ORDINANCE 2022-05-013

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON AMENDING CHAPTER 15.42 OF THE BELLINGHAM MUNICIPAL CODE TO ADOPT REGULATIONS FOR STORMWATER CONTROLS FOR NEW DEVELOPMENT, REDEVELOPMENT, AND CONSTRUCTION SITES AND SOURCE CONTROL FOR EXISTING DEVELOPMENT AS REQUIRED BY THE CITY'S 2019-2024 NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM MUNICIPAL STORMWATER PERMIT

WHEREAS, the City of Bellingham operates a surface and stormwater utility and management program to further public health, safety and welfare by promoting a comprehensive approach to these issues, controlling storm and surface runoff, and enhancing environmental protection; and

WHEREAS, the City's stormwater management program is codified in Chapter 15.42 of the Bellingham Municipal Code; and

WHEREAS, the responsible federal and state regulatory authorities, including the Washington State Department of Ecology, have required local governments to adopt stormwater management regulations, which include minimum requirements; and

WHEREAS, the City must periodically update its codified regulations to implement the requirements of the federal and state regulatory authorities, as set forth in the City's 2019-2024 National Pollution Discharge Elimination System Municipal Stormwater Permit ("2019-2024 NPDES Permit"); and

WHEREAS, Section S5.C.6 of the 2019-2024 NPDES Permit requires permittees to review, revise and make effective their local development-related codes, rules, standards, or other enforceable documents to incorporate and require a program to reduce pollutants in stormwater runoff to a regulated small Municipal Separate Storm Sewer System (MS4) from new development, redevelopment, and construction site activities; AND

WHEREAS, this ordinance amends BMC 15.42 to meet the requirements of the 2019-2024 NPDES Permits to adopt certain controls for stormwater runoff from new development, redevelopment, and construction sites and source control for existing development.

WHEREAS, on March 28, 2022 the proposed code amendments were introduced to the Bellingham City Council during a Public Works and Natural Resources Committee meeting.

WHEREAS, the proposed code amendments were published on the Engage Bellingham website for public review and comment.

WHEREAS, on April 13, 2022 a public open house was conducted for the proposed code amendments.

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NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELLINGHAM DOES HEREBY ORDAIN THAT:

Section 1. Chapter 15.42 of the Bellingham Municipal Code is amended as set forth below in strikethrough/underline format. Only those sections being amended are shown.

15.42.060 Approval Standards

A – E [unchanged]
F. *Minimum Requirements for Stormwater Mitigation.* The following are considered the minimum requirements for stormwater mitigation:

1. *Minimum Requirement No. 1 – Preparation of Stormwater Site Plans ("SSP").* All projects meeting the thresholds in subsection (A)(1) or (2) of this section shall prepare a stormwater site plan ("SSP") for the city's review. SSPs shall be prepared in accordance with the current editions of the Ecology Manual, the city of Bellingham "Development Guidelines and Improvement Standards" and this BMC. This SSP may be incorporated with building, grading or clearing plan sets as applicable. Those projects that are subject to Minimum Requirements No. 1 through No. 9 shall include an engineering report that addresses all elements and minimum requirements of the project's stormwater management along with an analysis that supports the SSP and the construction stormwater pollution prevention plan ("construction SWPPP"). If the project included construction of conveyance systems, treatment facilities, flow control facilities, structural source control BMPs, bioretention facilities, permeable pavement, vegetated roofs, a rainwater harvest system, and/or newly planted or retained trees for which a flow reduction credit was taken, the applicant shall submit a corrected plan ("record drawings") to the local government agency with jurisdiction when the project is completed. These should be engineering drawings that accurately represent the stormwater infrastructure of the project as constructed. These corrected drawings must be professionally drafted revisions that are stamped, signed, and dated by a licensed civil engineer registered in the state of Washington.

2. *Minimum Requirement No. 2 – Construction Stormwater Pollution Prevention Plan ("Construction SWPPP").*

a. All new development and redevelopment shall comply with construction SWPPP Elements No. 1 through No. 13 as described in this section below.

b. Projects outside the Lake Whatcom watershed in which the new, replaced, or new plus replaced hard surfaces total 2,000 square feet or more, or disturb 5,000 square feet

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or more of land must prepare a construction SWPPP as part of the stormwater site plan (see subsection (F)(1) of this section). Each of the 13 elements must be considered and included in a construction SWPPP unless site conditions render the element unnecessary and the exemption from that element is clearly justified in the narrative of the SWPPP. The SWPPP shall include, at a minimum, the narrative, the stormwater site plan and copies of best management practice detail sheets that will be utilized as a part of the SWPPP.

c. Projects outside the Lake Whatcom watershed that add or replace less than 2,000 square feet of hard surface and disturb less than 5,000 square feet of land are not required to prepare a construction SWPPP. They must, however, consider all of the 13 elements of construction stormwater pollution prevention detailed below and propose controls for all elements that pertain to the project site within the stormwater site plan.

d. Those projects, that are within the Lake Whatcom watershed, that create or add 200 square feet or greater, of new, replaced or new plus replaced hard surface area or that disturb more than 500 square feet of land shall provide a construction SWPP plan and a stormwater site plan as described above.

e. *Elements of Construction Stormwater Pollution Prevention.*

i. *Element 1 – Preserve Vegetation/Mark Clearing Limits.* Prior to beginning land-disturbing activities, including clearing and grading, all clearing limits, sensitive areas and their buffers, and trees that are to be preserved within the construction area should be clearly marked, both in the field and on the plans, to prevent damage and off-site impacts. Plastic, metal, or stake wire fence may be used to mark the clearing limits. Retain the duff layer, native top soil, and natural vegetation in an undisturbed state to the maximum degree practicable.

ii. *Element 2 – Establish Construction Access.*

(A) Construction vehicle access and exit shall be limited to one route if possible.

(B) Access points shall be stabilized with quarry spall or crushed rock to minimize the tracking of sediment onto public roads.

(C) Wheel wash or tire baths should be located on site, if applicable.

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(D) Public roads shall at a minimum be cleaned thoroughly at the end of each day. Sediment shall be removed from roads by shoveling or pickup sweeping and shall be transported to a controlled sediment disposal area. Street washing will be allowed only after sediment is removed in this manner.

(E) Street wash wastewater shall be controlled by pumping back on site, or otherwise be prevented from discharging into systems tributary to state surface waters.

(F) Control street wash wastewater by pumping back on site, or otherwise prevent it from discharging into systems tributary to waters of the state.

iii. *Element 3 – Control Flow Rates.*

(A) Protect properties and waterways downstream of development sites from erosion and the associated discharge of turbid waters due to increases in the velocity and peak volumetric flow rate of stormwater runoff from the project site.

(B) Properties subject to Minimum Requirement No. 5 and/or No. 7 shall implement controls as early in the development as is practicable to mitigate for flow rates.

(C) Where necessary to comply with Minimum Requirement No. 7, stormwater retention/detention facilities shall be constructed as one of the first steps in grading. Detention facilities shall be functional prior to construction of site improvements (e.g., impervious surfaces).

(D) If permanent infiltration ponds are used for flow control during construction, these facilities should be protected from siltation during the construction phase.

iv. *Element 4 – Install Sediment Controls.*

(A) Design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants.

(B) Construct sediment control BMPs (sediment ponds, traps, filters, etc.) as one of the first steps in grading. These BMPs shall be functional before other land-disturbing activities take place.

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(C) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site.

(D) Direct stormwater runoff from disturbed areas through a sediment pond or other appropriate sediment removal BMP, before the runoff leaves a construction site or before discharge to an infiltration facility. Runoff from fully stabilized areas may be discharged without a sediment removal BMP, but must meet the flow control performance standard in subsection (F)(2)(e)(iii)(A) of this section.

(E) Locate BMPs intended to trap sediment on site in a manner to avoid interference with the movement of juvenile salmonids attempting to enter off-channel areas or drainages.

(F) Where feasible, design outlet structures that withdraw impounded stormwater from the surface to avoid discharging sediment that is still suspended lower in the water column.

v. *Element 5 – Stabilize Soils.*

(A) All exposed and unworked soils shall be stabilized by application of effective BMPs that protect the soil from the erosive forces of raindrop impact and flowing water, and wind erosion. Applicable BMPs include, but are not limited to: temporary and permanent seeding, sodding, mulching, plastic covering, erosion control fabrics and matting, soil application of polyacrylamide (PAM), the early application of gravel base early on areas to be paved, and dust control.

(B) Control stormwater volume and velocity within the site to minimize soil erosion.

(C) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion.

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(D) From October 1st through April 30th of each year, no soils shall remain exposed and unworked for more than two days. From May 1st to September 30th of each year, no soils shall remain exposed and unworked for more than seven days. This condition applies to all soils on site, whether at final grade or not.

(E) Stabilize soils at the end of the shift before a holiday or weekend if needed based on the weather forecast.

(F) Minimize the amount of soil exposed during construction activity.

(G) Minimize the disturbance of steep slopes.

(H) Minimize soil compaction and, unless infeasible, preserve topsoil.

(I) Applicable practices include, but are not limited to, temporary and permanent seeding, sodding, mulching, plastic covering, soil application of polyacrylamide (PAM), early application of gravel base on areas to be paved, and dust control.

(J) Soil stabilization measures selected should be appropriate for the time of year, site conditions, estimated duration of use, and potential water quality impacts that stabilization agents may have on downstream waters or ground water.

(K) Soil stockpiles must be stabilized and protected with sediment trapping measures and, where possible, locate away from storm drain inlets, waterways and drainage channels.

(L) Work on linear construction sites and activities, including right-of-way and easement clearing, roadway development, pipelines, and trenching for utilities, shall not exceed the capability of the individual contractor for his portion of the project to install the bedding materials, roadbeds, structures, pipelines, and/or utilities, and to restabilize the disturbed soils, meeting the timing conditions listed above.

(M) In addition, at the discretion of the public works director, those sites unable to maintain the quality of their stormwater discharge may be required to provide soil stabilization to all exposed soil areas regardless of the working status of the

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area. Upon written notification, the property owner shall provide full stabilization of all exposed soil areas within 24 hours.

vi. *Element 6 – Protect Slopes.*

(A) Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Applicable practices include, but are not limited to, reducing continuous length of slope with terracing and diversions, reducing slope steepness, and roughening slope surfaces (for example, track walking).

(B) Consider soil type and its potential for erosion.

(C) Reduce slope runoff velocities by reducing the continuous length of slope with terracing and diversions, reduce slope steepness, and roughen slope surface.

(D) Divert upslope drainage and run-on waters from off site with interceptors at top of slope. Off-site stormwater should be handled separately from stormwater generated on the site. Diversion of off-site stormwater around the site may be a viable option. Diverted flows shall be redirected to the natural drainage location at or before the property boundary.

(E) Contain down slope collected flows in pipes, slope drains, or protected channels to prevent erosion. Temporary pipe slope drains must handle the peak volumetric flow rate calculated using a 10-minute time step from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year one-hour flow rate predicted by an approved continuous runoff model, increased by a factor of 1.6, may be used. The hydrologic analysis must use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis must use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the Western Washington Hydrology Model to predict flows, bare soil areas should be modeled as "landscaped area."

(F) Provide drainage to remove ground water intersecting the slope surface of exposed soil areas.

(G) Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations.

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(H) Check dams shall be placed at regular intervals within trenches that are cut down a slope.

(I) Stabilize soils on slopes, as specified in Element No. 5.

vii. *Element 7 – Protect Drain Inlets.*

(A) All storm drain inlets made operable during construction shall be protected so that stormwater runoff shall not enter the conveyance system without first being filtered or treated to remove sediment.

(B) All approach roads shall be kept clean, and all sediment and street wash water shall not be allowed to enter storm drains without prior and adequate treatment unless treatment is provided before the storm drain discharges to waters of the state.

viii. *Element 8 – Stabilize Channels and Outlets.*

(A) All temporary on-site conveyance channels shall be designed, constructed and stabilized to prevent erosion from expected peak flows. Channels must handle the peak volumetric flow rate calculated using a 10-minute time step from a Type 1A, 10-year, 24-hour frequency storm for the developed condition. Alternatively, the 10-year~~,~~ peak flow rate, as determined by an approved continuous runoff model with a 15-minute time step~~one-hour flow rate indicated by an approved continuous runoff model, increased by a factor of 1.6,~~ may be used. The hydrologic analysis must use the existing land cover condition for predicting flow rates from tributary areas outside the project limits. For tributary areas on the project site, the analysis shall use the temporary or permanent project land cover condition, whichever will produce the highest flow rates. If using the Western Washington Hydrology Model to predict flows, bare soil areas should be modeled as "landscaped area."

(B) Stabilization, including armoring material, adequate to prevent erosion of outlets, adjacent stream banks, slopes and downstream reaches shall be provided at the outlets of all conveyance systems.

ix. *Element 9 – Control Pollutants.*

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(A) Design, install, implement and maintain effective pollution prevention measures to minimize the discharge of pollutants.

(B) All pollutants, including waste materials and demolition debris, that occur on site during construction shall be handled and disposed of in a manner that does not cause contamination of stormwater.

(C) Cover, containment, and protection from vandalism shall be provided for all chemicals, liquid products, petroleum products, and noninert wastes present on the site (see Chapter 173-304 WAC, as currently enacted or hereafter modified, for the definition of inert waste, which is incorporated herein by this reference).

(D) Maintenance and repair of heavy equipment and vehicles involving oil changes, hydraulic system drain down, solvent and de-greasing cleaning operations, fuel tank drain down and removal, and other activities which may result in discharge or spillage of pollutants to the ground or into stormwater runoff must be conducted using spill prevention measures, such as drip pans. Contaminated surfaces shall be cleaned immediately following any discharge or spill incident. Emergency repairs may be performed on site using temporary plastic placed beneath and, if raining, over the vehicle.

(E) Wheel wash, or tire bath wastewater, shall be discharged to a separate on-site treatment system or to the sanitary sewer.

(F) Application of agricultural chemicals, including fertilizers and pesticides, shall be conducted in a manner and at application rates that will not result in loss of chemical to stormwater runoff. Manufacturers' recommendations shall be followed for application rates and procedures.

(G) Management of pH-modifying sources shall prevent contamination of runoff and stormwater collected on the site. These sources include, but are not limited to, bulk cement, cement kiln dust, fly ash, new concrete washing and curing waters, waste streams generated from concrete grinding and sawing, exposed aggregate processes, and concrete pumping and mixer washout waters.

(H) Adjust the pH of stormwater if necessary to prevent violations of water quality standards.

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(I) Assure that washout of concrete trucks is performed off site or in designated concrete washout areas only. Do not wash out concrete trucks onto the ground, or into storm drains, open ditches, streets, or streams. Do not dump excess concrete on site, except in designated concrete washout areas. Concrete spillage or concrete discharge to surface waters of the state is prohibited. Do not wash out to formed areas awaiting infiltration BMPs.

(J) Obtain written approval from Ecology before using chemical treatment other than CO_2, ~~or~~ dry ice, or food grade vinegar to adjust pH.

(K) Uncontaminated water from water-only based shaft drilling for construction of building, road, and bridge foundations may be infiltrated provided the wastewater is managed in a way that prohibits discharge to surface waters. Prior to infiltration, water from water-only based shaft drilling that comes into contact with curing concrete must be neutralized until pH is in the range of 6.5 to 8.5 (su).

x. *Element 10 – Control Dewatering.*

(A) All foundation, vault, and trench dewatering water, which have similar characteristics to stormwater runoff at the site, shall be discharged into a controlled conveyance system, prior to discharge to a sediment trap or sediment pond. Channels must be stabilized, as specified in Element No. 8.

(B) Clean, nonturbid dewatering water, such as well-point ground water, can be discharged to systems tributary to state surface waters, as specified in Element No. 8, provided the dewatering flow does not cause erosion or flooding of the receiving waters. These clean waters should not be routed through sediment ponds with stormwater.

(C) Highly turbid or otherwise contaminated dewatering water, such as from construction equipment operation, clamshell digging, concrete tremie pour, or work inside a cofferdam, shall be handled separately from stormwater at the site.

(D) Other disposal options, depending on site constraints, may include, by way of example: (1) infiltration, (2) transport off site in vehicle, such as a vacuum flush truck, for legal disposal in a manner that does not pollute state waters, (3) on-site treatment using Ecology approved chemical treatment or other suitable

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treatment technologies, (4) sanitary or combined sewer discharge with local sewer district approval, or there is no other option, (5) use of a sedimentation bag that discharges to a ditch or swale for small volumes of localized dewatering.

xi. *Element 11 – Maintain BMPs.*

(A) All temporary and permanent erosion and sediment control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function. All maintenance and repair shall be conducted in accordance with BMPs.

(B) Sediment control BMPs shall be inspected weekly or after a runoff-producing storm event during the dry season and daily during the wet season. All projects that disturb an area greater than one acre shall have a certified erosion control lead available to the site. This erosion control lead shall be responsible to provide overview of ongoing day-to-day erosion control requirements. The erosion control lead shall (within 24 hours) report to the city and Department of Ecology any site discharges that exceed state water quality standards that have or are likely to have entered waters of the state.

(C) All temporary erosion and sediment control BMPs shall be removed within 30 days after final site stabilization is achieved or after the temporary BMPs are no longer needed. Trapped sediment shall be removed or stabilized on site. Disturbed soil areas resulting from removal of BMPs or vegetation shall be permanently stabilized.

xii. *Element 12 – Manage the Project.*

(A) Phasing of Construction. Development projects shall be phased where feasible in order to prevent, to the maximum extent practicable, the transport of sediment from the development site during construction. Revegetation of exposed areas and maintenance of that vegetation shall be an integral part of the clearing activities for any phase.

(B) When establishing these permitted clearing and grading areas, consideration should be given to minimizing removal of existing trees and minimizing disturbance/compaction of native soils except as needed for building purposes. Permitted clearing and grading areas and any other areas required to preserve

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critical or sensitive areas, buffers, native growth protection easements, or tree retention areas, shall be delineated on the site plans and the development site.

(C) Coordination with Utilities and Other Contractors. The primary project proponent shall evaluate, with input from utilities and other contractors, the stormwater management requirements for the entire project, including the utilities, when preparing the construction SWPPP.

(D) Inspection and Monitoring. All BMPs shall be inspected, maintained, and repaired as needed to assure continued performance of their intended function.

(E) For any project disturbing more than one acre, a certified professional in erosion and sediment control shall be identified in the construction SWPPP and shall be on site or on call at all times. Certification may be through the Washington State Department of Transportation/Associated General Contractors (WSDOT/AGC) Construction Site Erosion and Sediment Control Certification Program or any equivalent local or national certification and/or training program, in the city's discretion.

(F) Whenever inspection and/or monitoring reveals that the BMPs identified in the construction SWPPP are inadequate, due to the actual discharge of or potential to discharge a significant amount of any pollutant, the SWPPP shall be modified, as appropriate, in a timely manner.

(G) Maintenance of the Construction SWPPP. The construction SWPPP shall be retained on site. The construction SWPPP shall be modified whenever there is a significant change in the design, construction, operation, or maintenance of any BMP.

xiii. *Element 13 – Protect Low Impact Development BMPs.*

(A) Protect all bioretention and rain garden BMPs from sedimentation through installation and maintenance of erosion and sediment control BMPs on portions of the site that drain into the bioretention and/or rain garden BMPs. Restore the BMPs to their fully functioning condition if they accumulate sediment during construction. Restoring the BMP must include removal of sediment and any sediment-laden bioretention/rain garden soils, and replacing the removed soils with soils meeting the design specification.

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(B) Prevent compacting bioretention and rain garden BMPs by excluding construction equipment and foot traffic. Protect completed lawn and landscaped areas from compaction due to construction equipment.

(C) Control erosion and avoid introducing sediment from surrounding land uses onto permeable pavements. Do not allow muddy construction equipment on the base material or pavement. Do not allow sediment-laden runoff onto permeable pavements or base materials.

(D) Pavement fouled with sediments or no longer passing an initial infiltration test must be cleaned using procedures in accordance with the Ecology Manual or the manufacturer's procedures.

(E) Keep all heavy equipment off existing soils under LID facilities that have been excavated to final grade to retain the infiltration rate of the soils.

3. *Minimum Requirement No. 3 – Source Control of Pollution.* All known, available and reasonable source control BMPs shall be applied to all projects. Source control BMPs shall be selected, designed, and maintained according to the Ecology Manual. Source controls that are applicable to a project shall be either indicated on the stormwater site plan and/or contained within a stormwater engineering report when such report is required.

4. *Minimum Requirement No. 4 – Preservation of Natural Drainage Systems and Outfalls.* Natural drainage patterns shall be maintained, and discharges from the project site shall occur at the natural location, 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. Additional information on how to comply with this requirement may be found in the Ecology Manual.

5. *Minimum Requirement No. 5 – On-Site Stormwater Management.*

a. *Applicability.* Except as provided below, on-site stormwater management BMPs are required to be constructed in accordance with the following project thresholds, standards, and lists to infiltrate, disperse, and retain stormwater runoff on site to the extent feasible without causing flooding or erosion impacts.

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Projects qualifying as flow control exempt in accordance with Minimum Requirement No. 7 shall either use the LID BMPs from List No. 3 for all surfaces within each type of surface in List No. 3; or use any Flow Control BMP(s) desired to achieve the LID Performance Standard, and apply BMP T5.13.~~do not have to achieve the LID performance standard, nor consider bioretention, rain gardens, permeable pavement, and full dispersion if using List No. 1 or List No. 2 of the Ecology Manual. However, those projects must implement BMP T5.13; BMPs T5.10A, B, or C; and BMP T5.11or T5.12 of the Ecology Manual, if feasible.~~

b. *Thresholds.*

i. Projects triggering only Minimum Requirements No. 1 through No. 5 shall either:

(A) Use on-site stormwater management BMPs from List No. 1 of the Ecology Manual for all surfaces within each type of surface in List No. 1; or

(B) Demonstrate compliance with the LID performance standard. Projects selecting this option cannot use rain gardens. They may choose to use bioretention BMPs as described in the Ecology Manual and apply BMP T5.13.

ii. *Thresholds.* Projects triggering Minimum Requirements No. 1 through No. 9 shall meet the requirements stated in ~~Table 2.5.1 of~~ the Ecology Manual.

c. *Low Impact Development Performance Standard.* Stormwater discharges shall match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from eight percent of the two-year peak flow to 50 percent of the two-year peak flow. Refer to the standard flow control requirement section in Minimum Requirement No. 7 for information about the assignment of the predeveloped condition. Project sites that must also meet minimum requirement No. 7 shall match flow durations between eight percent of the two-year flow through the full 50-year flow.

6. *Minimum Requirement No. 6 – Runoff Treatment.*

a. *Applicability.* All projects subject to this minimum requirement shall utilize on-site stormwater BMPs for the treatment of runoff. Additionally, when the following design thresholds are met or exceeded within a threshold discharge area, an engineered water quality facility shall be provided. All runoff treatment facilities and BMPs shall be designed, sized and provided for in accordance with the Ecology Manual.

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b. *Thresholds.* When assessing the applicability of Minimum Requirement No. 6, only consider those hard and pervious surfaces listed below.

i. The following require construction of stormwater treatment facilities:

(A) Projects in which the total of new, replaced or new plus replaced effective pollution-generating hard surface (PGHS) is 5,000 square feet or more in a threshold discharge area of the project; or

(B) Projects in which the total of new, replaced or new plus replaced effective pollution-generating pervious surfaces (PGPS) – not including permeable pavements – is three-quarters of an acre or more in a threshold discharge area, and from which there will be a surface discharge in a natural or manmade conveyance system from the site.

ii. Additional thresholds for oil control, phosphorus treatment, enhanced treatment, and basic treatment are stated in the Ecology Manual.

c. *Additional Requirements.* Direct discharge of untreated stormwater from pollution-generating hard surfaces to ground water is prohibited, except for the discharge achieved by infiltration or dispersion of runoff from residential sites through use of on-site stormwater management BMPs in accordance with Chapter 5, Volume V and Chapter 7, Volume V of the Ecology Manual; or by infiltration through soils meeting the soil suitability criteria in Chapter 3 of Volume III of the Ecology Manual. Projects within Basin One of the Lake Whatcom watershed shall meet these standards for water quality in addition to those contained in other portions of this code.

7. *Minimum Requirement No. 7 – Flow Control.*

a. *Applicability.* Projects must provide flow control to reduce the impacts of stormwater runoff from hard surfaces and land cover conversions. All projects subject to this minimum requirement shall utilize on-site stormwater BMPs for flow control. Additionally, when the following design thresholds are met or exceeded, an engineered water quantity facility shall be provided. All water quantity facilities and flow control BMPs shall be designed and provided for in accordance with the Ecology Manual. The thresholds and requirements below apply to projects that discharge stormwater directly or indirectly into fresh water. Those projects that meet flow control exemption criteria of the Ecology Manual are eligible to apply for modification to these requirements. Exception:

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The exemption of flow standards for Lake Whatcom shall only be allowed with the written approval of the public works department. The basis of that approval shall be a finding that no appreciable risk of water quality degradation will result from the exemption.

b. *Thresholds.* When assessing the applicability of Minimum Requirement No. 7, consider the following:

i. Projects in which the total of new, replaced or new plus replaced effective hard surfaces are 10,000 square feet or more in a threshold discharge area; or

ii. Projects that convert three-fourths acres or more of native vegetation to lawn or landscape, or convert two and one-half acres or more of native vegetation to pasture in a threshold discharge area, and from which there is a surface discharge in a natural or manmade conveyance system from the site; or

iii. Projects that, through a combination of new, replaced or new plus replaced effective impervious surfaces and converted pervious surfaces, cause a 0.15 cubic feet per second (cfs) or greater increase in the 100-year flow frequency as estimated using an approved continuous simulation model and 15-minute time steps ~~0.1 cubic feet per second increase in the 100-year flow frequency from a threshold discharge area as estimated using the Western Washington Hydrology Model or other approved model using one-hour time steps (or a 0.15 cfs increase using 15-minute time steps)~~; or

iv. Projects within Basin One of the Lake Whatcom watershed.

c. *Standard Flow Control Methodology.* Stormwater discharges shall match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from 50 percent of the two-year peak flow up to the full 50-year peak flow. The predeveloped condition to be matched shall be a forested land cover unless reasonable, historic information is provided that indicates the site was prairie prior to settlement (modeled as "pasture" in the Western Washington Hydrology Model); or

This standard requirement is waived for sites that will reliably infiltrate all the runoff from hard surfaces and converted vegetation areas.

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d. Flow control BMPs shall be selected, designed, and maintained according to Volume III of the Ecology Manual.

8. *Minimum Requirement No. 8 – Wetlands Protection.* Projects shall employ stormwater management BMPS in accordance with the thresholds, standards, and requirements in Ecology Manual to reduce the impacts of stormwater runoff to wetlands.

~~a. *Applicability.* The requirements below apply only to projects whose stormwater discharges into a wetland, either directly or indirectly through a conveyance system. These requirements must be met in addition to meeting Minimum Requirement No. 6 – Runoff Treatment.~~

~~b. *Thresholds.* The thresholds identified in Minimum Requirement No. 6 – Runoff Treatment, and Minimum Requirement No. 7 – Flow Control shall also be applied for discharges to wetlands.~~

~~c. *Standard Requirement.* Discharges to wetlands shall maintain the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses. Projects shall comply with Guide Sheets No. 1 through No. 3 in Appendix I-D of the Ecology Manual. The hydrologic analysis shall use the existing land cover condition to determine the existing hydrologic conditions unless directed otherwise by a regulatory agency with jurisdiction.~~

~~d. *Additional Requirements.*~~

~~i. The standard requirement does not excuse any discharger from the obligation to apply whatever technology is necessary to comply with state water quality standards, Chapter 173-201A WAC, or state ground water standards, Chapter 173-200 WAC. Additional treatment requirements to meet those standards may be required by federal, state, or local government.~~

~~ii. Stormwater treatment and flow control facilities shall not be built within a natural vegetated buffer or wetland, except for:~~

~~(A) Necessary conveyance systems as approved by the directors of the city's public works and planning departments or their designees; or~~

~~(B) As allowed in wetlands approved for hydrologic modification and/or treatment in accordance with guidance from the Department of Ecology; or~~

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~~(C) Where full dispersion of flow within a buffer has been approved as a low impact development practice.~~

~~iii. An adopted and implemented basin plan or a total maximum daily load (TMDL, also known as a water clean-up plan) may be used to develop requirements for wetlands that are tailored to a specific basin.~~

9. *Minimum Requirement No. 9 – Operation and Maintenance.* An operation and maintenance manual that is consistent with the provisions within the Ecology Manual shall be provided for all proposed stormwater facilities and BMPs, and the party (or parties) responsible for maintenance and operation shall be identified. At private facilities, a copy of the manual shall be retained on site or within reasonable access to the site, and shall be transferred with the property to the new owner. For public facilities, a copy of the manual shall be retained in the appropriate department. A log of maintenance activity that indicates what actions were taken shall be kept and be available for inspection by the city or Ecology.

G. [unchanged]

15.42.070 Maintenance, inspection and enforcement

A. *General Requirements.*

1. *Maintenance Required.* All stormwater facilities shall be maintained in accordance with this chapter and the Stormwater Management Manual. Systematic, routine preventive maintenance is preferred.

2. *Minimum Standards.* The following are the minimum standards for the maintenance of stormwater facilities:

a. Facilities shall be inspected annually and cleared of debris, sediment and vegetation when they affect the functioning and/or design capacity of the facility.

b. Grassy swales and other biofilters shall be inspected monthly and mowed or replanted as necessary. Clippings are to be removed and properly disposed of.

c. Maintenance of stormwater facilities including LID facilities, which may include, but are not limited to, bioretention, dispersion, and infiltration facilities, amended soils, pervious systems, vegetated roofs, or roof water harvesting, shall be maintained consistent

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with conditions of approval, and recorded agreements against subject properties, and city standards as enacted at the time of approval.

d. Where lack of maintenance is causing or contributing to a water quality problem or violation, immediate action shall be taken by the subject property owner to correct the problem.

3. *Compliance.* Property owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs unless the city has accepted maintenance responsibility in writing and a written easement exists granting the city an adequate and sufficient right, in the city's discretion, to enter the property and conduct these activities. Property owners shall maintain, operate and repair the facilities in compliance with the requirements of this chapter and the DOE Manual (current edition).

B. *Administration.* The director of public works shall develop and administer an inspection program for stormwater facilities in Bellingham.

C. *Inspection Program.*

1. Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this chapter has been or is being committed, the inspector is authorized to inspect stormwater drainage systems within Bellingham to determine compliance with the provisions of this chapter.

2. *Development Inspection.* All new development and redevelopment shall provide for and install adequate runoff controls per an approved SSP or SWPPP. Failure to provide such required runoff controls prior to or simultaneously with the commencement of land disturbance activities and failure to schedule an inspection for the runoff controls shall result in an order to stop all work upon the site for a minimum of three working days; provided, that such work that is necessary to bring the site into compliance with this code, permits, or an approved SSP or SWPPP shall be allowed to continue.

3. *Control for Existing Development.* Businesses and/or sites identified based on the presence of activities that are pollutant generating as referenced in Appendix 8 of the Western Washington Municipal Phase II Stormwater Permit shall be inspected to enforce implementation of required BMPs to control pollution discharging into the MS4. The requirements of this subsection are met by using the source control BMPs in the Ecology Manual. In cases where the manual(s) lack guidance for a specific source of pollutants, the

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director shall work with the owner/operator to implement or adapt BMPs based on the best professional judgement of the director. A person authorized by the director may, during reasonable hours and upon notification to the person with a right to possession, enter any premises in the discharge of its official duties to examine or inspect, photograph, video record, investigate, measure or test the stormwater discharged or the private storm system connected, directly or indirectly, to the public system.

D. *Enforcement.*

1. *Orders.* The director shall have the authority to issue to an owner or person an order to install, maintain or repair a component of a stormwater facility or BMP to bring it in compliance with this chapter, the Ecology Manual (current edition), and/or city regulations. The order shall include:

a. A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;

b. A notice that the violation or the potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken; and

c. A reasonable time to comply, depending on the circumstances.

2. *Civil Penalty.* In addition to any other remedy or sanction available, a person who fails to comply with a final order issued by the director or city council pursuant to this chapter, or who fails to conform to the terms of an approval issued, shall be subject to a civil penalty and/or a stop work order.

a. *Amount of Penalty.* The penalty shall be not less than $100.00 or exceed $5,000 for each violation. Each day of continued violation or repeated violation shall constitute a separate violation.

b. *Aiding or Abetting.* Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

c. *Notice of Penalty.* A civil penalty shall be imposed by the director, by a notice in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation,

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the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.

d. *Application for Remission or Mitigation.* Any person incurring a penalty may apply in writing within 10 days of receipt of the penalty to the director of public works (or designee) for remission or mitigation of such penalty. Upon receipt of the application, the director of public works may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The director's decision may be appealed to the hearing examiner within 10 days of the decision.

e. *Appeal of Civil Penalty.* Persons incurring a penalty imposed by the director may appeal in writing within 10 days of the receipt of the notice of penalty to the hearing examiner. The hearing examiner shall hold a de novo hearing to consider the appeal and may affirm, modify or reverse the penalty. The decision of the hearing examiner may be appealed to superior court within 10 days of the date of the hearing examiner's decision.

3. *Penalties Due.* Penalties imposed under this section shall become due and payable 10 days after notice of the penalty is mailed or delivered, whichever occurs first, unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made or an appeal to the hearing examiner filed (including payment of all applicable hearing examiner fees), penalties shall become due and payable 10 days after the date of the decision regarding the remission or payable after all review proceedings and a final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed is not paid within the time specified in this section, the city may take actions necessary to recover such penalty.

4. *Penalty Recovered.* Penalties recovered shall be paid to a fund dedicated to enforcement and/or enhancement of the stormwater management program.

E. *City Action.* In addition to any other remedies the city may have under this chapter or at law or in equity, nothing in this chapter or elsewhere within this code shall prevent the city from effecting repairs or maintenance to stormwater facilities if the director of public works (or designee) determines that imminent danger to public safety, health or welfare, or public or private property, or critical areas or habitat is likely as a result of the actions or inaction of the property owner(s). If the city affects repairs or maintenance, the cost will be charged to the property owner(s) together with any penalties incurred under this chapter and any costs of collection

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(including attorneys' fees), all of which shall be considered a lien against the subject property and also collectable as a personal debt against the property owner(s).

Section 2. The amendments contained in Section 1 shall apply to complete development applications filed:

A. On or after July 1, 2022; or
B. Prior to January 1, 2017 that have not commenced construction by January 1, 2022; or
C. Prior to July 1, 2022, that have not started construction by July 1, 2027.

PASSED by City Council this 23rd day of May, 2022.

Council President

APPROVED by me this 26 day of May, 2022.

Mayor

ATTEST:

Finance Director

APPROVED AS TO FORM:

Office of the City Attorney

Published:

May 27, 2022

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