainage Report that quantifies and describes all impervious surfaces on the site, including the identification of Total Impervious Area (TIA) and Effective Impervious Areas (EIA), for each proposed stormwater facility.

(B) The applicant is encouraged to meet on-site with the City Engineer prior to submittal of the Drainage Report for the purposes of verifying the conditions of the site and all receiving waterbodies.

(C) The City Engineer may require the applicant to submit a modified Drainage Report if inspection or monitoring reveals that the actions undertaken pursuant to an approved Drainage Report may result in the actual discharge of or the potential to discharge a significant amount of any pollutant as determined by the City. The City Engineer shall notify the applicant that the Drainage Report is required to be modified. The notice shall state the deadline for submission of the modified Drainage Report, which shall be established by the City Engineer based upon the severity of discharge of pollutant and the expected difficulty of determining an alternative method of reducing the discharge to the maximum extent practicable. The modified Drainage Report shall be submitted for review and approval and the revisions implemented prior to final acceptance of the facilities by the City.

8. Operations and Maintenance Plan. An Operations and Maintenance Plan must be prepared by the applicant and, following review and approval by the City Engineer, recorded in the county in which the property/facility is located.

9. The applicant's designer shall be responsible for all stormwater system design, Site Assessment and Feasibility Analysis, Drainage Report, Operations and Maintenance Plan, as applicable.

ii. Large Projects (impervious area >3,000 sq. ft.).

Projects that create new, redevelop (replace), or both create and redevelop, impervious surface, where the sum total of affected impervious surface area is equal to or greater than 3,000 sq. ft., shall meet the following minimum requirements and controls.

1. Requirements and controls applicable to small projects. Comply with subsection i above.

2. Water Quality. Stormwater management facilities shall be designed to capture and treat 80% of the average annual runoff volume, based on local rainfall frequency and intensity. (See Manual for design storm information.)

3. Flow Control. Stormwater management facilities shall be designed to maintain post-development peak flow rates at their pre-development (c. 1850) levels for the 2-year, 5-year, and 10-year, 24-hour runoff events.

4. NPDES 1200C Permit. Applicant shall obtain a DEQ Construction Stormwater Permit (1200-C permit), when appropriate.

e. All Drainage Reports must address all criteria required for the report. Incomplete reports will be returned to the applicant.

f. Any modification of a Drainage Report shall be submitted to the City Engineer for review and approval. The report, as modified, must comply with the requirements for the report.

g. If an UIC is located on a site that does not have DEQ UIC permit or is not qualified for rule authorization under OAR 340-44-0018, and the applicant cannot obtain a UIC permit, the existing UIC system shall be decommissioned. Applicant shall follow DEQ's guidelines for decommissioning the UIC.

iii. Maintenance Projects (impervious area $\geq 3,000$ sq. ft.) with Additional Hydrologic Impacts.

Repair or maintenance activities on structures or facilities with $\geq 3,000$ sq. ft. of existing impervious surface and that result in additional offsite hydrologic impacts are subject to the requirements for large projects in LOC 38.25.120(1)(d)(ii) (above).

2. Exemptions from Certain Requirements.

The following development and activities are exempt from certain requirements of this Article:

a. Utilities.

Maintenance, repair, or installation of underground or overhead utility facilities, e.g., pipes, conduits and vaults, that include replacing the ground surface with in-kind material or materials with similar runoff characteristics are exempt from flow control or water quality treatment requirements.

b. Road Maintenance Activities.

The following road maintenance activities, conducted with consideration of pollution prevention practices, are exempt from flow control or water quality treatment requirements:

- i. Pothole and square cut patching.
- ii. Overlaying existing asphalt or concrete or brick pavement with asphalt or concrete without expanding the area of coverage; and slurry seal.
- iii. Shoulder grading.
- iv. Reshaping or re-grading drainage ditches.
- v. Crack sealing.
- vi. Vegetation maintenance.

c. Sites that manage stormwater onsite where new development produces no runoff. Developments that manage all stormwater onsite and produce no runoff during the flow control design events, as determined by a civil engineer registered in the State of Oregon and approved by the City Manager, are exempt from flow control requirements.

d. Right-of-way.

Right-of-way under control of another government body where that governmental body uses BMPs consistent with its own stormwater management program and approved NPDES Stormwater Discharge Permit where applicable, provided the BMPs are at least as stringent, as determined by the City Engineer, as provided in the Manual, are exempt from flow control or water quality treatment requirements.

3. **EXCEPTIONS.**

a. Grounds for Exceptions. The City Engineer may approve exceptions to the requirements of this Article when:

i. The exception, as mitigated, will not increase risks in the vicinity and downstream of the site to public health, safety and welfare, or to water quality or quantity, or to public and private property; or

ii. Where the requirement:

(1) Will cause harm or a significant threat of harm to public health, safety and welfare, including water quality or quantity, or harm public and private property;

(2) Is not technically feasible based on design requirements of the Lake Oswego Stormwater Management Manual; or

(3) Cannot be met because an emergency exists, such as where there is immediate danger of landslide, damage to public or private property, or failure of a public facility, that necessitates approval of the exception;

iii. The exception is only to the extent necessary to alleviate the condition in subsection ii above;

iv. Mitigation in the form of offsite stormwater control or other means may be required by the City Engineer.

b. Conditions of Approval. When an exception is granted, conditions of approval may be imposed to offset or mitigate harm that may be caused by granting the exception, or that would have been prevented if the exception had not been granted. This may include off-site stormwater treatment or payment into a fee-in-lieu program as allowed in LOC 38.25.170(3).

c. Exception Procedure.

i. Additional information may be required, e.g., an engineer's report or analysis, when necessary to demonstrate that the criteria are met and the exception will not harm or result in a significant threat of harm to public health, safety and welfare, to the environment, or to public or private property.

ii. Written findings of fact shall be issued with the decision.

38.25.130 Construction of Permanent Public Stormwater Management Facilities.

1. Notice of Construction Commencement.

- a. The applicant shall obtain a Public Improvement Permit for public infrastructure.
- b. Prior to the commencement of construction, the contractor shall arrange for a pre-construction meeting with the City Engineer.
- c. The applicant shall notify the City Engineer in advance of construction of any components of the stormwater facilities on the approved Drainage Report that are identified by the City Engineer as "critical" in the construction permit. The City may, at its discretion, issue verbal or written authorization to proceed with critical construction steps, such as installation of permanent stormwater facilities.

2. Construction Inspection by City. A final inspection and sign off on completion by the City is required before a Certificate of Acceptance will be provided.

3. Inspection and Certification by Stormwater Facility Designer. The stormwater management facility designer shall inspect and certify to the City Engineer that the facility has been constructed as designed, meets functional requirements outlined in the *Drainage Report*, and can be maintained in accordance with the *Operations and Maintenance Plan*.

38.25.140. Maintenance for Private Stormwater Management Facilities.

1. Purpose. This section requires periodic maintenance inspections and repairs of stormwater facilities so that they will continue to function.

2. Maintenance Responsibility. The Responsible Party shall maintain stormwater facilities in "good condition" as defined in the *Operations and Maintenance Plan*, and shall :

- a. Inspect the facilities as provided for in the *Operations and Maintenance Plan*, or as necessary to assure the facility is in working order;
- b. Promptly repair and restore stormwater management facilities;
- c. Maintain the stormwater management facilities and its access routes to and from the public right-of-way in accordance with the Manual, the approved *Drainage Report*, and the *Operations and Maintenance Plan*.

3. Requirements. The maintenance requirements for all stormwater management facilities are:

- a. *Operations and Maintenance Plan*.
 - i. The *Operations and Maintenance Plan* shall be reviewed and approved by the City Engineer for all private stormwater management facilities.
 - ii. This Plan shall contain any agreements regarding operations and maintenance of stormwater facilities that are required as a condition of approval.
 - iii. The approved *Operations and Maintenance Plan* shall be recorded as a covenant against the property(s) obligated to operate and maintain the stormwater management facilities with the appropriate county recording officer on a legal instrument approved by the City Engineer, and shall run with the land.
- b. All repairs, restoration, and maintenance shall be in accordance with the Manual, the approved *Drainage Report*, and the recorded *Operation and Maintenance Plan*.
- c. Successors and Assignees of the Property. The applicant and successor Responsible Parties shall inform purchasers and other successors and assignees of the property of the existence of private stormwater management facilities on the site, the *Drainage Report*, the restrictions of the stormwater management facilities (including design capacity, and related easements, and the requirements for inspection and maintenance of the stormwater facilities.
- d. Access by City. All stormwater management facilities, whether located on private or public property, shall be reasonably accessible for City inspection. The Responsible Party shall assure inspection access by easement to the City. See LOC 38.25.160(1) for easement requirements. When stormwater management

facilities are accepted by the City for maintenance, access easements shall be provided at a width sufficient to allow access by maintenance and inspection equipment, as outlined in the current version of the Manual.

e. Private Facility Agreement with City: An agreement with the City shall be required when the private stormwater management facility will be operated or maintained by the City. The Responsible Party shall assure operation and maintenance access by easement to the City. See LOC 38.25.160(1) for easement requirements.

f. Transfer of Private Facilities to City: When ownership of stormwater management facilities are transferred to and accepted by the City, access easements shall be provided as described in (c) above.

g. Inspection and Maintenance. The Responsible Party shall inspect and maintain stormwater management facilities on a schedule that is stated in Operation and Maintenance Plan.

i. Inspection and Maintenance Frequency: The applicant shall inspect and maintain stormwater management facilities at a frequency sufficient for the facility to operate at design capacity while in good working order.

ii. More frequent inspections/maintenance: The City may require the applicant to conduct more frequent inspections and/or perform maintenance more frequently when necessary to reasonably ensure continuous working order at design capacity, e.g., prior to full build-out of the facility catchment, when nuisance conditions are present, or following severe storm events.

h. Maintenance Inspection by City. The City Engineer shall establish inspection programs to evaluate and enforce compliance with the requirements of this Article, which may include but are not limited to:

i. Routine inspections;

ii. Random inspections;

iii. Inspections based upon complaints or other notice of possible violations; and

iv. Joint inspections with other agencies inspecting under environmental or safety laws.

i. Inspection of Facilities Operating Under a Certificate of Acceptance. The City Engineer shall cause or conduct periodic inspections for all stormwater management facilities for which a Certificate of Acceptance (full or partial) has been issued. All inspections shall be documented in writing. The inspection shall document any maintenance and repair needs and any discrepancies from the Operation and Maintenance Plan.

j. Records and Reporting of Maintenance Activities. The Responsible Party shall:

i. Maintain and report to the City Engineer all records of maintenance activities and facility repair as described in the Operations and Maintenance Plan.

ii. Report maintenance activities to the City Engineer on a schedule consistent with the Manual, and with the facility's approved Drainage Report and Operation and Maintenance Plan.

iii. Retain the records for at least 10 years. These records shall be made available to the City Engineer during inspection of the stormwater management facility and at other reasonable times upon request.

iv. The records shall be transferred to the successor Responsible Party of the stormwater facility.

v. The records may be retained by electronic means. The Responsible Party shall provide duplicate copies of the retained records to the City Engineer upon request.

4. Failure to Provide Adequate Maintenance of Stormwater Management Facility. In the event the City Manager has reason to believe that the stormwater management facility has not been maintained pursuant to

subsection 3(g) above, or that it has become a threat to public safety, health and welfare, or water quality standards:

a. The City Manager shall notify the Responsible Party by certified mail at the address shown on the most recent tax assessment roll. If the Responsible Party is an entity, notice may also be given to an officer of the entity or to its registered agent as shown by the records of the Secretary of State. The notice shall specify the suspected non-maintenance or conditions giving rise to the violation, and the measures the City Manager deems needed to comply.

i. The notice shall specify a correction period of thirty (30) days or a time period established by the City Manager, as needed under the circumstances to correct the violation. The City Manager may require the Responsible Party to set forth a proposed plan of correction for review and approval. In such case, the correction period would extend to the period set forth in the plan of correction.

ii. Within one-half of the correction period, the Responsible Party may propose alternative methods to the City Manager to correct the violation. If approved by the City Manager, the alternative methods shall be carried out by the Responsible Party within the correction period.

b. If corrective measures are not completed within the correction period, then the City Manager may pursue enforcement procedures pursuant to this Article, or otherwise under the Lake Oswego Code.

c. If corrective measures are not completed and the stormwater facility returned to operation as provided in the Operation and Maintenance Plan within the correction period, the City Manager may correct a violation by entering the property and performing the necessary work.

d. The City Manager may assess the Responsible Party for the cost of repair work, which shall be the personal liability of the Responsible Party. In addition, the City Manager may record a lien on the property in the Municipal Lien Docket, and shall provide notice to the owners of the lien property. The City Manager may undertake collection against the Responsible Party personally, and may also undertake foreclosure of the lien in the manner provided by Oregon law for foreclosure of mortgages.

38.25.150 ILLICIT DISCHARGES.

1. Prohibited Discharges. It is unlawful for any Responsible Party to cause or allow or permit a discharge, directly or indirectly, of any pollutant into the surface water management system, private storm drainage system connected to the surface water management system, or receiving water within City limits. This includes discharges as a result of an unintentional spill or deliberate dumping.

A discharge is prohibited, either singly or in combination with other substances, when the discharge is:

a. Causing or contributing to a violation of the City's NPDES-MS4 Permit (a copy of the Permit is available upon request of the City Engineer or at the City's surface water website: <http://www.ci.oswego.or.us/publicworks/surface-water>); or

b. Causing or contributing to a violation of a waste load allocation contained in a TMDL approved by the Environmental Protection Agency (a copy of the TMDL is available upon request of the City Engineer or at the City's surface water website: <http://www.ci.oswego.or.us/publicworks/surface-water>); or

c. Causing or contributing to a violation of a city, state, or federal law or regulation; or

d. Causing or contributing to the endangerment of public health, safety or welfare, the environment, or public or private property.

2. Conditionally Exempt Discharges.

a. Unless the non-stormwater discharges outlined as allowable discharges in the City's current NPDES-MS4 permit are identified by the City as a significant source of pollutants to Waters of the State, they are not considered illicit discharges and are authorized by the City's NPDES-MS4 permit.

b. If any of the discharges allowed in the City's current NPDES-MS4 Permit are determined to be a source of pollutants by the City Engineer, the person causing, suffering, or permitting the discharge shall take appropriate BMPs to make sure the discharge of pollutants associated with the source does not cause a violation of water quality standards (OAR 340, Division 41), an exceedance of the City's TMDL wasteload allocation, or visible alteration of surface waters.

c. Acceptance of Emergency Discharges. During the period of an emergency operation, such as firefighting or a water line break, discharges are not required to comply with the regulations of this section. Any repairs made after the period of emergency has ceased shall comply with this section.

3. Testing Discharges. When the City Manager has reasonable cause to believe that a discharge is a prohibited discharge, the City Manager may obtain samples of the discharge and analyze the discharge. If the discharge is prohibited, the applicant shall be liable to the City for its reasonable costs of obtaining the samples and analyzing the discharge.

a. The City Manager may assess the reasonable costs of obtaining the samples and analyzing the discharge, which shall be a personal liability of the person discharging the pollutant or the prohibited discharge. In addition, the City Manager may file a lien in the Municipal Lien Docket on any real property owned by the person within the City of Lake Oswego for the sampling and analyzing costs. Upon recording a lien, the City Manager shall give notice to the person in the manner provided in subsection 5(a) above of the assessment of costs and filing of the lien. The City Manager may thereafter undertake collection against the applicant, and may also undertake foreclosure of the lien in the manner provided by Oregon law for foreclosure of mortgages.

b. When the prohibited discharge is on a recurring basis, the City may conduct, or may require the Responsible Party to conduct, ongoing monitoring at their expense.

38.25.160 EASEMENTS AND DEDICATIONS.

1. Inspection and/or Operation and Maintenance Access Easement. When a public storm drainage inspection easement and/or operation and maintenance access easement to the City is required by LOC 38.25.140(3)(c) and (d):

a. Easement Width and Location. The easement width and location shall be as specified in the Lake Oswego Stormwater Management Manual or Operations and Maintenance Plan.

b. Scope of Easement. The rights of the easement shall be described either in the easement instrument itself or by separate recorded memorandum of easement, i.e., when an easement is shown on a plat but a description of the rights of the easement does not appear on the plat.

c. Approval and Acceptance of Easement before Recording or Filing. The easement or memorandum of easement shall be in a form as specified in Engineering Division documents and approved and accepted by the City Engineer before it is recorded or filed.

d. Dedication of Easement on Subdivision or Partition Plat. For subdivisions and partition applications, the easement shall be dedicated to the City on the subdivision or partition plat. A separate memorandum of easement describing the scope of easement shall be recorded with the county recording officer for the county where the site is located.

e. Dedication of Easement by Instrument. When the easement is required at a time other than at the creation of a subdivision or partition, the owner of the property shall dedicate the easement to the City by easement instrument. The owner shall record it with the county recording officer for the county where the site is located.

f. Evidence of Recording; Priority. The City Engineer may require the applicant or owner of the property to provide evidence that the easement was validly recorded and is not inferior to any prior interest or encumbrance on the property.

2. Dedication of Stormwater Management Facilities. The applicant proposing a stormwater facility required by this Code, or a Responsible Party, may offer for dedication any such stormwater facility, together

with such easements, appurtenances, and other interests as may be reasonably necessary for the operation and maintenance of the facility, as provided herein:

a. Preliminary Determination by City. Upon receipt of an offer of dedication, the City Engineer shall make a preliminary determination whether the dedication of the facility is appropriate in order to protect the public health, safety and general welfare, and furthers the goals of City's stormwater management program and/or associated watershed plans. Prior to making its determination, the City Engineer shall inspect the facility to determine whether it has been properly maintained and is in good repair. The City Engineer shall forward the determination to City Council.

b. Acceptance by City Council. City Council may accept the offer of dedication by adoption of a resolution. The document dedicating the stormwater facility shall be recorded with the County recording official in the county where the site is located.

c. Owner to Provide Documentation. The applicant / Responsible Party, at proposer's sole expense, shall provide any document or information requested by the City Engineer or the City Council, in order for a decision to be reached on accepting the facility.

38.25.170 FINANCIAL SECURITIES, FEES, AND FEE-IN-LIEU.

1. Financial Security Obligations for Public Stormwater Facilities.

a. Construction. Public stormwater facilities are subject to the public improvement construction financial security conditions in the Community Development Code (LOC 50.07.003.9.i).

The security deposit posted shall be released in full only upon submission of "as built plans" and issuance of the City's Certificate of Acceptance. The City will make a final inspection of the facility to ensure that it is in compliance with the approved plan and the provisions of this Code before the Certificate of Acceptance will be issued and security deposit released. Provisions for a partial pro-rata release of the construction security based on the completion of various development stages and issuance of a partial Certificate of Acceptance is at the discretion of the City.

b. Maintenance. A maintenance security shall be posted by the applicant upon completion of public facility construction, in order to ensure that the facility is maintained in accordance with the *Operation and Maintenance Plan*, pursuant to LOC 50.07.003.9.ii. The City will make a 1 year public infrastructure inspection to ensure that it complies with the *Operation and Maintenance Plan* before releasing the maintenance security.

2. Fees. The City may require a fee for development plan review and inspection, to be allocated to the Engineering Division. If required, each applicant seeking approval of a *Drainage Report* shall pay a fee upon submittal of the application, and shall pay a fee for each inspection (see the City's current *Master Fees and Charges*).

3. Fee-in-Lieu Payment. Pursuant to LOC 38.25.120(3), and following adoption by resolution of a fee schedule by the City Council, an applicant may pay a fee-in-lieu as a manner of mitigating an approved exception. The fee shall be used for projects approved by the City Engineer that mitigate impacts of stormwater discharges.

38.25.180 ENFORCEMENT AND PENALTIES.

1. Violations. Any act or failure to act that violates this Article, the requirements of an approved *Drainage Report*, the requirements of construction permit for public stormwater management facility, or the requirements of an *Operation and Maintenance Plan*, may be subject to enforcement.

Classification of major and minor violations often depends on particular circumstances that shall be assessed using the best professional judgment of the City Manager. In general the following definitions and general violation/activity of concern lists should be used:

a. Minor Violation. This category includes violations that have a *de minimus* impact on the environment or are administrative in nature. Minor violations include reporting, general site or facility maintenance, discharges not listed in subsection b(i) below, record keeping, or other activities when there is ample time for correction without negatively impacting the environment.

Minor violations shall not be deemed to be of a continuing nature under LOC 13.02.020 during the period of issuance of a citation until the citation is adjudicated in municipal court. An additional citation may be issued following entry of judgment by the municipal court, regardless whether an appeal is taken by the defendant or not.

b. Major Violation. Major violations are those violations that are not minor violations, including non-conformance with the *Drainage Report*, *Operations and Maintenance Plan* or permit submittal, stormwater facility maintenance during wet weather periods, large volume or harmful discharges, or other activities causing harm to the surrounding environment.

Major violations also include activities violating the discharge prohibitions of LOC 38.25.150, where the following circumstances are present:

i. Nature of Discharging Material. Any materials meeting the discharge prohibitions of LOC 38.25.150 due to one or more of the following:

- A. Visible sheen;
- B. pH of <6.0 or >9.0;
- C. Toxic chemicals; or
- D. Visible discoloration.

ii. Presence of Wet Weather Conditions. Discharge when storm runoff is occurring at the site or in receiving waters, or within 24 hours of the cessation of runoff.

iii. Presence of Steep Slopes. Discharge on to a steep slope (average slope of 25% or more, when measured from the front lot line to the most distant point of the building).

iv. Proximity to Designated Resource Areas. Within 50 feet of Waters of the State, active springs and seeps, stormwater management facilities, wellhead protection areas, open space tracts (areas set aside for public or private open space), and properties with a Sensitive Lands overlay district or conservation easement. (See LOC 38.25.120(1)(d)(i)(3) for example of method of measurement).

v. Site Disturbance over 10,000 sq. ft.

vi. Clear and imminent danger to human health or the environment. Spills of toxic or otherwise hazardous materials that present an immediate threat to human health or the environment.

Major violations may be deemed to be a continuing violation under LOC 13.02.020 following the issuance of the initial citation and continuing each day thereafter until the violation is remedied.

2. Notice of Violation. If the City Manager determines that an applicant, other Responsible Party, or other person has failed to comply with this Article, the terms and conditions of a stormwater-related permit (e.g., development permit, NPDES-MS4, UIC, Erosion Control), an approved *Drainage Report*, or an *Operation and Maintenance Plan*, the City Manager shall issue a written notice of violation to such person. Where a person is engaged in activity that requires a stormwater-related permit, without having first secured a permit, the notice of violation shall be served on the owner or the person in charge of the activity being conducted on the site.

The notice of violation shall include:

- a. The name and address of the applicant or the responsible person;
- b. The address or other description of the site where the violation is occurring; and
- c. A statement specifying the nature of the violation;
- d. A description of the remedial measures necessary to bring the act or failure to act into compliance with this Article, a permit, an approved *Drainage Report*, an *Operation and Maintenance Plan*, and the correction period date;
- e. A statement of the penalties that may be assessed; and
- f. A statement of other enforcement action that may occur.

3. Penalties. Any one or more of the following actions or penalties may be taken or assessed against the person to whom the notice of violation was directed:

a. Stop Work Order. The Building Official may issue a stop work order for any discharge of a pollutant or unpermitted discharge that arises from the work authorized under a building permit. The stop work order shall be issued in the manner provided in the Building Code. The stop work order shall remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Building Official to enable the necessary remedial measures.

b. Withhold Certificate of Occupancy. The Building Official may withhold issuance of a certificate of occupancy for any building or other improvements constructed on the site upon which a discharge of a pollutant or unpermitted discharge arises from the work authorized under a building permit, until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured.

c. Suspension, Revocation, or Modification of Permit. The Planning Director may suspend a permit authorizing a land development project. A suspended permit may be reinstated after the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured.

d. Civil Penalties. Violation of the listed acts in this article shall be subject to a fine of the amount stated for violations pursuant to LOC 13.02.020.

4. Failure to Complete Remedial Measures. In the event the applicant, Responsible Party, or other person fails to take the remedial measures set forth in the notice of violation, the City may issue a citation for each day the violation remains unremedied after receipt of the notice of violation, consistent with LOC 13.02.020.

5. Evidence of Violation. Proof of a violation of this Article shall be deemed prima facie evidence that such violation is that of the owner of the property upon which the unlawful discharge originated. Prosecution, or lack thereof, of the owner of the property, the occupant, or other person in possession or control of property shall not be deemed to relieve any other responsible person.

6. Violations; Abatement; Injunction.

a. A violation of any provision of this Article is a civil violation and shall be enforced pursuant to the provisions of LOC 34.04.101 to 34.04.145. Each day that the violation exists shall constitute a separate violation.

b. Any discharge of a pollutant that occurs contrary to the provisions of this Code or unpermitted discharge is hereby declared to be unlawful and a public nuisance, and may be abated pursuant to LOC 34.08.400 to 34.08.490.

c. Upon request of the City Manager, the City Attorney may institute an appropriate action in any court to enjoin the discharge which is in violation of any provision of this Article.

d. The rights, remedies and penalties provided in this Code are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provisions of law.

38.25.190 DEFINITIONS.

Applicant. The party submitting a development application.

Best Management Practice (BMP). The schedule of activities, controls, prohibition of practices, maintenance procedures and other management practices designed to prevent or reduce pollution. BMPs also include treatment requirements, operating procedures and practices to control stormwater runoff.

Certificate of Acceptance. Certificate stating that private construction of public stormwater facility has been accepted for transfer of ownership to City. The Certificate is issued following completion of construction in accordance with code requirements, and with City-approved construction plans and specifications.

City Engineer. The person holding the position of City Engineer of the City of Lake Oswego or designee of the City Engineer.

City Manager. The person holding the position of City Manager or any officer or employee of the City of Lake Oswego.

Design Capacity. The flow volume or rate that a stormwater management facility is designed to safely contain, receive, convey, reduce pollutants from, or infiltrate to meet a specific performance standard.

Development. Any manmade change to unimproved real property, including, but not limited to, construction, installation or alteration of a building or other structure, change of use, land division, establishment or termination of a right of access, storage on the land, grading, clearing, removal or placement of soil, paving, dredging, filling, excavation, drilling or removal of trees.

Discharge. When used without qualification, means the "discharge of a pollutant." Discharge of a pollutant means addition of any "pollutant" or combination of pollutants to the public stormwater management system and other receiving waters from any point source, including but not limited to the placement of wastes into public waters, on land, or otherwise into the environment in a manner that affects or may tend to affect the quality of public waters.

Effective Impervious Area (EIA). Are impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system.

Equivalent Service Unit (ESU). The nominal allowance for effective impervious surface per single family residence (see Master Fees and Charges Resolution).

Green Infrastructure. Stormwater facilities that require vegetation as a functional component.

Groundwater. Subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.

Illicit Discharge. Any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater except discharges authorized under Section A.4.a.xii of the City's 2012-2017 National Pollutant Discharge Elimination System-Municipal Separate Storm Sewer System (NPDES-MS4) Permit.

Low Impact Development (LID). An engineering design approach to managing storm water runoff. Low Impact Development emphasizes conservation and use of on-site natural features to protect water quality. This approach implements engineering small-scale hydrologic controls to replicate the pre-development hydrologic regime or condition of watersheds through infiltrating, filtering, storing, evaporation and detaining runoff close to its source.

Maintenance. See definition of Maintenance in LOC 50.10.003.2.

Municipal Separate Storm Sewer System (MS4). A conveyance or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutter, ditches, manmade channels, or storm drains that is owned or operated by a state, city, county, district, association, or other public body; is designed or used for collecting or conveying storm water, and is not a combined sewer or part of a Publicly Owned Treatment Works as defined in 40 CFR Sec. 122.2.

National Pollutant Discharge Elimination System (NPDES-MS4) Permit. A waste discharge permit issued in accordance with the National Pollutant Discharge Elimination System authorized by the Federal Act and OAR chapter 340, Division 045. A copy of the Permit is available upon request of the City Engineer or at the City's surface water website: <http://www.ci.oswego.or.us/publicworks/surface-water>.

Pollutant. Any substance, as certain chemicals or waste products, that renders the air, soil, water, or other natural resource harmful or unsuitable for a specific beneficial purpose.

Pollution. "Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

Prohibited Discharge. Prohibited discharges include discharge of pollutants or other material that is not explicitly identified as authorized discharges per the City's NPDES-MS4 Permit to the surface water management system, including the public stormwater management system.

Public Nuisance. Nuisance conditions include improper function resulting in uncontrolled runoff and overflow; stagnant water with concomitant algae growth, insect breeding, and odors; discarded debris; and safety hazards created by the stormwater management facility's operation.

Prima facie Evidence. A Latin expression ("*prima facie*") used in modern legal English to signify that on first examination, a matter appears to be self-evident from the facts. In common law jurisdictions, *prima facie* denotes evidence that – unless rebutted – would be sufficient to prove a particular proposition or fact.

Receiving Water. A receiving water is the ultimate destination for stormwater leaving a particular site. Virtually all receiving waters are Waters of the State, and include "lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction." (ORS 468B.005(10)).

Redevelopment. A project on a previously developed site that results in the addition or replacement of impervious surface.

Remedial measures. Corrective measures employed to remedy, reverse or stop damage or violation of the surface water utility code or to the surface water management system.

Replace or Replacement. The removal of an impervious surface that exposes soil followed by the placement of an impervious surface.

Responsible Party. The property owner(s) of the site upon which the stormwater facility was designed to benefit. In the case of an entity, it shall include the parties comprising the entity; i.e., homeowners association - the members of the association, partnership – partners; corporation – shareholders, LLC – members of the LLC. The *Operations and Maintenance Plan* shall list the responsible party(s) of the stormwater management facility. The obligations of a Responsible Party shall transfer to the successors/purchasers of the site.

For violations of or failure to comply with LOC Article 38.25, Responsible Party includes:

- An owner of a building or property where a violation or failure to comply has occurred, the person in charge of the building or property, the violator or the person failing to comply with the Code, and
- Where a person commits a violation and the person works for a contractor, either as an employee, subcontractor, or independent contractor, the contractor and/or other employer;
- and any manager, or person in charge of the person or property.

Storm Drain. A man-made pipe or inlet to the City's surface water management system that transports stormwater.

Stormwater. Stormwater is water that originates during precipitation events. The word stormwater may also be used to apply to water that originates with snowmelt that enters the stormwater system. Stormwater (one word) and storm water (two words) are considered identical in use and definition by the City. The City prefers the spelling "stormwater".

Stormwater Management Facilities. A designed facility intended to collect or convey stormwater runoff, reduce pollutants from stormwater, and reduce hydrologic impacts associated with stormwater by detaining or infiltrating stormwater to the maximum extent practicable. Stormwater facilities should be constructed in such a manner that they are not Waters of the State or Waters of the US.

Stormwater Runoff. Stormwater that does not soak into the ground becomes surface runoff, which either flows directly into surface waterways or is channeled into storm sewers, which eventually discharge to surface waters.

Surface Water Management Utility. The surface water management utility is the entity that plans, designs, constructs, maintains, administers, and operates all City surface water conveyances and facilities, and the regulations for facility control. The surface water management utility also establishes standards for design and construction.

Surface Water Management System. Includes all natural and man-made facilities utilized by the Surface Water Utility to regulate the quantity and quality of surface water, including drainage easements, culverts, storm drains, roadside ditches, catch basins, stream corridors, rivers, ponds, wetlands and impoundments. The Stormwater Management System is an engineered or built subset of the Surface Water Management System designed to convey or treat storm runoff.

Total Impervious Area (TIA). Any surface created by humans that cannot be penetrated by water easily or effectively, thereby resulting in stormwater runoff. Examples of TIA include pavement (interlocking pavers, asphalt, concrete, etc.), buildings, driveways, parking lots and sidewalks.

Total Maximum Daily Load (TMDL). Total maximum daily loads are developed for "water quality limited" or "impaired" water bodies by the Oregon Department of Environmental Quality in accordance with Oregon Administrative Rule 340-042-0040, which defines how much of an identified pollutant a specified waterbody can receive and still meet water quality standards. A copy of the TMDL documents are available upon request of the City Engineer or at the City's surface water website: <http://www.ci.oswego.or.us/publicworks/surface-water>.

Watercourse. A stream of water; a river or creek or brook or natural channel for water; also, a canal for the conveyance of water, especially in draining lands. Watercourses may include reaches ponded by natural or manmade actions provided a watercourse either enters or exits from such a pond.

Waters of the State. Lakes, bays, ponds, impounding reservoirs, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are wholly or partially within or bordering the state or within its jurisdiction [OAR 340-045-0010].

Article 38.26
Violation of Utility Code.

Sections:

- 38.26.905 Waste.**
- 38.26.910 Damage.**
- 38.26.915 Tampering.**
- 38.26.920 Surface Water-Sewer Connection Prohibited.**
- 38.26.925 Disposal of Septic Waste into City System Prohibited.**
- 38.26.930 Prohibited Conduct.**
- 38.26.935 Code Violation a Civil Violation.**

38.26.930 Prohibited Conduct.

~~1. No person shall dump or discharge debris, soil, pollutants such as fuels, lubricants, bitumens, sewage, paint and other harmful or hazardous materials into the surface water management system.~~

1. No person shall discharge, place, deposit, dump or otherwise contribute a solid or liquid material into the public surface water system, either directly or indirectly, which may obstruct flow or otherwise interfere with the operation or function of the public surface water management facility. This shall include, but is not limited to, placing of rock or soil without an approved fill permit, or the dumping of debris, rubbish, trash or other waste material.

2. Violation of this section is punishable by a fine of not more than \$5,000. Violation of this section a second or subsequent time within a 24-month period is punishable by a fine of not less than \$1,500 and not more than \$5,000.

BEFORE THE CITY COUNCIL
OF THE CITY OF LAKE OSWEGO

A REQUEST FOR AMENDMENTS TO LOC
CHAPTERS 38 AND 50 RELATED TO
STORMWATER MANAGEMENT

LU 15-0050
CITY OF LAKE OSWEGO
FINDINGS & CONCLUSIONS

NATURE OF PROCEEDINGS

This matter came before the Lake Oswego City Council on the recommendation of the Planning Commission for legislative amendments to LOC Chapter 38, Utility Code, and the Community Development Code, Chapter 50, to meet the requirements of the City's National Pollution Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit, and to improve stormwater management practices in development and redevelopment in the City.

HEARINGS

The Planning Commission held a public hearing and considered this application at its meetings of November 23, 2015, and December 14, 2015. The City Council held a public hearing to consider the Planning Commission's recommendation on February 2, 2016.

CRITERIA AND STANDARDS

A. City of Lake Oswego Comprehensive Plan (2013):

Land Use Planning Chapter

Policy A-1a, e; A-2a, c; A-6; and A-7

Policy B-2, B-3, B-4, B-7 and B-10e

Policy C-1b and C-4

Policy D-1

Community Culture Chapter, Civic Engagement Section

Policies 1-5, 8-9

Community Health and Public Safety Chapter, Public Facilities and Services: Surface Water Management Section

Policies 1-9

1 Open Spaces, Scenic and Natural Resources Chapter (Goal 5): Section 1, Fish & Wildlife
Habitat – *Replaced with new Healthy Ecosystems chapter*

2 Open Spaces, Scenic and Natural Resources Chapter (Goal 5): Section 2, Vegetation –
3 *Replaced with new Healthy Ecosystems chapter*

4 Open Spaces, Scenic and Natural Resources Chapter (Goal 5): Section 3, Wetlands –
5 *Replaced with new Healthy Ecosystems chapter*

6 Open Spaces, Scenic and Natural Resources Chapter (Goal 5): Section 4, Stream
Corridors – *Replaced with new Healthy Ecosystems chapter*

7 Open Spaces, Scenic and Natural Resources Chapter (Goal 5): Section 7, Oswego Lake –
8 *Replaced with new Healthy Ecosystems chapter*

9 B. Lake Oswego Comprehensive Plan (2015 Amendments*):
(*Adopted December 15, 2015, effective January 14, 2016)

10 Proposed Healthy Ecosystems Chapter, Goal 5 Resources Section
11 Policies 1-9, 11

12 Proposed Healthy Ecosystems Chapter, Urban Forest and Vegetation Section
Policies 4-6

13 Proposed Healthy Ecosystems Chapter, Oswego Lake Section
14 Policies 2c, d and 4

15 Proposed Healthy Ecosystems Chapter, Willamette River Greenway Section
Policy 5

16 C. Metro Urban Growth Management Functional Plan
17 Title 3: Water Quality and Flood Management, Metro Code Sections
3.07.330 and 3.07.340

18 D. City of Lake Oswego Community Development Code
19 LOC 50.07.003b Criteria for Legislative Decisions
20 LOC 50.75.005 Legislative Decisions Defined
21 LOC 50.75.015 Required Notice to DLCD
LOC 50.75.020 Planning Commission Recommendation Required
LOC 50.75.025 City Council Review and Decision

22 **FINDINGS AND REASONS**

23 The City Council incorporates the Council Reports dated January 22, 2016 and January
24 12, 2016, the Staff Report dated November 13, 2015 and Supplemental Staff Report dated
25 December 4, 2015, each with all exhibits, as well as the Findings, Conclusions and Order of the
26 Planning Commission, as support for the City Council’s decision, supplemented by the further

Page 2 – FINDINGS & CONCLUSIONS (LU 15-0050)

1 findings and conclusions that follow. In the event of any inconsistency between the City
2 Council’s supplemental findings and the incorporated materials, the supplemental findings
3 control.

4 Following are the supplemental findings and conclusions of this Council:

5 The City Council received testimony citing expenses that likely would be incurred for a
6 500 square foot roof replacement, including costs for infiltration tests, civil engineering, and
7 implementation of stormwater facilities, all of which were described as excessively expensive
8 for such a modest improvement. However, the original proposal for a 500 square foot
9 threshold has been modified. The currently-proposed code requirements as recommended by
10 the Planning Commission would apply to creation of new impervious surfaces equal to or
11 greater than 1,000 square feet, and to replacement of existing impervious surfaces equal to or
12 greater than 3,000 square feet. The Council also notes that “replacement” under the proposed
13 regulations means the removal of an impervious surface that exposes soil prior to installing
14 another impervious surface. As a result, the expenses described in the testimony would not be
15 incurred for the type of project described.

16 The City Council also heard testimony from the Birdshill Neighborhood Association Chair
17 ascribing recent flooding in the Fielding Road area to a lack of communication, coordination
18 and responsiveness among multiple agencies over the course of many years. The Chair testified
19 that the proposed stormwater manual may be an improvement, but that it had not been
20 “publicly vetted enough” to conclude that it will successfully address problems such as the one
21 described, and therefore the proposal should not be adopted. The City Council finds that the
22 multiple public hearings and other opportunities for public input, as outlined in the
23 incorporated materials, has been sufficient, and that the record establishes that the proposed
24 Code amendments and stormwater manual will significantly improve stormwater management
25 in the City.

26 Supportive testimony included comments that the proposed Code amendments and

1 manual were prudent ways to approach the issues, even if not perfect or optimal, as well as a
2 statement that the recommended regulations are a “powerful tool” to enhance the City’s
3 watersheds.

4 Based upon the evidence in the record, the City Council finds that LU 15-0050, as
5 recommended by the Planning Commission, is an appropriate and reasonable way to meet the
6 requirements of the City’s NPDES MS4 permit, to enhance and preserve water quality, and to
7 improve stormwater management practices in the City. The City Council finds that LU 15-0050
8 balances the interests of property owners while maximizing the public benefit derived through
9 stormwater management.

10 **CONCLUSION**

11 The City Council concludes that LU 15-0050, as recommended by the Planning
12 Commission, complies with all applicable criteria and should be approved. The Council also
13 concludes that proposed Ordinance 2695, which implements LU 15-0050, should be enacted.

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