

ORDINANCE NO. 41

**AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON,
ADOPTING WATER QUALITY STANDARDS.**

WHEREAS, the City Council has determined that it is in the best interest of the City to establish Water Quality Standards for the City; NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Water Quality Standards. The City adopts Water Pollution Regulations, as set forth in Exhibit A to this Ordinance.

Section 2. Copy to be Available. One copy of the Water Quality Standards shall be available in the office of the City Clerk for use and examination by the public.

Section 3. Severability. If any section, sentence, clause, or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality or any other section, sentence, clause or phrase of this ordinance.

Section 4.: Effective Date. This ordinance shall take effect on the official date of incorporation.

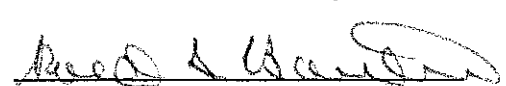
PASSED BY THE CITY COUNCIL ON JULY 31, 1995.


Stanley L. K. Flemming, Mayor

ATTEST:


Susan Matthew, City Clerk

APPROVED AS TO FORM:


Robert J. Backstein, City Attorney

Date of Publication: August 2, 1995

Effective Date: August 31, 1995

EXHIBIT A

Chapter --.12 Water Pollution

Sections:

- .12.005 Purpose.
- .12.015 Definitions.
- .12.025 Discharges into City of University Place Waters.
- .12.035 Best Management Practices.
- .12.045 Administration.
- .12.050 Enforcement.
- .12.060 Hazards.
- .12.070 Criminal Penalty.
- .12.080 Civil Penalties for water quality.
- .12.090 Construction-intent.
- .12.100 Effective date.
- .12.110 Severability.

 .12.005 **Purpose.** The purpose of this chapter is to protect the city's surface and groundwater 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.

 .12.015 **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 of management practices" or "BMPs" mean the best available and reasonable physical, structural, managerial, or behavioral activities, that when used singly or in combination, eliminate or reduce the contamination of surface and/or ground waters.

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

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

E. "City" means the City of University Place.

F. "Department" means the City of University Place Department of Planning.

G. "Director" means the director of the City of University Place Department of Planning, other department directors specified in enforcement procedures established pursuant to this chapter, or any duly authorized representatives of such 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 water.

I. "Drainage facility" means the system that collects, conveys, and stores surface and stormwater conveyance and containment facilities including streams, pipelines, channels, ditches, swamps, lakes, wetlands, closed depressions, infiltration facilities, retention/detention facilities, erosion/sedimentation control facilities and other drainage structures and appurtenances, both natural and artificial.

J. "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.

K. "National Pollutant Discharge Elimination System" or "NPDES" means the national program for controlling pollutants from point source discharges directly into waters of the U.S. under the Clean Water Act.

L. "National Pollutant Discharge Elimination System permit": means an authorization, license, or equivalent control document issued by the Environmental Protection Agency or the Washington State Department of Ecology to implement the requirements of the NPDES program.

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

N. "Source control BMP" means a BMP intended 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 non-structural. 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 non-structural 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.

O. "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 Washington Administrative Code.

P. "Storm Water BMP Manual" or "manual" means the manual and supporting documents as appropriate describing best management practices, design, maintenance, procedures, and guidance which has been approved by the City of University Place City Council.

Q. "Surface and storm water" means water originating from rainfall and other precipitation that is found in drainage facilities, rivers, streams, springs, seeps, ponds, lakes and wetlands as well as shallow ground water.

R. "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.

__12.025 Discharges into City of University Place Waters.

A. Prohibited discharges.

1. It is unlawful for any person to discharge any contaminants into surface and storm water, ground water or Puget Sound. 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 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, or gravel;
- aa. dyes (except as stated in subsection C.1. or this section):
- bb. chemicals, not normally found in uncontaminated water;
- cc. any hazardous material or waste, not listed above.

2. Unlawful connections. Any connection, identified by the Director, that could convey anything not composed entirely of surface and storm water directly to surface and storm water or ground water is considered an unlawful connection and is prohibited with the following exceptions: connections conveying allowable discharges, connections conveying discharges pursuant to an NPDES permit (other than a NPDES storm water permit) or a State Waste Discharge Permit, and connections conveying effluent from onsite sewage disposal systems to subsurface soils.

B. Allowable discharges. The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter unless the Director of the Department of Planning determines that the type of discharge, whether singly or in combination with others, is causing significant contamination of surface and storm water or ground water:

- 1. potable water;
- 2. potable water line flushing;
- 3. uncontaminated water from crawl space pumps or footing drains;
- 4. lawn watering;
- 5. residential car and boat washing;
- 6. dechlorinated swimming pool water;
- 7. materials placed as part of an approved habitat restoration or bank stabilization project;
- 8. natural uncontaminated surface water or ground water;
- 9. flows from riparian habitats and wetlands;
- 10. the following discharges from boats: engine exhaust, cooling waters, effluent from sinks, showers and laundry facilities and treated sewage from Type I and Type II marine sanitation devices; and

11. other types of discharges as determined by the Director of the Department of Planning.

C. Exceptions.

1. Dye testing is allowable but requires verbal notification to the Department of Community Development at least one day prior to the date of test; provided, however, the Pierce County Health Department is exempt from this requirement.

2. If a person has properly designed, constructed, implemented and is maintaining BMPs, and is carrying out AKART as required by this chapter and in the Storm Water BMP Manual, and contaminants continue to enter surface and storm water or ground water; or the person can demonstrate that there is no additional contaminants being discharged from the site above the background conditions of the water entering the site; that person shall not be in violation of subsection A of this section. Such person however, is still liable for prohibited discharges through unlawful connections, dumping, spills, improper maintenance of BMPs, or other discharges that allow contaminants to enter surface and storm water or ground water.

3. Emergency response activities or other actions that must be undertaken immediately or within a time too short to allow full compliance with the Chapter, to avoid an imminent threat to public health or safety, shall be exempt from this section. The Director of the Department of Planning may specify actions that qualify for this exception in City procedures. The person responsible for emergency response activities should take steps 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 restrict recurrence.

 .12.035 **Best management practices.**

A. Best management practices.

1. The City Council understands that the Pierce County Surface Water Management Division is developing a Storm Water Best Management Practices Manual. The manual shall present BMPs and procedures for existing facilities and activities and for new development activities not covered by the City's Surface Water Design Manual. The manual shall describe 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. Once the manual is completed, the City Council will review and may adopt the manual as the City's BMP Manual. If adopted, the Director will be charged with the implementation of the manual.

3. In applying the CMP manual, the Director shall first require that implementation of 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 treatment BMPs, utilizing AKART. The City will provide available technical assistance, materials and information on outside financial assistance options to persons required to comply with this chapter.

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 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 IVA 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 of the Department of Planning 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. The City Council intends to consider the application of BMPs to single family residential activities after completion of the Storm Water BMP Manual

__12.045 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. The Director will coordinate the implementation and enforcement of this chapter with relevant departments of Pierce County government as well as neighboring cities.

__12.050 Enforcement.

A. The Director is authorized to carry out enforcement actions pursuant to the enforcement and penalty provisions of the City's Enforcement Ordinance. **[The Director is authorized to enforce against prohibited discharges resulting from unlawful connections and intentional acts, such as dumping, immediately upon the effective date of this chapter. The Director will be authorized to enforce against all other prohibited discharges upon the effective date of the Storm Water BMP Manual.]**

B. The Director shall gain compliance with this chapter by requiring the implementation of 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 a flagrant act that should be addressed through immediate penalties or poises a hazard as defined in the Hazards section (Section __12.060).

C. The Director shall develop and implement additional enforcement procedures. These procedures shall indicate how the City will investigate and respond to reports or instances of noncompliance with this chapter and shall identify by title the official(s) responsible for implementing the enforcement procedures.

D. The Director is authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter.

1. The Director may observe best management practices or examine or sample surface and storm water or ground water as often as may be necessary to determine compliance with this chapter. Whenever an inspection of a property is made, the findings shall be recorded and a copy of the inspection report shall be furnished to the owner or the person in charge of the property after the conclusion of the investigation and completion of the inspection report.

2. 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 of Community Development.

E. 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.

___.12.060 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 county or 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 and investigating such emergency conditions. The Director may without prior notice order the immediate discontinuance of any activity leading to the emergency condition. Failure to comply with such order shall constitute a misdemeanor as specified in the City's Enforcement Ordinance.

___.12.070 Criminal penalty. Any willful violation of an order issued pursuant to Section ___.12.050 or Section ___.12.060 of this chapter for which a criminal penalty is not prescribed by state law is a misdemeanor.

___.12.080 Civil penalties for water quality. 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 shall be subject to civil penalties assessed as follows:

1. an amount reasonable determined by the Director to be equivalent to the economic benefit the violator derives from the violation as measured by: the great of the resulting increase in market value of the property or business value received by the violator, or savings of construction or retrofitting costs realized by the violator performing any act in violation of this chapter; and

2. an amount, not to exceed \$25,000, that is reasonable based upon the nature and gravity of the violation and the cost to the City of enforcing this chapter against 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. 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 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 the environment.

In the event more than one person is determined to have violated the provisions of this chapter, all applicable civil penalties may be imposed against each person, and recoverable damages, costs, and expenses may be allocated among the persons on any equitable basis. Factors that may be considered in determining an equitable allocation include:

1. Awareness of the violation
2. Ability to correct the violation;
3. Ability to pay damages, costs and expenses;
4. Cooperation with government agencies;
5. Degree of impact or potential threat to water or sediment quality, human health, 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.

___.12.090 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.

___.12.100 Effective Date. The effective date of this ordinance shall be the date of City incorporation.

___.12.110 Severability. If any provision of this chapter or its application to any person or property is held invalid, the remainder of the chapter or the application of the provision to other persons or property shall not be affected.