

WHEN RECORDED RETURN TO:  
CITY OF WEST RICHLAND  
3801 VAN GIESEN  
WEST RICHLAND, WA 99353

**CITY OF WEST RICHLAND**

**ORDINANCE NO. \_\_-10**

**AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON, RELATING TO STORMWATER MANAGEMENT ADDING CHAPTER 13.86 TO THE WEST RICHLAND MUNICIPAL CODE.**

**WHEREAS**, on January 17<sup>th</sup>, 2007 the Washington State Department of Ecology issued a general permit, the National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewers in Eastern Washington, commonly known as the Eastern Washington NPDES Phase II Municipal Stormwater Permit; and

**WHEREAS**, the Eastern Washington NPDES Phase II Municipal Stormwater Permit requires the City of West Richland to develop, implement and enforce a program by February 16, 2010 to reduce pollutants in stormwater runoff to the municipal separate storm sewer system (MS4) from construction activities that disturb one acre or more and from construction projects of less than one acre that are part of a common plan of development or sale; and

**NOW, THEREFORE**, the City Council of the City of West Richland, Washington does hereby resolve as follows:

**Section 1.** Chapter 13.86, "Stormwater Management", which follows, is hereby added to the West Richland Municipal Code and shall read as follows.

**Chapter 13.86  
Stormwater Management**

**Sections:**

- 13.86.010 Purpose**
- 13.86.020 Definitions**
- 13.86.030 Applicability**
- 13.86.040 Responsibility for Administration**
- 13.86.050 Ultimate Responsibility**
- 13.86.060 General Requirements**

- 13.86.070 Specific Requirements**
- 13.86.080 Review of Documents**
- 13.86.090 Right of Entry**
- 13.86.100 Enforcement Procedures**
- 13.86.110 Appeal Notice of Violation**
- 13.86.120 Abatement by the City**
- 13.86.130 Injunction**
- 13.86.140 Compatibility with other Regulations**
- 13.86.150 Effective Date**

**13.86.010 Purpose.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of West Richland, Washington by establishing minimum stormwater management requirements and controls to regulate stormwater runoff from construction, development and redevelopment. This ordinance establishes methods for controlling the introduction of runoff and pollutants into the municipal separate storm sewer system (MS4) in order to comply with the requirements of the Washington State Department of Ecology issued National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Discharges from Small Municipal Separate Storm Sewers in Eastern Washington, commonly known as the Eastern Washington NPDES Phase II Municipal Stormwater Permit. The objectives of this ordinance are:

1. To regulate the contribution of runoff and pollutants to the municipal separate storm sewer system (MS4) from stormwater discharges from land-disturbing activities, construction activities, new land development and redevelopment; and
2. To establish legal authority to carry out all inspections, surveillance, monitoring procedures and enforcement necessary to ensure compliance with this ordinance; and
3. To provide long term responsibility for and maintenance of stormwater BMPs.

**13.86.020 Definitions**

For the purposes of Chapter 13.86 of the West Richland Municipal Code (WRMC), the definitions provided in WRMC Section 13.80.030 Definitions shall apply.

**13.86.030 Applicability.**

WRMC Chapter 13.86 shall be applicable to all land-disturbing activities, new subdivisions, and redevelopment projects disturbing greater than or equal to one (1) acre and to projects of less than one (1) acre that are part of a common plan of development or sale where the disturbed area of the entire plan is greater than or equal to one (1) acre that drain to the City of West Richland's Municipal Separate Storm Sewer System (MS4) as determined by the City Engineer.

Partial exemptions or exceptions may be granted in accordance with the Stormwater Management Manual for Eastern Washington (SWMMEW) published by the Washington State

Department of Ecology dated September 2004 or latest edition thereof. Jurisdiction-wide exceptions to the requirements in the SWMMEW shall be approved by the Washington State Department of Ecology.

The following practices shall be exempted from the requirements of WRMC chapter 13.86:

1. Forest practices regulated under Title 222 WAC.
2. Commercial agriculture practices involving working the land for production.
3. Oil and gas field activities including construction of drilling sites, waste management pits, access roads, transportation and treatment infrastructure.
4. Road and parking area preservation and maintenance including:
  - a. Pothole and square cut patching;
  - b. Crack sealing;
  - c. Resurfacing with in-kind material without expanding the road prism;
  - d. Overlaying existing asphalt or concrete pavement with bituminous surface treatment (BST or "chip seal"), asphalt or concrete without expanding the area of coverage;
  - e. Shoulder grading;
  - f. Reshaping or re-grading drainage systems;
  - g. Vegetation maintenance.

#### **13.86.040 Responsibility for Administration**

Administration, implementation, interpretation and enforcement of this ordinance shall be the responsibility of the Public Works Director or the Public Works Director's designated representative. The Public Works Director shall adopt, and revise as necessary, such instructions, policies and forms as are necessary to carry out the provisions of this title. Any powers granted or duties imposed upon the City may be delegated by the Public Works Director to persons or entities acting in the beneficial interest of or in the employ of the City.

#### **13.86.050 Ultimate Responsibility**

Any person who undertakes or causes to be undertaken any land disturbing activities, new development or redevelopment shall ensure soil erosion, sedimentation and increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution. The standards set forth herein and promulgated pursuant to WRMC Chapter 13.86 are minimum standards and are not intended to ensure compliance by any person or to ensure there will be no contamination, pollution, or unauthorized discharge of pollutants.

#### **13.86.060 General Requirements**

All land-disturbing activities, new development and redevelopment unless otherwise exempted in accordance with WRMC Section 13.86.030 shall be required to comply with the standards and requirements set forth by WRMC Chapter 13.86 and the:

- a. City of West Richland Standard Plans and Specifications; and

- b. Stormwater Management Manual for Eastern Washington (SWMMEW).

### **13.86.070 Specific Requirements**

The following specific requirements apply to all land-disturbing activities, new development, and redevelopment unless exemptions or exceptions are approved in accordance with WRMC Section 13.86.030. These requirements shall be implemented in accordance with the SWMMEW.

- a. Core Element #1: Prepare a Stormwater Site Plan.
- b. Core Element # 2: Construction Stormwater Pollution Prevention. Prepare and maintain a Construction Stormwater Pollution Prevention Plan.
- c. Core Element #3: Source Control of pollution. Apply all known, available and reasonable source control BMPs. Operational and structural source control BMPs shall be selected, designed and maintained according to the SWMMEW.
- d. Core Element #4: Preservation of Natural Drainage Systems. Preserve natural drainage systems to the extent possible at the site.
- e. Core Element #5: Runoff Treatment. When the technical thresholds/requirements for basic treatment, metals treatment, oil treatment or phosphorus treatment are met, the property owner(s) shall select, design, size, construct, operate, and maintain runoff treatment at the site.
- f. Core Element #6: Flow Control. Projects that result in 10,000 square feet or more of new impervious surfaces and are located in a flow restricted basin shall construct stormwater flow control facilities for any discharge or stormwater directly, or through a storm drainage system, into surface water.
- g. Core Element #7: Operation and Maintenance of Stormwater Facilities.
  - i. The property owner(s) shall be responsible for the continual performance, operation and maintenance of all private stormwater facilities in accordance with the standards and requirements of the City and remain responsible for any liability as a result of these duties.
  - ii. New private stormwater facilities shall have a written operation and maintenance (O&M) plan. Furthermore, existing facilities may be required to develop a written O&M plan.
    - The O&M plan shall at a minimum address all stormwater facilities and BMPs at the site and address the long-term funding mechanism to support O&M.
    - The O&M plan shall be retained onsite or within reasonable access to the site, and shall be transferred with the property to the new owner(s).
    - The property owner(s) shall maintain a log of maintenance activities.
  - iii. All stormwater facilities, BMPs, O&M plans, and records shall be subject to inspection by the City Engineer.

- iv. The City may assume ownership of privately-owned facilities where there is a regional benefit to the utility and if the following conditions have been met:

All necessary easements or dedications entitled the City to properly maintain the facility have been conveyed to the City;

The City Engineer has determined the facility is in the dedicated public road right-of-way or maintenance of the facility will contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:

1. Flooding,
2. Downstream erosion,
3. Property damage due to improper function of the facility,
4. Safety hazard associated with the facility,
5. Degradation of water quality,
6. Degradation to the general welfare of the community;

The City Engineer has inspected the facility and any construction deficiencies have been repaired at the property owner(s) expense; and

The City has declared in writing acceptance of maintenance responsibility by the City.

- v. The City Engineer may terminate the City's assumption of maintenance responsibility or decline the acceptance of a facility in writing to the property owner(s) after determining maintenance by the City will not significantly contribute to protecting or improving the health, safety and welfare of the community based upon review of the existence of or potential for:

1. Flooding;
2. Downstream erosion;
3. Property damage due to improper function of the facility;
4. Safety hazard associated with the facility;
5. Degradation of water quality; or
6. Degradation to the general welfare of the community.

h. Core Element #8: Local requirements.

- i. All new stormwater systems and facilities shall be in accordance with the most current City Standard Details and Specifications.
- ii. Additional requirements for all land-disturbing activities:
  1. Construction site operators shall control all waste including but not limited to discarded building materials, concrete truck washouts, chemicals, litter, and sanitary waste at

2. construction sites to prevent stormwater pollution and non-stormwater discharges. Construction site operators shall implement and maintain erosions and sediment control BMPs to reduce or eliminate stormwater pollution.

### **13.86.080 Review of Documents**

The City Engineer shall review documents required under WRMC Section 13.86.070 and submitted as part of an application for a proposed land-disturbing activity, development or redevelopment project. Review of required documents must be completed by the City Engineer and a Notice to Proceed Letter issued by the City Engineer prior to the start of construction.

### **13.86.090 Right of Entry**

#### **a. Inspection and Sampling**

The City shall be permitted to enter and inspect sites subject to regulation under this ordinance as often as may be necessary to determine compliance. Inspections may occur before, during and after construction.

- i. The City shall have access to all parts of the site for the purposes of inspection, sampling and examination of discharges to the MS4, and the performance of additional duties as defined by State and Federal law.
- ii. The City has the right to set up such devices as are necessary to conduct monitoring and/or sampling of the site's stormwater discharge.
- iii. The City has the right to require an owner or occupier of sites to install such sampling and monitoring equipment, as the City deems necessary. Sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or occupier at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure accuracy.
- iv. Any temporary or permanent obstruction to safe and easy access to the sites shall be promptly removed by the owner or occupier upon the written or oral request of the director and shall be replaced. The costs of clearing such access shall be paid by the owner or occupier.
- v. Property owner(s) shall upon request provide the City Engineer access to all records related to the operation and maintenance of the stormwater facilities and BMPs including but not limited to Stormwater Site Plans, Stormwater Pollution Prevention Plans, and Operation & Maintenance Plans.

#### **b. Search Warrants**

If the City Engineer has been refused access to any part of the premises from which a discharge has occurred or is likely to occur, and the City Engineer is able to demonstrate probable cause to believe there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

### **13.86.100 Enforcement Procedures**

When the Director finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the Director may order compliance through one or more of the following procedures. The Director may, at his discretion choose the following enforcement procedures appropriate to the violation:

- A. **Verbal Warning.** The Director, or his designee, may direct compliance with this ordinance through a verbal warning issued to the violator. A verbal warning will include specific information describing the violation, specific actions required to remedy the violation, an expected time for performance and referral to technical guidance available to the violator.
- B. **Written Warning.** The Director, or his designee, may direct compliance with this ordinance through a written warning issued to the violator. A written warning will include specific information describing the violation, specific actions required to remedy the violation, an expected time for performance and referral to technical guidance available to the violator.
- C. **Compensatory Action.** In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the Director may impose alternative compensatory actions such as storm drainage stenciling, attendance at compliance workshops, cleanup, or other alternative actions deemed appropriate by the Director.
- D. **Written Notice of Violation.** The Director may require compliance by written notice of violation to the responsible person. Such notice may require without limitation:
  - a. The elimination of illicit connections or discharges;
  - b. The violating discharges, practices or operations shall cease;
  - c. The performance of the monitoring, analyses and reporting;
  - d. The abatement and remediation of stormwater pollution or contamination hazards and the restoration of the MS4 facilities;
  - e. Implementation of source control or treatment BMPs;and/or
  - f. Payment of a fine. Any person who fails to comply with any provision of this chapter or any regulation, rule, or permit of the City, issued pursuant to this chapter shall be guilty of a civil infraction and pay a monetary fine, which is punitive in nature and not a cost or compensation to the City for services, of up to \$1,000 per violation. Each day upon which a violation occurs or continues shall constitute a separate violation. Such monetary fines may be recovered by judicial actions and/or, to the extent permissible by State law, and by administrative procedures. Any person who knowingly and intentionally fails to comply with any provision of this chapter or any regulation, rule, or permit of the City, issued pursuant to this chapter shall be guilty of a misdemeanor.

If notice of a violation and/or restoration of the MS4 facilities is required, the notice shall set forth a date within which remediation or restoration must be completed. Such notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by the City or a contractor designated by the Director and expense thereof shall be charged to the violator.

- E. **Show Cause Hearing.** The Director may order the responsible person which has violated or continues to violate this chapter to appear before the Director and show cause why the proposed enforcement action should not be taken. Notice of the hearing shall be served on the responsible person specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action and a request that the user show cause why the proposed enforcement action should not be taken. A show

cause hearing shall not be a bar against, or prerequisite for, taking any action against the responsible person.

**13.86.110 Appeal Notice of Violation**

Any person receiving a Notice of Violation may appeal the determination of the Director.

Persons desiring to appeal notice of violation and/or fines must file a written request with the City Clerk for the City to reconsider the violation and/or fine along with full payment of the fine amount within thirty (30) days of being notified of the fine. Where a request has merit, the Mayor shall convene a hearing on the matter within thirty (30) days of receiving the request from the violator. In the event the person's appeal is successful, the payment together with any interest accruing thereto, shall be returned to the person.

**13.86.120 Abatement by the City**

The Director is authorized to direct abatement of any violation of this chapter that constitutes an immediate threat to the health, safety or well-being of the public, or results from persistent non-compliance by a violator. Any expense related to such abatement undertaken by the City shall be fully reimbursed by the property owner and/or responsible party.

Within 30 days after the abatement by the City, the Director shall notify the property owner and/or responsible person of the cost of abatement, including administrative costs. Unpaid charges shall, after 30 calendar days, be assessed an additional penalty of 5% of the unpaid balance, and interest shall accrue thereafter at a rate of one percent (1%) per month. A lien against the violator's property will be sought for unpaid charges, penalties, and interest.

Violators desiring to dispute such charges must file a written request with the City Clerk for the City to reconsider the charges along with full payment of the charges within thirty (30) days of being notified of the charges. Where a request has merit, the Mayor shall convene a hearing on the matter within thirty (30) days of receiving the request from the violator. In the event the person's appeal is successful, the payment together with any interest accruing thereto, shall be returned to the person.

**13.82.130 Injunction**

It shall be unlawful for any person to violate any provisions or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this ordinance, the City may:

**13.86.140 Compatibility with other Regulations**

This ordinance is not intended to modify or repeal any other ordinance, rule, regulations, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

**13.86.150 Effective Date**

This ordinance shall take effect on February 16, 2011.

**Section 2. Severability.** If any portion of this Ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the Ordinance or the application of the remainder to other persons or circumstances.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND,  
WASHINGTON,** this \_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Donna Noski, Mayor

ATTEST:

\_\_\_\_\_  
Julie Richardson, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Bronson Brown, City Attorney