

ORDINANCE NO. 554

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING UNIVERSITY PLACE MUNICIPAL CODE CHAPTER 12.10, WATER QUALITY STANDARDS, TO REGULATE THE ILLICIT DISCHARGE OF POLLUTANTS INTO SURFACE AND GROUND WATERS AND THE CITY'S STORMWATER FACILITIES.

WHEREAS, the Federal Clean Water Act established the National Pollutant Discharge Elimination System ("NPDES") permitting program which was enacted to protect the surface and groundwater supplies and which delegates to the Washington State Department of Ecology the authority to administer the program; and

WHEREAS, in 2007 the Department of Ecology issued to smaller cities in Western Washington, including University Place, the Western Washington Phase II Municipal Stormwater permit to regulate discharges from small municipal storm sewers; and

WHEREAS, in order to control the quality and quantity of stormwater runoff within the City and to obtain compliance with the NPDES municipal permit, and in order to protect the public health, safety, and welfare, the City finds that changes to the City's water quality standards provisions are necessary.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Amending Section 12.10 UPMC. Section 12.10 is amended as follows:

**Chapter 12.10
WATER QUALITY STANDARDS**

Sections:

- 12.10.010 Purpose.
- 12.10.020 Definitions.
- 12.10.030 Discharges into city of University Place waters.
- 12.10.040 Stormwater Manual Adopted.
- 12.10.050 Best management practices.
- 12.10.060 Administration.
- 12.10.070 Inspections.
- 12.10.080 Hazards.
- 12.10.090 Enforcement.
- 12.10.100 Civil penalties.
- 12.10.110 Criminal penalty.

12.10.120 Discharges of pollutants into municipal separate storm sewer system – Liability for Expenses

12.10.130 Private wells prohibited.

12.10.140 Construction – Intent.

12.10.010 Purpose.

The purpose of this chapter is to protect the city's surface and ground water quality by providing minimum requirements for reducing and controlling the discharge of contaminants. The city council recognizes that water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, this chapter prohibits the discharge of contaminants into surface and storm water and ground water, and outlines preventive measures to restrict contaminants from entering such waters. These measures include the implementation of best management practices (BMPs) by the residents of the city of University Place.

The city council finds this chapter is necessary to protect the health, safety and welfare of the residents of the city of University Place and the integrity of the city's resources for the benefit of all by: minimizing or eliminating water quality degradation; preserving and enhancing the suitability of waters for recreation, fishing, and other beneficial uses; and preserving and enhancing the aesthetic quality and biotic integrity of the water. The city council recognizes that implementation of this chapter is required under the federal Clean Water Act, 33 U.S.C. 1251 et seq. In meeting the intent of the Clean Water Act, the city council also recognizes the importance of maintaining economic viability while providing necessary environmental protection and believes this chapter helps achieve both goals.

12.10.020 Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

A. "AKART" means an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge.

B. "Best management practices" or "BMPs" mean the schedules of activities, prohibitions of practices, maintenance procedures, and reasonable physical, structural, managerial, or behavioral activities that, when used singly or in combination, prevent or reduce the release of pollutants or other adverse impacts to surface and/or ground waters of the State.

C. "Chapter" means this chapter and any administrative rules and regulations adopted to implement this chapter.

D. "City" means the city of University Place.

E. "Clean Water Act" means 33 U.S.C. 1251 et seq., as amended.

F. "Department" means the city of University Place public works department, or other department designated by the City Manager.

G. "Director" means the city of University Place public works department director, or other person designated by the City Manager, or any duly authorized representatives of the directors.

H. "Discharge" means to throw, drain, release, dump, spill, empty, emit, or pour forth any matter to flow, run, or seep from land or be thrown, drained, released, dumped, spilled, emptied, emitted, or poured into the City's municipal separate storm sewer system or waters of the State.

I. "Ground water" means all waters that exist beneath the land surface or beneath the bed of any stream, lake, or reservoir, or other body of surface water, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

J. "Hyperchlorinated" means water that contains more than 10 mg/Liter chlorine. Disinfection of water mains and appurtenances requires a chlorine residual of 10 mg/L at the end of the disinfection period. This level is well above the Maximum Residual disinfectant Level of an annual average of 4 mg/Liter chlorine for potable water.

K. "Illicit connection" means any man-made conveyance that is connected to the City's municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

L. "Illicit discharge" means any direct or indirect discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges expressly allowed by this Chapter

M. "King County Surface Water Design Manual" ("KCSWDM") means the City's adopted Storm Water Manual that sets forth the drainage and erosion control requirements, BMPs, design, and maintenance procedures and guidance for stormwater management.

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

O. Municipal Separate Storm Sewer System (MS4) means a conveyance, or a system of conveyances, (including roads with stormwater drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (i) owned or operated by the City;
- (ii) designed or used for collecting or conveying stormwater;
- (iii) which is not a combined sewer; and
- (iv) which is not part of a publicly owned treatment works as defined at 40CFR 122.2.

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

Q. "Non-Stormwater Discharge" means any discharge to the storm drainage system that is not composed entirely of storm water. Examples include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, improperly disposed motor oil, solvents, lubricants, and paints.

R. "Notice of Intent" means the application forms for coverage under the Baseline General Permit for stormwater discharges associated with industrial activities.

S. "Person" means an individual, their agents or assigns, municipality; political subdivision; government agency; partnership; corporation; business; or any other entity.

T. "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of surface waters including change in temperature, taste, color, turbidity, or odor of the waters,

or such discharge of any liquid, gas, solid, radioactive, or other substance into any surface waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, or welfare or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses of the water or to livestock, wild animals, birds, fish, or other aquatic life.

U. "Source control BMP" means a BMP to prevent contaminants from entering surface and storm water and/or ground water including the modification of processes to eliminate the production or use of contaminants. Source control BMPs can be either structural or nonstructural. Structural source control BMPs involve the construction of a physical structure on-site, or other type of physical modification to a site; for example, building a covered storage area. A nonstructural source control BMP involves the modification or addition of managerial or behavioral practices; for example, using less toxic alternatives to current products or sweeping parking lots.

V. "State waste discharge permit" means an authorization, license, or equivalent control document issued by the Washington State Department of Ecology in accordance with Chapter 173-216 WAC.

W. "Storm water manual" or "manual" means the manual and supporting documents as appropriate describing best management practices, design, maintenance, procedures, and guidance for stormwater management which has been adopted by the City.

X. "Stormwater Drainage Facility" means the facilities, including the City's municipal separate storm sewer system, by which storm water is collected and /or conveyed, including but not limited to any roads with drainage , municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures. Storm drainage systems may be both public and private.

Y. "'Storm water" means water runoff during and following precipitation and snowmelt events, including surface runoff and drainage.

Z. "Treatment BMP" means a BMP intended to remove contaminants once they are already contained in storm water. Examples of treatment BMPs include oil/water separators, biofiltration swales, and wet-settling basins.

12.10.030 Discharges into City of University Place waters.

A. Illicit Discharges Prohibited.

1. It is unlawful for any person to make any illicit discharge or to discharge any pollution or contaminants into the City's MS4 or waters of the State except as provided by this Chapter. Contaminants include, but are not limited to, the following:

- a. Trash or debris;
- b. Construction materials;
- c. Petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
- d. Antifreeze and other automotive products;
- e. Metals in either particulate or dissolved form;
- f. Flammable or explosive materials;
- g. Radioactive material;

- h. Batteries;
- i. Acids, alkalis, or bases;
- j. Paints, stains, resins, lacquers, or varnishes;
- k. Degreasers and/or solvents;
- l. Drain cleaners;
- m. Pesticides, herbicides, or fertilizers;
- n. Steam cleaning wastes;
- o. Soaps, detergents, or ammonia;
- p. Swimming pool or spa filter backwash (diatomaceous earth);
- q. Chlorine, bromine, and other disinfectants;
- r. Heated water;
- s. Domestic animal wastes;
- t. Sewage;
- u. Recreational vehicle waste;
- v. Animal carcasses;
- w. Food wastes;
- x. Bark and other fibrous materials;
- y. Collected lawn clippings, leaves, or branches;
- z. Silt, sediment, concrete, cement, or gravel;
- aa. Dyes (except as stated in subsection (C)(1) of this section);
- bb. Chemicals, not normally found in uncontaminated water;
- cc. any other process associated discharge except as otherwise allowed under this Chapter.
- dd. Any hazardous material or waste, not listed above.

2. Illicit Connections. The construction, use, maintenance, or continued existence of an illicit connection to convey storm water or illicit discharge to the City's MS4 or waters of the State is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

B. Allowable Discharges. The following types of discharges shall not be considered illicit discharges for the purpose of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or likely to cause significant contamination of surface water or ground water:

1. Diverted stream flows,
2. Rising ground waters,
3. Uncontaminated ground water infiltration as defined in 40 CFR 35.2005(20),
4. Uncontaminated pumped ground water,
5. Foundation drains,
6. Air conditioning condensation,
7. Irrigation water from agricultural sources that is comingled with urban stormwater,
8. Springs,
9. Water from crawl space pumps,
10. Footing drains,
11. Flows from riparian habitats and wetlands,
12. Discharges from emergency fire fighting activities.

C. Conditional Discharges. The following types of discharges shall not be considered an illicit discharge for the purposes of this chapter so long as the conditions stated in this section are met, and unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause significant contamination of surface water or ground water:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system.
2. Lawn watering and other irrigation runoff, if minimized to the extent possible.
3. Dye testing, upon notification to the Department at least one day in advance.
4. Dechlorinated swimming pool discharges. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system.
5. Street and sidewalk wash water, water used to control dust, and routine external building wash so long as there is no use of detergents and runoff is minimized to the extent possible. At active construction sites, street sweeping must be performed prior to washing the street.
6. Non-stormwater discharges covered by another NPDES permit so long as the permittee is in full compliance with all requirements of the permit, waiver, order, or other applicable laws.
7. Other non-stormwater discharges so long as the discharges are in compliance with a City approved stormwater pollution prevention plan.
8. Emergency response activities or other actions that must be undertaken immediately to avoid an imminent threat to public health or safety, so long as the person responsible for the emergency response activities can demonstrate that all steps were taken to ensure that the discharges resulting from such activities are minimized to the greatest extent possible. In addition, this person shall evaluate BMPs and the site plan, where applicable, to minimize recurrence.

12.10.040 Stormwater Manual Adopted.

The King County Surface Water Design Manual, the King County Stormwater Pollution Prevention Manual, and all associated documents referenced in UPMC 13.25.120(A) herein are hereby adopted as the City's Stormwater Manual and are hereby incorporated fully into this Chapter by this reference.

12.10.050 Best management practices.

A. Best Management Practices.

1. The KCSWDM presents the BMPs and the standards and procedures for existing facilities and activities and for new development activities not covered by the city's Public Works Code. The manual describes the types of regulated activities; the types of contaminants generated by each activity, and the contaminant's effect on water quality; the required source control BMPs and available treatment BMPs; and a schedule for BMP implementation.

2. Property owners are responsible for the maintenance, operation and repair of stormwater facilities and the BMPs within their property. Property owners shall maintain, operate and repair these facilities in compliance with the requirements of this Chapter and the City's stormwater manual.

3. The Director shall apply and implement the BMPs within the KCSWDM as follows. The director shall first require the implementation of non-structural source control BMPs. If these are not sufficient to prevent contaminants from entering surface and storm water or ground water, the director may require implementation of structural source control BMPs or of treatment BMPs, utilizing AKART.

B. Exemptions.

1. Persons implementing BMPs through another federal, state or local program will not be required to implement the BMPs prescribed in the city's stormwater manual, unless the director determines the alternative BMPs to be ineffective at reducing the discharge or contaminants. If the other program requires the development of a plan, the person shall make their plan available to the city upon request. Persons who qualify for exemptions include, but are not limited to, persons who are:

a. Required to obtain a general or individual NPDES permit for storm water discharges from the Washington State Department of Ecology;

b. Implementing and maintaining, as scheduled, a Pierce County conservation district- approved farm management plan;

c. Permitted under a Washington State Department of Ecology NPDES general or individual permit for commercial dairy operations;

d. Implementing BMPs in compliance with the city's zoning ordinance – development standards: animals, home occupation, home industry;

e. Implementing BMPs in compliance with the management program of the county's municipal NPDES permit;

f. Engaged in forest practices, with the exception of Class IV, and Class IV-A special general forest practices. This section will apply to Class IV general forest practices occurring on lands platted after January 1, 1960, or on lands being converted to another use, or where the activity is taking place in areas designated by the Washington State Department of Natural Resources as "lands with a likelihood of future conversion"; or regulatory authority is otherwise provided to local government by RCW 76.09.240; or

g. Identified by the director as being exempt from this section.

2. Persons conducting normal single-family residential activities will not be required to implement the BMPs prescribed in the city's manual, unless the director determines that these activities pose a hazard to public health, safety, or welfare, endanger any property, or adversely affect the safety and operation of city right-of-way, utilities, and/or other property owned or maintained by the city.

12.10.060 Administration.

The director is authorized to promulgate and adopt administrative rules and regulations for the purpose of implementing and enforcing the provisions of this chapter. The director will coordinate the implementation and enforcement of this chapter with other public entities as applicable.

12.10.070 Inspections.

A The director is authorized to develop inspection procedures and requirements for all stormwater facilities and to make such inspections and take such actions as may be required to enforce the provisions of this chapter.

B The director is authorized enter at all reasonable times in or upon any property to inspect the property and the storm water facility, observe best management practices, review maintenance records, or examine or sample surface and storm water or ground water as often as may be necessary to determine compliance with this chapter. Prior to such entry, the director shall obtain permission to enter the premises unless a hazard exists as set forth in 12.10.060. If entry is refused the City shall have recourse via every remedy provided by law to secure entry.

C When the director has reason to believe that any person is violating this chapter, the director may require the violator to sample and analyze any discharge, surface and storm water, ground water, and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the director. If the violator is required to complete this sampling and analysis, a copy of the analysis shall be provided to the department.

12.10.080 Hazards.

Whenever the director determines that any violation of this chapter poses a hazard to public health, safety, or welfare, endangers any property, or adversely affects the safety and operation of city right-of-way, utilities, and/or other property owned or maintained by the city, the person holding title to the subject property, and/or other person or agent in control of said property, upon receipt of notice in writing from the director shall within the period specified therein address the cause of the hazardous situation in conformance with the requirements of this chapter.

Notwithstanding any other provisions of this chapter, whenever it appears to the director that conditions covered by this chapter exist requiring immediate action to protect the public health and/or safety, the director is authorized to enter at all times in or upon any such property, public or private, for the purpose of inspecting, investigating, and correcting such emergency conditions. The director may without prior notice issue an emergency order for the immediate discontinuance of any activity leading to the emergency condition, including but not limited to, suspending and discontinuing the access to the City's MS4.

12.10.090 Enforcement.

A. The Director is authorized to carry out enforcement actions pursuant to the enforcement and penalty provisions of this chapter and Chapter 1.20 UPMC. The director is authorized to enforce against prohibited illicit discharges, prohibited illicit connections, and other violations of this chapter.

B. The Director shall gain compliance with this chapter by requiring the implementation of operational BMPs and, when necessary, AKART. The director shall initially rely on education and informational assistance as much as possible to gain compliance with this chapter, unless the director determines a violation is a result of an intentional act or poses a hazard as defined in UPMC 12.10.060.

C. The Director may order the correction or discontinuance of any unsafe condition or operation or correction of any violation of this Chapter. Any order issued by the Director may be appealed to the City's Hearings Examiner within 14 days of the order in accordance with the provisions of UPMC 1.20. Such an

appeal does not stay the requirement to comply with the order, and in particular any emergency order issued under UPMC 12.10.080.

D. In addition to or in the alternative to a correction order or civil infraction, the Director may issue a Notice of Civil Violation for a violation of this Chapter with a penalty of up to \$10,000, based upon the factors set forth in UPMC 12.10.100.

E. In addition to or in the alternative to a correction order or Notice of Civil Violation, the Director may issue a civil infraction for a violation of this Chapter, with a penalty in an amount of \$100 per violation for minor violations, and \$1,000 per violation for significant violations. Each day the violation shall continue shall constitute a separate violation. A minor violation shall be one in which the damage or risk to the public or water quality is low and the violator acted unknowingly or in good faith. A significant violation is one in which the damage or risk to the public or water quality is great or is a repeat violation or the violator acted in bad faith.

F. In addition to any other penalty or method of enforcement, the prosecuting attorney may bring actions for injunctive or other relief to enforce this Chapter.

12.10.100 Civil penalties.

The enforcement provisions for water quality are intended to encourage compliance with this chapter. To achieve this, violators will be required to take corrective action and comply with the requirements of this chapter, and may be required to pay a civil penalty for the redress of ecological, recreational, and economic values lost or damaged due to the unlawful action.

A. The provisions in this section are in addition to and not in lieu of any other penalty, sanction or right of action provided by law.

B. Any person in violation of this chapter may be subject to civil penalties assessed as follows:

An amount, not to exceed \$10,000, that is reasonable based upon the nature and gravity of the violation, the cost to the City of enforcing this Chapter against the violator, and the economic benefit derived from the violation by the violator.

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

D. Each violator is jointly and severally liable for a violation of this chapter. The director may take enforcement action, in whole or in part, against any violator or against each violator. The decisions whether to take enforcement action, what type of action to take, and which person to take action against, are all entirely within the director's discretion. Factors to be used in taking such enforcement actions and determining equitable allocation of damages, costs, and expenses shall be:

1. Awareness of the violation;
2. Ability to correct the violation;
3. Cooperation with government agencies;
4. Degree of impact or potential threat to water or sediment quality, human health or safety, or the environment.

E. Penalties may be reduced based upon one or more of the other following mitigating factors:

1. The person responded to city attempts to contact the person and cooperated with efforts to correct the violation;
2. The person showed due diligence and/or substantial progress in correcting the violation; or
3. An unknown person was the primary cause of the violation.

Payment of a monetary penalty pursuant to this chapter does not relieve the person of the duty to correct the violation.

F. All civil penalties recovered during the enforcement of this chapter shall be deposited into the surface water management fund and shall be used for the protection of surface and storm water or ground water as set forth in this chapter, through education or enhanced implementation.

12.10.110 Criminal penalty.

Any willful violation of an order issued pursuant to UPMC 12.10.080 or 12.10.090 for which a criminal penalty is not prescribed by state law is a misdemeanor.

12.10.120 Discharges of pollutants into municipal separate storm sewer system—Liability for expenses.

Any person responsible for any pollutant discharge into the City's municipal separate storm sewer system who fails to immediately collect, remove, contain, treat, or disperse such pollutant materials at the director's request is responsible for the necessary expenses incurred by the City in carrying out the abatement of the pollution, including the collection, removal, containment, treatment, or disposal of such materials.

12.10.130 Private wells prohibited.

Except for the replacement of an existing non-contaminated water well, no person shall hereafter drill or install, or cause to be drilled, a nonpublic domestic water supply well, as defined in Chapter 173.160 WAC (Minimum Standards for Construction and Maintenance of Wells), within the following area located within the city of University Place: the area bounded by Orchard Street to the east; by 44th Street West, if extended, (and also the city limits at this location) to the north; by Cirque Drive to the south; and by Leach Creek on the west. Any replacement well must comply with all state and local laws and regulations and must be tested for the presence of landfill contaminants as noted in Table 3 of the Tacoma Landfill Consent Decree Scope of Work.

12.10.140 Construction – Intent.

This chapter is enacted as an exercise of the City's power to protect and preserve the public health, safety and welfare. Its provision shall be exempted from the rule of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. This chapter is not enacted to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter.

The primary obligation of compliance with this chapter is placed upon the person holding title to the property. Nothing contained in this chapter is intended to be or shall be construed to create or form a basis for liability for the city, the department, its officers, employees or agents for any injury or damage resulting from the failure of the person holding title to the property to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter by the city, department, its officers, employees or agents.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or

unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

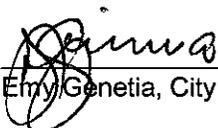
Section 3. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

PASSED BY THE CITY COUNCIL ON JULY 20, 2009.



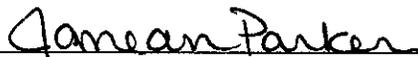
Linda Bird, Mayor

ATTEST:



Emily Genetia, City Clerk

APPROVED AS TO FORM:



Janean Parker, City Attorney

Published: 07/22/09
Effective Date: 07/27/09