

Ordinance \_\_\_\_\_

An ordinance generally amending Missoula Municipal Code Chapter 13.27 entitled “Storm Water Utility, Rates and Regulations” renaming the chapter “Storm Water Management” to update the storm water regulations in compliance with the City’s MS4 Storm Water Discharge Permit and provide for the enactment of standards by administrative rule.

Be it ordained that Chapter 13.27 is hereby amended as follows:

**CHAPTER 13.27**  
**STORM WATER ~~UTILITY, RATES, AND REGULATIONS~~ MANAGEMENT**

**Articles:**

- I. [Storm Water Utility](#)
- II. [Discharge Prohibitions](#)
- III. [Regulations and Requirements](#)
- IV. [Construction Activity](#)
- V. [Inspection and Enforcement](#)

**Article I. Storm Water Utility**

**Sections:**

- [13.27.010 Storm Water Utility Established](#)
- [13.27.020 Purpose and Intent](#)
- [13.27.030 Definitions](#)
- [13.27.040 Authority](#)
- [13.27.050 Applicability](#)
  
- [13.27.060 Storm Water Utility Service Area](#)
- [13.27.070 Operation Cost Determination](#)
- [13.27.080 Storm Water Utility Service Fee](#)
- [13.27.090 Coordination with the Missoula Valley Water Quality District and Neighboring MS4s  
~~Coordination with the Missoula Valley Water Quality District and Other Missoula Valley MS4 Agencies~~](#)
- [13.27.100 Ultimate Responsibility of Discharger](#)
- [13.27.110 Conflict of Law or Regulations](#)

**13.27.010 Storm Water Utility Established**

~~A city storm water utility~~The City of Missoula Storm Water Utility is hereby established along with ~~a rate schedule and adopted~~ administrative rules and regulations for operation as well as ~~specifications and design standards~~to implement the provisions of this chapter.

**13.27.020 Purpose and Intent**

The purpose and intent of this ordinance is to:

~~B.A.~~Protect and enhance the water quality of ~~the Clark Fork River, Bitterroot River, Rattlesnake Creek, Pattee Creek, Grant Creek, Miller Creek, water bodies~~named and unnamed surface waters, groundwater, and wetlands within the city limits, in a manner pursuant to and consistent with ~~the~~ Clean Water Act of 1972, and U.S. EPA~~current federal~~ and ~~MDEQ storm~~state water quality standards and regulations.

~~C.B.~~ Create permitting, submittal, and design standards for erosion and sedimentation control, protection of the storm water system, flood mitigation, site grading, and protection of property.

~~D.C.~~ Minimize pollutants and non-storm water discharges to storm drains.

~~E.D.~~ Provide design, construction, operation, and maintenance criteria for permanent and temporary Best Management Practices (BMPs) for storm water ~~management facilities that handle storm water runoff systems~~.

~~F.E.~~ Establish legal authority to conduct inspections, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with federal and state regulations.

~~G.F.~~ Establish legal authority to develop, implement, and enforce a program to reduce pollutants in storm water runoff from new development, redevelopment, and construction activities.

~~H.G.~~ Provide an equitable distribution of cost for the program as outlined in the storm water utility rate schedule, which will be established by City Council resolution following a public hearing.

~~I.H.~~ Provide for the regulation of contributors or dischargers to the City's storm water system through the development of a Storm Water Management Program.

~~J.I.~~ Regulate ~~construction, grading, and drainage post-construction storm water management~~ to protect natural resources from erosion and in accordance with ~~the Storm Water Pollution Prevention Plan current federal, state, and local environmental~~ quality standards ~~and regulations~~.

~~K.J.~~ Establish remedies and penalties for violations of this chapter.

~~A.K.~~ Ensure consistency with the ~~applicable~~ requirements of the Clean Water Act, ~~Safe Drinking Water Act, Montana Water Quality Act,~~ and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and ~~the Montana Pollutant Discharge Elimination System (MPDES General Permit) permits that may affect storm water~~ and any amendments, revisions, or re-issuance thereof.

### 13.27.030 Definitions

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context explicitly indicates a different meaning:

~~"Administrative rule(s)" means any rule(s) approved by the Director for the implementation of this chapter.~~

~~"Administrative Rules of Montana (ARM)" means the regulations, standards, or statements of applicability that implement, interpret, or set law or policy in Montana.~~

~~"Authorized enforcement agent" means the City Public Works Director or any individual or entity designated by the Public Works Director as an authorized enforcement agent.~~

~~"Belowground installations" means activity that causes sediment-laden storm water, concrete-sawing wash water, wash water, drilling mud, or similar construction water with a high concentration of suspended solids pumped from an excavation or structure and shall be treated as sediment-laden runoff for erosion control purposes compliance.~~

~~"Best Management Practices (BMPs)" means schedule of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. BMPs also include treatment requirements, operating procedures, and practices to~~

control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“City” is the City of Missoula and its employees designated by the Director with the authority to inspect or enforce storm water compliance.

“Code of Federal Regulations (CFR)” means the compilation of administrative laws governing federal regulatory agency practice and procedures.

“Clean Water Act (CWA)” means the Federal Water Pollution Control Act enacted by Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; and 33 USC 1251 et seq.

“Construction activity” means any work that results in land disturbance of any nature, which requires a building or an activity (e.g., clearing, grading, excavation, stockpiling earth materials, and other placement or removal of earth material performed during construction-related permit projects) that is subject to MPDES construction permits and/or an activity subject to a City Storm Water and/or Excavation Permit.

“Construction General Permit” means the MPDES General Permit for Storm Water Discharges Associated with Construction Activity, required for construction activities that disturb greater than or equal to one acre of land, including clearing, excavating, grading, grubbing, or placement/removal of earth material. A Construction General Permit is also required if construction activity that disturbs less than one acre is part of a larger common plan of development or sale that would disturb one acre or more. A Construction General Permit (commonly referred to as a SWPPP) is issued by MDEQ under ARM 17.30.1341.

“Construction Site BMP Manuals” means the Montana Department of Transportation Erosion and Sediment Control Best Management Practices Manual and the Montana Department of Environmental Quality Storm Water Management During Construction Field Guide for Best Management Practices, as periodically updated. Where there may be discrepancies between the two, the MDEQ manual shall prevail.

“Design standards” means the City standards and specifications prepared and updated by the Public Works Department or Development Services Department.

“Developer” means a person who creates a development or causes a development to be created.

“Development” means any construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure within the jurisdiction of the City as well as any manmade change or alteration to the landscape, including but not limited to mining, drilling, dredging, grading, paving, excavating, and filling.

“Director” means the Public Works Director or their designee.

“Discharge” means any introduction or addition of any substance into waterbodies of the MS4, storm water system or state waters of the state, or waters of the United States.

“Discharger” means any person who causes, allows, permits, or is otherwise responsible for a discharge, including, without limitation, any operator of a construction site or industrial facility.

“Drainage” means the natural and/or artificial draining, movement, or removal of water due to the following:

- aa named or unnamed creek, stream, or river in normal or flood capacity or other natural body of water;

- natural rainfall, runoff, or storm water; or
- ~~sheeting, which is melting snow and/or thawing ice on the surface of frozen ground.~~

“General Permit” means an MPDES permit issued by the State of Montana under ARM 17.30.1341 that authorizes a category of discharges under the Act within a geographical area.

- irrigation.

“Dry Well” means a USEPA-designated Class V storm water injection well: a bored, drilled, or driven shaft or dug hole whose depth is greater than the opening width at the widest point, for the subsurface infiltration of storm water.

“Final approval” is the completion of a project, site, or building in accordance with City requirements and ordinances. In the case of a building, a certificate of occupancy is issued. In case of a subdivision, when the two-year warranty and maintenance bond has been submitted and the appointed City employee certifies all work is complete.

“Grading” means the mechanical movement of dirt, gravel, rock, sand, or soil to adjust the level or steepness (grade) of a construction site, development, parcel, or lot.

“Green infrastructure” means an approach to storm water management that protects, restores, or mimics the natural water cycle. Green infrastructure uses vegetation, soils, and natural processes to manage water and create healthier urban environments.

“Hazardous material” means 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 present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Illicit connection” means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 storm water system, including but not limited to any conveyances which allow any discharge, such as sewage, process wastewater, and wash water, to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether the drain or connection had been previously allowed, permitted, or approved by a government agency; or any drain or conveyance connected from a commercial or industrial land use to the MS4 storm water system which has not been documented in plans, maps, or equivalent records and approved or permitted by the cityCity.

“Illicit discharge” means any discharge to an MS4 the storm water system that is not composed entirely of storm water, except discharges not identified as significant contributors exempted in §13.27.200B of pollutants listed in the General Permit and allowable under the City’s MS4 program this chapter.

“Impervious surface” means a surface which prevents or retards the penetration of water into the ground, including but not limited to roofs, sidewalks, patios, driveways, parking lots, concrete and asphalt paving, gravel, compacted native surfaces and earthen materials, and oiled, macadam (asphalt), or other surfaces which similarly impede the natural infiltration of storm water.

“Larger common plan of development or sale” means a contiguous area where multiple separate and distinct land-disturbing activities may be taking place at different times, on different schedules, but under one proposed plan. For the purposes of this definition, "one proposed plan" is broadly defined as any

announcement or piece of documentation (e.g., a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design) or physical demarcation (e.g., boundary signs, lot stakes, or surveyor markings) indicating construction activities may occur on a specific parcel.

“Low impact development” means practices that work with nature to manage storm water as close to its source as practicable, utilizing various principles: e.g., preserving and recreating natural landscape features; minimizing effective imperviousness; creating functional and aesthetically appealing site drainage; and treating storm water as a resource rather than a waste product.

“Major modification” means an alteration to an existing or planned storm water drainage facility that does one or more of the following: changes the volume, surface area, depth, capacity, inflow rates, outflow rates, or level of treatment by 5 percent% or more; changes the treatment process; adds more than 1,000 square feet of impervious surface; or increases the tributary impervious drainage area to an individual drainage facility component by more than 10 percent%.

“Maximum extent practicable (MEP)” means there must be a serious attempt to comply with technology-based discharge standard for municipal separate storm sewer system effluent limitations to reduce pollutants in the storm water discharges that was established by the Clean Water Act, §402(p). See, also see ARM 17.30.1111(5). Practical solutions may not be lightly rejected. If a permittee chooses only a few of the least expensive BMPs, it is likely that ‘maximum extent practicable’ has not been met. However, if a permittee employs all applicable BMPs, except those where it can show that they are not technically feasible in the locality, or whose cost would exceed any benefit to be derived, it would have met the standard. ‘Maximum extent practicable’ requires permittees to choose effective BMPs, and to reject applicable BMPs only where other effective BMPs will serve the same purpose, the BMPs would not be technically feasible, or the cost would be prohibitive.

“Missoula Municipal Code (MMC)” means the official code of the general ordinances of the City of Missoula.

“Montana Department of Environmental Quality (MDEQ)” means the Montana state agency responsible to protect the environment as guaranteed by the Montana State Constitution.

“Montana Pollution Discharge Elimination System (MPDES) permit” means an area-wide permit that is any of the permits issued to a government agency or agencies for the discharge by MDEQ that regulate discharges by limiting the quantities of pollutants from any point source into the waters of the state or United States to be discharged. The limits and/or requirements in the permit help ensure compliance with Montana’s Water Quality Standards, state, and federal regulations, all of which were written to protect public health and the aquatic environment.

“Municipal separate storm sewer system (or Separate Storm Sewer System (MS4)) Permit” means a conveyance or system of conveyance (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) the MPDES General Permit for Storm Water Discharges Associated with Small MS4s. An MS4 means a system of conveyances that is:

- owned or operated by a public body (created under by a state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, city, town, village, or other wastes, including special districts under state law, such as sewer district, irrigation district, flood control district, or drainage district, or similar public entity that discharges to the state waters of the United States;

- designed or used to collect or convey storm water (e.g., dry wells, inlets, pipes, and ~~which are outfalls~~),
- not a combined sewer; and
- not part of a ~~sewage treatment plant, or~~ publicly owned treatment works (POTW) as defined in ~~per~~ ARM Title 17, Chapter 30, Subchapter 13.

~~“Non-~~The City’s MS4 Permit (MTR040007) is administered by MDEQ, under authorization of the USEPA for compliance with the Clean Water Act. Pursuant to the Montana Water Quality Act (§75-5-401, MCA) and requirements in ARM 17.30 §§11-13, MDEQ requires designated municipalities, like the City, to obtain and maintain coverage under this permit.

“Non-point source discharge” generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Non-point source pollution, unlike pollution from industrial and sewage treatment plants or other discrete point sources, comes from many diffuse sources. Non-point source pollution is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, and groundwater.

“Non-storm water discharge” means any discharge that is not entirely composed of storm water.

“Notice of Violation (NOV)” means a notice issued by City inspectors for failure to comply with ~~submitted, approved, or issued SWPPP Permits,~~ any of the listed conditions in the Storm Water Permit or Dry Well Approval.

“Noxious weed” is a non-native plant that displaces native plant species. The Montana Department of Agriculture updates the Montana State Noxious Weed List annually. The Missoula County Weed District monitors the control and eradication of noxious weeds throughout Missoula County. The City relies on the designations provided by these entities regarding the noxious weed status of a non-native plant species. The City reserves the right to prioritize management of non-native species that are not listed as noxious weeds, for site-specific management.

“Owner or operator” means a person who owns, leases, operates, controls, or supervises an activity that may produce storm water runoff. For the purpose of permitting, an “owner or operator” means a person associated with a construction project who is designated as an eligible signatory, has operational control over the construction plans and specifications, or has day-to-day operational control at the project to ensure compliance with ~~the SWPPP~~ any applicable permits.

“Permittee” means the person ~~or,~~ owner, or operator to whom ~~the Storm Water Pollution Prevention Plan (SWPPP) Permit is~~ any permit issued pursuant to this chapter.

“Person” means any individual, firm, association, club, organization, corporation, partnership, business trust, company, or other entity that is recognized by law as the subject of rights or duties.

“Point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, and vessel or other floating craft from which pollutants are or may be discharged, including but not limited to chemical mixing, loading, and storage sites and sites of ~~agricultural chemical~~ hazardous material spills.

*"Pollutant"* means ~~dredged spoil, anything that causes or contributes to pollution: e.g., paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid waste, incinerator residue, filter backwash, sewage, wastes and yard wastes; sediment, refuse, rubbish, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or litter, or other discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water and as otherwise defined in 40 CFR 122.2 or abandoned objects, articles, and accumulations, which may cause or contribute to pollution; floatables; detergents, pesticides, herbicides, and fertilizers; hazardous materials and wastes; sewage, fecal coliform, and pathogens; dissolved and particulate metals; animal wastes; construction wastes and residues; and noxious or offensive matter of any kind.~~ The terms "sewage," "industrial waste," and "other wastes" as defined in ~~75-5-103, §75-5-103,~~ MCA, are interpreted as having the same meaning as pollutant.

*"Post-Construction BMP Design Manual"* is the [Montana Post-Construction Storm Water BMP Design Guidance Manual produced for Montana's MS4 Municipalities, as periodically updated.](#)

*"Post-construction storm water management controls"* are the BMPs that are used to manage storm water and prevent potential pollutants in storm water discharges after construction activities have been completed: e.g., biofiltration (vegetated) swale, bioretention pond, detention basin, proprietary treatment device, rain garden, and dry well.

*"Redevelopment"* means a project that proposes to add, replace, and/or alter impervious surfaces affecting an existing ~~drainage~~ storm water system, other than routine maintenance, resurfacing, or repair. A project which meets the criteria of a major modification as defined in this chapter shall be considered a redevelopment.

*"State waters"* ~~means any body of water, irrigation system, or drainage system, either surface or underground has the meaning provided in § 75-5-103(34a), MCA.~~

*"Storm water"* means storm water runoff, snow melt runoff, and surface runoff and drainage. [The City has relied on MDEQ's use of the term as two words, per the MS4 Permit. However, MDEQ uses the compound word in its Construction General Permit.](#)

*"Storm water management"* means the process of collection, conveyance, storage, treatment, and disposal of storm water to ensure control of the magnitude and frequency of runoff and to minimize the hazards associated with flooding. Also includes implementing controls to reduce the discharge of pollutants, including management practices, control techniques and systems, and design and engineering methods.

*"Storm Water Management ~~Site Plan (SWMP)"~~* means details of the on-site drainage system, structures, BMPs, concepts, and techniques that will be used ~~to control~~ [for post-construction storm water management](#), including drawings.

*"Storm Water Management Report"* means the engineering calculations, computer analyses, maintenance and operations procedures, and all other supporting documentation for ~~developments equal to or less than five acres~~ [the Storm Water Management Site Plan.](#)

*"Storm Water Pollution Prevention Plan (SWPPP)"* ~~means~~ [is](#) a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity, and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a person, facility, or activity. [A SWPPP is required when applying for a Construction General Permit.](#)

“Storm water system” means the physical facilities, private and public, temporary or permanent, designed to treat, collect, and transport storm water, including but not limited to curbs, inlets, pipe, ~~box~~ culverts, dry wells, swales, ditches, ponds, French drains, boulder pits, wattles, and silt fences. “Storm water system” in this chapter also includes the City’s flood control devices, such as levees, ~~flood walls~~floodwall, high-hazard dams, and their appurtenances.

“Storm water utility” means a mechanism for planning, operating, maintaining, regulating, financing, and performing capital improvements to the City’s storm water system. The storm water utility is funded from a user feerate that is charged to properties within the service area.

~~“Unit” means real property or portions of property as identified and classified in the Montana Department of Revenue’s property tax records. For the purposes of this ordinance and its related documentation, a unit is either a single-family residential dwelling or a single commercial/industrial business.~~

“Underground source of drinking water (USDW)” is an aquifer or part of an aquifer that is currently used as a drinking water source. A USDW may also be groundwater needed as a drinking water source in the future.

“United States Environmental Protection Agency (~~U.S. EPA~~EPA)” means the federal agency established to coordinate programs aimed at reducing pollution and protecting the environment.

“Wetland” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that, under normal circumstances, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

#### **13.27.040 Authority**

A. The ~~Public Works~~ Director shall have the authority to adopt administrative rules ~~and regulations as well as specifications and design standards~~ interpreting this chapter and governing the use, operation, and management of the storm water utility.

~~B.A.~~ The City shall create and maintain administrative rules ~~and regulations~~ that provide additional policy, criteria, and information for the proper implementation of the requirements of this chapter. Design and construction of storm water facilities shall meet the minimum water quality performance standards contained in ~~the specifications and design standards~~ this chapter and any applicable administrative rules.

A. Activities regulated by this chapter may be subject to further regulation by administrative rules and ~~regulations and~~ specifications and design standards. No permit or approval issued pursuant to this chapter shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other ~~applicable~~ federal, state, and/ or local law, rule, code, act, permit, and/or ordinance.

#### **13.27.050 Applicability**

This chapter shall apply to any activity that may potentially affect the City’s ~~MS4~~ storm water system or may introduce storm water pollutants into any ~~private or public~~ storm drainwater system or any ~~body of water~~ state waters within the City’s ~~MS4~~ jurisdiction. Exceptions include activities that are contained entirely on federal, state, or county lands and do not ~~impact~~ affect adjacent jurisdictions or ~~MS4~~ storm water systems.

Additionally, permanent and temporary storm water management controls and facilities constructed as part of any activities listed in this chapter that are located within the City's MS4 jurisdiction are also subject to this chapter.

### **13.27.055 Infrastructure Protection**

To ensure public safety and the security of storm water infrastructure, no person may break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the City storm water system, including but not limited to, any maintenance hole storm hatch, conveyance, detention/retention basin, power source, sampling equipment, supporting structures or substrate, or any part whatsoever.

### **13.27.060 Storm Water Utility Service Area**

The storm water utility service area is inclusive of all lands annexed to the City and bounded by the incorporated city limits as the same may be adjusted by the City Council, with the exception of ~~other MS4 permittees~~ lands under the jurisdiction of another MS4 Permit. The City reserves the right to plan for storm water system improvements outside the service area. The City may also construct storm water system improvements outside the service area when needed as an integral part of the storm water system located within the storm water utility service area, or as part of an agreement with ~~an adjacent MS4 permittee~~ a neighboring MS4.

### **13.27.070 Operation Cost Determination**

The ~~Public Works~~ Director shall determine the total annual cost of operation and maintenance of the City's storm water system and shall develop operating plans for the system. The City is responsible for maintaining the storm water system within the City right-of-way and on City-owned properties. Storm water systems that are on not on City-owned properties and are outside the City right-of-way are maintained by the property owner or their assignee. The total annual cost of operation and maintenance of the City storm water system shall include, but is not limited to, all costs related to the following:

A. The acquisition by gift, purchase, or condemnation of real and personal property, and interests therein, necessary to manage storm water or to construct, operate, and maintain storm water systems;

~~B.A.~~ Costs of administration and implementation of the storm water utility, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency storm water management requirements;

~~C.A.~~ Costs related to planning, engineering and design, debt service and related financing expenses, construction costs for new storm water systems, and enlargement or improvement of existing storm water systems;

~~D.A.~~ Operation and maintenance of the City's storm water system;

~~E.A.~~ Monitoring, surveillance, and inspection of the City's storm water ~~system~~ system;

~~F.A.~~ Water quality monitoring and water quality programs;

~~G.A.~~ Retrofitting developed areas for pollution control;

~~H.A.~~ Inspection and enforcement activities;

~~1.A.~~ Billing and administrative costs;

~~1.A.~~ Permitting;

~~1.A.~~ Staff;

~~1.A.~~ Equipment; and

A. Other expenses related to the storm water utility.

### **13.27.080 Storm Water Utility Service Fee**

A storm water utility service fee shall be charged to properties in the utility service area based upon a methodology and at a rate to be established by City Council resolution following a public hearing. A copy of the resolution shall be placed on file in the City Clerk's office and on the City's website. Any changes to the methodology or rates also shall be made by City Council resolution following a public hearing. The storm water utility service fee is to be used to pay for the costs necessary to fulfill the purpose and intent of this chapter, including but not limited to, all costs related to the City's activities under this chapter.

### **13.27.090 Coordination with the Missoula Valley Water Quality District and ~~Other Missoula Valley MS4 Agencies~~Neighboring MS4s**

The City may coordinate storm water-related management activities with the Missoula Valley Water Quality District and ~~other Missoula Valley MS4 agencies~~neighboring MS4s, in order to make attempt to seek the best use of resources and finances for the purpose of meeting all ~~Missoula MPDES Storm Water the City's MS4~~ Permit ~~discharge~~ requirements. Coordination may include pooling resources, forming interlocal agreements, and entering into contractual agreements with other agencies where applicable.

### **13.27.100 Ultimate Responsibility of Discharger**

The standards set forth in and promulgated pursuant to this chapter are minimum standards. This chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into state waters ~~of the state~~ caused by that person. This chapter shall not create liability on the part of the City or any City authorized agent or employee for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made pursuant to this chapter.

### **13.27.110 Conflict of Law or Regulations**

This chapter shall not diminish nor supersede any of the laws and regulations governing the Missoula Valley Water Quality District. In the event any part of this chapter or referenced regulations in this chapter should overlap or conflict with ~~Title 13, Chapter 26, any other chapters~~ in the MMC, the more stringent of the codes or regulations shall prevail.

## **Article II. Discharge Prohibitions**

### **Sections:**

13.27.200 Prohibition of Illicit Discharges

13.27.210      Prohibition of Illicit Connections

**13.27.200**      **Prohibition of Illicit Discharges**

- A. Except as authorized by a separate MPDES permit, it shall be unlawful to discharge or cause to be discharged into the [MS4storm water system](#) any discharge that is not composed entirely of storm water, including but not limited to discharges containing pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards or that could cause the City to be in violation of its MPDES permit.
- B. The commencement, conduct, or continuance of any discharge not composed entirely of storm water to the [MS4storm water system](#) is prohibited except as follows:

~~2.1.~~ Discharges pursuant to an MPDES ~~general permit for MS4s~~ permit and discharges due to firefighting activities.

~~4.2.~~ Discharges from the following activities shall not be considered a source of pollutants to the [MS4storm water system](#) and to state waters when properly managed and shall not be considered illicit discharges unless determined by the City to be significant contributors of pollutants to the [MS4storm water system](#), or to cause a violation of the provisions of the Clean Water Act or this chapter based on quantity of flow, concentration of pollutants, proximity to a watercourse, or condition of a receiving water:

~~b.a.~~ Irrigation water;

~~d.b.~~ Irrigation ditch return flows;

~~f.c.~~ Landscape irrigation;

~~h.d.~~ Permitted diverted stream flows;

~~j.e.~~ Rising ~~ground waters~~[groundwater](#);

~~l.f.~~ Rising natural floodwaters;

~~n.g.~~ Uncontaminated groundwater infiltration to separate storm sewers;

~~p.h.~~ Uncontaminated pumped groundwater;

~~r.i.~~ Discharges from potable water sources;

~~t.j.~~ Foundation drains;

~~v.k.~~ Air conditioning condensation;

~~x.l.~~ Springs;

~~z.m.~~ Water from crawl space or basement pumps;

~~bb.n.~~ Footing drains;

~~dd.o.~~ Lawn watering (excluding overwatering);

~~ff.p.~~ ~~Individual residential~~ Residential car washing;

~~hh.g.~~ ~~Individual residential~~ Residential dechlorinated swimming pool and hot tub discharges;

~~jj.r.~~ ~~Individual residential~~ Residential street washing;

~~kk.s.~~ ~~Fire hydrant flushing~~ Flows from riparian habitats and wetlands;

~~ll.t.~~ ~~Water line flushing~~ Uncontaminated water from irrigation system meter pits;

~~mm.u.~~ Flows from emergency firefighting activities; and

~~nn.v.~~ Residential gardening or landscaping activities ~~on areas less than 1,000 square feet.~~

5.3. Before applying the listed exceptions, the City shall make a determination ~~on a case-by-case basis as teas needed regarding~~ what is considered significant contributors of pollutants. In addition, the following non-storm water discharges ~~needare~~ not be prohibited from entering the ~~MS4storm water system~~, provided ~~that~~ approved ~~control measures to minimize the impacts from the sources~~ BMPs are implemented:

a. Municipally owned dechlorinated swimming pool discharges, municipal water tank draining, and water from street washing (including sidewalks and medians) that is conducted by City staff or under contract with the City;

~~b. The City may exempt, in writing, other non-storm water discharges which are not a significant source of pollutants to the City's MS4 or state waters~~ Charity or other non-commercial car washes;

~~c. Fire hydrant flushing; and~~

~~d. Water line flushing.~~

- C. No person shall throw, deposit, leave, maintain, wash, rinse, or keep any substance that may cause or contribute to pollution or permit any such substance to be thrown, deposited, left, maintained, washed, or rinsed in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, ~~structure/manhole~~ storm hatch, ditch, channel, pond, or any other component of the ~~MS4storm water system~~ or state waters. Pollutants for this purpose include but are not limited to oil, solvents, antifreeze, flammables, septage, poisonous or infectious substances, garbage, soaps, acids, bases, and sediment. Wastes deposited in streets in a manner allowed by the City for the purpose of collection are exempted from this prohibition.
- D. It shall be unlawful to store, handle, or apply any pollutant in a manner that will cause exposure to storm water, rainfall or runoff, ~~and~~ which may lead to a discharge to the ~~MS4 and to~~ storm water system, state waters, or waters of the United States.
- E. All other requirements and restrictions pertaining to illicit discharges to the ~~MS4 or the~~ storm water system shall comply with the requirements of this chapter, ~~the Storm Water Specifications~~ administrative rules, and ~~Design Standards, and Title 13, Chapter 26, any applicable chapters of the~~ MMC.

### 13.27.210 Prohibition of Illicit Connections

- A. The construction, use, maintenance, or continued existence of illicit connections to the [MS4 storm water system](#) is prohibited. An owner or operator responsible for an illicit connection to the [MS4 storm water system](#) shall comply with the requirements of this chapter; ~~Title 13, Chapter 4, MMC;~~ and [Title 13, Chapter 26, any applicable chapters of the MMC.](#)
- ~~B.A.~~ 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.
- ~~C.A.~~ A person is in violation of this chapter if the person connects a line conveying sewage or other pollutant to the [MS4 storm water system](#) or allows an existing connection to continue.
- ~~D.A.~~ Illicit connections ~~must~~[shall](#) be disconnected at the property owner's expense, or the City shall arrange for the disconnection and charge the resulting costs to the property owner.
- A. Any drain or conveyance that has not been documented in plans, maps, or equivalent ~~—~~ and which may be connected to the storm [sewerwater](#) system, ~~—~~ shall be located by the owner or operator of that property upon receipt of written notice from the City. The notice will specify a reasonable time period to locate the drain or conveyance, identify the drain or conveyance as storm [sewerwater](#), sanitary sewer, or other, and identify the outfall location or point of connection to the storm [sewerwater](#) system, sanitary sewer system, or other discharge point. Results of these investigations shall be documented and provided to the [Public Works](#) Director.

## Article III. Regulations and Requirements

### Sections:

- [13.27.300 Requirement to Control and Reduce Storm Water Pollutants](#)  
[13.27.310 Requirement to Monitor and Analyze](#)  
[13.27.320 Notification of Spills](#)  
[13.27.330 Discharge Pursuant to MPDES Permit](#)  
[13.27.340 Noncompliance with an MPDES ~~General~~ Permit](#)

### 13.27.300 Requirement to Control and Reduce Storm Water Pollutants

- A. ~~The City's Storm Water Management Plan~~ [Based on federal and Storm Water Specifications state law, MDEQ requires the City to obtain and maintain coverage under the MS4 Permit, and abide by applicable water quality laws and regulations.](#)
- B. [Pursuant to the Safe Drinking Water Act of 1974, the City must also report on dry wells that are part of the City's storm water infrastructure. An owner or operator of a dry well on private property is required to submit its inventory information directly to the USEPA. Owners or operators of dry wells on private property shall not rely on the City to submit their inventory for them.](#)
- C. [The administrative rules adopted pursuant to this chapter, which include the Construction Site BMP Manuals and Post-Construction BMP Design ~~Standards~~ Manual, outline ~~appropriate~~ the BMPs to control the volume, rate, and potential of pollutants in storm water runoff from new development and redevelopment projects ~~as that~~ may be appropriate to minimize the generation, transport, and discharge of pollutants \[and comply with federal and state water quality laws.\]\(#\)](#)

D. The City supports and encourages the use of post-construction storm water management controls that rely on low-impact development and green infrastructure techniques. In addition to reducing and delaying runoff volumes, these techniques can also reduce pollutant levels in storm water, enhance aquifer recharge, protect surface water from storm water runoff, increase carbon sequestration, mitigate urban heat islands, and increase wildlife habitat.

E. Any owner or operator engaged in activities or operations, which will or may result in pollutants entering storm water, the MS4 storm water system, or state waters, shall implement BMPs to the maximum extent practicable to provide protection from discharge into the MS4. BMPs shall be provided and maintained at the owner or operator's expense. The Public Works Director shall have the authority to require the installation, operation, maintenance, and/or replacement of BMPs as well as the authority to order the removal of temporary BMPs.

### **13.27.310 Requirement to Monitor and Analyze**

The City may require any owner or operator engaged in any activity ~~or owning or operating any facility which that~~ may cause or contribute to storm water pollution, illicit discharges, or non-storm water discharges to the MS4 storm water system or state waters, to undertake, at the owner or operator's expense, monitoring and analysis by a state-certified laboratory, pursuant to the provisions of this chapter ~~and furnish these. These~~ reports shall be submitted to the Public Works Department ~~as deemed necessary, to determine compliance with this chapter as well as the Storm Water Specifications and Design Standards, and administrative rules.~~

### **13.27.320 Notification of Spills**

Notwithstanding other requirements of law, as soon as any owner or operator of a facility or operation has information of any known or suspected release of pollutants discharging into a storm water, the MS4, or state waters system from that facility, that person shall take all necessary steps to ensure the discovery, containment, ~~and cleanup,~~ and documentation of the release. If a ~~pollutant~~ hazardous material is released, the owner or operator shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). If there is a release not requiring an emergency response, the owner or operator shall notify the City by calling Missoula Valley Water Quality District and the Public Works Department within 24 hours and ~~providing provide~~ a written notice thereto within five business days. If the discharge of ~~prohibited materials~~ a hazardous material emanates from a commercial or industrial establishment, the owner or operator shall make and keep an onsite written record of the circumstances of the discharge and the actions taken to prevent its recurrence. These records shall be retained for not less than five years.

The Missoula Valley Water Quality District administers an Enforcement Response Plan and Illicit Discharge Investigation and Corrective Action Plan for spills within the City limits and all places within five miles outside the City limits (MMC 13.26), and spills in this area must comply with the requirements of those plans.

### **13.27.330 Discharge Pursuant to an MPDES ~~General~~ Permit**

The prohibition of discharges shall not apply to any discharge regulated under an MPDES ~~General Permit~~ permit issued and administered by MDEQ, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations. Compliance with an applicable MPDES ~~General Permit~~ permit governing discharges into the MS4 storm water system shall be considered compliance with this chapter.

### 13.27.340 Noncompliance with an MPDES ~~General~~ Permit

Any storm water discharge within the City limits that would constitute a violation of an MPDES ~~General Permit~~permit and any amendments, revisions, or re-issuance thereto, when either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge. ~~The City is not liable for violations under another MPDES General Permit holder's jurisdiction.~~

All owners or operators shall comply with applicable federal and state laws, including those related to facility personnel, training, training records, training record maintenance, maintenance of notification procedures, and implementation of notification requirements for spill response, to ensure containment, cleanup, and immediate notification to the owner or operator of the MS4 storm water system. Persons responsible for spills are to comply with applicable state and federal notification requirements to ensure containment, clean up, and immediate notification to the owner or operator of the MS4 storm water system.

## Article IV. Construction Activity

### Sections:

<u>13.27.400</u>	<u>Permits Required</u>
<u>13.27.410</u>	<u>Permit–Application–Fee</u>
<u>13.27.420</u>	<u>Permit Fee Exceptions</u>
<u>13.27.430</u>	<u>Investigation Fees; Work Without a Permit</u>
<u>13.27.440</u>	<u>Permit Fee Refunds</u>
<u>13.27.450</u>	<u>Repealed Construction Submittals</u>
<u>13.27.460</u>	<u>Construction Requirements</u>
<u>13.27.470</u>	<u>Post-Construction Storm Water Facility Management Procedures for Developments</u>

### 13.27.400 Permits Required

~~It shall be unlawful for any person, firm or corporation to commence grading associated with a building permit or zoning compliance permit on public or private property without first obtaining a Grading Permit from Development Services. Any new building which requires a building permit where grades are altered more than 3 feet, except single-family residences located on slopes less than 5 percent, shall require a Grading Permit. Any construction activities related to grading that meets the requirements of this chapter shall require a Grading Permit. The applicant for the permit shall provide plans of the proposed site development in conformance with Storm Water Specifications and Design Standards and receive approval for such plans prior to commencing any construction.~~

~~A. Grading, Drainage, and Erosion Control Permits shall expire by limitation and become null and void if work authorized does not begin within 180 calendar days after date of issuance. Also, permits shall expire by limitation and become null and void if work authorized by the permit is suspended for more than 30 calendar days, except for weather-related delays. Issued Grading, Drainage, and Erosion Control Permits expire one year from date of issuance. Before work begins or resumes, the permittee shall obtain a new permit and pay a full permit fee. The Development Services Director or designee may grant a time extension on permits. Applicants shall give Development Services staff a minimum of two hours' notice before beginning grading operations and provide notice of completion of work under the permit.~~

~~B. SWPPP Permits shall expire by limitation and become null and void if work authorized does not begin within 180 calendar days after date of issuance. Also, permits shall expire by limitation and become null and void if work authorized by the permit is suspended for more than 30 calendar days, except for weather-related delays. Issued SWPPP Permits expire one year from date of issuance. Before work begins or resumes, the permittee shall obtain a new permit and pay a full permit fee. The Development Services Director or designee may grant a time extension on permits. Applicants shall give the Development Services staff a minimum of two hours' notice before beginning grading operations and provide notice of completion of work under the permit.~~

A. Storm Water Permit. It shall be unlawful to conduct any type of earthwork that will result in more than 2,500 square feet of land disturbance or change the grade of the lot by 3 feet or more without first obtaining a Storm Water Permit from the City. Land disturbance activities related to agricultural practices or improvements are exempt from this requirement, as is any emergency activity that is immediately necessary for the protection of life, property, or natural resources. Activities that disturb one acre or more of land—or less than one acre but are part of a larger common plan of development—are also required to obtain coverage under a Construction General Permit, in addition to the Storm Water Permit. The Storm Water Permit application shall be submitted to Development Services no more than 180 days and no fewer than 60 days from the start date of construction.

1. Erosion Control Site Plan. This plan shall provide details of the on-site drainage system, structures, BMPs, concepts, and techniques that will be used to manage storm water runoff during construction. An Erosion Control Site Plan is required as part of the Storm Water Permit package.

i. The applicant shall use the Erosion Control Site Plan Review Checklist to ensure their plan meets the City's requirements.

ii. The applicant shall complete the Construction Inspection Frequency Determination to identify their project's priority ranking.

2. Storm Water Management Site Plan and Report. This site plan shall provide details of the on-site drainage system, structures, BMPs, concepts, and techniques that will be used for post-construction storm water management, including drawings. The Storm Water Management Report shall include engineering calculations, computer analyses, maintenance and operations procedures, and all other supporting documentation. A Storm Water Management Site Plan and Report are required for medium- to high-priority projects, per the Construction Inspection Frequency Determination.

i. The applicant shall use the Storm Water Management Site Plan Review Checklist to ensure their plan meets the City's requirements.

ii. The applicant shall complete the Post-Construction Inspection Frequency Determination to identify their project's priority ranking.

iii. The City shall determine the final priority ranking.

B. Construction General Permit. An authorization from MDEQ under the Construction General Permit is required for construction activities—including clearing, excavating, grading, grubbing, or placement/removal of earth material—that disturb a total area of one or more acres of land, including activities that disturb less than one acre when part of a larger common plan of development or sale that would disturb one acre or more. To apply for an authorization under the Construction General Permit, a complete Notice of Intent Application Package shall be submitted to MDEQ. Once the application has been approved by MDEQ, a copy of the Notice of Intent, Storm Water Pollution Prevention Plan (SWPPP), and MDEQ's approval letter shall be submitted to the Storm Water Utility for review. Upon City approval, the City will then issue any required permits for construction activity. When construction activity is completed, MDEQ's Notice of Termination for Storm Water Construction (NOT-SWC) shall be submitted to both MDEQ and the Storm Water Utility. The NOT-SWC is separate from the NOT required by the City for termination of permit coverage under the City's Storm Water Permit and/or Dry Well Approval.

C. Dry Well Approval. Underground injection control wells—commonly referred to as dry wells, sumps, or infiltration devices—are subsurface structures that allow storm water to flow into the ground under the force of gravity. A Dry Well Approval for new, redeveloped, or closed drywells is required to protect the Missoula aquifer and for the City to maintain an updated inventory for reporting to USEPA and MDEQ. The City’s Dry Well Approval does not relieve an owner or operator of the responsibility to submit the required inventory information directly to USEPA.

1. Dry Well Approval is obtained under the City’s Excavation Permit.

D. Notice of Termination (NOT). The City of Missoula requires notification that permit coverage under the Storm Water Permit and/or Dry Well Approvals should be terminated. Once permanent erosion control has been established on 70% or greater of the disturbed areas, the permittee shall complete a permit-specific NOT and submit it to Development Services. Additionally, for NOT approval, all temporary BMPs shall be removed, all construction equipment and vehicles shall be removed, and all potential pollutant-generating activities due to construction activity shall be complete.

1. For post-construction storm water management, the Storm Water-NOT shall include a recorded covenant for maintenance, utility easement, and an accurate post-construction (as-built) plan of the system, signed and sealed by a Montana-licensed professional engineer.

2. When the Storm Water Utility concurs that the permit coverage conditions have been achieved, the permittee will be notified that the authorization is terminated. An NOT-SWC is required by MDEQ for activities covered under MDEQ’s Construction General Permit and a copy shall be submitted to the City, along with the Storm Water-NOT.

#### **13.27.410 Permit—Application—Fee Fees**

A. Storm Water Permit and Dry Well Approval fees are based on the average direct and indirect costs to provide plan ~~checks~~reviews, permit administration, field inspection, and record management. The fee for obtaining a permit shall be established or amended by City Council resolution after conducting a public hearing.

A. These fees are provided on the Engineering Fee Schedule.

A.B. Revenue from these fees shall be credited to the general fund.

#### **13.27.420 Permit Fee Exceptions**

A. The Development Services Director may exempt any contractor doing work for the City from permit fees referred to in this chapter.

B.A. Work performed by the City is exempt from permit fees, but the City department shall submit and obtain permit approval prior to commencing work. The same guidelines for submitting and obtaining approval of a Storm Water Permit, Dry Well Approval, and Notice of Termination apply to all City departments.

#### **13.27.430 Investigation Fees; Work Without a Permit**

Whenever any work for which a permit is required by this ordinance has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this ordinance. The payment of such investigation fee shall not exempt any person from compliance with all provisions of this ordinance. SWPPP PermitsMPDES permits shall also be subject to U.S. EPAUSEPA, MDEQ, and/or county air quality standards, penalties, and fines, as applicable.

### 13.27.440 Permit Fee Refunds

Refunds or credits of permit fees shall ~~only be given~~considered when permit errors or mistakes are caused by the City.

### 13.27.450 ~~Repealed~~Construction Submittals

~~In addition to all other permits required in this chapter, all new developments and redevelopment projects will be required to provide a Storm Water Management Plan and all other submittals regarding storm water control and runoff in accordance with adopted rules and regulations and Storm Water Specifications and Design Standards.~~

### 12.27.460 Construction Requirements

~~General requirements shall be in accordance with adopted rules and regulations and Storm Water Specifications and Design Standards. Construction activity involving grading, erosion control, sediment control, or waterway crossing shall meet the design criteria set forth in the most recent versions of the Construction Site BMP Manuals and administrative rules. The design criteria shall be adequate to prevent transportation of sediment from the site, to the satisfaction of the City.~~

- A. Permittees shall follow the minimum standards described as Non-Numeric Technology-Based Effluent Limits in the most current Construction General Permit.
- B. Concrete operations (e.g., washout and slurry) shall require BMPs that allow for the capture and disposal of generated pollutants.
- C. Clearing and Grading Requirements
  - 1. Clearing and grading of natural resources, such as water bodies and wetlands, shall not be permitted, except when in compliance with all other required permits.
  - 2. Clearing techniques that retain natural vegetation and retain natural drainage patterns shall be used.
  - 3. Phasing shall be required on all sites disturbing equal to or greater than 30 acres, with the size of each phase to be established at plan review and as approved by the City.
  - 4. Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.
- D. Construction Site Access Requirements
  - 1. Ingress and egress point BMPs shall mitigate the tracking of debris off site onto the right-of-way.
  - 2. At least one temporary access entrance shall be provided at all sites.
  - 3. Other measures may be required at the discretion of the City in order to ensure that sediment is not tracked onto public streets by construction vehicles, or washed into storm drains.
- E. Erosion Prevention Requirements
  - 1. Soil must be stabilized using recommended methods described in the Construction Site BMP Manuals.
  - 2. Soil stockpiles shall be stabilized or covered at the end of each workday.
  - 3. Techniques shall be employed to prevent the blowing of dust or sediment from the site.
  - 4. Techniques that divert upland runoff past disturbed slopes shall be employed.
- F. Noxious Weeds

1. Disturbed areas shall be managed to prevent noxious weeds from becoming established in the short and long term. Per the Montana County Weed Control Act (§7-22-2101 to 2154, MCA), it is unlawful to permit noxious weeds to propagate.
2. The City or County reserves the right to prioritize management of non-native species that are not listed as noxious weeds, for site-specific management.
3. Permittees are responsible for ensuring their projects comply with state and local weed management regulations.

#### G. Removal of Temporary BMPs

1. Upon establishing 70% or greater permanent ground cover, all temporary storm water management control devices shall be removed.

#### H. Sediment Control Requirements

1. Where necessary, sediment controls shall be provided in the form of settling basins or sediment traps or tanks, temporary seeding, perimeter controls, or other methods described in the Construction Site BMP Manuals.
2. Adjacent properties shall be protected by the use of a vegetative buffer, silt fence, fiber rolls, or other BMPs outlined in the Construction Site BMP Manuals.

#### I. Activity involving waterways and watercourses

1. When a watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided and an approval obtained from the City and all other authorized permitting agencies.
2. When in-channel work is conducted, the channel shall be stabilized before, during and after work.
3. Stabilization adequate to prevent erosion must be provided at the outlets of all pipes and paved channels.
4. Stabilization methods shall follow those described in the Construction Site BMP Manuals or administrative rules.

#### J. Winterization Requirements

1. Winterization BMPs shall be implemented on projects prior to seasonal shut downs or downtime of one month or longer.

### **13.27.470 Post-Construction Storm Water Facility Management Procedures for Developments**

The developer, owner, or operator/permittee shall create, manage, and maintain storm water post-construction storm water controls in accordance with the Post-Construction BMP Design Manual and any other applicable administrative rules. The permittee shall also comply with MMC §20.50.030, when applicable.

- A. When required, post-construction storm water management controls shall be designed to infiltrate, evapotranspire, and/or capture for reuse the post-construction runoff generated from the first 0.5 inches of rainfall from a 24-hour storm preceded by 48 hours of no measureable precipitation.
  1. For projects that cannot meet 100% of the runoff reduction requirement, the remainder of the runoff from the first 0.5 inches of rainfall must be either:
    - i. Treated onsite using post-construction storm water management control(s) expected to remove 80% total suspended solids (TSS);
    - ii. Managed offsite within the same sub-watershed using post-construction storm water management controls designed to infiltrate, evapotranspire, and/or capture for reuse;  
or
    - iii. Treated offsite within the same sub-watershed using post-construction storm water management control(s) expected to remove 80% TSS.

- B. Any new storm water outfalls to a named waterbody shall implement BMPs to reduce pollutant discharge to the maximum extent practicable.
- C. Riparian resource buffer areas (MMC §20.50.030) shall be clearly defined in the Storm Water Management Site Plan.
- D. A recorded utility easement, covenant for maintenance, and as-built plan for any required private storm water systems shall be provided in a form acceptable to the City with submission of the Storm Water-NOT.
  - 1. The utility easement shall provide sufficient space for vehicle or heavy machinery access for inspection and maintenance, as appropriate for the facility and determined by a Montana-licensed professional engineer.
  - 2. The covenant shall give the City the right to inspect the facilities in accordance with the Storm Water Specifications and Design Standards, and provide a guarantee to the City that the private storm water system will be maintained by the owner or operator, such that the facility will function as designed in perpetuity.

## **Article V. Inspection and Enforcement**

### **Sections:**

<u>13.27.500</u>	<u>Inspections</u>
<u>13.27.510</u>	<u>Sampling, Testing, and Monitoring</u>
<u>13.27.520</u>	<u>Violations</u>
<u>13.27.530</u>	<u>Enforcement and Penalties</u>
<u>13.27.540</u>	<u>Violation of the <del>Federal</del>-Clean Water Act</u>
<u>13.27.550</u>	<u>Concealment</u>
<u>13.27.560</u>	<u>Civil Actions</u>
<u>13.27.570</u>	<u>Administrative Enforcement Powers</u>
<u>13.27.580</u>	<u>Appeal</u>
<u>13.27.590</u>	<u>Disclaimer of Liability</u>

### **13.27.500 Inspections**

An authorized agent may inspect—at a reasonable time and in a reasonable manner—the premises for which a permit application has been filed or the premises for which the City has issued a permit.

- A. The City will conduct all inspections of any ~~construction~~ activities within ~~the MS4 area~~s jurisdiction that require a ~~SWPPP and Storm Water Permit, Dry Well Approval, and/or Construction General Permit~~; and the City will conduct them ~~in accordance with~~ pursuant to adopted administrative rules and regulations.
- B. During construction, sites will be inspected according to the Construction Inspection Frequency Determination.
- C. Once construction activities are completed, ~~the developer, owner, or operator~~ post-construction storm water management controls shall ~~conduct~~ be inspected annually according to the Post-Construction Inspection Frequency Determination. Annual inspections of the storm water facilities and maintain records of such inspections in accordance with adopted rules periodic maintenance are required to ensure the storm water system continues to function as designed. The City shall have the right to inspect all private post-construction storm water management controls within the City limits but is not responsible for maintenance.

1. Low- to medium- priority sites shall be self-inspected annually.
2. High priority sites shall be inspected annually by the City.
- ~~B-3.~~ All sites shall require a renewal of their Storm Water Permit every five years; and ~~regulation~~the City will inspect all sites upon renewal.

### 13.27.510 Sampling, Testing, and Monitoring

All sampling, testing, and monitoring conducted on any portion of the storm water system shall be conducted in accordance with adopted ~~rules and regulations~~ administrative rules. With the consent of the owner or occupant or with authorization from a court of competent jurisdiction, any authorized agent may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the authorized agent may take any samples deemed necessary. Samples shall be collected, stored, and transported in conformance with accepted sampling and testing standards and protocols.

### 13.27.520 Violations

- A. Whenever the City finds that any permit conditions, or other conditions required by this chapter, have been violated or that a discharge of pollutants within the ~~MS4 area~~ City's jurisdiction is taking place or has occurred, which ~~will~~ may result in or has resulted in pollutants entering storm water, the MS4 storm water system, or state waters, the City will do one or more of the following:

#### ~~2-1.~~ Issue a Notice of Violation (an NOV)

The NOV issued will notify the owner or operator of the violation and will describe what needs to be done to correct the violation, as well as the timeframe in which the correction is to be made. ~~SWPPP~~ Storm Water Permit and/or Dry Well Approval violations shall result in the City issuing an NOV ~~with~~. The City shall determine the owner or operator being allowed 24 hour timeframe to correct the violation, based on the nature of the violation and the potential threat.

#### ~~3-2.~~ Require Corrective Action

The City will notify the responsible owner or operator in writing and give him or her the opportunity to remediate the affected property in accordance with the provisions of this chapter using a remediation plan approved by the ~~Public Works~~ Director or designee.

~~b-a.~~ An authorized enforcement agent may issue a stop work order pursuant to until the remediation of a current violation or the potential of a violation of this chapter is corrected.

~~d-a.~~ Owners or operators shall submit remediation plans to and have them approved by the Public Works Director before remediation begins. The plan shall include, but is not limited to, a remediation schedule, a course of action, a list of personnel performing remediation work, and a list of equipment to be used.

~~f-a.~~ An authorized enforcement agent may enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety, as authorized in ~~section~~ §7-1-4124(16), MCA.

~~h.a.~~ Failure to take corrective action shall result in suspension of the relevant permit.

~~(2)(1)~~ A suspended permit shall be reinstated without additional fees if it is resolved within seven days.

~~(4)(1)~~ A suspended permit that is not resolved within seven days shall not be reinstated; the permittee shall re-apply and re-purchase permit and shall be subject to permit fees.

~~j.a.~~ Failure to ~~take~~diligently pursue corrective action shall result in ~~a fine equal to fines per the permit fee amount~~Storm Water Penalty Assessment and Escalation Table, which will be established by City Council resolution following a public hearing.

~~B.A.~~ The owner or operator shall take appropriate preventive action to ensure a violation does not recur.

~~C.A.~~ Whenever an authorized enforcement agent finds any potential pollutant—including but not limited to oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, or waste—upon the sidewalk or right-of-way abutting or adjoining any parcel of land or upon any parcel of land that is in close proximity to any portion of the storm water system and may result in the pollutant entering the storm water system, an authorized enforcement agent may give notice to the owner or operator to remove and lawfully dispose of the material. The owner or operator shall undertake the activities described in the notice and within the time frames set forth therein. If the owner or operator fails to conduct the activities as described in the notice, the ~~Public Works~~ Director may cause the required activities to be performed and have the cost assessed and invoiced to the property owner, as set forth in this chapter and adopted ~~rules and regulations~~administrative rules.

### **13.27.530 Enforcement and Penalties**

A. If an owner or operator fails to take corrective actions on, or prior to, a required date on a reported or observed spill or the potential to release pollutants, including sediment, into the storm water system, the City, or a designated contractor, may remediate the affected property at the owner or operator's expense, if the owner or operator does not take corrective actions. The owner or operator shall reimburse the City for all expenditures pertaining to the corrective action.

~~B.A.~~ In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter that the ~~Public Works~~ Director or designee considers to be an immediate threat to the public health, safety, and welfare and the environment may be summarily abated and/or restored by the City, or a designated contractor, with the owner or operator responsible to pay the costs of any abatement and restoration.

~~C.A.~~ An authorized enforcement agent may enter private property, ~~obtaining warrants when necessary,~~ for the purpose of enforcing ordinances that affect the general welfare and public safety, as authorized in ~~section~~§7-1-4124(16), MCA.

~~D.A.~~ Each day a violation continues shall constitute a new violation and ~~any resultant fines~~fines will be assessed per the Storm Water Penalty Assessment and Escalation Table.

~~E.A.~~ Failure to pay the costs to the City, or a designated contractor, as described in this chapter may result in the City placing a lien against the property. Continued non-payment may result in the City pursuing payment as outlined in ~~§7-13-~~4309, MCA.

- A. Any person convicted of violating any of the provisions of this chapter, with the exception of a late payment of a storm water utility bill, may be charged with a misdemeanor. The maximum fine imposed shall be \$1000 per day and no imprisonment shall be imposed.

#### **13.27.540 Violation of ~~Federal~~the Clean Water Act**

Any owner or operator who violates any provision of this chapter or any provision of any permit issued pursuant to this chapter; ~~who~~ discharges pollutants, waste, or wastewater, so as to cause an illicit discharge into the ~~MS4~~storm water system, or ~~who~~ violates any cease and desist order, prohibition, or effluent limitation ~~also~~, may be in violation of the ~~Federal~~Clean Water Act and ~~may be~~ subject to the sanctions ~~of that Act~~thereof, including civil and criminal penalties.

#### **13.27.550 Concealment**

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of this chapter.

#### **13.27.560 Civil Actions**

In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the City. In any such action, the City may seek, and the court shall grant, as appropriate, any or all of the following remedies:

- A. A temporary and/or permanent injunction.
- B. Assessment of the owner or operator in violation for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation and for the reasonable costs of preparing and bringing legal action under this section.
- C. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.
- D. Compensatory damages for loss or destruction to water quality, wildlife, fish, and aquatic life. Assessments under this section shall be paid to the City to be used exclusively for costs associated with monitoring and establishing storm water discharge control systems and/or implementing or enforcing the provisions of this chapter.
- E. Fines to be paid to the City for MPDES permit violations.

#### **13.27.570 Administrative Enforcement Powers**

The City will enforce the requirements under the ~~state's~~Construction General Permit for storm water discharges associated with construction activity in whole or in part as determined by the authorized ~~enforcement~~ agent and in accordance with this chapter, ~~adopted~~ administrative rules, and ~~regulations, Storm Water Specifications and Design Standards, and Title MMC §13, Chapter 26, MMC.~~

#### **13.27.580 Appeal**

Any person notified of non-compliance with this chapter or required to perform monitoring, analysis, reporting, and/or corrective action, who is aggrieved by the decision of the City's authorized ~~enforcement~~ agent, may appeal such decision in writing to the ~~Public Works~~ Director within 10 business days following the effective date of the decision or written notice. Upon receipt of such request, the ~~Public Works~~ Director shall request a report and recommendation

from the City's authorized ~~enforcement~~ agent and shall set the matter for administrative hearing at the earliest practical date. At said hearing, ~~the Public Works~~ Director may hear additional evidence, and may revoke, affirm, or modify the authorized ~~enforcement~~ agent's decision. The decision shall be final.

**13.27.590 Disclaimer of Liability**

- A. The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth here are minimum standards, and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the state or the United States.
- B. This chapter shall not create liability on the part of the City, any agent, or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, for any reason this ordinance should be declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by a vote of \_\_\_  
Ayes, \_\_\_\_\_; \_\_\_ Nays, \_\_\_; \_\_\_\_\_  
Abstain, \_\_\_\_\_; and \_\_\_ Absent, \_\_\_\_\_

Second and final reading and on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by a vote of \_\_\_  
Ayes, \_\_\_\_\_; \_\_\_ Nays, \_\_\_; \_\_\_\_\_  
Abstain, \_\_\_\_\_; and \_\_\_ Absent, \_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
Martha L. Rehbein, CMC  
City Clerk

\_\_\_\_\_  
John Engen  
Mayor