

ORDINANCE NO. 1463

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON

relating to the City of Des Moines Municipal Stormwater System, creating an illicit discharge detection and elimination program, creating an operation, maintenance, and inspection program for stormwater facilities, adding new chapters to Title 11 DMMC, amending DMMC 1.28.20, assessing penalties, and codifying new chapters in Title 11 DMMC.

**WHEREAS**, the City of Des Moines has adopted a surface water management program to control and prevent flooding, erosion, sedimentation, and water quality degradation; to protect the streams and wetlands within the City limits; to accommodate future urban growth and correct existing surface water problems; to safeguard the public safety; to prevent property damage; and to improve water quality, and

**WHEREAS**, the Federal Clean Water Act of 1972 required the establishment of the National Pollution Discharge Elimination System (NPDES) to regulate discharges to waters under the jurisdiction of the United States. The United States Environment Protection Agency administers the NPDES program, but has delegated authority to the Washington State Department of Ecology. The Department of Ecology issued the NPDES-Western Washington Phase II Municipal Stormwater Permit (Phase II Permit) on January 17, 2007, and

**WHEREAS**, the City of Des Moines was required to apply for coverage under the Phase II Permit, and was granted coverage effective February 16, 2007, to February 15, 2012. The NPDES permit requires the City to develop an Illicit Discharge Detection and Elimination (IDDE) program, which includes "an ordinance or other regulatory mechanism to effectively prohibit non-stormwater, illegal discharges, and dumping into the

municipal storm sewer system to the maximum extent allowable under state and federal law", and

**WHEREAS**, DMMC 18.86.340 currently prohibits surface water contamination, but the code does not meet all of the requirements of the NPDES permit. This code amendment prohibits illegal connections and discharges into the municipal stormwater system and gives the City authority to abate violations and meets the requirements of the NPDES permit, and

**WHEREAS**, the NPDES permit by August 15, 2009, requires the regular maintenance and inspection for all stormwater facilities constructed after the effective date of the permit. To comply, a new chapter in Title 11 DMMC is created requiring regular maintenance and inspection of all stormwater facilities. As required by the permit, this ordinance provides for enforcement to ensure compliance with those facilities constructed after the effective date of the permit, and

**WHEREAS**, the NPDES permit by August 15, 2009, requires the use of Best Management Practices for controlling pollution from new development, redevelopment and construction related activities. This ordinance meets this requirement by adopting by reference the King County Stormwater Pollution Prevention Manual, and

**WHEREAS**, to comply with NPDES permit technical "Minimum Requirement #5 - On-site Stormwater Management", the City needs to adopt by reference the King County Surface Water Design Manual - Reference 4, King County's grading code soil amendment standard pertaining to the preservation of the soil moisture-holding capacity following removal of topsoil following grading activities. This ordinance meets this requirement, and

**WHEREAS**, to comply with NPDES permit technical "Minimum #8 - Wetland Protection", the City needs to adopt by reference the Department of Ecology Stormwater Management Manual for Western Washington Guide Sheets 1B and 2B are adopted addenda to the King County Surface Water Design Manual, and

**WHEREAS**, all actions undertaken to enforce a statute, regulation, ordinance, resolution or prior decision are categorically exempt from the SEPA pursuant to WAC 197-11-800(12)(a), and

**WHEREAS**, legislative actions are considered actions in the context of SEPA per WAC 197-11-704, and

**WHEREAS**, the proposed regulations meet the definition of action and the plain language of the categorical exemption established by WAC 197-11-800(12)(a); and the SEPA official has determined that the ordinance is categorically exempt from SEPA and further environmental review is not required; now therefore,

**THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:**

**Sec. 1.** DMMC 1.28.020 and section 2 of Ordinance No. 1236 as amended by section 1 of Ordinance No. 1321 are amended to read as follows:

**Definitions.**

(1) Use of words and phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Abate" means to repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a civil violation by such

means, in such a manner and to such an extent as the applicable department Director determines is necessary in the interest of the general health, safety, and welfare of the community.

(3) "Act" means doing or performing something.

(4) "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation. Traffic infractions pursuant to Title 10 DMMC and civil noise infractions pursuant to Titles 7 and 18 DMMC are specifically excluded from this chapter.

(5) "Development" means the erection, alteration, enlargement, demolition, maintenance, or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a City permit, approval, or other regulation.

(6) "Emergency" means a situation that in the opinion of the applicable department Director requires immediate action to prevent or eliminate an immediate threat of injury or damage to persons or property.

(7) "Hearing examiner" means the Des Moines hearing examiner or any lawfully appointed deputy hearing examiner.

(8) "Omission" means a failure to act.

(9) "Person" means any individual, firm, association, partnership, corporation or any entity, public or private.

(10) "Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

(11) "Regulation" means and includes the following, as now or hereafter amended:

(a) Title 5 DMMC, regarding City business licenses, taxes and regulation;

(b) Title 7 DMMC, regarding health and sanitation, including without limitation regulations pertaining to solid waste disposal, noise, and junk vehicles;

(c) Title 11 DMMC relating to the City utilities code governing surface water management and the municipal stormwater system,

(d) Title 12 DMMC relating to streets, sidewalks and public places, including without limitation the City's right-of-way use code;

(e) Title 14 DMMC, the City's building and construction code;

(f) Chapter 15.04 DMMC, the Des Moines harbor code, which includes without limitation all marina rules;

(g) Title 18 DMMC, the City's zoning code;

(h) Chapter 19.08 DMMC, regarding the City's park use regulations;

(i) All standards, regulations and procedures adopted pursuant to the above; and

(j) The terms and conditions of any lease, moorage agreement, contract, permit or approval issued by the City, or any concomitant agreement with the City.

(k) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a notice of civil violation has been issued within two years.

(l) "Violation" means an act or omission contrary to a City regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

**Sec. 2. National Pollution Discharge Elimination System (NPDES) Program.** A new chapter entitled "National Pollution Discharge Elimination System Program" ("NPDES") is added to Title 11 DMMC to read as follows:

(1) **Purpose.** The purpose of this section is to protect the quality of City of Des Moines surface waters and ground waters and Puget Sound by providing minimum requirements for reducing and controlling the discharge of contaminants from industrial, agricultural, commercial, residential, and other land use activities within Des Moines jurisdiction from entering the municipal stormwater system. Water quality degradation can result either directly from one discharge or through the collective impact of many small discharges. Therefore, this section prohibits the discharge of contaminants into surface water, ground water, Puget Sound and the municipal stormwater system and outlines preventive measures to restrict contaminants from entering such waters. These measures include the implementation of Best Management Practices as prescribed by this section.

This section protects the health, safety and welfare of the residents of City of Des Moines and the integrity of the City's resources for the benefit of all by minimizing or eliminating water quality degradation, preserving and enhancing the suitability of waters for recreation, fishing, and other beneficial uses and preserving and enhancing the aesthetic quality and biotic integrity of the water. Implementation of this section is required under the federal Clean Water Act, 33 U.S.C. 1251 et. seq.

(2) **Definitions.**

(a) Use of words and phrases. As used in this section, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(b) "Best Management Practice" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce water pollution. Best Management Practices are listed and described in the King County Stormwater Pollution Prevention Manual, as adopted by reference in section 3 of this ordinance, and King County Surface Water Design Manual as previously adopted in DMMC 18.86.330 and supplemented in section 4 of this ordinance.

(c) "Chapter" means this DMMC chapter and any administrative rules and regulations adopted to implement this chapter.

(d) "Clean Water Act" means 33 U.S.C. § 1251 et. seq. as amended.

(e) "Contaminant" means anything which causes or contributes to pollution.

(f) "Director" means the Director of Planning, Building and Public Works Department.

(g) "Discharge" means throw, drain, release, dump, spill, empty, emit, or pour forth any matter or to cause or allow matter to flow, run or seep from land or be thrown, drained, released, dumped, spilled, emptied, emitted or poured into the municipal stormwater system, surface waters, ground waters or Puget Sound.

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

(i) "Hazardous" 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.

(j) "Hyper-chlorinated" means water that contains more than 10 mg/liter chlorine.

(k) "Illicit connection" means any man-made conveyance that is connected to the municipal stormwater system that allows the discharge of illicit discharges to the municipal stormwater system. Examples include sanitary sewer connections, septic tank discharge pipe connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal stormwater system.

(l) "Illicit discharge" means any direct or indirect non-stormwater discharge to the municipal stormwater system, surface waters, ground waters, or Puget Sound, except as expressly exempted by this chapter.

(m) "Municipal Stormwater System" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by the City of Des Moines;

(ii) Designed or used for collecting or conveying stormwater; and

(iii) Which is not part of a Public Owned Treatment Works (POTW). "POTW" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned.

(n) "National Pollutant Discharge Elimination System (NPDES)" means the national program for controlling pollutants from point source discharges directly into waters of the United States under the Clean Water Act.

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

(p) "Person" means any individual, partnership, corporation, association, organization, cooperative, public or Municipal Corporation, agency of the state, or local government unit, however designated.

(q) "Single family residential activity" means normal activities associated with single family residential land uses other than home-operated businesses or auto repair activities.

(r) "Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels or pipes into a defined surface water channel, or a constructed infiltration facility.

(s) "Stormwater drainage system" means constructed and natural features which function together as a

system to collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat or filter stormwater.

(t) "Stormwater 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 basins, retention basins, constructed wetlands, infiltration devices, catch basins, oil/water separators, sediment basins and modular pavement. Stormwater facilities are described in the King County Surface Water Design Manual as previously adopted in DMMC 18.86.330.

(u) "Stormwater Pollution Prevention Manual" means the manual adopted by reference in section 3 of this ordinance and prepared by King County that contains Best Management Practices to prevent or reduce pollution.

(v) "Source control Best Management Practice" means a Best Management Practice intended to prevent contaminants from entering surface and storm water or ground water including the modification of processes to eliminate the production or use of contaminants. "Source control Best Management Practices" can be either structural or nonstructural. Structural source control Best Management Practices involves the construction of a physical structure on site, or other type of physical modification to a site. An example of a structural source control Best Management Practice is building a covered storage area. A nonstructural source control Best Management Practice involves the modification or addition of managerial or behavioral practices. An example of a nonstructural source

control Best Management Practice is using less toxic alternatives to current products or sweeping parking lots.

(w) "State Waste Discharge Permit" means an authorization, license, or equivalent control document issued by the Washington state Department of Ecology in accordance with chapter 173-216 WAC.

(x) "Surface and stormwater" means water originating from rainfall and other precipitation that is found on ground surfaces and in stormwater facilities, rivers, streams, springs, seeps, ponds, lakes, and wetlands as well as and shallow ground water.

(y) "Treatment BEST MANAGEMENT PRACTICE" means a Best Management Practice intended to remove contaminants once they are already contained in stormwater. Examples of treatment Best Management Practices include oil/water separators, biofiltration swales and wetponds.

(3) **Prohibited discharges.** It is unlawful for any person to discharge any contaminants into the municipal stormwater system, surface water, ground water or Puget Sound. Contaminants include, but are not limited, to the following:

- (a) Solid waste, trash or debris;
- (b) Construction materials;
- (c) Petroleum products including but not limited to oil, gasoline, grease, fuel oil, heating oil;
- (d) Antifreeze and other automotive products;
- (e) Metals in excess of naturally occurring amounts whether particulate or dissolved form;
- (f) Flammable or explosive materials;
- (g) Radioactive material;

- (h) Batteries;
- (i) Acids, alkalis, or bases;
- (j) Paints, stains, resins, lacquers or varnishes;
- (k) Degreasers and solvents;
- (l) Drain cleaners: commercial and household cleaning materials;
- (m) Pesticides, herbicides or fertilizers;
- (n) Steam cleaning wastes;
- (o) Laundry waste, soap, detergent or ammonia;
- (p) Swimming pool or spa filter backwash;
- (q) Chlorine, bromine and other disinfectants;
- (r) Heated water;
- (s) Animal waste;
- (t) Domestic or sanitary sewage;
- (u) Recreational vehicle waste;
- (v) Animal carcasses;
- (w) Food and food waste including fats, oils, and grease (FOG);
- (x) Bark and other fibrous materials;
- (y) Collected lawn clippings, leaves or branches;
- (z) Silt, sediment, cement or gravel;
- (aa) Dyes, except as permitted by this section;
- (bb) Chemicals not normally found in uncontaminated water;
- (cc) Chlorinated swimming pool or hot tub water except as permitted by this chapter;
- (dd) Discharges from potable water sources which may include but are not limited to: water line flushing, hyper-

chlorinated water line flushing, fire hydrant flushing, and pipeline hydrostatic test water, except as permitted by this chapter; and

(ee) Any hazardous material or waste not listed above.

**(4) Allowable discharges.** The following types of discharges shall not be considered prohibited discharges for the purpose of this chapter:

- (a) Spring water;
- (b) Diverted stream flows;
- (c) Uncontaminated water from crawl space pumps, foundation drains, or footing drains;
- (d) Single family residential lawn irrigation watering that is commingled with urban stormwater;
- (e) Pumped ground water flows that are uncontaminated;
- (f) Materials placed as part of an approved habitat restoration or bank stabilization project;
- (g) Natural uncontaminated surface water or ground water;
- (h) Flows from riparian habitats and wetlands;
- (i) Collected rainwater that is uncontaminated;
- (j) Uncontaminated groundwater that seeps into or otherwise enters stormwater conveyance systems;
- (k) Air conditioning condensation;
- (l) Non-stormwater discharges covered by another NPDES permit;
- (m) Dye testing using environmentally friendly products for the purpose of testing or tracing source pollution

is allowable but requires verbal notification to the City prior to the time of testing; or

(n) Discharges from emergency fire fighting activities.

**(5) Conditional discharges.** Best Management Practices shall be applied to any business or residential activity that might result in prohibited discharges as specified in the Stormwater Pollution Prevention Manual. Activities that might result in prohibited discharges include but are not limited to following:

(a) Potable water, including water from line flushing, hyper-chlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater;

(b) Lawn watering or other irrigation, except single family residential, is permitted using Best Management Practices regarding lawn care and vegetation management;

(c) Dechlorinated swimming pool discharges. The discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments. Swimming pool cleaning wastewater and filter backwash shall not be discharged;

(d) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted provided that Best Management

Practices are used in accordance to the Stormwater Pollution Prevention Manual as adopted in section 3 of this ordinance;

(e) Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan that is reviewed and approved by the Director using Best Management Practices to address such discharges.

(6) **Illicit connections.** Any connection identified by the Director that could convey anything not composed entirely of surface and stormwater directly to the municipal stormwater system is considered an illicit connection and is prohibited with the following exceptions:

(a) Connections conveying allowable discharges or conditional discharges;

(b) Connections conveying discharges pursuant to an NPDES permit or a State Waste Discharge Permit; and

(c) Connections conveying effluent from onsite sewage disposal systems to subsurface soils.

(7) **Requirement to Prevent, Control, and Reduce Stormwater Contamination By Use of Best Management Practices.**

(a) Compliance with this ordinance shall be achieved through the use of the Best Management Practices in accordance with the King County "Stormwater Pollution Prevention Manual", as adopted by reference in section 3 of this ordinance. Any owner/operator responsible for premises, which are found to be the source of an illicit discharge, will be required to implement, at owner/operator's expense, the structural and non-structural best management practices as specified in the manual to prevent the further discharge of contaminants to the

municipal stormwater system, ground waters, surface waters, or Puget Sound.

(b) Technical assistance. The City of Des Moines Surface Water Management Division will provide, upon reasonable request, available technical assistance materials and information.

(c) In applying the Stormwater Pollution Prevention Manual to prohibited discharges from single family residential activities, the Director shall use public education and warnings as primary method of gaining compliance with this section and shall not use citations, notice and orders, assessment of civil penalties and fines, or other compliance actions as authorized in this section, unless the Director determines:

(i) The discharge from a normal single family residential activity, whether singly or combination with other discharges, is causing a significant contribution of contaminants to surface and stormwater or ground water; or

(ii) The discharge from a normal single family residential activity poses a hazard to the public health, safety or welfare, endangers any property or adversely affects the safety and operation of City right-of-way, utilities or other public-owned or maintained property.

(d) Persons implementing Best Management Practices through another federal, state or local program will not be required to implement the Best Management Practices prescribed in the Stormwater Pollution Prevention Manual, unless the Director determines the alternative Best Management Practices are ineffective at reducing the discharge of

contaminants. If the other program requires the development of a stormwater pollution prevention plan or other best management practices plan, the person shall make the plan available to the City upon request.

**(8) Facility operation and maintenance.** The provisions of this section are intended to provide standards and procedures for inspection and maintenance of stormwater facilities in Des Moines to provide for an effective, functional stormwater drainage system.

(a) Ownership, operation and maintenance requirement.

(i) Public stormwater facilities.

(A) Stormwater facilities in rights-of-way or dedicated easements or tracts: The City of Des Moines shall own, operate and maintain all elements of the storm drainage system in the right-of-way and in easements or tracts granted or dedicated to, and accepted by the City of Des Moines.

(B) Existing stormwater facilities on private property: The City of Des Moines will not acquire or accept (via dedication, grant of easement, or other conveyance) existing components of the stormwater conveyance system located on private property, except when the components are needed for City of Des Moines construction projects identified in the capital plan or annual capital improvement program, or when in the best interest of the City as determined by the City Council.

(C) New stormwater facilities. The City of Des Moines will accept ownership and responsibility for new retention/detention systems (via dedication, grant of easement,

or other covenant) only if all of the following conditions are met:

(1) Public ownership of the system will provide a public benefit;

(2) An easement or dedication of the property is offered by the property owner at no cost;

(3) The system meets City standards;

(4) There is access for City of Des Moines maintenance workers from a public right-of-way;

(5) The City of Des Moines has adequate resources to maintain the system; and

(6) The system serves a subdivision (as opposed to a multifamily or commercial property).

(ii) Private stormwater facilities. Unless a written maintenance agreement is made between the City and property owner pursuant to DMMC 11.12.070, stormwater systems located on private property shall be the responsibility of the owner to operate, inspect, maintain and improve.

(b) Maintenance responsibility.

(i) All stormwater facilities shall be maintained in accordance with this section, the King County Surface Water Design Manual, and the King County Pollution Prevention Manual. Stormwater facilities shall be maintained so that they operate as intended. Systematic, routine preventive maintenance is preferred.

(ii) Public stormwater facilities. The responsibility of the City of Des Moines shall be limited to

maintenance and operation of the municipal stormwater system, and the City of Des Moines assumes no responsibility for maintenance and operation of private systems other than private systems under a written agreement pursuant to DMMC 11.12.070.

(iii) Private stormwater facilities. Property owners are responsible for the maintenance, operation or repair of stormwater drainage systems and Best Management Practices. Property owners shall maintain, operate and repair these facilities in compliance with the requirements of this section.

(iv) New subdivisions. In new subdivisions, maintenance responsibility for private stormwater facilities shall be specified on the face of the subdivision.

(v) Existing subdivisions. If a private stormwater facility serves multiple lots and the responsibility for maintenance has not been specified on the subdivision plat or other legal document, maintenance responsibility shall rest with the homeowners' association, if one exists, or otherwise with the owners of the properties served by the facility. If owners of the properties served by the facility cannot be located, maintenance responsibility shall rest with the owner(s) of the property on which the facilities are located.

(c) Minimum maintenance standards. The following are the minimum standards for the maintenance of stormwater facilities:

(i) All stormwater facilities shall be inspected at regular intervals and maintained and repaired in accordance with the King County Surface Water Design Manual maintenance requirements, an approved operation and maintenance

manual for stormwater facilities, or by permits which may be issued by the State Department of Ecology, or the Environmental Protection Agency (EPA), applicable construction standards, and the minimum requirements as stated in the King County Stormwater Pollution Prevention Manual.

(ii) Where maintenance and repair is necessary to correct health or safety problems, to prevent harmful materials from entering the stormwater system, or to remove harmful materials that have entered the stormwater system, such work shall be completed by the owner or operator of the stormwater system or stormwater facility within 24 hours of discovery of the need for maintenance or repair. When maintenance and repair is found necessary to prevent water quality degradation, such work shall be completed within 14 calendar days of discovery of the need for maintenance or repair. For other related problems, maintenance or repairs shall be completed within 30 calendar days of discovery or repair.

(iii) Where lack of maintenance is causing or contributing to a water quality problem, immediate action shall be taken to correct the problem. Within one month, the Director or his or her designee shall revisit the facility to assure that it is being maintained.

(iv) Should the Director have reasonable cause to believe that the situation at a private stormwater facility is so adverse or hazardous so as to preclude written notice, he or she may take the measures necessary to eliminate the hazardous situation; provided, that he or she shall first make a reasonable effort to locate the owner before acting. In such instances the owner of the property and/or the person

responsible for the maintenance of the facility shall be obligated for the payment of all costs incurred. If costs are incurred and a bond pursuant to this chapter or other City requirement has been posted, the Director shall have the authority to collect against the bond to cover costs incurred.

(v) Illicit discharges to the stormwater system are prohibited, unless such discharges are authorized in accordance with Chapter 173-216 WAC (State Waste Discharge Permit Program) or Chapter 173-220 WAC (National Pollutant Discharge Elimination System Program).

(vi) Harmful and prohibited materials, as defined in this section, shall not be allowed to enter any stormwater system. All such substances shall be stored, handled and disposed in a manner that will prevent them from entering the stormwater system. Further, storage, handling and disposal shall be conducted in accordance with Chapters 173-303 and 173-304 WAC.

(d) Disposal of waste from maintenance activities. Disposal of waste from maintenance activities shall be conducted in accordance with the Minimum Functional Standards for Solid Waste Handling, Chapter 173-304 WAC, guidelines for disposal of waste materials from stormwater maintenance activities, and where appropriate, the Dangerous Waste Regulations, Chapter 173-303 WAC.

(e) Administration.

(i) Inspection program.

(A) The Director shall develop and implement a program and procedures for the regular inspection of all public and private stormwater facilities in Des Moines. As

part of that program, or whenever there is probable cause to believe that a violation of this chapter or article has been or is being committed, the Director (or his or her designated inspector) is authorized to inspect all public and private portions of the stormwater drainage systems within Des Moines during regular working hours and at other reasonable times to determine compliance with the provisions of this chapter.

(B) As part of the inspection program, the Director shall establish a master inspection and maintenance schedule. Inspections shall be annual, at a minimum. Critical stormwater facilities may require a more frequent inspection schedule. If, during an inspection, a facility is found not to be in compliance with the standards as described in this chapter, all subsequent inspection and maintenance intervals shall be scheduled more frequently if determined by the Director to be necessary in order to assure future compliance. If, during the course of the inspection program, additional existing stormwater facilities are discovered, they shall be added to the master inspection and maintenance schedule.

(ii) Entry to stormwater facilities. Prior to making any inspections, the Director or designated inspector shall present identification credentials, state the reason for the inspection and request entry.

(A) If the property or any building or structure on the property is unoccupied, the Director or designated inspector shall first make a reasonable effort to locate the owner or other person(s) having charge or control of the property or portions of the property and request entry.

(B) If after reasonable effort, the Director or designated inspector is unable to locate the owner or other person(s) having charge or control of the property, and has reason to believe the condition of the stormwater drainage system creates a risk of imminent harm to persons or property, the inspector may enter.

(C) If entry is not consented to by the owner or person(s) in control of the property or portion of the property, and no conditions are reasonably believed to exist which create a risk of imminent harm, the Director shall obtain a search warrant as authorized by the laws of the State of Washington.

(D) The Director or designated inspector may also inspect the stormwater drainage system without obtaining a search warrant, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

(f) Inspection and maintenance records.

(i) Records for new facilities. Records of new public or private stormwater facilities shall include the following:

(A) As-built plans and locations.

(B) Findings of fact for any exemption granted by the City of Des Moines.

(C) Operations and maintenance requirements and records of inspections, maintenance actions and frequencies.

(D) Engineering reports, if prepared prior to or during construction of the facility.

(ii) Records for existing facilities. Upon the request of the Director or designated inspector, all owners of existing storm drainage systems shall provide the Director with all inspection, maintenance and repair records for their facilities, as well as any existing record drawings or diagrams of their storm drainage systems.

**(9) Violations and enforcement.** Whenever the City finds that an owner/operator has violated or failed to meet a requirement in any provision of this section, the City may pursue the code enforcement procedures set forth in chapter 1.28 of the Des Moines Municipal Code. Any violation of this section that is deemed by the Director to be a threat or potential threat to the public health, safety and welfare may be abated as a nuisance or pursuant to any other applicable local, state or federal law or regulation. Regulation under this section shall not serve as a shield to any action under other applicable laws or regulations of the City, State, or United States.

**Sec. 3. Stormwater Pollution Prevention Manual - Adopted by reference.** A new chapter entitled "Stormwater Pollution Prevention Manual-Adopted by reference" is added to Title 11 DMMC to read as follows:

The King County "Stormwater Pollution Prevention Manual" is adopted by reference pursuant to RCW 35A.12.140 as though fully set forth in this ordinance, as presently constituted or as may be subsequently amended. Not less than one (1) copy of this manual, suitably marked to indicate amendments and additions, is filed in the office of the Des Moines City Clerk for public inspection.

**Sec. 4. Supplemental stormwater standards.** A new chapter entitled "Supplemental stormwater standards" is added to Title 11 DMMC to read as follows:

(1) **Purpose.** The purpose of this section is to supplement the King County Surface Water Design Manual, adopted by reference in DMMC 18.86.330, as the City stormwater standards.

(2) **Impervious surface percentage exemption.** Under Core Requirement #3 for Flow Control, of the King County Surface Water Design Manual, the impervious surface percentage exemption exempting threshold drainage areas that result in no more than 4% total impervious surface and no more than 15% pervious surface is not allowed.

(3) **Soil quality preservation.** Reference 4-A of the King County Surface Water Design Manual as previously adopted in DMMC 18.86.330 requires that any areas that have been cleared and graded shall have the soil moisture holding capacity restored to the original undisturbed soil condition to the maximum extent practicable. This reference shall be applicable to the standards of performance for land grading under DMMC 14.24.130(3).

(4) **Drainage review.** A person who clears, grades or otherwise disturbs a site shall provide erosion and sediment control that prevents, to the maximum extent practicable, the transport of sediment from the site to drainage facilities, water resources, and adjacent properties. Erosion and sediment controls shall be applied as specified by the erosion and sediment control measures and performance criteria in the King County Surface Water Design Manual. Drainage review will be

made for erosion and sedimentation control for all land filling, clearing and grading permits required under DMMC 14.24.

**(5) Stormwater discharges to wetlands.**

(a) Applicability. The requirements below apply only to projects whose stormwater discharges into a wetland, either directly or indirectly through a conveyance system using the thresholds as applied by the King County Surface Water Design Manual.

(b) Discharges to wetlands shall maintain the hydrologic conditions, hydrophytic vegetation, and substrate characteristics necessary to support existing and designated uses. The hydrologic analysis shall use the existing land cover condition to determine the existing hydrologic conditions unless directed otherwise by a regulatory agency with jurisdiction. A wetland can be considered for hydrologic modification and/or stormwater treatment in accordance with Guide Sheets 1B and 2B in Appendix I-D of the Department of Ecology Stormwater Management Manual for Western Washington (2005). Guide Sheet 1B and 2B of Appendix I-D of the Department of Ecology Stormwater Management Manual for Western Washington (2005) are adopted by reference in section 2 of this ordinance and are for wetland protection in accordance to this section.

**Sec. 5. Department of Ecology Stormwater Management Manual for Western Washington Guide Sheets 1B and 2B--Adopted by reference.**

(1) The Department of Ecology Stormwater Management Manual for Western Washington (2005) Guide Sheets 1B and 2B are adopted by reference pursuant to RCW 35A.12.140 as though fully

set forth in this ordinance, and as presently constituted or as may be subsequently amended.

(2) Not less than one (1) copy of each such regulation as written, and suitably marked to indicate amendments and additions, is filed in the office of the Des Moines City Clerk and is available for use and examination by the public.

**Sec. 6. Codification.** Sections 2, 3, 4, and 5 of this ordinance shall be codified as new chapters in Title 11 DMMC.

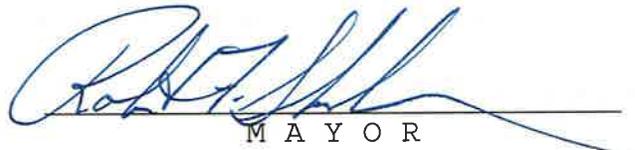
**Sec. 7. Severability - Construction.**

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

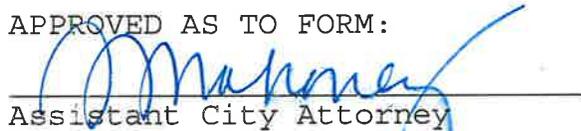
(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

**Sec. 8. Effective date.** This ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

**PASSED BY** the City Council of the City of Des Moines this 13th day of August, 2009 and signed in authentication thereof this 13th day of August, 2009.

  
M A Y O R

APPROVED AS TO FORM:

  
Assistant City Attorney

ATTEST:

  
Interim City Clerk

Published: August 17, 2009  
Effective Date: September 12, 2009