

ORDINANCE NO. 16-3727

**AN ORDINANCE OF THE CITY OF KELSO ADDING A NEW SECTION TO THE KELSO MUNICIPAL CODE TO BE ENTITLED "STORMWATER MANAGEMENT," TO BE CODIFIED AS KMC 13.09, TO GUIDE AND ADVISE ALL WHO MAKE USE OF, CONTRIBUTE WATER TO, OR ALTER THE CITY DRAINAGE SYSTEM, AND TO ENSURE MAINTENANCE OF ALL STORMWATER FACILITIES WITHIN THE CITY BY SETTING MINIMUM STANDARDS FOR THEIR INSPECTION AND MAINTENANCE, AS MORE PARTICULARLY DESCRIBED HEREIN.**

WHEREAS, the City finds that stormwater pollution is a problem associated with land utilization and development and the common use of potential pollutants such as pesticides, fertilizers, petroleum products, and numerous others; and

WHEREAS, the City finds that land utilization and development are also known to increase both the volume and speed of peak flows. The resulting erosion, scouring, deposition of sediment, and flooding affect the ecological balance in the waterbody and present safety hazards to both life and property; and

WHEREAS, the City finds that sedimentation and stormwater pollution cause diversity of species to decrease and allow more tolerant (and usually less desirable) species to remain; and

WHEREAS, the City finds that stormwater facilities are a common feature of urban development which must be maintained in order to prevent damage to the public and/or pollution of surface and ground water; and

WHEREAS, the City finds that in the future such problems and dangers will be reduced or avoided if existing properties and future developers, both private and public, provide for stormwater quality and quantity controls; and

WHEREAS, the City finds that stormwater quality and quantity controls can be achieved when land is developed or redeveloped by implementing appropriate best management practices (BMPs); and

WHEREAS, the City finds that BMPs can be expected to perform as intended only when properly designed, constructed and maintained; and

WHEREAS, the City is required to be in compliance with the Western Washington Phase II Municipal Stormwater Permit (Permit) by August 15, 2009 and WAC 173-218, the Underground Injection Control (UIC) program to regulate stormwater discharges to groundwater through drywells and other types of infiltration systems created under the NPDES permit; now, therefore,

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

**SECTION 1.**

That a new section entitled "Stormwater Management" is hereby added to the Kelso Municipal Code, to be codified as KMC 13.09, which shall provide as follows:

**CHAPTER 13.09  
STORMWATER MANAGEMENT**

**Sections:**

- 13.09.010 Purpose/Intent.**
- 13.09.020 Definitions.**
- 13.09.030 General Provisions.**
- 13.09.035 Stormwater Management Plan Adopted.**
- 13.09.040 Applicability.**
- 13.09.050 General Requirements.**
- 13.09.060 Approval Standards.**
- 13.09.070 Construction Inspection for Permanent Stormwater BMPs.**
- 13.09.080 Easements, Deeds, and Covenants.**
- 13.09.090 Maintenance Agreement and Plan.**
- 13.09.100 Stormwater Performance Bond.**
- 13.09.110 As-Built Plans.**
- 13.09.120 Dedication of Stormwater BMPs.**
- 13.09.130 Ongoing Maintenance for Stormwater BMPs.**
- 13.09.140 Maintenance Escrow Requirement.**

- 13.09.150 Maintenance, Inspection and Enforcement.**
- 13.09.160 Administration.**
- 13.09.170 Adjustments, Exceptions, and Appeals.**
- 13.09.180 Infractions - Penalty.**
- 13.09.190 Misdemeanors - Penalty.**
- 13.09.200 Severability.**
- 13.09.210 Compatibility with Other Permit and Ordinance Requirements.**
- 13.09.220 Legal Authority.**
- 13.09.230 Liability.**
- 13.09.240 Designation of Public Works: Powers and Duties.**

**13.09.010 PURPOSE/INTENT.**

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City through the regulation of runoff from construction, development, and redevelopment. This ordinance establishes methods for controlling the introduction of runoff and pollutants into the stormwater drainage system in order to comply with requirements of the Western Washington Phase II Municipal Stormwater Permit (Permit) process.

The objectives of this chapter are to:

- A. Minimize water quality degradation in streams, ponds, lakes, wetlands, and other water bodies;
- B. Minimize the degradation of habitat and habitat forming processes in streams, ponds, lakes, wetlands, and other water bodies;
- C. Minimize the impact of increased volume and runoff rates, flooding, increases in stream temperature, erosion and sedimentation caused by land development and maintenance practices;
- D. Promote site planning and construction practices that are consistent with natural geological, topographical, vegetational, and hydrological conditions;
- E. Maintain and protect the City's stormwater management infrastructure and those downstream;
- F. Minimize disruption of hydrologic functions, patterns, and processes;
- G. Regulate the contribution of pollutants to the stormwater drainage system by stormwater dischargers from development and redevelopment;
- H. Provide long-term responsibility for and maintenance of stormwater BMPs;
- I. Establish legal authority to carry out all the inspection and monitoring procedures necessary;
- J. Meet the minimum requirements as established in WAC 173-218 and the Permit.

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

**13.09.020 DEFINITIONS.**

For the purposes of this Ordinance, the following definitions shall mean:

1. **Amenity.** A pleasant and/or engaging feature that increases attractiveness, value, and/or

understanding of stormwater.

2. **Best Management Practices (BMP).** The schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other structural or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State or the stormwater drainage system.
  - (a) **Source control BMP.** A BMP that is intended to prevent pollution from entering stormwater.
  - (b) **Treatment BMP.** A BMP that is intended to remove pollution from stormwater.
  - (c) **Flow control BMP.** A BMP that is intended to mitigate the impacts of increased surface and stormwater runoff rates generated by development.
  - (d) **Low Impact Development BMP.** A stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions.
  - (e) **Experimental BMP.** Any treatment or methodology proposed for treatment or management of stormwater that is not in a current stormwater manual approved by the Washington State Department of Ecology (Ecology).
3. **Bioretention.** An integrated stormwater management practice that uses the chemical, biological, and physical property of plants, microbes, and soils to remove or retain pollutants from stormwater runoff. Bioretention facilities are depressions that can be isolated detention cells, swales for conveyance as well as treatment, or a connected-cell hybrid of the two. Bioretention facilities include compost amended soils, landscape plantings selected for tolerance to a range of conditions and a mulch layer.
4. **City.** The City of Kelso.
5. **Clean Water Act (CWA).** The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
6. **Clearing.** The destruction and removal of vegetation by manual, mechanical, chemical or other such method.
7. **Common plan of development or sale.** A site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. Examples include: phased projects and projects with multiple filings or lots, even if the separate phases or filings/lots will be constructed under separate contract or by separate owners (e.g. a development where lots are sold to separate builders); a development plan that may be phased over multiple years, but is still under a consistent plan for long-term development; and projects in a contiguous area that may be unrelated but still under the same contract, such as construction of a building extension and a new parking lot at the same facility. If the project is part of a common plan of development or sale, the disturbed area of the entire plan shall be used in determining permit requirements.
8. **Critical areas.** Areas defined in Kelso Municipal Code Chapter 18.20, with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems.
9. **Detention.** Temporary storage of stormwater to facilitate the release of stormwater runoff from the site at a slower rate than it is collected by the stormwater facility system.

10. **Development.** Means new development, redevelopment, or both, including a combination thereof.
11. **Director.** The City of Kelso Public Works Director or his/her designee.
12. **Ecology.** Means the Washington State Department of Ecology.
13. **Stormwater Manual.** The "Stormwater Management Manual for Western Washington" by Ecology as currently adopted or hereafter modified.
14. **Erosion.** The wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep.
15. **Excavation.** The mechanical removal of earth material.
16. **Fill.** A deposit of earth material placed by artificial means.
17. **Forest practice.** Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to road and trail construction; harvesting, final and intermediate; pre-commercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; brush control, or slash burning.
18. **Highly contaminated runoff.** Runoff containing toxicants which would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.
19. **Highway.** A main public road connecting towns and cities.
20. **Illicit discharge (IDDE).** Any direct or indirect discharge to the stormwater drainage system that is not composed entirely of stormwater.
21. **Impervious surface.** A hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include but are not limited to roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed gravel surfaces, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling. Impervious surfaces that meet the criteria for full dispersion or that are fully infiltrated in compliance with the Stormwater Manual shall be excluded in the determination of thresholds for compliance with this ordinance.
22. **Kelso Engineering Design Manual (KEDM).** A manual that sets forth certain standards of design and specifications for public works projects in the City and for projects subject to approval by the Director. The manual is adopted at KMC 13.09.050 and within this ordinance for compliance with stormwater requirements for development.
23. **Land disturbing activity.** Any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices or gardening are not generally considered land-disturbing activities.
24. **LID Guidance Manual.** The January 2005 Low Impact Development Technical Guidance Manual for Puget Sound, prepared by the Puget Sound Action Team and the Washington

State University Pierce County Extension as now or hereafter amended.

25. **Low Impact Development (LID).** A stormwater management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions.
26. **Maintenance.** Maintenance and repair includes activities conducted on currently serviceable structures, facilities, and equipment that involve no expansion or use beyond that previously existing use. Maintenance includes those usual activities taken to prevent a decline, lapse, or cessation in the use of structures and systems. Those usual activities may include removal and replacement of nonfunctional or poorly functioning facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. By way of example is the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the same span, or width, of roadway.
27. **MR.** Ecology's Minimum Technical Requirement(s) or "Minimum Requirements" for New Development and Redevelopment for land disturbances of one acre or more or that are part of a larger common plan of development or sale.
28. **Municipal Separate Storm Sewer System (MS4).** A conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
  - (a) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States,
  - (b) designed or used for collecting or conveying stormwater,
  - (c) which is not a combined sewer, and
  - (d) which is not part of a Publicly Owned Treatment Works as defined at 40 CFR 122.2.
29. **National Pollutant Discharge Elimination System (NPDES).** The national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by Ecology under authority delegated pursuant to 33 USC § 1342(b).
30. **Native vegetation.** Vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry, and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.
31. **New development.** Land disturbing activities, including Class IV -general forest practices that are conversions from timber land to other uses; structural development, including construction or installation of a building or other structure; creation of impervious surfaces;

and subdivision, short subdivision and binding site plans, as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

32. **Non-stormwater discharge.** Any discharge to the storm drainage system that is not composed entirely of stormwater. Examples may include but are not limited to sanitary wastewater, laundry wastewater, noncontact cooling water, vehicle wash wastewater, radiator flushing wastewater, spills from roadway accidents, and improperly disposed motor oil, solvents, lubricants, and paints.
33. **Permit (the "Western Washington Phase II Municipal Stormwater Permit").** A permit issued by Ecology under Sections 307, 402, 318, and 405 of the Federal Clean Water Act that authorizes the discharge of pollutants to surface waters of the state. Also known as an NPDES permit.
34. **Pollutant.** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
35. **Pollution.** Contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
36. **Pre-developed condition.** For areas that drain directly or indirectly to a river or stream, pre-developed conditions shall mean the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The pre-developed condition shall be assumed to be a forested land cover unless reasonable historic information is provided that indicates the site was prairie prior to settlement.
37. **Project site.** That portion of a property, properties, or right of way subject to land disturbing activities, new impervious surfaces, or replaced impervious surfaces. The total projected area of new, replaced or new plus replaced impervious surfaces for subdivisions shall constitute a project site.
38. **RCW.** Revised Code of Washington.
39. **Receiving waters.** Bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow.
40. **Redevelopment.** On a site that is already substantially developed (which means 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities, or other project where any other City construction

- permit is required.
41. **Replaced impervious surface.** For structures, the removal and replacement of any exterior impervious surfaces or foundation. For other impervious surfaces, the removal down to bare soil or base course and replacement.
  42. **Routine Maintenance.** Preventative or cyclical (weekly, monthly, etc.) maintenance that is an essential part of the on-going care and upkeep of a system or facility against normal wear and tear.
  43. **Site.** The area defined by the legal boundaries of one or more parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project site and the right-of-way boundaries define the site.
  44. **Soil.** The unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.
  45. **Stormwater.** Runoff during and following precipitation and snowmelt events, including surface runoff and drainage.
  46. **Stormwater Drainage Plan.** The comprehensive report containing all of the technical information and analysis necessary for a regulatory agency to evaluate a proposed new development or redevelopment project for compliance with stormwater requirements.
  47. **Stormwater drainage system.** See “Municipal Separate Storm Sewer System (MS4)”
  48. **Stormwater facility (facility).** A constructed component of a stormwater drainage system designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include but are not limited to pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.
  49. **Stormwater Manual.** The “Stormwater Management Manual for Western Washington,” February 2005, as prepared by Ecology. This manual contains BMPs to prevent, control or treat pollution in stormwater and reduce other stormwater-related impacts to waters of the state. The Stormwater Manual is intended to serve as a reference and supplement to this ordinance to control the quantity and quality of stormwater runoff from new development and redevelopment.
  50. **Stormwater Master Plan.** Documents illustrating the location, facility types and connections of the city’s stormwater drainage system. These documents include the current editions of the Kelso Stormwater Master Plan and are created and maintained for the comprehensive management of stormwater for the City of Kelso urban areas and suburban fringe areas.
  51. **Stormwater Pollution Prevention Plan (SWPPP).** A written plan to implement BMPs to identify, prevent, and control the contamination of stormwater discharges to stormwater, stormwater drainage systems and/or receiving waters to the maximum extent practicable.
  52. **WAC.** Washington Administrative Code.
  53. **Wastewater.** Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
  54. **Waterbody.** Lakes, rivers, ponds, streams, inland waters, sloughs, ditches, and all other surface waters and watercourses within the jurisdiction of the state of Washington.
  55. **Wetlands.** Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

**56. Vegetation.** Organic plant life growing on the surface of the earth.

### **13.09.030 GENERAL PROVISIONS.**

#### **A. Abrogation and Greater Restrictions**

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

#### **B. Interpretation**

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

### **13.09.035 STORMWATER MANAGEMENT PROGRAM ADOPTED.**

The City of Kelso's Stormwater Management Program, as now or hereafter modified, is hereby adopted by reference and is hereinafter referred to as the Program. The Program contains information assembled for the purposes of identifying existing and projected problems, analyzing alternatives leading to recommendations, and preparing a program to implement recommendations. The City expresses no guarantee of the accuracy of the information, although updates will be made as necessary to reflect best available information. The use of information should be accompanied by adequate checks for accuracy along with good engineering practice and judgment.

The Director shall be authorized to modify the Program, in accordance with the City's adopted Policies and Procedures, to reflect newly developed technical data, models, and other updated information.

### **13.09.040 APPLICABILITY AND EXEMPTIONS.**

#### **A. Applicability**

This ordinance shall apply to all:

- (1) Water or pollutants directly or indirectly entering the storm drain system generated on any developed or undeveloped lands; and
- (2) New development, redevelopment, and construction site activities, unless explicitly exempted herein.

#### **B. Exemptions**

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

- (1) Projects disturbing less than five acres that meet the requirements delineated in the KEDM may apply for an “Erosivity Waiver” to be exempt from 13.09.060(H)(2), the requirement to submit a Stormwater Pollution Prevention Plan (SWPPP),
- (2) Commercial agriculture and forest practices regulated under WAC Title 222, except for Class IV General Forest Practices that are conversions from timber land to other uses; are exempt from all technical and administrative requirements established in this chapter.
- (3) Road Maintenance. The following road maintenance activities are exempt from the additional nine Minimum Requirements required for projects that disturb one (1) acre or more of land or that are part of a larger common plan of development or sale:
  - (a) Pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regrading drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.
  - (b) Removing and replacing a paved surface to base course or lower, or repairing the roadway base are considered redevelopment subject to MRs #1 - #5, if impervious surfaces are not expanded. However, in most cases, only MR #2, Construction Stormwater Pollution Prevention, will be germane.
  - (c) The following examples of redevelopment are considered new impervious surfaces and have no exemption: resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete (for example by extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders); or upgrading from a bituminous surface treatment (“chip seal”) to asphalt or concrete.
- (4) Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement #2, Construction Stormwater Pollution Prevention.
- (5) Normal landscape activities and gardening.

### **13.09.050 GENERAL REQUIREMENTS.**

#### **A. City of Kelso Engineering Design Manual**

The KEDM, as now or hereafter modified, is hereby adopted by reference for use in implementation of this ordinance. The KEDM contains requirements and technical detail for stormwater modeling, facility design, pollution and flow control, and application of these methods. The Director shall be authorized to modify the KEDM, in accordance with the City’s adopted Policies and Procedures, to reflect newly updated technical data, models, and other information.

#### **B. Stormwater Best Management Practices (BMPs)**

- (1) **General:** BMPs shall be used to minimize stormwater pollution and control stormwater flow. BMPs described and/or referenced in the KEDM shall be used to comply with the standards in this ordinance.
- (2) **Low Impact Development (LID):** Low Impact Development BMPs shall be preferentially

used as practicable in all activities subject to regulation in this ordinance. Approved LID BMPs include those methods described in the Low Impact Development Guidance Manual or the Stormwater Manual.

- (3) **Experimental BMPs:** Experimental BMPs are encouraged as a means of solving problems in a manner not addressed by the Manual in an effort to improve stormwater quality technology. Experimental BMPs must be approved prior to implementation by the Director, in accordance with the variance criteria outlined in 13.09.170.

#### **C. Illicit Discharges**

Illicit discharges to stormwater drainage systems are prohibited.

#### **D. Surface Water Quality Standards**

All activities subject to the requirements of this ordinance are expected to comply with the numerical water quality standards established in WAC 173-201A. The point of compliance is considered the first point of discharge from the development or redevelopment activity to a municipal stormwater drainage facility or to waters of the state.

### **13.09.060 STANDARDS FOR DEVELOPMENT.**

Development projects within the City shall provide the erosion and stormwater controls in accordance with the thresholds and standards described herein.

#### **A. General Applicability**

- (1) All projects shall protect the public right-of-way, the stormwater drainage system, receiving waters, and adjoining properties from the deposition of materials, discharge of sediments and other pollutants, and damage from increased surface and subsurface flow rates caused by the project.
- (2) All projects shall comply with the City's general design and construction criteria for stormwater drainage systems contained in the KEDM.

#### **B. Erosion and Sediment Control**

Additionally, projects disturbing 5,000 square feet or more of land are required to:

- (1) Obtain a local Excavation and Grading permit for the project prior to the land disturbance (this permit may be waived if a Right-of-Way, Building, or Public Improvement permit for the same project has been issued); and
- (2) Submit a site erosion and sediment control plan, and if necessary, any supplemental information such as narratives, specifications, and/or calculations.
- (3) Provide and install adequate runoff controls per an approved plan prior to land disturbing activity.

#### **C. Basic Stormwater Control**

Additionally, projects creating 5,000 square feet or more of new impervious surfaces (cumulative over conditions existing in 1999) are required to:

- (1) Submit a Stormwater Drainage Plan and supporting information (e.g. design calculations, geotechnical report, details, specifications, and maintenance requirements);
- (2) Satisfy water quality, quantity, and amenity criteria as outlined in the KEDM.

#### **D. Source Control**

- (1) Additionally, any new development or redevelopment, regardless of size, that is identified by the City to have the potential to generate highly contaminated runoff shall design and implement a level of treatment commensurate with the risk.
- (2) Additionally, all projects requiring City approval that are changing the intended use of a parcel to one identified in the KEDM as needing oil/water separation, shall provide such treatment.

#### **E. Redevelopment**

Additionally, projects that create and/or replace 5,000 square feet or more of impervious surface that are not otherwise required in paragraphs C and G of this section to provide stormwater controls, shall select among and comply with at least one of a reduced and flexible set of controls, as described in Chapter 4 – Storm Drainage of the KEDM.

#### **F. Ecology's Construction Stormwater NPDES Permit**

Additionally, projects that disturb one (1) acre or more of land or that are part of a larger common plan of development or sale must obtain the state Construction NPDES Permit if required by Ecology.

#### **G. Ecology's Nine Minimum Requirements for Development and Redevelopment**

Additionally, new development, redevelopment, and construction site activities that result in land disturbance of one (1) acre or more, including projects less than one acre that are part of a larger common plan of development or sale, must satisfy one or more of the Minimum Requirements required by Ecology and delineated in the KEDM. The Minimum Requirements are:

1. Site Plan
2. Construction SWPPP
3. Source Control
4. Preserve Natural Drainage
5. On-site Runoff Management
6. Runoff Treatment
7. Flow Control

8. Wetlands Protection, and/or
9. Operations and Maintenance

They are subject to the site planning and BMP selection and design criteria of Ecology's Stormwater Management Manual for Western Washington, or other equivalent manual approved by Ecology.

This section identifies thresholds that determine the applicability of these nine Minimum Requirements (MR) to projects (that disturb at least one acre, or that are part of a larger common plan of development or sale that disturbs at least one acre).

#### (1) Development

(a) All new development shall be required to comply with MR #2.

(b) The following new development shall comply with MRs #1 through #5 for the new and replaced impervious surfaces and the land disturbed:

- Creates or adds 2,000 square feet, or greater, of new, replaced, or new plus replaced impervious surface area, or
- Has land disturbing activity of 7,000 square feet or greater.

(c) The following new development shall comply with MRs #1 through #9 for the new impervious surfaces and the converted pervious surfaces:

- Creates or adds 5,000 square feet, or more, of new impervious surface area, or
- Converts  $\frac{3}{4}$  acres, or more, of native vegetation to lawn or landscaped areas, or
- Converts  $2\frac{1}{2}$  acres, or more, of native vegetation to pasture.

#### (2) Redevelopment

(a) All redevelopment shall be required to comply with MR #2. In addition, all redevelopment that exceeds certain thresholds shall be required to comply with additional MRs as follows.

(b) The following redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:

- The new, replaced, or total of *new plus replaced* impervious surfaces is 2,000 square feet or more, or
- 7,000 square feet or more of land disturbing activities.

(c) The following redevelopment shall comply with MRs #1 through #9 for the new impervious surfaces and converted pervious areas:

- Adds 5,000 square feet or more of *new* impervious surfaces or,
- Converts  $\frac{3}{4}$  acres, or more, of native vegetation to lawn or landscaped areas, or
- Converts  $2\frac{1}{2}$  acres, or more, of native vegetation to pasture.

(d) If the runoff from the new impervious surfaces and converted pervious surfaces is not separated from runoff from other surfaces on the project site, the stormwater treatment facilities must be sized for the entire flow that is directed to them.

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

### (3) Additional Requirements for Re-development Project Sites

(a) For road-related projects, runoff from the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) shall meet all the MRs (#1 through #9) if the new impervious surfaces total 5,000 square feet or more and total 50% or more of the existing impervious surfaces within the project limits. The project limits shall be defined by the length of the project and the width of the right-of-way.

(b) Other types of redevelopment projects shall comply with all the MRs (#1 through #9) for the new and replaced impervious surfaces if the total of new plus replaced impervious surfaces is 5,000 square feet or more, and the valuation of proposed improvements – including interior improvements – exceeds 50% of the assessed value of the existing site improvements.

(c) The City may adopt a plan and schedule, in accordance with the Adjustment, Exception/Variance, and/or Basin Planning provisions of this Ordinance, to provide regional treatment, flow control, and/or wetlands protection to the replaced impervious surfaces of redevelopment projects.

(d) The City may grant a variance/exception to the application of the flow control requirements to replaced impervious surfaces if such application imposes a severe economic hardship per Section 6 13.09.170.

### (4) Basin/Watershed Planning

The City may allow alternative or regional approaches to treatment, flow control, and wetlands protection per the Basin Planning provisions of the Permit.

### **I. Financial liability / public nuisance declared**

In addition to other remedies, vandalism of or failure to install and/or maintain water courses or stormwater facilities as required in this ordinance and applicable permits is hereby declared to be a public nuisance, subject to abatement as provided by applicable laws of the City or the State of Washington. The property owner and all persons engaged in development or land-disturbing activity shall be liable, jointly and severally, for all costs incurred by the City in any public nuisance action

taken hereunder, or on account of damage or threatened damage to City property or facilities or water bodies, or associated with remedial actions necessitated by the failure to install and/or maintain required stormwater facilities.

### **13.09.070 CONSTRUCTION INSPECTION FOR PERMANENT STORMWATER BMPS.**

#### **A. Notice of Construction Commencement**

The applicant must notify Public Works before the commencement of construction. Public Works may, at its discretion, issue verbal or written authorization to proceed with critical construction components, such as installation of permanent stormwater BMPs based on stabilization of the drainage area and other factors.

#### **B. Construction Inspections by Public Works or its Representatives**

Public Works or its representatives shall conduct periodic inspections of the stormwater BMPs shown on the approved stormwater management design plan, and especially during critical installation and stabilization steps. All inspections shall be documented in writing. The inspection shall document any variations or discrepancies from the approved plan, and the resolution of such issues. Additional information regarding inspections can be found in the KEDM. A final inspection by the Stormwater Authority is required before any performance bond or portion thereof, shall be released.

### **13.09.080 EASEMENTS, DEEDS AND EDUCATION.**

#### **A. Easements**

Storm drainage easements shall be required where the conveyance, storage, or treatment of stormwater is identified on the stormwater management design plan, and where access is needed to structural or non-structural stormwater measures.

The following conditions shall apply to all easements:

- (1) Dimensions: Easements shall be of a width and location specified in the KEDM.
- (2) Easements Approved Before Plat Approval: Easements shall be approved by Public Works and shall be recorded with Cowlitz County and on all property deeds.
- (3) With the exception of managed properties, such as apartment complexes, all residential stormwater facilities shall be placed in the public right of way, or a full easement shall be granted to the City for inspection and maintenance.

#### **B. Deeds and Covenants for LID**

Private home owner deed restrictions and homeowners/building covenants shall be required for all properties with onsite LID BMPs to ensure that the stormwater management applications continue to function as designed. The deed restrictions or covenants shall specifically address and/or append the requirements and responsibilities for long-term management and maintenance of any LID BMPs.

#### **C. Education**

Education measures (e.g. fact sheet or brochure) describing the functions of conservation areas and LID BMPs shall be developed and distributed during the initial and all successive sales of properties using LID BMPs.

### **13.09.090 MAINTENANCE AGREEMENT AND PLAN.**

#### **A. Responsible Party**

The owner shall be responsible for the operation and maintenance of stormwater facilities and shall pass such responsibility to any successor owner, unless such responsibility is transferred to the City or to another governmental entity in 13.09.120

#### **B. Requirement for Maintenance Agreement & Plan**

If a stormwater management design plan requires structural or nonstructural measures, the owner shall execute a stormwater maintenance agreement prior to Public Works granting final approval for the plan, or any plan of development or other development for which a permit is required under this Ordinance. The agreement shall be recorded in the office of the clerk of the circuit court for Cowlitz County and shall run with the land.

#### **C. Required Elements for Maintenance Agreement & Plan**

The stormwater maintenance agreement shall be in a form approved by the City, and shall, at a minimum:

- (1) **Designate Responsible Party:** Designate the owner or other legally established entity (responsible party) which shall be permanently responsible for maintenance of the structural or non-structural measures required by the plan.
- (2) **Pass Responsibility to Successors:** Pass the responsibility for such maintenance to successors in title.
- (3) **Right of Entry for Stormwater Authority:** Grant Public Works and its representatives the right of entry at reasonable times and in a reasonable manner for the purposes of inspecting all stormwater BMPs. This includes the right to enter a property when Public Works has a reasonable basis to believe that a violation of this Ordinance is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this Ordinance.
- (4) **Maintenance Plan:** Ensure the continued performance of the maintenance obligations required by the plan and this ordinance through a maintenance plan (which may be an attachment to the actual maintenance agreement). The plan shall include a list of inspection and maintenance tasks, a schedule for routine inspection and maintenance, actions to be taken when maintenance is required, and other items listed in the KEDM.

### **13.09.100 STORMWATER PERFORMANCE BOND.**

#### **A. Stormwater Performance Bond**

At the discretion of Public Works, the applicant seeking to build a stormwater facility may be required to furnish a stormwater facility performance bond, or equivalent guarantee in a form acceptable to the City, in an amount sufficient to cover all costs associated with the construction of the facility. This bond is to secure the installation and performance of the stormwater facilities identified in the approved stormwater management design plan. The applicant shall be responsible for any costs incurred by the City to secure performance of the stormwater facilities that are in excess of the amount of the bond.

#### **B. Term of Performance Bond**

The stormwater performance bond furnished pursuant to this section, or the unexpended or unobligated portion thereof, shall be released to the applicant within sixty (60) days of issuance by Public Works of the final acceptance of the permanent stormwater BMP by the Public Works Department. A final inspection by Public Works is required before any performance bond will be released.

#### **C. Term Extended for Initial Maintenance**

At the discretion of Public Works, the stormwater performance bond may be extended beyond the time period specified above to cover a reasonable period of time for testing the BMPs during storm events and for initial maintenance activities. For the purposes of this section, the time shall not exceed 2 years beyond final acceptance of the construction of the BMP, unless the Director determines that an extension is necessary to ensure that the facility satisfies the maintenance and performance requirements identified in the KEDM and the approved stormwater maintenance plan..

#### **D. Partial Release of Bond**

The Public Works shall have the sole discretion to adopt provisions for a partial pro-rata release of the performance bond on the completion of various stages or phases of development.

#### **E. Bond Estimation**

The applicant shall be responsible for determining bond value and submitting the estimation to Public Works for approval. If the Director disagrees with the applicant's estimate, the Director shall determine a reasonable estimate. The bond value for public and private facilities is to be 125 percent of the estimated cost for the City to construct the stormwater features and achieve final stabilization. The Director may allow an equivalent financial guarantee in a form acceptable to the city in lieu of a bond.

### **13.09.110 AS-BUILT PLANS.**

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

### **13.09.120 DEDICATION OF STORMWATER BMPs.**

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

- (1) **Preliminary Determination by Public Works:** Upon receipt of such offer of dedication by the City, Public Works shall make a preliminary determination that the dedication of the facility is appropriate to protect the public health, safety and general welfare, and furthers the goals of the City's stormwater management program and/or associated watershed plans. Public Works shall forward its determination to the City Council. Prior to making its determination, Public Works shall inspect the facility to determine whether it has been properly maintained and is in good repair.
- (2) **Acceptance by City Council:** City Council may accept the offer of dedication by adoption of a resolution. The document dedicating the stormwater BMP shall be recorded in the office of the clerk of the circuit court for Cowlitz County.
- (3) **Owner to Provide Documentation:** The owner, at his sole expense, shall provide any document or information requested by Public Works or the City Council in order for a decision to be reached on accepting the facility.

### **13.09.130 ONGOING MAINTENANCE FOR STORMWATER BMPs.**

#### **A. Maintenance Responsibility**

The responsible party named in the recorded stormwater maintenance agreement shall maintain in good condition and promptly repair and restore all structural and non-structural stormwater BMPs and all necessary access routes and appurtenances (grade surfaces, walls, drains, dams and structures, vegetation, erosion and sedimentation controls, and other protective devices). Such repairs or restoration and maintenance shall be in accordance with the approved stormwater management design plan, the stormwater maintenance agreement, and the stormwater maintenance plan.

#### **B. Maintenance Inspection by Public Works or its Representatives**

Public Works or its representatives shall conduct periodic inspections for all stormwater facilities following project completion. All inspections shall be documented in writing. The inspection shall document any maintenance and repair needs and any discrepancies from the stormwater maintenance agreement and stormwater maintenance plans.

#### **C. Records of Maintenance Activities**

The responsible party shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to Public Works during inspection of the BMP(s) and at other reasonable times upon request.

#### **D. Failure to Provide Adequate Maintenance**

In the event that the stormwater BMP has not been maintained and/or becomes a danger to public safety or public health, Public Works shall notify the responsible party by registered or certified mail. The notice shall specify the measures needed to comply with the maintenance agreement and the maintenance plan and shall specify that the responsible party has thirty (30) days or other time frame mutually agreed to between Public Works and the responsible party, within which such measures shall be completed. If such measures are not completed, then Public Works shall pursue enforcement procedures pursuant to Section 7 of this Ordinance.

If a responsible person fails or refuses to meet the requirements of an inspection report, maintenance agreement, or maintenance plan the City, after thirty (30) days written notice (except, that in the event the violation constitutes an immediate danger to public health or public safety, 24 hours notice shall be sufficient), may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the BMP in proper working condition. The City may assess the responsible party for the cost of repair work which shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the City.

#### **13.09.140 MAINTENANCE ESCROW REQUIREMENT.**

At the discretion of the Director, the property owner will be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount that would cover costs associated with maintenance or repair in the event of BMP failure in the event the Director determines that such security is necessary to ensure the facility satisfies the maintenance and performance requirements identified in the KEDM and the approved stormwater maintenance plan. . This instrument is required to be posted prior to completion of construction and release of the Stormwater Performance Bond and remain in place for a minimum of two (2) years.

#### **13.09.150 MAINTENANCE, INSPECTION AND ENFORCEMENT.**

##### **A. General Requirements**

- (1) **Maintenance required:** All stormwater facilities shall be maintained in accordance with this ordinance and the KEDM. Systematic, routine preventive maintenance is preferred.
- (2) **Compliance:** Property owners are responsible for the maintenance, operation and repair of stormwater drainage systems and BMPs on their properties unless the City has accepted maintenance responsibility in writing and a written easement exists granting the City an adequate and sufficient right, at the City's discretion, to enter the property and conduct these activities. Property owners shall maintain, operate and repair the facilities in compliance with the requirements of this ordinance and the KEDM.

**B. Administration:** The Director shall develop and administer an inspection program for stormwater facilities in Kelso.

##### **C. Inspection Program**

- (1) **Authorization:** Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this ordinance has been or is being committed, the inspector is authorized to inspect stormwater drainage systems within Kelso to determine compliance with the provisions of this ordinance.
- (2) **Development inspection:** All new development shall provide for and install adequate runoff controls per an approved Stormwater Drainage Plan and SWPPP. Failure to provide such required runoff controls prior to or simultaneously with the commencement of land disturbing activities shall result in an order to stop all work upon the site for a minimum of 3 working days. After the stop-work period, the Director may allow work onsite to recommence, provided that such work is necessary to bring the site into compliance with this ordinance, permits, or an approved Stormwater Drainage Plan or SWPPP. Once the site is found to be in compliance, land disturbing activities shall be allowed to continue.

#### D. Enforcement

- (1) **Orders:** The Director shall have the authority to issue to an owner or person an order to install, maintain or repair a component of a stormwater facility or BMP to bring it in compliance with this ordinance, the Stormwater Manual, and/or City regulations. The order shall include:
  - (a) A description of the specific nature, extent and time of the violation and the damage or potential damage that reasonably might occur;
  - (b) A notice that the violation or the potential violation cease and desist and, in appropriate cases, the specific corrective actions to be taken; and
  - (c) A reasonable time to comply, depending on the circumstances.
- (2) **Civil penalty:** In addition to any other remedy or sanction available, a person who fails to comply with an order issued by the Director or the Kelso City Council pursuant to this chapter, or who fails to conform to the terms of an approval issued, shall be subject to a civil penalty.
  - (a) **Amount of penalty.** Violation of any of the provisions of this Chapter shall constitute a civil infraction and upon appropriate finding, the violator shall be assessed a civil penalty as established by the court, not to exceed five hundred dollars (\$500), or as hereinafter amended. Each day of violation shall constitute a separate and distinct infraction.
  - (b) **Aiding or abetting.** Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
  - (c) **Notice of penalty.** A civil penalty shall be imposed by the Director, by a notice in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and

desist, and, in appropriate cases, require necessary corrective action within a specified time.

(d) **Application for remission or mitigation.** Any person incurring a penalty may apply in writing within 10 days of receipt of the Notice of penalty to the Director for remission or mitigation of such penalty. Upon receipt of the application, the Director may remit or mitigate the penalty only upon a demonstration of extraordinary circumstances, such as the presence of information or factors not considered in setting the original penalty. The Director's decision may be appealed to the Hearing Examiner within 10 days of the decision.

(e) **Appeal of civil penalty.** Persons incurring a penalty imposed by the Director may appeal in writing within 10 days of the receipt of the notice of penalty to the Hearing Examiner. The Hearing Examiner shall hold a de novo hearing to consider the appeal and may affirm, modify or reverse the penalty. The decision of the Hearing Examiner may be appealed to Superior Court within 10 days of the receipt of the Hearing Examiner's decision. A fee to appeal the civil penalty and shall be one thousand five hundred dollars (\$1,500) shall be paid to the City along with the appeal.

(3) **Penalties due:** Penalties imposed under this Section shall become due and payable 10 days after notice of the penalty is mailed or delivered, whichever occurs first, unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made or an appeal to the Hearing Examiner is filed (including payment of all applicable Hearing Examiner fees), penalties shall become due and payable 10 days after the date of the decision regarding the remission or payable after all review proceedings and a final decision has been issued confirming all or part of the penalty. If the amount of a penalty owed is not paid within the time specified in this Section, the City may take actions necessary to recover such penalty.

(4) **Penalty recovered:** Penalties recovered shall be paid to the Stormwater utility.

## E. City Action

In addition to any other remedies the City may have under this ordinance or at law or in equity, nothing in this ordinance or elsewhere within this Code shall prevent the City from effecting repairs or maintenance to stormwater facilities if the Director determines that imminent danger to public safety, health or welfare, or public or private property, or critical areas or habitat is likely as a result of the actions or inaction of the property owner(s). If the City effects repairs or maintenance, the cost will be charged to the property owner(s) together with any penalties incurred under this ordinance and any costs of collection (including attorneys' fees), all of which shall be considered a lien against the subject property and also collectable as an *in personam* debt against the property owner(s).

### 13.09.160 ADMINISTRATION.

#### A. Director

The Director shall administer this ordinance and shall have the authority to develop and implement administrative procedures to implement and enforce this ordinance.

#### **B. Review and approval**

The Director may approve, conditionally approve or deny an application for activities regulated by this ordinance.

### **13.09.170 ADJUSTMENTS, EXCEPTIONS, AND APPEALS.**

#### **A. Authority**

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

#### **B. Adjustments**

Adjustments to the requirements of this ordinance may be granted provided that a written finding of fact is prepared, that addresses the following:

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

#### **C. Exceptions and variances**

Exceptions to the requirements of this ordinance may be granted provided that a written finding of fact that documents the City's determination to grant an exception, and

- (1) The exception will not increase risk to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
- (2) The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.

Additionally, exceptions to 13.09.060(H) may be granted only if such an application imposes a severe and unexpected economic hardship, according to the criteria provided in the KEDM, and:

- (1) Prior legal public notice is provided of an application for an exception, and
- (2) Legal public notice of the City's decision on the application is published, and
- (3) Ecology approval is required for any jurisdiction-wide exception, and
- (4) The City keeps records, including the written findings of fact, of all exceptions to the MRs.

#### **D. Prior approval**

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

#### **E. Duration of variance**

Variations granted shall be valid for 2 years, unless granted for a shorter period.

#### **F. Right of appeal**

Except as otherwise provided in this ordinance, all actions of the Director in the administration and enforcement of this ordinance shall be final and conclusive, unless within 30 days of receipt of the Director's action, the original applicant or an aggrieved party files a notice of appeal with the Hearing Examiner for review of the action. The decision of the Hearing Examiner shall be final and conclusive unless, within 10 days after receipt of the decision of the Hearing Examiner, an aggrieved party appeals the same to Cowlitz County Superior Court.

#### **13.09.180 INFRACTIONS - PENALTY.**

A violation of any provision of this ordinance, other than as set forth in Section 13.09.070 of this ordinance, shall be considered an infraction punishable by a fine not to exceed five hundred dollars (\$500), or as hereinafter amended. This penalty shall be in addition to any other remedy or sanction provided in this ordinance or by other law or in equity.

The court may order, in addition to any fine imposed, that a person found to have committed an infraction shall make restitution to any person damaged by the violation.

#### **13.09.190 MISDEMEANORS - PENALTY.**

Any violation of this ordinance which results in damage to public or private property, other than the property of the violator, in an amount greater than \$250, or as hereinafter amended, or which results in any physical injury to a person shall be a misdemeanor. For purposes of this section "damage" shall include cost to restore as well as loss of value.

Each second or subsequent violation of this ordinance by any person within a period of three years shall be a misdemeanor.

Each misdemeanor shall be punishable by a fine not to exceed one thousand nine hundred (\$1,900) or 90 days in jail, or as hereinafter amended, or both. This penalty shall be in addition to any other remedy or sanction provided in this ordinance or by other law or in equity.

The court may order, in addition to any fine imposed, that a person found to have committed a misdemeanor shall make restitution to any person damaged by the violation.

#### **13.09.200 SEVERABILITY.**

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or

circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

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

**13.09.210 COMPATIBILITY WITH OTHER PERMIT AND ORDINANCE REQUIREMENTS.**

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

**13.09.220 LEGAL AUTHORITY.**

This ordinance is adopted pursuant to authority conferred by and in accordance with the Permit.

**13.09.230 LIABILITY.**

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

**13.09.240 DESIGNATION OF PUBLIC WORKS: POWERS AND DUTIES.**

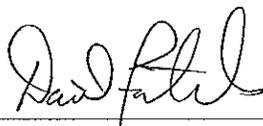
Public Works shall administer and enforce this ordinance, and may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this ordinance.

**SECTION 2.**

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

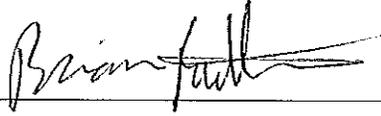
**ADOPTED** by the City Council and **SIGNED** by the Mayor this 16<sup>th</sup> day of March

\_\_\_\_\_, 2010\_\_\_\_\_.

  
\_\_\_\_\_

MAYOR

ATTEST/AUTHENTICATION:

  
\_\_\_\_\_

CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_

CITY ATTORNEY

PUBLISHED: 3/20/10