

ORDINANCE NO. 17-3895

AN ORDINANCE OF THE CITY OF KELSO REPEALING ORDINANCE #3421, REPEALING KELSO MUNICIPAL CODE CHAPTER 13.11 - ILLICIT DISCHARGES AND AMENDING CHAPTER 13.09 - STORMWATER MANAGEMENT TO BE CONSISTENT WITH STATE REGULATIONS.

WHEREAS, the City Council adopted new stormwater regulations in 2009 and 2010 by Kelso Municipal Code Chapters 13.09 and 13.11 to comply with new state stormwater laws and amended the enforcement procedures in 2015 to be consistent with the KMC Chapter 1.50 Code Enforcement.

WHEREAS, the City Council wishes to merge Kelso Municipal Code Chapter 13.11 into Chapter 13.09 – Stormwater Management to avoid redundancy and provide more clarity in the code;

WHEREAS, the City is required to be in compliance with the Western Washington Phase II Municipal Stormwater Permit and its new stormwater requirements by June 30, 2017; and

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. KMC CHAPTER 13.09 AMENDED. That Kelso Municipal Code Chapter 13.09 is hereby amended as set forth in Exhibit A, attached hereto and incorporated fully by this reference.

SECTION 2. KMC CHAPTER 13.11 REPEALED. That Kelso Municipal Code Chapter 13.11 is hereby repealed.

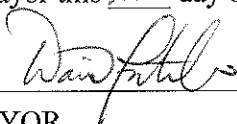
SECTION 3. ORDINANCE #3421 REPEALED. That the Ordinance #99-3421, adopted in 1999 to create technical regulations for stormwater, is hereby repealed as it is now obsolete.

SECTION 4. SEVERABILITY. The provisions of this Ordinance are declared to be

severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

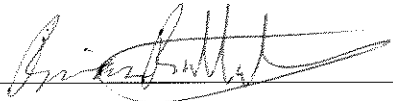
SECTION 5. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this 20th day of June, 2017.



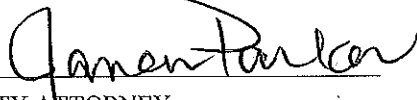
MAYOR

ATTEST/AUTHENTICATION:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PUBLISHED: June 24, 2017

Chapter 13.09

STORMWATER MANAGEMENT

June 2017

Sections:

- 13.09.010 Purpose/intent.
- 13.09.020 Definitions.
- 13.09.030 General provisions.
- 13.09.040 Applicability and exemptions.
- 13.09.050 General requirements.
- 13.09.060 Standards for development and redevelopment.
- 13.09.065 Permit expiration.
- 13.09.080 Inspection and sampling.
- 13.09.090 Requirement to prevent, control, and reduce stormwater pollutants using BMPs.
- 13.09.100 Protection of facilities and watercourses.
- 13.09.110 Spills.
- 13.09.120 Construction and development inspection of stormwater facilities and BMPs.
- 13.09.125 Long-term maintenance inspection.
- 13.09.130 Stormwater facility and BMP ownership.
- 13.09.135 Ongoing operation and maintenance of stormwater facilities and BMPs.
- 13.09.140 Easements, deeds, and covenants.
- 13.09.150 Stormwater performance bond.
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- 13.09.170 Dedication of stormwater facilities.
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13.09.010 Purpose/intent.

A. The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city and to provide protection for wildlife and the environment through the following:

1. The regulation of runoff from construction, development, and redevelopment;
2. The regulation of illicit discharges to the storm drainage system to the maximum extent practicable (MEP) as required by federal and state law; and
3. The control of the introduction of runoff and pollutants into the municipal separate storm sewer system (stormwater drainage system) in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit (Phase II permit) process.

B. The objectives of this chapter are to:

1. Minimize water quality degradation in streams, ponds, lakes, wetlands, and other water bodies;
2. Minimize the degradation of habitat and habitat forming processes in streams, ponds, lakes, wetlands, and other water bodies;

3. Minimize the impact of increased volume and rates of runoff, flooding, increases in stream temperature, erosion and sedimentation caused by land development and maintenance practices;
4. Promote site planning and construction practices that are consistent with natural geological, topographical, vegetative, and hydrological conditions;
5. Maintain and protect the city's stormwater management infrastructure and those downstream;
6. Minimize disruption of hydrologic functions, patterns, and processes;
7. Provide long-term responsibility for and maintenance of stormwater facilities;
8. Establish legal authority to carry out all the inspection, surveillance, and monitoring procedures necessary to ensure compliance with this chapter;
9. Meet the minimum standards as established in Chapter 173-226 WAC and the Phase II permit;
10. Regulate the contribution of pollutants from stormwater discharges to the stormwater drainage system or to a surface water body;
11. Prohibit illicit connections and discharges to the stormwater drainage system.

The intent of this chapter is to place the obligation of complying with its requirements upon the individual, owner and/or contractor. Neither the city nor any officer, agent, or employee thereof shall incur or be held as assuming any liability by reason or in consequence of any permission, inspection or approval authorized herein, or issued as provided herein, or by reason or consequence of anything done or act performed pursuant to the provisions of this chapter.

13.09.020 Definitions.

For the purposes of this chapter, the definitions below shall apply. Any term not defined herein shall be given its normal definition subject to guidance by definitions in the Phase II permit and the Stormwater Management Manual for Western Washington (SWMMWW) as well as federal, state, and local codes.

1. "Application" means the submittal for a development, redevelopment, or construction project of the SEPA checklist, if required, and at the minimum, the following elements of the stormwater site plan: project description and site development drawings.
2. "Best management practices (BMPs)" means the schedules of activities, prohibitions of practices, maintenance procedures, and other structural and/or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State or the stormwater drainage system.
 - a. "Source control BMP" means a structure or operation that is intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants.
 - b. "Treatment BMP" means a BMP that is intended to remove pollution from stormwater.
 - c. "Flow control BMP" means a BMP that is intended to mitigate the impacts of increased surface and stormwater runoff volumes and rates generated by development.
 - d. "Low impact development BMP" means distributed stormwater management practices, integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated roofs, minimum excavation foundation and water re-use.

3. "Bioretention" means an engineered facility that treats stormwater by passing it through a specified soil profile, and either retains or detains the treated stormwater for flow attenuation.
4. "CFR" means Code of Federal Regulations.
5. "City" means the city of Kelso.
6. "Clean Water Act (CWA)" means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.
7. "Clearing" means the destruction and removal of vegetation by manual, mechanical, chemical methods.
8. "Commercial agriculture" means those activities conducted on lands defined in RCW 84.34.020(2) and activities involved in the production of crops or livestock for commercial trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.
9. "Common plan of development or sale" means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules and/or by different contractors, but still under a single plan. Examples include: (1) phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g., a development where lots are sold to separate builders); (2) a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; (3) projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility, and (4) linear projects such as roads, pipelines, or utilities.
10. "Converted vegetation area" means the surfaces on a project site where native vegetation, pasture, scrub/shrub, or unmaintained non-native vegetation (e.g. Himalayan blackberry, scotch broom) are converted to lawn or landscaped areas, or where native vegetation is converted to pasture.
11. "Detention" means the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility, the difference being held in temporary storage.
12. "Development" means land-disturbing activities, including Class IV General Forest Practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of hard surfaces; and subdivision, short subdivision and binding site plans; as defined and applied in Chapter 58.17 RCW.
13. "Director" means the city of Kelso community development director or his/her designee.
14. "Ecology" means the Washington State Department of Ecology.
15. "Emerging technologies" means a treatment BMP proposed for treatment of stormwater that is not in the SWMMWW but that has been approved by Ecology.
16. "Erosion" means the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Also, detachment and movement of soil or rock fragments by water, wind, ice, or gravity.
17. "Excavating" means the mechanical removal of earth material.
18. "Filling" means depositing earth material placed by artificial means.
19. "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to road and trail construction; harvesting,

final and intermediate; pre-commercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; brush control, or slash burning.

20. "Hard Surface" means an impervious surface, a permeable pavement, or a vegetated roof.
21. "Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
22. "Hyperchlorinated water" means the water that contains more than ten milligrams per liter chlorine.
23. "Illicit connection" means any infrastructure connection to the storm drainage system that is not intended, permitted or used for collecting and conveying stormwater or non-stormwater discharges. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the stormwater drainage system.
24. "Illicit discharge" means any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater or of non-stormwater discharges allowed as specified under Section 13.09.050(C).
25. "Impervious surface" means a non-vegetated surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include but are not limited to roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of the Minimum Requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.
26. "Kelso Engineering Design Manual (KEDM)" means a manual that sets forth certain standards of design and specifications for development, redevelopment, and construction projects in the city and for projects subject to approval by the director. The KEDM is adopted at Section 13.09.050 for compliance with stormwater requirements for development, redevelopment, and construction sites.
27. "Land-disturbing activity" means any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, clearing, grading, filling, and excavating. Compaction that is associated with stabilization of structures and road construction shall also be considered a land-disturbing activity. Vegetation maintenance practices or gardening are not generally considered land-disturbing activities. Stormwater facility maintenance is not considered land-disturbing activity if conducted according to established standards and procedures.
28. "Low impact development (LID)" means a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.
29. "Maintenance" means activities conducted on currently serviceable structures, facilities, and equipment that involve no expansion or use beyond that previously existing and results in no significant adverse hydrologic impact. It includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include replacement of malfunctioning facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. One example is the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the same span, or width, of roadway. In

regard to stormwater facilities, maintenance includes assessment to ensure ongoing proper operation, removal of built-up pollutants (i.e., sediments), replacement of failed or failing treatment media, and other actions taken to correct defects.

30. "Maximum Extent Practicable (MEP)". MEP refers to paragraph 402(p)(3)(B)(iii) of the federal CWA which reads as follows: Permits for discharges from municipal storm sewers shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design, and engineering methods, and other such provisions as the administrator or the state determines appropriate for the control of such pollutants.
31. "Minimum Requirements (MR)," or "Ecology's Minimum Technical Requirement(s)" or means the nine minimum measures required to be taken to control the quantity and quality of stormwater runoff when thresholds are exceeded for land disturbance, development and redevelopment. The MRs are listed in the KEDM, the SWMMWW, and the Phase II permit Appendix 1.
32. "Municipal separate storm sewer system (MS4)" means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
 - a. Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States;
 - b. Designed or used for collecting or conveying stormwater;
 - c. Which is not a combined sewer; and
 - d. Which is not part of a publicly owned treatment works as defined at 40 CFR 122.2.
33. "National Pollutant Discharge Elimination System (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 CWA, 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 Ecology.
34. "Native vegetation" means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas fir, western hemlock, western red cedar, alder, big-leaf maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.
35. "New development" means land-disturbing activities, including Class IV – general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of hard surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in chapter 58.17 RCW. Projects meeting the definition of "redevelopment" shall not be considered new development.
36. "Nonstormwater discharge" means any discharge to the storm drainage system that is not composed entirely of stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.
37. "Owner" means any individual, association, organization, partnership, firm, corporation or other entity recognized by law who is (1) the owner of the premises or the owner's agent, or (2) in control of the premises,

or (3) the owner of any facility causing the illicit discharge, or the owner's agent, or (4) in control of any facility causing the illicit discharge.

38. "Phase II permit" (the "Western Washington Phase II Municipal Stormwater Permit") means a permit issued by Ecology under Sections 307, 402, 318, and 405 of the federal CWA that authorizes the discharge of pollutants to surface waters of the state.
39. "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
40. "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state 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, or to livestock, wild animals, birds, fish or other aquatic life.
41. "Private stormwater drainage system" means a conveyance, or system of conveyances to drain and manage stormwater, and associated structures such as catch basins, and on-site, treatment, and/or flow control BMPs, owned and operated by a private entity.
42. "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
43. "Project site" means that portion of a property, properties, or right-of-way subject to land-disturbing activities, new hard surfaces, or replaced hard surfaces.
44. "RCW" means the Revised Code of Washington.
45. "Receiving waters" means naturally and/or reconstructed naturally occurring surface water bodies, such as creeks, streams, rivers, lakes, wetlands, estuaries, and marine waters, or ground water, to which a MS4 discharges.
46. "Redevelopment" means, on a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of hard surface that is not part of a routine maintenance activity; and land-disturbing activities.
47. "Replaced hard surface" means, for structures, the removal and replacement of hard surfaces down to the foundation. For other hard surfaces, the removal down to bare soil or base course and replacement.
48. "Routine maintenance" means preventative or cyclical (weekly, monthly, etc.) maintenance that is an essential part of the on-going care and upkeep of a system or facility against normal wear and tear.
49. "Site" means the area defined by the legal boundaries of a parcel or parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.
50. "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

51. "Started construction" means, for the purpose of determining expiration date of stormwater-related construction, development, and/or engineering permits, the approved site work such as grading or installation of utilities associated with, and directly related to, an approved development, redevelopment, and/or construction project has begun. Clearing the project site does not constitute the start of construction.
52. "Stormwater" means runoff during and following precipitation and snowmelt events, including surface runoff, drainage or interflow.
53. "Stormwater site plan" means the comprehensive report containing all of the technical information and analysis necessary for a regulatory agency to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements.
54. "Stormwater drainage system" means either a municipal separate storm sewer system (MS4) (see definition) or a private stormwater drainage system (see definition).
55. "Stormwater facility (facility)" means a constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include but are not limited to pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.
56. "SWMMWW" means the "Stormwater Management Manual for Western Washington," (amended in 2014), as prepared by Ecology. The SWMMWW contains site planning requirements, BMP selection criteria, BMP design criteria, BMP infeasibility criteria, and LID competing needs criteria, and BMP limitations to prevent, control or treat pollution in stormwater and reduce other stormwater-related impacts to waters of the state. The SWMMWW is adopted for use in Kelso by KEDM.
57. "Source control BMP" see "Best management practice."
58. "Stormwater pollution prevention plan (SWPPP)" means a written plan to implement BMPs to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.
59. "Treatment and flow control facility" means a detention facility, treatment BMP/facility, bioretention, vegetated roof, and permeable pavement that help meet MR 6 (treatment), MR 7 (flow control), or both.
60. "Vegetation" means all organic plant life growing on the surface of the earth.
61. "WAC" means the Washington Administrative Code.
62. "Western Washington Phase II Municipal Stormwater Permit (Phase II permit)" means a permit issued by the Washington Department of Ecology under Sections 307, 402, 318, and 405 of the federal CWA that authorizes the discharge of pollutants to surface waters of the state.
63. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

13.09.030 General provisions.

A. Abrogation and Greater Restrictions. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

C. Authority. The director shall administer, implement, and enforce the provisions of this chapter and shall have the authority to develop and implement administrative procedures to implement and enforce this chapter. The director may approve, conditionally approve, or deny an application for activities regulated by this chapter.

13.09.040 Applicability and exemptions.

A. Applicability. This chapter shall apply to all:

1. Owners or individuals responsible for and/or otherwise causing pollutants to directly or indirectly enter the stormwater drainage system on any developed or undeveloped lands unless explicitly exempted herein; and
2. New development, redevelopment, and construction site activities, unless explicitly exempted herein.

B. Exemptions. The following development activities are exempt from certain provisions of this chapter:

1. Forest practices regulated under WAC Title 222, except for Class IV – general forest practices that are conversions from timber land to other uses, are exempt from the MRs.
2. Commercial agriculture practices involving working the land for production are generally exempt from the MRs. However, the conversion from timberland to agriculture and the construction of impervious surfaces are not exempt.
3. Pavement Maintenance. The following pavement maintenance activities are exempt from the MRs:
 - a. Pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.
 - b. The following pavement maintenance practices are not categorically exempt. The extent to which each activity is exempt is explained for each circumstance.
 - i. Removing and replacing a paved surface to base course or lower, or repairing the roadway base are not exempt. These activities are considered redevelopment and are subject to MRs 1-5, if impervious surfaces are not expanded.
 - ii. The following examples of redevelopment are considered new impervious surfaces and have no exemption: resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete (for example by extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders); or upgrading from a bituminous surface treatment (“chip seal”) to asphalt or concrete.
4. Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to MR 2, Construction Stormwater Pollution Prevention.
5. Vegetation maintenance and gardening practices.

13.09.050 General requirements.

A. City of Kelso Engineering Design Manual. The KEDM, as now or hereafter modified, is hereby adopted by reference for use in implementation of this chapter, and the requirements contained therein shall be the minimum standards for stormwater and drainage control for new development, redevelopment, and land-disturbing activities except where modified or exceeded by this chapter. The KEDM contains the MRs, thresholds, definitions, and the following standards to implement the MRs: site planning requirements; BMP selection criteria; BMP design criteria; BMP infeasibility criteria; LID competing needs criteria; and BMP limitations. The KEDM also contains minimum standards for setbacks, conveyance, stormwater facility plantings, construction site limitations, and construction site

signage. The director shall be authorized to modify the KEDM, in accordance with the city's adopted policies and procedures, to reflect newly updated technical data, models, and other information.

B. Emerging Technologies

1. Emerging technologies are encouraged as a means of solving problems in a manner not addressed by the SWMMWW in an effort to improve stormwater quality technology.
2. Emerging technologies must be approved by the director prior to implementation, in accordance with the variance criteria outlined in Section 13.09.220.

C. Illicit Discharges. No owner or individual shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or discharge into the storm drainage system and/or surface or groundwaters any material other than stormwater or allowable nonstormwater discharges. All illicit discharges, as defined in this chapter, constitute a violation of this chapter.

1. Exempt Nonstormwater Discharges. The following categories of nonstormwater discharges are allowed, unless they are identified as a significant source of pollution:

- a. Diverted stream flows.
- b. Rising groundwaters.
- c. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20)).
- d. Uncontaminated pumped groundwater.
- e. Foundation drains.
- f. Air conditioning condensation.
- g. Irrigation water from agricultural sources that is commingled with urban stormwater.
- h. Springs.
- i. Water from crawl space pumps.
- j. Footing drains.
- k. Flows from riparian habitats and wetlands.
- l. Nonstormwater discharges covered by another NPDES permit.
- m. Discharges from emergency fire-fighting activities.

2. Conditional Discharges. The following categories of nonstormwater discharges are allowed if the conditions stated in this section are met unless they are identified by the city as a significant source of pollution. Failure to comply with the conditions shall constitute a violation of this chapter.

- a. Discharges from potable water sources, including 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 one-tenth ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system.
- b. Discharges from swimming pools, hot tubs and similar discharges. These discharges shall be dechlorinated to a concentration of one-tenth ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater drainage system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving

water. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the stormwater drainage system.

c. Nonstormwater discharges covered by another NPDES permit; provided, that the discharger is in compliance with that permit, waiver, or order and other applicable laws and regulations; and granted that written approval has been granted for discharge to the stormwater drainage system.

d. Other nonstormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed by the city, which addresses control of such discharge by applying all known and reasonable methods of prevention control and treatment (AKART) to prevent contaminants from entering surface and groundwater.

e. Discharges specified in writing by the director as being necessary to protect public health and safety.

f. Dye testing is an allowable discharge, but requires a verbal notification to the director prior to the time of the test.

3. Other Conditional Discharges. The following shall be addressed through public education and water conservation efforts to prevent illicit discharge:

a. Discharges from lawn watering and other irrigation runoff are permitted but shall be minimized.

b. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street.

D. Prohibition of Illicit Connections. The construction, use, maintenance or continued existence of illicit connections to the stormwater drainage system, including but not limited to any sewage connection, is prohibited and constitutes a violation of this chapter. 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.

13.09.060 Standards for development and redevelopment.

Development, redevelopment and construction projects within the city shall provide the erosion and stormwater controls in accordance with the thresholds and standards described herein.

A. General Applicability.

1. All projects shall protect the public right-of-way, the stormwater drainage system, receiving waters, and adjoining properties from the deposition of materials, discharge of sediments and other pollutants, and damage from increased surface and subsurface flow rates and volumes caused by the project.

2. All projects shall comply with the city's general design and construction criteria for stormwater drainage systems contained in the KEDM.

3. The city may, in accordance with the basin planning provisions of the Phase II permit, modify MR 5, MR 6, MR 7, and/or MR 8 or may adopt a plan and schedule to provide equivalent level of treatment, flow control, and/or wetlands protection through construction and use of regional stormwater facilities.

B. Erosion and Sediment Control. Additionally, projects disturbing seven thousand square feet or more of land or over fifty cubic yards of soil are required to:

1. Obtain a local civil engineering permit for the project prior to the land disturbance.

C. New Development. New development shall comply with the MRs as described in the KEDM and as follows:

1. All new development shall comply with MR 2.

2. The following new development shall obtain a local civil permit and shall comply with MRs 1-5 for the new and replaced hard surfaces and the land disturbed:

- a. Results in 2,000 square feet or greater of new plus replaced hard surface area, or
- b. Has land-disturbing activity of 7,000 square feet or greater.

3. The following new development shall obtain a local civil engineering permit and shall comply with MRs 1 - 9 for the new and replaced hard surfaces and the converted vegetation areas:

- a. Results in 5,000 square feet or greater of new plus replaced hard surface area; or
- b. Converts $\frac{3}{4}$ acres or more of vegetation to lawn or landscaped areas; or
- c. Converts 2.5 acres or more of native vegetation to pasture.

D. Redevelopment. Redevelopment shall comply with the MRs as described in the KEDM and as follows:

1. All redevelopment shall comply with MR 2.

2. The following redevelopment shall obtain a local civil permit and shall comply with MRs 1-5 for the new and replaced hard surfaces and the land disturbed:

- a. Results in 2,000 square feet or more of new plus replaced hard surface area; or
- b. Has land-disturbing activity of 7,000 square feet or greater.

3. The following redevelopment shall obtain a local engineering permit and shall comply with MRs 1-9 for the new and replaced hard surfaces and the converted vegetation areas:

a. A road-related project that results in 5,000 square feet or more of new hard surface area if such new hard surfaces total 50 percent or more of the existing hard surfaces within the project limits; or

b. Redevelopment that results in 5,000 square feet or more of new plus replaced hard surface area if the valuation of proposed improvements – including interior improvements – exceeds 50 percent of the assessed value of the existing site improvements.

4. The following redevelopment shall comply with MRs 1-9 for the new hard surfaces and converted vegetation areas:

- a. Adds 5,000 square feet or more of new hard surfaces; or
- b. Converts $\frac{3}{4}$ acres or more of vegetation to lawn or landscaped areas; or
- c. Converts 2.5 acres or more of native vegetation to pasture.

5. An equivalent (flow and pollution characteristics) area within the same site can be used to meet the MRs. For public roads projects, the equivalent area does not have to be within the project limits, but must drain to the same receiving water.

6. The city may grant a variance/exception to the application of the flow control requirements to replaced impervious surfaces if such application imposes a severe economic hardship per Section 13.09.220.

E. Source Control

1. A project requiring city approval that is changing the intended use of a parcel to one identified in the KEDM as needing oil/water separation shall provide such treatment.

F. Ecology's NPDES Construction Stormwater General Permit. Additionally, projects that disturb one acre or more of land or on sites smaller than one acre that are part of a larger common plan of development or sale that will ultimately disturb one acre or more of land must obtain the state NPDES Construction Stormwater General Permit if required by Ecology.

G. Financial Liability/Public Nuisance Declared. In addition to other remedies, vandalism of or failure to install and/or maintain water courses or stormwater facilities as required in this chapter and applicable permits is hereby declared to be a public nuisance, subject to abatement as provided by applicable laws of the city or the state of Washington. The property owner and all persons engaged in development, redevelopment, or land-disturbing activity shall be liable, jointly and severally, for all costs incurred by the city in any public nuisance action taken hereunder, or on account of damage or threatened damage to city property or facilities or water bodies, or associated with remedial actions necessitated by the failure to install and/or maintain required stormwater facilities.

13.09.065. Permit expiration.

A. A permit issued pursuant to this chapter for an application that was submitted prior to June 25, 2017 shall expire no later than June 30, 2022, unless the applicant or owner has started construction by June 30, 2022.

13.09.080 Inspection and sampling.

A. The director is authorized to develop inspection procedures and requirements for all private stormwater drainage systems in the city.

B. Inspection Procedure. Prior to entry of the premises for the purpose of making any inspections, sampling, or records examination, the city shall obtain permission to enter the premises as follows:

1. The director shall present identification credentials, state the reason for the inspection and request entry of the owner, if available.
2. Unoccupied Building. If the premises or any building or structure on the premises is unoccupied, the director shall make reasonable efforts to locate the owner and request entry. In the event of an imminent hazard to persons or property as set forth in subsection (B)(3) of this section, such reasonable efforts shall be satisfied by attempting to contact the owner on site and by telephone at the last known number.
3. Imminent Hazard. If, after reasonable efforts, the director is unable to locate the owner, and has reason to believe the condition of the premises or of the private stormwater drainage system creates an imminent hazard to persons or property, the director may enter to abate the danger.

C. Inspection Parameters. Inspections for compliance with the provisions of this chapter shall be allowed as follows:

1. Construction and Development Inspection. A city representative or authorized designee shall have the right of entry to access any premises for which a permit has been issued pursuant to this chapter, during regular business hours, or when reasonable under the circumstances for the purpose of review of erosion control practices and private stormwater drainage systems, and to ensure compliance with the terms of such permit. Applicants for any such permit shall agree in writing, as a condition of permit issuance, that such access shall be permitted for such purposes. Inspection procedures shall be as outlined in this section.
2. Inspection for Cause. Whenever the city has cause to believe that a violation of any provision of this chapter has been or is being committed, the director, following procedures prescribed in this section, is authorized to enter the premises to inspect the premises during regular business hours, or when reasonable in the circumstances to ensure compliance with this chapter. Reasonable cause includes, but is not limited to, a citizen notification or an observation by a city employee.
3. Long-term Maintenance Inspection. The director, following procedures prescribed in this section, is authorized to enter the premises to inspect private stormwater drainage systems during regular business hours, or at any other time reasonable under the circumstances, in order to ensure continued functioning of the facilities for the purposes for which they were constructed, and to ensure that maintenance is being performed in accordance with the standards of this chapter and any maintenance schedule or standard adopted during the plan review process.

for the premises. The director also may enter the premises for the purposes of observing source control BMPs required by this Chapter.

D. Water Sampling and Analysis. Water sampling and analysis for determination of compliance with this chapter shall be allowed as follows:

1. Sample Collection. When the city has reason to believe that a violation exists or is occurring on a premises, the director is authorized to enter the property to set up on the premises such devices as are necessary to conduct sampling, inspection, compliance monitoring, or flow measuring operations.

2. Sample Analysis. Analysis of samples collected during investigation of potential violations shall be analyzed by a laboratory certified by the Department of Ecology as competent to perform the required analysis using standard practices and procedures.

3. Cost of Sample Collection and Analysis. If it is determined that a violation of this chapter exists on the premises, the owner shall pay the city's actual costs for collecting samples and for laboratory analysis of those samples. If it is found that a violation does not exist, the city will pay such charges.

E. If the city inspector has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 chapter 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.

13.09.090 Requirement to prevent, control, and reduce stormwater pollutants using BMPs.

The owner or operator of a commercial, industrial, or multi-family establishment shall provide, at their own expense, reasonable protection from spill or loss of prohibited materials or other wastes into the stormwater drainage system or watercourses through the use of structural and/or operational source control BMPs. The design and selection of BMPs shall be from the SWMMWW or BMPs with city approval. Further, any owner responsible for a premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said owner's expense, additional structural and operational source control BMPs or treatment BMPs to prevent the further discharge of pollutants to the stormwater drainage system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

13.09.100 Protection of facilities and watercourses.

A. Protection. It is a violation for any owner to break, block, damage, destroy, uncover, deface or tamper with any watercourse, stormwater facility, or BMP.

B. Responsibility. Every owner upon whose property exists a water body shall keep and maintain that part of the water body within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water into or through the water body. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a water body, so that such structures will not become a hazard to the use, function, or physical integrity of the water body.

13.09.110 Spills.

A. Reporting. Notwithstanding other requirements of law, as soon as any owner who has information of any known or suspected spill, deposition, discharge, or other loss of materials which are resulting or may result in illicit discharges of pollutants discharging to stormwater shall notify the city.

B. Response. Notwithstanding other requirements of law, as soon as any owner responsible for a premises or operation, or responsible for emergency response for a premises or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges of pollutants discharging into stormwater, the drain system, shall immediately take all necessary steps to ensure the discovery, containment, and full cleanup of such release and to the satisfaction of the city and/or Ecology. In the event of such a release of hazardous materials, said owner shall immediately notify emergency response agencies of the occurrence via emergency

dispatch services. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five years.

13.09.120 Construction and development inspection of stormwater facilities and BMPs.

A. Notice of Construction Commencement. The applicant shall notify community development before the commencement of construction. Community development may, at its discretion, issue verbal or written authorization to proceed with critical construction components, such as installation of permanent stormwater BMPs based on stabilization of the drainage area and other factors.

B. Construction Inspections by Community Development or its Representatives. During construction and development, community development or its representatives shall conduct periodic inspections of the stormwater facilities and BMPs shown on the approved stormwater site plan and/or the C-SWPPP, and especially during critical installation and stabilization steps. All inspections shall be documented in writing. The inspection shall document any variations or discrepancies from the approved plan, and the resolution of such issues. A final inspection by the director is required before any performance bond or portion thereof shall be released.

13.09.125 Long-term maintenance inspection.

Community development or its representatives will conduct periodic inspections of stormwater facilities following project completion. All inspections will be documented in writing. The inspection will document any maintenance and repair needs and any discrepancies from the KEDM, the SWMMWW and/or the approved stormwater operation and maintenance plan.

13.09.130 Stormwater facility and BMP ownership.

A. Stormwater facilities/BMPs managing stormwater runoff from a city street shall be located in the right-of-way and shall be owned and operated by the city.

B. Stormwater facilities/BMPs managing stormwater runoff from private property shall be located on private property and shall be owned and operated by the private property owner unless a Homeowner's Association is formed to operate and maintain the residential stormwater facilities/BMPs.

13.09.135 Ongoing operation and maintenance of stormwater facilities and BMPs.

A. Operation and Maintenance Required. All stormwater facilities (including, but not limited to on-site stormwater management BMPs, treatment and flow control facilities, catch basins and other protective devices, necessary access routes, and appurtenances), and BMPs shall be operated and maintained in accordance with the manufacturer's specifications, the SWMMWW, the KEDM, the approved stormwater site plan, and the stormwater operation and maintenance plan.

B. Operation and Maintenance Responsibility. The responsible party named in the recorded stormwater improvement restrictive covenant shall maintain in good condition and promptly repair and restore all stormwater facilities and all source control BMPs and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, erosion and sedimentation controls, and other protective devices). Such repairs or restoration and maintenance shall be in accordance with the approved stormwater site plan, the SWMMWW, and the approved stormwater operation and maintenance plan.

C. Inspection Required. The responsible party for a treatment and/or flow control facility shall inspect the facility annually in accordance with maintenance criteria established in the KEDM and the SWMMWW.

D. Successor. The owner shall pass responsibility for ongoing operation and maintenance of stormwater facilities and BMPs to any successor owner, unless such responsibility is transferred to the city or to another governmental entity in accordance with Section 13.09.170.

E. Records of Inspection and Maintenance Activities.

I. The responsible party shall make records of the installation and of all maintenance, repairs, and inspections and shall retain the records for at least five years.

2. These records shall be made available to community development during inspection of the facility(ies) and at other reasonable times upon request.

3. By January 31 of each year, the responsible party of a treatment and/or flow control facility shall submit a record of inspection of the site's stormwater facilities to the City.

F. Failure to Provide Adequate Maintenance. Failure to provide adequate maintenance of a stormwater facility or BMP approved pursuant to this chapter is a violation of this chapter. In the event that the stormwater facility has not been maintained and/or becomes a danger to public safety or public health, community development shall notify the responsible party by registered or certified mail. The notice shall specify the measures needed to comply with the stormwater operation and maintenance plan and/or the SWMMWW and shall specify that the responsible party has thirty days or other time frame mutually agreed to between community development and the responsible party, within which such measures shall be completed. If such measures are not completed, then community development shall pursue enforcement procedures pursuant to Section 13.09.210.

If a responsible person fails or refuses to meet the requirements of an inspection report, or operation and maintenance plan, the city, after thirty days' written notice (except, that in the event the violation constitutes an immediate danger to public health or public safety, twenty-four hours' notice shall be sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the facility in proper working condition. The city may assess the responsible party for the cost of repair work which shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the city.

13.09.140 Easements, deeds and covenants.

A. Easements. A storm drainage easement shall be required where conveyances or permanent stormwater facilities/BMPs, with the exception of source control BMPs, are identified on the approved stormwater site plan.

The following conditions shall apply to all easements:

1. Dimensions. Easements shall be of a width and location as determined by the director and approved by the City attorney.

2. Easements Approved Before Plat Approval. Easements shall be approved by community development and shall be recorded with Cowlitz County and on all property deeds.

B. Stormwater Improvement Restrictive Covenant. The applicant shall prepare a stormwater improvement restrictive covenant that runs with the land for each site and each lot that contains stormwater facilities. The applicant shall record the covenant(s) with the Cowlitz County auditor.

1. Required Elements of stormwater improvement restrictive covenant. The stormwater improvement restrictive covenant shall be in a form approved by the city, and shall include, at a minimum:

a. Designate Responsible Party. Designate the owner or other legally established entity (responsible party) which shall be permanently responsible for operating and maintaining the stormwater facilities and source control BMPs.

b. Pass Responsibility to Successors. Pass the responsibility for such operation and maintenance to successors in title.

c. Establish an Operation and Maintenance Plan. Establish a written stormwater operation and maintenance plan in a form approved by the city as described in KEDM.

d. Restrict the removal and alteration of stormwater and drainage facilities without approval from the city.

e. Right of Entry for Stormwater Authority. For those stormwater improvement restrictive covenants prepared for a commercial site or subdivision, grant community development and its representatives the right of entry at reasonable times and in a reasonable manner for the purposes of inspecting all stormwater facilities and source control BMPs. This includes the right to enter a property to perform inspections pursuant

to this chapter and when community development has a reasonable basis to believe that a violation of this chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter. This includes the right to maintain, repair, and/or restore stormwater facilities that have not been properly operated and maintained and the right to charge the property owner for the cost of such maintenance, repair, and/or restoration.

13.09.150 Stormwater performance bond.

A. Stormwater Performance Bond. At the discretion of community development, the applicant seeking to build a stormwater facility may be required to furnish a stormwater facility performance bond, or equivalent guarantee in a form acceptable to the city, in an amount sufficient to cover all costs associated with the construction of the facility. This bond is to secure the installation and performance of the stormwater facilities identified in the approved stormwater site plan. Performance shall include, when applicable, plant establishment, infiltration rate and/or facility drawdown time within parameters established in the design, and all workmanship and materials. The applicant shall be responsible for any costs incurred by the city to secure performance of the stormwater facilities that are in excess of the amount of the bond.

B. Term of Performance Bond. The stormwater performance bond furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be released to the applicant within sixty days of issuance of the final acceptance of the permanent stormwater facilities by the community development department. A final inspection by community development is required before any performance bond will be released.

C. Partial Release of Bond. Community development shall have the sole discretion to adopt provisions for a partial pro rata release of the performance bond on the completion of various stages or phases of development.

D. Bond Estimation. The applicant shall be responsible for determining bond value and submitting the estimation to community development for approval. If the director disagrees with the applicant's estimate, the director shall determine a reasonable estimate. The bond value for public and private facilities is to be one hundred twenty-five percent of the estimated cost for the city to construct the stormwater features and achieve final stabilization. The director may allow an equivalent financial guarantee in a form acceptable to the city in lieu of a bond.

13.09.155 Stormwater maintenance bond.

A. Stormwater Maintenance Bond. The applicant seeking final acceptance of a stormwater treatment and/or flow control facility for public ownership shall be required to furnish a maintenance bond, or equivalent financial guarantee in a form acceptable to the city, in an amount sufficient to cover costs associated with maintenance or repair in the event the stormwater facility does not meet the maintenance standards of the manufacturer, the SWMMWW, the KEDM, and/or the approved operation and maintenance plan. A finding of deficiency in facility condition shall be based on inspection. For vegetated facilities, a finding of deficiency shall be made if plant survival after two years is less than 90% of the approved design. This bond is to secure the maintenance and repair of the stormwater facilities identified in the approved stormwater site plan. The applicant shall be responsible for any costs incurred by the City to bring the facility into compliance with approved standards in the event such costs are in excess of the amount of the bond.

B. Term of Maintenance Bond. The stormwater maintenance bond furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be released to the applicant within ninety days of the City inspection conducted on or after two years after the City's final acceptance of the permanent stormwater facilities by the community development department.

C. Bond Estimation. The applicant shall be responsible for submitting the estimation of bond value to community development for approval. If the director disagrees with the applicant's estimate, the director shall determine a reasonable estimate. The bond value for public facilities shall be ten percent of the cost to construct the facility.

13.09.160 As-built plans and certification of acceptability.

A. All applicants are required to submit as-built plans for any permanent stormwater treatment and/or flow control facilities, including any on-site stormwater management facilities that are used to meet treatment or flow control requirements, located on site after final construction is completed. The plans must show the final design specifications for all stormwater management facilities, meet the criteria for as-built plans in the KEDM, and be sealed by a registered professional engineer.

B. All applicants are required to submit, prior to final occupancy, a certification of acceptability for any permanent treatment and/or flow control facilities, including any on-site stormwater management facilities that are used to meet treatment or flow control requirements, sealed by a registered professional engineer. The certification must provide that the professional engineer has inspected the constructed stormwater facility, that the facility was constructed substantially in accordance with the plans approved by the City, and that the facility will function in accordance with approved design. At the discretion of the director, the certification for a facility that uses infiltration shall provide that the professional engineer has conducted a facility performance, verification, or acceptance test as described in the KEDM and the SWMMWW, and that the facility infiltrates in accordance with the plans approved by the City.

13.09.170 Dedication of stormwater facilities.

The owner of a stormwater facility required by this chapter may offer to the city for dedication any such stormwater facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

A. Preliminary Determination by Community Development. Upon receipt by the city of such offer of dedication, community development shall make a preliminary determination that the dedication of the facility is appropriate to protect the public health, safety and general welfare, and furthers the goals of the city's stormwater management program and/or associated watershed plans. Community development shall forward its determination to the city council. Prior to making its determination, community development shall inspect the facility to determine whether it has been properly maintained and is in good repair.

B. Acceptance by City Council. The city council may accept the offer of dedication by adoption of a resolution. The document dedicating the stormwater facility shall be recorded in the office of the Cowlitz County auditor at the owner's sole expense.

C. Owner to Provide Documentation. The owner, at his sole expense, shall provide any document or information requested by community development or the city council in order for a decision to be reached on accepting the facility.

13.09.210 Enforcement.

A. Violations of this Chapter shall be enforced under the provisions of Kelso Municipal Code chapter 1.50.

B. For enforcement of illicit discharges, the order of escalating enforcement procedures and actions will begin with education and technical assistance unless the illicit discharge is an intentional act or constitutes gross negligence.

C. For enforcement of temporary erosion and sediment controls on a construction site, failure to provide such required runoff controls prior to or simultaneously with the commencement of land-disturbing activities shall result in an order to stop all work upon the site. Once the site is found to be in compliance, land-disturbing activities shall be allowed to continue.

13.09.220 Adjustments, exceptions, and appeals.

A. Authority. The director may grant an adjustment or exception from the requirements of this chapter. In so granting, the director may prescribe conditions that are deemed necessary or desirable for the public interest.

B. Adjustments. Adjustments to the Minimum Requirements of this chapter may be granted; provided, that a written finding of fact is prepared that addresses the following:

1. The adjustment provides substantially equivalent environmental protection.
2. Based on sound engineering practices, the objectives of safety, function, environmental protection, and facility maintenance are met.

C. Exceptions and Variances. Exceptions to the requirements of this chapter may be granted; provided, that a written finding of fact is prepared that documents the city's determination to grant an exception and:

1. An exception shall meet the following criteria:
 - a. The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and

b. The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirement(s).

2. Additionally, exceptions to Minimum Requirements in Section 13.09.060 may be granted following legal public notice of the application for an exception, legal public notice of the city's decision on the application, and written findings of fact that documents the city's decision to grant an exception. An exception may be granted only if such the application of the Minimum Requirements imposes a severe and unexpected economic hardship on the applicant as documented in a written finding of fact considering the following::

a. The current (pre-project) use of the site; and

b. How the application of the Minimum Requirement(s) restricts the proposed of the site compared to the restrictions that existed prior to adoption of the Minimum Requirements; and

c. The possible remaining uses of the site if the exception were not granted; and

d. The uses of the site that would have been allowed prior to adoption of the Minimum Requirements; and

e. A comparison of the estimated amount and percentage of value loss as a result of the Minimum Requirements versus the estimated amount and percentage of value loss of requirements that existed prior to adoption of the Minimum Requirements; and

f. The feasibility for the applicant to alter the project to apply the Minimum Requirements.

D. Prior Approval. Any variance shall be approved prior to permit approval and construction.

E. Duration of Variance. Variances granted shall be valid for two years, unless granted for a shorter period.

F. Right of Appeal. Except as otherwise provided in this chapter, all actions of the director in the administration and enforcement of this chapter shall be final and conclusive unless, within thirty days of receipt of the director's action, the original applicant or an aggrieved party files a notice of appeal with the hearing examiner for review of the action. The decision of the hearing examiner shall be final and conclusive unless, within ten days after receipt of the decision of the hearing examiner, an aggrieved party appeals the same to Cowlitz County superior court.

13.09.230 Compatibility with other permit and ordinance requirements.

This chapter is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

13.09.250 Liability.

Any person who undertakes or causes to be undertaken any land disturbance shall ensure that soil erosion, sedimentation, increased pollutant loads and changed water flow characteristics resulting from the activity are controlled so as to minimize pollution of receiving waters. The requirements of this chapter are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize pollution of receiving waters.

13.09.260 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

If this chapter is in conflict with any other section of the Kelso Municipal Code, this chapter shall control.