



CITY OF PORT ORCHARD Planning Commission

216 Prospect Street, Port Orchard, WA 98366
(360) 874-5533 planning@cityofportorchard.us

PLANNING COMMISSION MEETING AGENDA

Tuesday, September 6, 2022 – 6:00 pm

***** Attendees and Planning Commissioners may attend in person at City Hall or via Zoom*****

Join Zoom Meeting, Public Link: <https://us02web.zoom.us/j/88585029741>

Dial-in (phone audio) only: + 1 253 215 8782

Webinar ID: 885 8502 9741

Planning Commissioners please use individual webinar links.

1. Call to Order: 6:00 p.m.

Pledge of allegiance.

2. Welcome and Introduction.

Planning Commission and City Staff Introductions.

3. Audience Comments: Topics not listed for public hearing on tonight's agenda.

Please limit comments to **3 minutes**.

4. Approval of Minutes from August 2, 2022. (Attachment)

(ACTION)

5. Business Items:

a) POMC 20.132 Temporary Signage and Subdivision Entrance Signs (Attachment)

Discussion of Sign regulations and existing conditions.

b) POMC 20.32 Building Types (Attachment)

The City is considering the adoption of an ordinance amending the building type section to incorporate design standards required in POMC 20.127 and 20.139 into the applicable building type. The intent of the amendment is to eliminate inconsistencies between sections of code and locate applicable design requirements in specific building types.

c) POMC Title 20 "Housekeeping" Amendments (Attachment)

DCD staff continually tracks errors, inconsistencies, outdated references, and omissions in Title 20 POMC (Unified Land Use and Development Code) and gathers these into one corrections ordinance each year – generally known as the annual Title 20 "housekeeping ordinance". These proposed corrections to Title 20 for 2022 have been prepared for the Planning Commission's review.

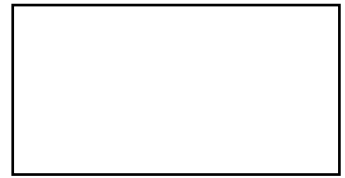
d) POMC 15.30 and POMC 20.150.270 (Attachment)

The City is considering the adoption of an ordinance relating to Stormwater Management; amending POMC 15.30, and POMC 20.150.270 for certain amendments which are necessary to ensure that the

City is in compliance with provisions of the National Pollution Discharge Elimination System permit governing inspection and enforcement implemented by the City.

6. Adjourn

Next Planning Commission Meeting – October 4, 2022



Planning Commission Meeting Minutes
August 2nd, 2022
Zoom Teleconference

COMMISSIONERS:

Present: Bek Ashby, Joe Morrison, Tyler McKlosky, Phil King, Stephanie Bailey, Dave Bernstein.

Absent: Annette Stewart.

STAFF:

Community Development Director Nick Bond, Senior Planner Jim Fisk, Associate Planner Jacob Miller, and Assistant Planner Josie Rademacher.

1. CALL TO ORDER: Vice Chair Ashby called the meeting to order at 6:03 p.m. and led the Pledge of Allegiance.

2. WELCOME AND INTRODUCTION: Vice Chair Ashby introduced the present Planning Commissioners, Commissioner Morrison, Commissioner McKlosky, Commissioner King, Commissioner Bailey, Commissioner Bernstein, and present City staff members, Community Development Director Nick Bond, Senior Planner Jim Fisk, and Assistant Planner Josie Rademacher. Associate Planner Jacob Miller joined later in the meeting.

3. PUBLIC COMMENTS: There were no comments from the public regarding issues not on the agenda.

4. APPROVAL OF MINUTES FROM JULY 5TH, 2022: Commissioner McKlosky made a motion to approve the minutes as presented from the July 5th meeting. Commissioner Morrison seconded the motion. The motion passed unanimously.

5. BUSINESS ITEMS:

A. PUBLIC HEARING: POMC 20.68 ACCESSORY DWELLING UNITS AND POMC 20.38.235 MVOD ACCESSORY DWELLING UNITS.

Senior Planner Jim Fisk shared that the City has considered an amendment to Port Orchard Municipal Code 20.68.070, .090 and .100 removing requirements and references to an owner occupancy requirement. The City has considered the repeal of POMC 20.38.235 addressing detached accessory dwelling units within the McCormick Village Overlay District. The purpose of the amendment is to remove barriers to the creation of accessory dwelling units.

Due to issues with the Zoom link at the July 5th meeting, the Commissioners voted to move the public hearing to next month's agenda (August 2nd). The Department of Community Development reissued a Notice of Hearing for this month's meeting to ensure that testimony could be given regarding the following proposed amendments.

No action was taken at the July 5th meeting; however, Commissioners discussed a provision in POMC 20.68.070 which requires an agreement to be recorded with the Kitsap County auditor. The version presented to the commission reflected that discussion by removing POMC 20.68.070 (1)(c) as any agreement recorded with the auditor would be unnecessary if the owner occupancy requirement was removed elsewhere in the POMC.

Vice Chair Ashby opened the public hearing.

John Gish, resident at 1013 Morton St, stated that he bought the property as a duplex, and when he applied for building permits it took a little longer, and that he needed parking. He built the parking but before he got the permit, he needed to make one of the units an ADU because an ordinance was then recently passed that over under duplexes weren't allowed. Mr. Gish states that he is bringing this up because his intent for the property was for it to belong to his family's estate for his children, and future family members to manage, and to use the profits from the rentals for college for grandchildren. Mr. Gish states that as the code is now, the plan for his property would not work. His children don't plan to live there, they live all over the country. Mr. Gish supplied letters to City Staff stating that his property has been a duplex since the 1960s. Mr. Gish indicated he'd applied for a variance and indicated it hasn't been addressed because this public hearing was coming up. Mr. Gish stated that if this is passed and the owner occupancy restrictions are lifted, this would remove the challenges specific to his property, and it can be used in his family moving forward.

Vice Chair Ashby closed the public hearing.

Commissioner McKlosky made a motion to recommend the City Council to approve the ordinance amending POMC 20.68 and POMC 20.38.235 as presented. Commissioner Morrison seconded the motion. Commissioner McKlosky, Commissioner King, Commissioner Morrison, Commissioner Bernstein, and Vice Chair Ashby all voted in favor of the motion. Commissioner Bailey voted against the motion. The motion passed 5 to 1.

B. PUBLIC HEARING: POMC 20.33.010, 20.34.010, 20.34.020, 20.34.030, 20.34.040, 20.34.050, 20.34.060 Accessory Structure Setbacks

Senior Planner Jim Fisk shared that the City has considered the adoption of an ordinance relating to accessory structure setbacks in the Greenbelt and Residential zoning districts; amending POMC Sections 20.33.010, 20.34.010, 20.34.020, 20.34.030, 20.34.040, 20.34.050, 20.34.060 and clarifying that accessory structures are permitted in the Greenbelt zoning designation. The intent of the proposed amendments is to provide clarity on omitted accessory structure setbacks and provide flexibility in the siting of accessory structures.

Vice Chair Ashby opened the public hearing.

There were no comments from the public.

Vice Chair Ashby closed the public hearing.

Commissioner McKlosky made a motion to recommend the City Council to approve the ordinance amending POMC 20.33.010, 20.34.010, 20.34.020, 20.34.030, 20.34.040, 20.34.050, 20.34.060 as presented. Commissioner King seconded the motion. The motion passed unanimously.

C. DISCUSSION: HOUSING ACTION PLAN (HAP) AND PUBLIC PARTICIPATION PLAN.

Senior Planner Jim Fisk shared that the City kicked off its Housing Action Plan (HAP). Last week, Makers Architecture, the selected consultant for the project gave a presentation to the City Council outlining the process and looking for input. As a part of the plan, staff took the consultants on a tour of the City and showed them a variety of different housing projects happening in the City. The consultant started interviewing stakeholders to gain feedback on housing in Port Orchard. Shared with the commission in the meeting's packet, the Public Participation Plan was created by the consultant to outline the public engagement process. The consultant is looking for input, comments, and feedback on how to improve the housing stock in Port Orchard. In addition to speaking with stakeholders, they plan to put out a community survey to see what the residents of Port Orchard are looking for; is it missing middle housing or are they looking for other options. There will be a multitude of opportunities to provide input and a City webpage for the HAP will be available tomorrow. The City anticipated to have an adopted Housing Action Plan by late summer of 2023 and incorporating this plan into the periodic update of the Comprehensive Plan in 2024.

ADJOURN: Vice Chair Ashby adjourned the meeting at 6:55 pm.

Annette Stewart, Chair

Nick Bond, Community Development Director



CITY OF PORT ORCHARD

DEPARTMENT OF COMMUNITY DEVELOPMENT

216 Prospect Street, Port Orchard, WA 98366
Ph.: (360) 874-5533 • FAX: (360) 876-4980

PLANNING COMMISSION STAFF REPORT

Agenda Item No:	5(a)	Meeting Date:	September 6, 2022
Subject:	Discussion: Temporary Signage and Subdivision Entrance Signs	Prepared by:	Nick Bond, Development Director

Issue: On June 27, 2017 the City of Port Orchard adopted a sign code which is consistent with the Reed v. Town of Gilbert Decision issued by the Supreme Court of the United States (SCOTUS) in 2015. Port Orchard's current sign regulations address signage type, size, placement and design, but is entirely content-neutral.

The current regulations allow temporary signage as defined in [Port Orchard Municipal Code \(POMC\) 20.132.290](#) to be placed within public right-of-way outside of the roadway provided the temporary signage placement is consistent with the regulations of [POMC 20.132.270](#). Currently, City staff do not have an ability to remove temporary signage unless the placement, size or material is inconsistent with the minimum code requirements. City staff cannot remove dilapidated signage as POMC 20.132.270 indicates the person responsible for placement of the sign is also responsible for its removal.

Recently, Staff has been made aware of a significant amount of temporary signage in public right-of-way. POMC 20.132 does not regulate or have measures to enforce temporary signage removal, such as the signage shown in the attached exhibit. Temporary signage that meets the standards outlined in POMC 20.132.270 does not require a permit.

Reed v. Town of Gilbert decision about content neutrality encouraged amendments to POMC 20.132 in the past, however recent court decisions may have opened opportunities for regulations relating to commercial signage.

Separately, POMC 20.132 does not provide standards for free standing sign related to subdivision entry points. In fact, most subdivisions are not permitted free-standing signage based on the associated residential zoning designation. POMC 20.132.210(2)(b) requires a free-standing sign to be located a minimum of 30 feet from any residential zoned property. However, if the property is residentially zoned, a free-standing sign cannot be 30 feet from the property which it would be constructed.

Staff intends to create specific development standards for a new free-standing sign type, Subdivision Entry sign, and present the draft regulations to the Planning Commission in the near future.

City staff would like to have discussion to receive feedback from the Planning Commission regarding commercial signage and subdivision entrance signs.

Attachments: Temporary Signage Exhibit























































CITY OF PORT ORCHARD

DEPARTMENT OF COMMUNITY DEVELOPMENT

216 Prospect Street, Port Orchard, WA 98366
Ph.: (360) 874-5533 • FAX: (360) 876-4980

PLANNING COMMISSION STAFF REPORT

Agenda Item No:	5(b)	Meeting Date:	September 6, 2022
Subject:	Discussion: Building Types- Design Standards	Prepared by:	Nick Bond, Development Director

Issue:

The City is considering the adoption of an ordinance amending the building type section to incorporate design standards required in Port Orchard Municipal Code (POMC) 20.127 and 20.139 into the applicable building type. The intent of the amendment is to eliminate inconsistencies between sections of code and locate applicable design requirements in specific building types.

POMC 20.32 provides definitions of specific building types while also providing some minimal design standard requirements while POMC 20.127 and 20.139 provide detailed requirements for single-family residential and multi-family/non-residential respectively. Staff has identified a potential improvement in code where most basic design standards would be located in the Building Type section while specific standards would remain in the respective design standard section.

For instance, currently if an individual were to construct a detached house, the detached house must first meet the criteria in [POMC 20.32.020](#). The Building Type section, 20.32, requires a minimum ground floor elevation, identifies allowed building elements, identifies permissible locations for pedestrian access, and notes garage door restrictions which refer the user to [POMC 20.139](#). POMC 20.139 applies to several building types, primarily single-family dwellings, and provides much more detailed design requirements such as the minimum area of windows, garage width, roof pitch, architectural details, and variety.

- POMC 20.32.020 *allows* three building elements: porch, balcony, and a stoop. However, POMC 20.139.025(1) *requires* the detached house to have a porch.
- POMC 20.32.020(6)(d) *allows* the pedestrian access to face any required yard except the rear. However, 20.139.025(2) *subjectively requires* that the front elevation be the focal point of the structure using windows or doors.

Similar instances occur with multi-family/non-residential buildings and the requirements of POMC 20.127. For instance, apartment buildings per [POMC 20.32.100](#), cannot have a blank wall *area* greater than 35 feet while [POMC 20.127.460](#) defines a blank wall and provides minimal dimensional standards for a blank wall. The minimum area which would be considered a blank wall is 15 feet by 10 feet or 150 square feet. Similar conflicts occur with transparency requirements, among others, where the building type may require a greater transparency than what is required of the block frontage standards in POMC 20.127.

Below you find an example of how staff intends to reorganize the Building Type section.

The intent of the amendment is to create consistency and predictability between what is expected of specific building types. More often than not, applicants do not review the minimum requirements of building types. Rather,

applications typically only address what is identified in the applicable design standard section. These amendments would combine the most basic design standards into the applicable building type.

Staff asks that the Planning Commission review the applicable sections through the links provided in this staff report and provide feedback to staff for consideration in development of an amendment. Staff will prepare an Ordinance provided in clean format, and an explanatory document is provided that lists each correction in numerical order, in redline strikeout/underline format, with explanations at the head of each change. The Planning Commission is requested to schedule a public hearing regarding the described amendments at the November 8, 2022 Planning Commission Meeting.

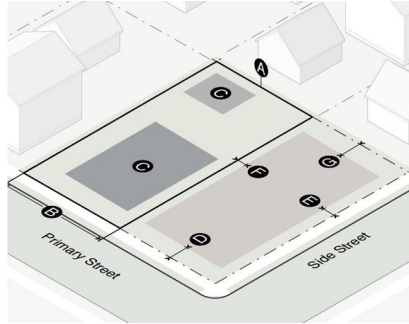
20.32.020 Detached house.



(1) Definition. A building type that accommodates one dwelling unit on an individual lot with yards on all sides.

(2) Districts where allowed: GB, R1, R2, R3, R6, NMU, BPMU.

(3) Lot and Placement.



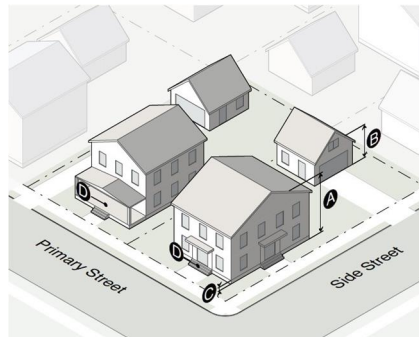
- (a) Minimum/maximum lot area: set by district.
- (b) Minimum lot width: set by district.
- (c) Maximum lot coverage: set by district.
- (d) Building and structure setback from primary street lot line: set by district.
- (e) Building and structure setback from side street lot line: set by district.
- (f) Building and structure setback from side interior lot line: set by district.
- (g) Building and structure setback from rear lot line: set by district.

(4) Maximum Dwelling Units Per Lot. One primary, one accessory.

(5) Build-to Zone (BTZ).

- (a) Building facade in primary street BTZ: does not apply.
- (b) Building facade in secondary street BTZ: does not apply.

(6) Height and Form.



- (a) Maximum principal building height: three stories/35 feet max.
- (b) Accessory structure: 24 feet max.
- (c) Minimum ground floor elevation: two feet minimum. ~~For houses on lots located below the adjacent right-of-way, or which slope significantly down from the adjacent right-of-way, only those portions of the house structure within 15 feet of the interior edge of the rights-of-way for the primary or side street must meet this requirement.~~

(d) Pedestrian Access.

- (i) The main entrance to the home shall face the primary street, ~~side street or side yard.~~

(e) Building Elements ~~Allowed~~Required.

(i) Balcony. See POMC 20.122.030.

(iii) Porch. See POMC 20.122.060.

(iii) Stoop. See POMC 20.122.070.

Commented [JF1]: Subjective. Quantitative measure is necessary.

Commented [JF2]: POMC 20.40.050(3) only requires min GFE to be met in first 20 feet of Lot.

Commented [JF3]: Define pedestrian access:

"An entrance providing both ingress and egress, operable to residents or customers at all times, is required to meet the street-facing entrance requirements. Additional entrances off another street, pedestrian area or internal parking area are permitted."

Commented [JF4]: Required per POMC 20.139.025(1)

Commented [JF5]: Porch standard refinement

(f) Building Elements Allowed.

(i) Balcony. See POMC 20.122.030.

(ii) Porch. See POMC 20.122.060.

(iii) Stoop. See POMC 20.122.070

(fg) Parking Location.

(i) Front/Corner Yard Restrictions. None

(ii) Garage Door Restrictions. See Chapter [20.139.015](#) POMC.

(h) Transparency.

(i) See POMC 20.139.025

Commented [JF6]: Porch standard refinement

Commented [JF7]: Required per POMC 20.139.025(1)



CITY OF PORT ORCHARD

DEPARTMENT OF COMMUNITY DEVELOPMENT

216 Prospect Street, Port Orchard, WA 98366
Ph.: (360) 874-5533 • FAX: (360) 876-4980

PLANNING COMMISSION STAFF REPORT

Agenda Item No:	5(c)	Meeting Date:	September 6, 2022
	Discussion: Annual	Prepared by:	Nick Bond, Development
Subject:	Housekeeping Amendments		Director

Issue:

DCD staff continually tracks errors, inconsistencies, outdated references, and omissions in Title 20 POMC (Unified Land Use and Development Code) and gathers these into one corrections ordinance each year – generally known as the annual Title 20 “housekeeping ordinance”. These proposed corrections to Title 20 for 2022 have been identified and the proposed action for the Planning Commission’s review.

- POMC 5.88 Land Classification: Repeal in its entirety.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard05/PortOrchard0588.html#5.88>
- POMC 10.96 RV Parking Permitting: Repeal in its entirety.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard10/PortOrchard1096.html#10.96>
- POMC 20.100.070(1) Cul-de-sac streets: Minimum right-of-way width conflicts with minimum right-of-way required in the Port Orchard Public Works Engineering Standards and Specifications. Staff recommends revising to create consistency between City regulations.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard20100.html#20.100.070>
- POMC 20.124.040(11) Bicycle Parking Required: Current language allows for parking stall amount reduction for all development. Intent of this regulation is to reduce the amount of land dedicated to surface parking associated with non-residential uses. Staff recommends revising to only apply to non-residential development.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard20124.html#20.124>
- POMC 20.127.160(1) Landscaped block frontage standards: typographic correction. The language in adopted code contains an unnecessary “the”. Staff recommends deleting an erroneous “the”.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard20127.html#20.127.160>
- POMC 20.127.330(4)(b) Walkway Design: Current language does not consider wheel stops as appropriate mitigation to prevent overhanging vehicles on adjacent walkways. Staff recommends including language referencing wheel stops as described in POMC 20.124.100 as an appropriate preventive measure to overhanging vehicles on adjacent walkways.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard20127.html#20.127.330>

- POMC 20.132.210(3)(a) Minimum Support Width: Staff recommends replacing “Minimum” with “Maximum” as a minimum requirement creates what would be considered a monument sign as no maximum is identified.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard20132.html#20.132.210>
- POMC 20.180.004(1)(r) Exempt Development: Include language in tenant improvement permit exemption which considers change in use that may not otherwise be exempt from concurrency requirements.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard20180.html#20.180.004>
- POMC 20.200.018 City Construction Code - Appeals Section: Clean up to IFC reference from Section 108 to Section 109.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard20200.html#20.200.018>
- POMC 20.31.010(2) Zones established: Include the McCormick Village Overlay District (MVOD) as an established overlay district.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard2031.html#20.31.010>
- POMC 20.39.250 Parks and Open Space: Reformatting specific uses under “defined” as subsections.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard2039.html#20.39.250>
- POMC 20.39.355 Personal Service: Include “massage parlor” as a listed personal use consistent with January 24, 2022 Director’s Interpretation.
<https://www.codepublishing.com/WA/PortOrchard/#!/PortOrchard20/PortOrchard2039.html#20.39.355>

Staff will prepare an Ordinance provided in clean format, and an explanatory document is provided that lists each correction in numerical order, in redline strikeout/underline format, with explanations at the head of each change. The Planning Commission is requested to schedule a public hearing regarding the described amendments at the November 8, 2022 Planning Commission Meeting.



CITY OF PORT ORCHARD

DEPARTMENT OF COMMUNITY DEVELOPMENT

216 Prospect Street, Port Orchard, WA 98366
Ph.: (360) 874-5533 • FAX: (360) 876-4980

PLANNING COMMISSION STAFF REPORT

Agenda Item No:	5(d)	Meeting Date:	September 6, 2022
Subject:	Discussion: Amendments to POMC 15.30 and 20.150.270 relating to Stormwater Management	Prepared by:	Nick Bond, Development Director

Issue: The City of Port Orchard is a permittee under the Washington State Department of Ecology (Ecology) for stormwater via the Phase II Municipal National Pollution Discharge Elimination System (NPDES) Permit. The City's Stormwater Management Program is the City's mechanism for implementing the NPDES Permit, thereby, managing and controlling stormwater runoff so that it does not pollute downstream waters.

POMC Chapter 15.30 regulates the contribution of non-stormwater discharges to the storm sewer system. POMC Chapter 20.150 provides additional regulations to supplement those set out in POMC 15.30 for storm and surface water discharge, such as source control and the use of best management practices, by new development and redevelopment within the City under the authority of the Public Works Department.

City staff proposes to amend Port Orchard Municipal Code (POMC) 15.30 and POMC 20.150.270 relating to Stormwater Management for compliance with current standards. Although the City already has certain regulations in place that comply with many of the requirements of the NPDES permit, certain amendments are necessary to ensure that the City is in compliance with provisions of the permit relating to inspection and enforcement. The City has an inventory of publicly and privately owned sites that have the potential to generate pollutants and would be responsible for holding annual inspections of these sites and maintaining records of the findings from those inspections.

The proposed amendments are consistent with the surface water maintenance and management programs required under the terms of the NPDES permit. The City sent notice of the proposed code amendments to the Washington State Department of Commerce pursuant to RCW 36.70A.106.

The following amendments are provided on behalf of the City's Public Works Department. The City's Public Works Department will bring the proposed amendments to City Council for Public Hearing and adoption.

Attachments: POMC 15.30 Amendments, POMC 20.150.270, NPDES Compliance Ordinance

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

Chapter 15.30

ILLICIT DISCHARGE PREVENTION, DETECTION AND ELIMINATION

Sections:

- 15.30.010 Purpose.
- 15.30.020 Definitions.
- 15.30.030 Applicability.
- 15.30.040 Administration.
- 15.30.050 Compliance required.
- 15.30.060 Minimum standards.
- 15.30.070 Discharge prohibitions.
- 15.30.080 Suspension of MS4 access.
- 15.30.090 Industrial or construction activity discharges.
- 15.30.100 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices (BMPs).
- 15.30.110 Watercourse protection.
- 15.30.120 Notification of illicit discharges.
- 15.30.130 Inspection and investigation.
- 15.30.140 Enforcement and penalties.
- 15.30.150 Appeals.
- 15.30.160 Records retention.
- 15.30.170 Construction – Intent.

15.30.010 Purpose.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of Port Orchard and to protect and enhance the water quality of watercourses and water bodies through the regulation of non-stormwater discharges, dumping and illicit connections, to the storm drain system to the maximum extent practicable as required by federal and state law. This chapter is established in compliance with the Federal Clean Water Act (Title 33 United States Code Section 1251 et seq. ~~and~~), the requirements of the city's National Pollutant Discharge Elimination System (NPDES) permit, Western Washington Phase II Municipal Stormwater Permit, and the Port Orchard stormwater manuals as set out in Port Orchard Municipal Code Chapter 20.150. ~~The objectives of this chapter are:~~

The objectives of this chapter are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user, utilizing best management strategies and source control, in conjunction with the provisions set out in POMC Title 13 and Chapter 20.150;
- (2) To prohibit illicit connections and discharges to the municipal separate storm sewer system;

Style Definition: Normal: Font: (Default) Georgia, Space After: 10 pt, Line spacing: Multiple 1.15 li

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Do not suppress endnotes

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Space After: 0 pt, Line spacing: single, Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Formatted: Indent: Left: 0", First line: 0", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Justified, Don't keep with next, Don't hyphenate, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: -1", Left + -0.5", Left + Not at 0.75"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Justified, Don't hyphenate, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: -1", Left + -0.5", Left + Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted

Formatted: Font: Georgia, 11 pt

Formatted

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

(3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter; and

(4) To establish enforcement processes and penalties for violations of this chapter. (Ord. 019-09 § 2).

15.30.020 Definitions.

~~The terminology in this chapter shall have the meanings described as follows:~~ Definitions provided below and those set out in POMC 20.150.020 apply to this chapter, provided if there is a conflict between this chapter and POMC 20.150.020 as to a defined term, the definition set out in this chapter applies to the application of this chapter.

(1) "AKART" means all known available and reasonable methods of prevention, control, and treatment.

(2) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(3) "City" means Port Orchard, Washington, or as indicated by the context, the public works director, or other authorized representative of the governmental authority of the city of Port Orchard.

(4) "Director" means the public works director or designee(s).

(5) "Discharge" means to 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 to be thrown, drained, released, dumped, spilled, emptied, emitted, or poured into water.

(6) "Groundwater" means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

(7) "Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Justified, Indent: First line: 0.5", Don't hyphenate, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: -1", Left + -0.5", Left + Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Justified, Indent: First line: 0.5", Don't hyphenate, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: -1", Left + -0.5", Left + Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

(8) "Illicit connection" means (a) any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the city; or (b) any drain or conveyance connected from a residential, commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the city.

(9) "Illicit discharge" means any direct or indirect non-stormwater discharge to a municipal separate storm sewer or to surface or groundwater that is not composed entirely of stormwater, except discharges pursuant to an NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer), discharges resulting from ~~fire fighting~~firefighting activities, and those discharges expressly allowed conditionally by this chapter.

Formatted: Font: +Body (Calibri), 12 pt

(10) "Industrial waste" means any liquid, gaseous or solid substance or a combination thereof which is an undesired by-product waste resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources, except garbage.

(11) "Municipal separate storm sewer system (MS4)" means a conveyance or system of conveyances which is intended to convey only stormwater (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) and which are: (a) owned or operated by the city of Port Orchard; (b) designed or used for collecting or conveying stormwater; (c) are not part of a publicly owned treatment works (any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned); and (d) are not a combined sewer (a system that collects sanitary sewage and stormwater in a single sewer system).

(12) "National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit" means a permit issued by the Environmental Protection Agency (EPA) or by the Washington State Department of Ecology that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, group, or general area-wide basis.

(13) "Non-stormwater discharge" means any discharge to the storm drain system that is not composed entirely of stormwater.

Formatted: Font: Georgia, 11 pt

(14) "Owner" or "person" includes any individual, association, organization, partnership, firm, corporation, business, leasee, or other entity recognized by law; acting as either the owner or

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

as the owner's agent, and/or having responsibility, charge, and/or control over any property that is subject to the provisions of this chapter.

(15) "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, 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.

(16) "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the city, state, or United States, 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 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.

~~(17)~~ (17) "Port Orchard stormwater manuals" or the "stormwater manuals" means as defined at POMC 20.150.060(3).

~~(18)~~ (18) "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved.

~~(19)~~ (19) "Sanitary sewer" means a conveyance system which transports sewage and to which storm, surface and groundwaters are not intentionally admitted.

~~(20)~~ (20) "Sewage" means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such groundwater, surface water and stormwater as may be inadvertently present. The admixture of sewage with industrial wastes as defined above or other wastes also shall be considered "sewage" within the meaning of this definition.

~~(21)~~ (21) "Stop work order" means an immediate order posted at site halting all operations except those required to correct improper activities.

~~(22)~~ (22) "Storm drainage system or storm drain system" means any publicly owned facility, including the city's municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

~~(2223)~~ “Storm water” or “stormwater” means any surface flow, runoff, and drainage consisting entirely of uncontaminated water from any form of natural precipitation, including snowmelt, during and following precipitation, and resulting from such precipitation that meets the nonpollutant requirements.

Formatted: Font: +Body (Calibri), 12 pt

~~(2324)~~ “Stormwater pollution prevention plan” or “SWPPP” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Formatted: Font: +Body (Calibri), 12 pt

~~(2425)~~ Source Control BMPs – A structural or operation that is intended to prevent pollutants from encountering stormwater through physical separation of areas or careful management of activities that are sources of pollutants. Structural Source Control BMPs are physical, structural, or mechanical devices, or facilities that are intended to prevent pollutants from entering stormwater. Operational Source Control BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater.

~~(26)~~ “Wastewater” means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

~~(2527)~~ “Watercourse” means a depression formed by runoff moving over the surface of the earth; any natural or artificial channel through which water flows; a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically.

Formatted: Font: +Body (Calibri), 12 pt

~~(2628)~~ “Waters of the state” means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington as defined in Chapter 90.48 RCW. ~~(Ord. 019-09 § 3).~~

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

15.30.030 Applicability.

This chapter shall apply to all water entering the stormwater drainage system and waters of the state within the city’s jurisdiction. ~~(Ord. 019-09 § 4).~~ and to all new and existing development, public and private. The provisions of this chapter shall also apply to the maintenance responsibility of existing stormwater facilities.

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

Meeting the requirements of this chapter is the joint and severable responsibility of the owner(s) of the site and the person(s) responsible for maintenance on both new and existing facilities.

The city recognizes that the implementation of successful pollution and source control practices is most likely through prevention education effort for institutional sites, commercial sites, industrial sites, and the general public. The city will endeavor to provide education and technical assistance within the constraints of available resources to educate individuals as to how to implement pollution and source control practices.

15.30.040 Administration.

The public works director or designee shall administer, implement, and enforce the provisions of this chapter. The director shall have the authority to develop and implement procedures to administer and enforce this chapter. ~~(Ord. 019-09 § 5).~~

15.30.050 Compliance required.

Property owners are responsible for the maintenance, operation and repair of stormwater systems and source control BMPs within their property. Property owners shall maintain, operate, and repair ~~these facilities~~ stormwater systems and source controls in compliance with the requirements of this chapter and the city's adopted codes and manuals. ~~(Ord. 019-09 § 6).~~ including the city's stormwater manuals as set out in Port Orchard Municipal Code Chapter 20.150.

15.30.060 Minimum standards.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants. (Ord. 019-09 § 7).

15.30.070 Discharge prohibitions.

(1) Prohibition of Illicit Discharges. It is unlawful for any person to throw, drain, or otherwise discharge, or cause or allow others under its control to throw, drain or otherwise discharge, any materials other than stormwater into the municipal storm drain system and/or surface and groundwaters of the city. Prohibited materials include, but are not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards. The commencement, conduct, or continuance of any illicit discharge to the storm drain system is prohibited.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

Examples of ~~pollutants~~ **prohibited discharges** include, but are not limited to, the following: trash or debris; solid waste; construction materials; petroleum products including, but not limited to, oil, gasoline, grease, fuel oil, heating oil; antifreeze and other automotive products; fixed and mobile vehicle washes; metals in either particulate or dissolved form in excess of naturally occurring amounts; flammable or explosive materials; radioactive materials; batteries; acids, alkalis, or bases; paints, stains, resins, lacquers, or varnishes; degreasers or solvents; drain cleaners; commercial and household cleaning materials; carpet cleaning wastes; pesticides, herbicides, or fertilizers; steam cleaning wastes; laundry waste; soaps, detergents, or ammonia; swimming pool or spa filter backwash (diatomaceous earth); swimming pool cleaning wastewater; chlorine, bromine, and other disinfectants; heated water; chlorinated swimming pool or hot tub water; human and animal wastes; domestic or sanitary sewage; recreational vehicle waste; animal carcasses; food and food wastes; yard waste; bark and other fibrous materials (does not include large woody debris in approved restoration projects); collected lawn clippings, leaves, or branches; wastes associated with building construction; concrete and concrete by-products; silt, sediment, including dirt, sand, and gravel; dyes and ink (except as stated in subsection (2)(e) of this section); chemicals not normally found in uncontaminated water; any other process-associated discharge except as otherwise allowed in this section; and any hazardous material or waste not listed above.

(2) Conditional Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter if they meet the stated conditions or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

(a) Discharges from potable water sources, including water line flushing, hyper-chlorinated (> 10 mg/liter chlorine) water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater system;

(b) Discharges from lawn watering and other irrigation runoff; however, these shall be minimized through water conservation efforts;

(c) Dechlorinated spa or swimming pool discharges. The discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the stormwater system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water. Swimming pool

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

cleaning wastewater and filter backwash shall not be discharged to the storm drainage system;

(d) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. The amount of street wash, dust control, and building wash water shall be minimized. At active construction sites, street sweeping must be performed prior to washing the street;

(e) Dye testing with verbal notification to the city a minimum of 24 hours prior to the time of the test;

(f) Nonstormwater discharges covered by another NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency or Washington State Department of Ecology; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;

(g) Discharges resulting from maintenance, repair, or operation of firefighting equipment and facilities that are not directly associated with public firefighting, including discharges from public firefighting training exercises, unless city-approved best management practices are implemented;

(h) Other nonstormwater discharges shall be in compliance with the requirements of a stormwater pollution prevention plan reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or groundwater.

(3) Allowable Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter if they do not contain pollutants or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

(a) Diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in Title 40 of the Code of Federal Regulations: 40 CFR 35.2005(20)), uncontaminated pumped groundwater, foundation drains, air conditioning condensation, irrigation water from agricultural sources that is commingled with urban stormwater, springs, water from crawl space pumps, footing drains, flows from riparian habitats and wetlands, and discharges from emergency firefighting activities in accordance with "S2. Authorized Discharges" of the city's NPDES permit.

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

(b) Discharges specified in writing by the city as being necessary to protect public health and safety.

(c) If a person can demonstrate that there are no additional pollutants being discharged from the premises above the background conditions of the water entering the site, that person shall not be in violation of subsection (1) of this section.

(4) Prohibition of Illicit Connections.

(a) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(b) Any connection identified by the director that could convey anything not composed entirely of surface and stormwater directly into municipal drainage facilities is considered an illicit connection and is prohibited with the following exceptions: connections conveying allowable discharges or connections conveying discharges pursuant to an NPDES permit or a state waste discharge permit.

(c) Illicit connections must be disconnected and redirected, if warranted, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the city.

(d) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which is connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the city requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as a storm sewer, sanitary sewer, or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the city.

(5) Prohibition of Stormwater Discharge to Sanitary Sewer. Stormwater shall not be discharged into the sanitary sewer without written permission to do so from the city of Port Orchard.

(6) Prohibition of Waste Disposal. No person shall throw, deposit, leave, maintain, or keep in or upon any public or private property, the stormwater drainage system, or waters of the state any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, or

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

accumulations that may cause or contribute to pollution. Wastes deposited in proper nonleaking waste receptacles for the purposes of collection are exempt from this prohibition. (Ord. 007-18 § 1; Ord. 019-09 § 8).

15.30.080 Suspension of MS4 access.

(1) Suspension Due to Illicit Discharges in Emergency Situations. The city may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the public health or welfare, or to the MS4, or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

(2) Suspension Due to the Detection of Illicit Discharge. The city may terminate a person's MS4 access if such termination would abate or reduce an illicit discharge. The city will notify a violator of the proposed termination of its MS4 access. The violator may appeal such termination in accordance with POMC 15.30.150. No person shall reinstate MS4 access to premises terminated pursuant to this section, without the prior approval of the city. (Ord. 019-09 § 9).

15.30.090 Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. ~~The city may require proof, in addition to meeting the requirements of this chapter and POMC Chapter 20.150, where applicable. Proof of~~ compliance with ~~said~~ permit ~~under this section shall be required~~ in a form acceptable to the ~~city public works department~~ prior to ~~the city allowing discharges to the MS4. (Ord. 019-09 § 10); any discharge to the municipal separate storm sewer. The public works director may allow a person to submit a copy of a new, existing, or renewed NPDES permit to meet the purposes of this subsection.~~

15.30.100 Requirement to prevent, control, and reduce stormwater pollutants by the use of source control best management practices (BMPs).

(1) General. Any person causing or allowing discharge to a storm water drainage system, surface waters or groundwater shall limit pollutants in the discharge by implementing source control best management practices (BMPs).

(2) The owner or operator of an institutional, commercial or industrial establishment facility shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system,

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Indent: Left: 0", Hanging: 1", Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: Georgia, 12 pt

Formatted: Font: Georgia, 12 pt

Formatted: Font: Georgia, 12 pt

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

watercourses, surface water, or groundwater through the use of structural and nonstructural ~~source control BMPs set out in the stormwater manuals for the activity, facility or activity, provided those facilities or activities not identified in the stormwater manuals shall utilize structure and nonstructural source control~~ BMPs which have been approved by the city for ~~any~~the activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the state. ~~Further, any~~

Formatted: Font: Georgia, 12 pt

Formatted: Font: Georgia, 12 pt

(3) ~~Any~~ person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional ~~operational, treatment,~~ structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the NPDES permit.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

(24) BMP Descriptions. ~~Approved~~ BMPs are described in the stormwater ~~management manual(s)~~manuals adopted by the city. The ~~manual(s) describes~~stormwater manuals describe the types of regulated activities, the types of contaminants generated by each activity, the contaminant's effect on water quality, the ~~applicable~~ required source control BMPs, and the available treatment BMPs. The ~~manual(s) includes~~stormwater manuals include information on design, maintenance, and allowable use of additional or alternative BMPs. ~~Source control BMPs not included in the stormwater manuals may be approved by the director or designee if the director or designee determines that it provides equivalent effectiveness. The City may require additional source control BMPs and/or treatment BMPs or facilities if additional BMPs or facilities are deemed necessary by the director and/or his or her designee to eliminate an ongoing release of pollution, in accordance with the stormwater manuals.~~

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

(35) Priority of BMP Implementation. In applying the ~~BMP manual~~stormwater manuals, the ~~director~~Director shall first require the implementation of source control BMPs unless the ~~BMP manual~~stormwater manuals specifically ~~requires~~require treatment BMPs. If source control BMPs (or treatment BMPs if required by the ~~BMP manual~~stormwater manuals) do not prevent contaminants from entering surface and stormwater or groundwater, the director may require implementation of additional source control BMPs and/or treatment BMPs, according to AKART.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

(46) Prevention of Pollution of Surface and Groundwater. BMPs shall be applied as required herein, so that when all appropriate combinations of individual BMPs are utilized, pollution of surface or groundwater is prevented. If all BMPs required herein, or by the director are applied,

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

and pollution still occurs, the discharger shall modify existing practices or apply further water pollution control measures, as specified by the director. In the absence of implementation of applicable BMPs, the director shall be authorized to conclude that individual activities are causing pollution in violation of this section, and shall be authorized to enforce this chapter accordingly. (Ord. 019-09 § 11).

15.30.110 Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. (Ord. 019-09 § 12).

15.30.120 Notification of illicit discharges.

(1) Notwithstanding other requirements of law, as soon as any person, including any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, who has information of any known or suspected release of materials which are resulting, or may result in, illicit discharges or pollutants discharging into stormwater, the storm drain system, or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(a) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911) and the public works department (360-876-4991).

(b) In the event of a release of non-hazardous materials, said person shall notify the public works department in person or by phone (360-876-4991) or facsimile (360-876-4980) within 48 hours after said discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city within three business days of the phone notice.

(2) If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained in accordance with POMC 15.30.160. (Ord. 019-09 § 13).

15.30.130 Inspection and investigation.

(1) Authorization.

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Indent: Left: 0", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

(a) Whenever implementing the provisions of this chapter, or whenever there is cause to believe that a violation of this chapter has been or is being committed, the ~~director~~ **Director or designee** is authorized to inspect during regular working hours and at other reasonable times all stormwater facilities within the city of Port Orchard to determine compliance with the provisions of this chapter.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

(b) The director may observe BMPs or examine and/or sample surface and stormwater or groundwater as often as may be necessary to determine compliance with this chapter. The director is further authorized, as set forth in subsections (2) and (4) of this section, to enter in or upon any public or private property for the purpose of inspecting and investigating conditions relating to the pollution of, or the possible pollution of, surface and/or groundwater. Whenever an on-site inspection of a property is made, the findings shall be documented. A copy of the inspection findings shall be furnished to the owner or the person in charge of the property after the conclusion of the investigation.

(2) Right of Entry. The director is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating any conditions relating to the provisions of this chapter or any regulation adopted under this chapter; provided, that the city shall first obtain from the owner or person responsible for such premises, permission to enter. If entry is refused, the city shall have recourse to every remedy provided by law to secure entry. The right of entry is subject to the provisions of subsection (4) of this section.

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(a) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the director.

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(b) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the facility operator.

(c) No person who is the owner or operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity shall deny the city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter. Unreasonable delays in allowing the city access to a permitted facility is a violation of a stormwater discharge permit and of this chapter.

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(3) Obstructing the Director. No person shall obstruct the director in the performance of his or her official duties in the enforcement of this chapter, including but not limited to:

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

(a) Intentional use of, or threat to use, force to obstruct a person he or she knows, or should reasonably know, is the director and is performing his or her official duties in the enforcement of stormwater system regulations; or

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(b) Acting in a manner that he or she knows, or should reasonably know, will interfere with or obstruct a person known to be, or who should reasonably be known to be, responsible for the enforcement of stormwater system regulations; or

(c) Refusing to identify himself or herself and give his or her current address to the director for the enforcement of this chapter pursuant to an investigation of a violation upon request by the director.

(4) Inspection Requirements. The director is authorized to develop inspection procedures and requirements for all stormwater facilities in the city of Port Orchard. In addition to any procedures for inspections developed by the director, the following shall apply:

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(a) Prior to making any inspections on private property, the director shall present identification credentials, state the reason for the inspection, and request entry.

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(b) If the property, or any building or structure on the property, is unoccupied, the director 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.

(c) Unless entry is consented to by the owner or person(s) in control of the property, or portion of the property, or unless conditions are reasonably believed to exist in the opinion of the director which create immediate danger to public health or safety, the director shall obtain a search warrant or other remedy, prior to entry, as authorized by the laws of the state of Washington.

(d) Nothing in this section prevents the director from inspecting a stormwater system without consent of the property owner or a search warrant, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

(5) Monitoring, Sampling, and Analysis.

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(a) Whenever the director determines that any person has violated or is violating the provisions of this chapter, the director may require the person responsible for the violation to sample and analyze any discharge, surface water, stormwater, groundwater, and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the director. When the director has reason to believe that a connection is resulting in an illicit discharge, the director may sample and analyze the

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

discharge and recover the costs from a person in an enforcement proceeding. When the discharge is likely to contain illicit discharges on a recurring basis, the director may conduct, or may require the person to conduct, ongoing monitoring (including sampling and testing) at the person's expense.

(b) The city shall have the right to set up on any facility such devices as are necessary in the opinion of the city to conduct monitoring and/or sampling of the facility's stormwater discharge.

(c) The city has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. When monitoring is required, the discharger shall sample and analyze any discharge, surface and stormwater, groundwater, and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the director. A copy of the analysis shall be provided to the director. (Ord. 019-09 § 14).

15.30.140 Enforcement and penalties.

(1) Authorization. The director is authorized to enforce this chapter and any permit, order or approval issued pursuant to this chapter, against any violation or threatened violation thereof.

(2) Compliance. The director shall attain compliance with this chapter by requiring the implementation of source control BMPs. The director may initially rely on education and informational assistance to gain compliance with this chapter, unless the director determines a violation poses a hazard to public health, safety, or welfare, endangers any property, or adversely affects the safety and operation of city right-of-way, utilities and/or other property owned or maintained by the city, that should be addressed through immediate penalties. The director may demand immediate cessation of discharges and assess penalties for violations that are an imminent or substantial danger to the health or welfare of persons or danger to the environment. Enforcement actions shall escalate for non-compliance.

Enforcement shall include one or more of the following actions, singly or in combination-, at the discretion of the director or designee. Responsibility for violations subject to enforcement under this chapter is joint and several, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for compliance.

The director may apply whatever enforcement action, or combination of actions, is determined appropriate within the following range of actions, regardless of the position in the range.

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

(a) Written warning with voluntary compliance. May be applied to first time, minor violations. Educational materials and informational assistance will be provided to the violator.

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(b) Compensatory actions such as community service related to stormwater education or mitigation in lieu of penalty or enforcement proceedings. Requires a formal written agreement between the director and the violator.

(c) Written notice of violation ordering compliance, in accordance with subsection (3) of this section.

Formatted: Font: +Body (Calibri), 12 pt

(d) Civil or criminal penalties. In accordance with subsections (4) and (5) of this section.

(e) Emergency cease and desist order. In circumstances where a violation poses a hazard to public health, safety, or welfare, endangers any property, or adversely affects the safety and operation of city right-of-way, utilities and/or other property owned or maintained by the city, the director is authorized to issue cease and desist orders. The cease and desist order may require immediate compliance with this chapter by halting operations and/or terminating discharges may be applied by means of the use of a stop work order.

(f) Disconnection from the MS4. Applies to illicit connections to MS4, to illicit discharges in emergency situations, or continued failure of the property owner to comply.

(g) Revocation of permit. Where the violation of this chapter provides a nuisance or poses a hazard to public health, safety and welfare, and has not previously been abated, the director may, upon written notice, revoke any and all permits associated with the site and/or issuance of an associated stop work order. Service of a written notice of revocation shall be in the same manner as service of a notice and order. Revocation of a permit by the director may be appealed within 10 working days of service of written notice. The appeal must be in accordance with POMC 15.30.150.

Formatted: Font: +Body (Calibri), 12 pt

(3) Notice and Order.

(a) Contents. The director shall have authority to issue to an owner or person responsible for a violation of this chapter an order to maintain or repair a component of a stormwater facility or BMP to bring it into compliance with this chapter or other city regulations, to remove any illicit connection, to cease any illicit discharge, and to repair or remediate any damages to the environment caused by any such violation. The order shall include the following:

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(i) The order identification number or permit number; and

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

- (ii) The street address, when available, and the tax parcel number of real property and/or description of personal property sufficient for identification of where the violation occurred or is located; and
- (iii) A description of the specific nature, extent and time of the violation and the damage that has occurred or potential damage that reasonably might occur; and
- (iv) A notice that the violation or the potential violation cease and desist; and
- (v) A statement of the corrective action required to be taken. If the director has determined that corrective work is required, the order shall require that all required permits be secured, that work physically be commenced, and that the work be completed within such times as the director determines are reasonable under the circumstances; and
- (vi) A statement advising that if any required work is not commenced or completed within the times specified, the director may proceed to cause abatement of the violation and cause the work to be done and charge the costs thereof as a lien against the property and as a joint and separate personal obligation of any person in violation; and
- (vii) Any requirements for monitoring, analyses and reporting; and
- (viii) A statement specifying the amount of any civil penalty assessed as a result of the violation and, if applicable, the conditions on which assessment of such civil penalty is contingent; and
- (ix) An order to the owner to provide the director a detailed plan showing drawings and steps that will be taken to achieve compliance within a specific time. The plan is subject to the approval of the director; and
- (x) A statement advising that the order shall become final unless, no later than 10 working days after the notice and order are served, any person aggrieved by the order requests an appeal in accordance with POMC 15.30.150.

(b) Service. Service of the notice and order shall be made upon all persons identified in the notice and order either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested. If the address of any such person cannot reasonably be ascertained, a copy of the notice and order shall be mailed to such person at the address of the location of the violation. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this chapter. Service by certified mail in the manner provided in this section shall

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

be effective on the date of postmark. The notice and order may be, but is not required to be, posted on the subject property.

(c) Appeal. Persons to whom the notice and order of the director is issued may appeal the same within 10 working days of service. The appeal must be in accordance with POMC 15.30.150.

(4) Civil ~~Infraction~~.Penalties.

(a) Conduct made unlawful by this chapter shall constitute a class one civil infraction and is subject to enforcement and fines as provided in Chapter 2.64 POMC. Each day of noncompliance with any of the provisions of this chapter shall constitute a separate offense.

(ab) In addition to any other available sanction or remedial procedure, any person engaging in conduct made unlawful by this chapter shall be subject to a civil penalty ~~no greater than set by POMC 2.64.030~~ in an amount not to exceed \$5,000 per occurrence, per day for each violation from the date set for compliance until the date of compliance, based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action, and whether or not the violation was intentional.

(bc) Payment of a monetary penalty pursuant to this chapter does not relieve the person of the duty to correct the violation.

~~(e) All civil penalties recovered during the enforcement of this chapter shall be deposited into a fund which shall be used by the city for the protection of surface and stormwater or groundwater as set forth in this chapter, through education or enhanced implementation.~~

(d) Joint and Several Responsibility and Liability: Responsibility for civil penalties under this chapter is joint and several, and the city is not prohibited from seeking recovery against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for compliance.

(5) Criminal Prosecution. Any person violating or failing to comply with any of the provisions of this chapter shall be subject to criminal prosecution and upon conviction, shall be guilty of a misdemeanor for the first offense and a gross misdemeanor for any subsequent offense occurring within a five-year period. Each day of noncompliance with any of the provisions of this chapter shall constitute a separate offense.

(6) Recovery of Costs Incurred by the City. In addition to any costs for enforcement under this chapter, any person violating any of the provisions of this chapter shall be liable to the city for

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

any expense, loss, or damage caused by such violation or discharge, including but not limited to the costs for bringing the city back into compliance with its NPDES permit associated with any violation of these regulations, and any fines levied for violations of the city's NPDES permit.

(7) Violations Deemed a Public Nuisance. Any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(8) Summary Abatement.

(a) Whenever any violation of this chapter causes or creates a condition, the continued existence of which constitutes, in the opinion of the director, an immediate threat to the public health, safety or welfare or to the environment, the director may summarily and without prior notice, at the cost of the owner, abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(b) Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including labor and materials, legal expenses, administrative costs, and interest to the extent such costs are known. Persons to whom the assessment of costs of abatement is issued may appeal the same within 10 working days of service. The appeal must be in accordance with POMC 15.30.150. If the amount due is not paid within a timely manner as determined by the decision of the city or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(9) The owner shall pay the abatement costs in not more than ~~twelve~~ (12) equal payments. Such costs shall accrue interest at the rate set by the city's finance department per annum or the rate charged to the city for obtaining the funds necessary to abate, whichever interest is greater.

(10) Injunctive Relief. In addition to any other remedy provided by this chapter or the Port Orchard Municipal Code, the city may initiate injunction or abatement proceedings or any other appropriate action in courts against any person who violates or fails to comply with any provision of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the person violating and/or failing to comply with any provisions of this chapter shall be liable for the costs and reasonable attorneys' fees incurred by the city in bringing, maintaining, and/or prosecuting such action.

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

(11) Remedies Not Exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the city to seek cumulative remedies. (~~Ord. 019-09 § 15~~);

Formatted: Font: +Body (Calibri), 12 pt

15.30.150 Appeals.

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

(1) The director's notice and order, revocation of a permit, or assessment of costs of abatement may be appealed to the city council by persons to whom the notice and order, revocation of a permit, or assessment of costs of abatement is issued. An appeal shall be considered timely if, but only if, it is filed in writing with the director within 10 working days of service, and the appeal fee adopted by the city council is paid in full. In addition to the appeal fee, if the director determines that the services of an independent consultant are reasonably necessary in adjudicating the appeal, the appellant shall make an initial cash deposit to pay for an independent review as the same may be reasonably required by the director. The initial deposit, which is only an estimate of the consultant's costs, shall be paid in advance of the hearing. If it is determined during any point in the appeal process that the initial deposit is insufficient to cover all reasonable consultant's costs, the appellant shall be required to make an additional deposit in an amount sufficient to cover the same. Any portion of the deposit that is not used to cover all reasonable consultant's costs shall be refunded to the appellant. The amount of the deposit shall be at least \$500.00 but not more than \$1,500, and it shall be determined by the director based upon a good faith estimate of permissible costs. The appellant shall be given equal access to any report prepared by the consultant.

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(2) The director shall accept appeals that meet the requirements of this section and shall schedule such appeals for consideration by the city council. The city council hearing shall be scheduled within 60 days after the appeal is accepted. The director shall reject any appeal that fails to meet the filing and submittal requirements of this section. The appeal fee shall be refunded in the event the director rejects the appeal or in the event that the appellant files a statement with the director withdrawing the appeal at least 15 calendar days before the scheduled hearing. In all other cases, the appeal fee shall be nonrefundable.

(3) The written appeal shall contain all of the following information and attachments:

- (a) A copy of the notice and order, revocation of a permit, or assessment of costs of abatement being appealed;
- (b) The name of the property owner and, if applicable, the owner's agent;
- (c) The name and signature of each appellant and a statement showing that each is entitled to file the appeal under subsection (1) of this section; and

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

(d) A statement of appeal identifying each issue in the notice and order or assessment of costs of abatement that the appellant wishes to appeal, the reasons why each issue is in error as a matter of fact and/or law, and evidence relied upon.

(4) The city council, under its quasi-judicial authority, shall hear the appeal in an open record hearing. At least 10 business days before the hearing, notice of the same shall be mailed to parties who are entitled to notice of the decision. The notice of hearing does not need to be posted or published. The appeal shall be limited to those issues raised in subsection (3)(d) of this section, and shall be similar in format as other quasi-judicial matters that may from time to time come before the city council.

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(5) At least 10 business days before the hearing, the director and appellant shall each submit, as part of the record, separate reports to the city council containing a statement of the issues and applicable laws, discussion and analysis, proposed findings of fact and conclusions of law, and copies of any pertinent document referenced therein. The burden shall be on the city to support the order of the director by a preponderance of the evidence. Reports, if any, prepared by the independent consultant referenced in subsection (1) of this section shall be part of the record. The city council shall decide as follows, based upon the record made during the course of the public hearing:

(a) Uphold the order, revocation, or assessment of costs of abatement of the director in its entirety; or

Formatted: Indent: Left: 0.5", Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

(b) Uphold the order, revocation, or assessment of costs of abatement of the director in part and reverse the order, revocation, or assessment of costs of abatement in part; or

(c) Reverse the order, revocation, or assessment of costs of abatement of the director in its entirety.

(6) The city council shall issue a final decision on the appeal supported by written findings and conclusions within 10 business days of the hearing. The decision shall also include venue information and limitations on filing judicial appeal(s) of the decision. The director shall serve a copy of the final decision to the appellant and other parties of record. Service shall be in the same manner as set forth in POMC 15.30.140(3)(b). (~~Ord. 019-09 § 16~~).

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

15.30.160 Records retention.

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall retain an on-site written record of the discharge and the actions taken to prevent its occurrence. Such records shall be kept and maintained on a permanent basis from the effective date of the ordinance codified in

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Ordinance Amending POMC Ch. 15.30 and Section 20.150.270
Tracked Version of Proposed Amendments

this chapter. The record shall includes books, documents, memoranda, reports, and correspondence relating to any operation, maintenance, monitoring, sampling, and chemical analysis associated with the discharge and all records which pertain to matters which are the subject of any enforcement or litigation activities brought by the director pursuant to this chapter. Copies of any or all records shall be provided to the director upon his request. (~~Ord. 019-09 § 17~~).

15.30.170 Construction – Intent.

This chapter is enacted as an exercise of the city’s power to protect and preserve public health, safety, and welfare. Its provisions shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. This chapter is not enacted to create or otherwise establish or designate any particular class or group of persons who will, or should be, especially protected or benefited by the terms of this chapter. The primary obligation of compliance with this chapter is placed upon the person holding title to the property. Nothing contained in this chapter is intended to be, or shall be, construed to create or form a basis for liability for the city, its officers, employees or agents for any injury or damage resulting from the failure of the person holding title to the property (owner of record) to comply with the provisions of this chapter, or by reason or in consequence of any act or omission, to act in connection with the implementation or enforcement of this chapter by the city, its officers, employees, or agents. (~~Ord. 019-09 § 18~~).

15.30.180 City’s non-liability.

The primary obligation of compliance with this chapter shall be placed upon the person holding title to the property. Nothing contained in this chapter is intended to be or shall be construed to create or form a basis for liability for the City or agents for any injury or damage resulting from the failure of the person holding title to the property to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter by the City.

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Don't keep with next, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.75"

Formatted: Font: Georgia, 12 pt

Formatted: Font: +Body (Calibri), 12 pt

Formatted: Font: Georgia, 12 pt

Formatted: Font: Georgia, 11 pt

Formatted: Adjust space between Latin and Asian text, Adjust space between Asian text and numbers, Tab stops: Not at 0.5"

Formatted: Font: Georgia, 11 pt

Formatted: Footer, Left, Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON,
RELATING TO STORMWATER MANAGEMENT; AMENDING PORT ORCHARD
MUNICIPAL CODE CHAPTER 15.30, AND SECTION 20.150.270; PROVIDING
FOR SEVERABILITY AND PUBLICATION, AND ESTABLISHING AN
IMMEDIATE EFFECTIVE DATE.**

WHEREAS, the City of Port Orchard is a permittee under the regulatory authority of the Washington State Department of Ecology (Ecology) for stormwater via the Phase II Municipal National Pollution Discharge Elimination System (NPDES) Permit; and

WHEREAS, the City's Stormwater Management Program is the City's mechanism for implementing the Permit, thereby, managing and controlling stormwater runoff so that it does not pollute downstream waters; and

WHEREAS, at Port Orchard Municipal Code Chapter 13.06, the City maintains regulations for the operation of the City's storm drainage utility and applicable charges and fees; and

WHEREAS, at Port Orchard Municipal Code Chapter 15.30, the City regulates the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user, and prohibits illicit connections and discharges to the municipal separate storm sewer system; and

WHEREAS, at Port Orchard Municipal Code Chapter 20.105, of the City's Unified Development Code, the City maintains additional regulations to supplement those set out in POMC 15.30 for storm and surface water discharge, including but not limited to source control and the use of best management practices (BMPs), by new development and redevelopment within the City under the authority of the public works department; and

WHEREAS, although the City already has certain regulations in place that comply with many of the requirements of the Phase II NPDES permit, certain amendments are necessary to ensure that the City is in compliance with provisions of the permit governing inspection and enforcement that must be implemented by the City this year; and

WHEREAS, the City maintains a source control inventory of publicly and privately owned institutional, commercial, and industrial sites which have the potential to generate pollutants to the MS4 as well as other pollutant generating sources, is committed to an annual inspection of at least 20% of sites on the inventory, is committed to inspect 100% of sites identified through credible complaints, and shall maintain records of all inspections; and

WHEREAS, the proposed amendments herein are consistent in scope and subject matter with the surface water maintenance and management programs required under the terms of the NPDES permit; and

WHEREAS, this Ordinance is enacted as an exercise of the police power authority of the City of Port Orchard to protect and preserve the public health and welfare; and

WHEREAS, the City sent notice of the proposed code amendments to the Washington State Department of Commerce pursuant to RCW 36.70A.106; and

WHEREAS, on _____, the City's SEPA official issued a determination of non-significance for the proposed code amendments and there have been no appeals; and

WHEREAS, on _____, the City Council held a public hearing on the proposed code amendments; and

WHEREAS, the City Council, after careful consideration of the proposed code amendments and all public comments and testimony, finds that the proposed code amendments are consistent with the City's Comprehensive Plan and development regulations, the Growth Management Act, Chapter 36.70A RCW, and that the amendments herein are in the best interests of the residents of the City; now, therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. Amendment. Port Orchard Municipal Code Chapter 15.30, *Illicit Discharge Prevention and Elimination* is hereby amended to read as set out in Exhibit A hereto and incorporated herein by this reference.

SECTION 2. Amendment. Port Orchard Municipal Code Section 20.150.270, *Enforcement* is hereby amended to read as set out in Exhibit B hereto and incorporated herein by this reference.

SECTION 3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

SECTION 4. Corrections. Upon approval of the city attorney, the city clerk and the codifiers of this ordinance are authorized to make necessary technical corrections to this ordinance, including, without limitation, the correction of clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or section/subsection numbering.

SECTION 5. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this __ day of _____ 2022.

Robert Putaansuu, Mayor

ATTEST:

Brandy Wallace, MMC, City Clerk

APPROVED AS TO FORM:

SPONSOR:

Charlotte A. Archer, City Attorney

Scott Diener, Councilmember

PUBLISHED:

EFFECTIVE DATE:

Exhibit A – Amendments to POMC 15.30**Chapter 15.30****ILLICIT DISCHARGE PREVENTION, DETECTION AND ELIMINATION**

Sections:

- 15.30.010 Purpose.
- 15.30.020 Definitions.
- 15.30.030 Applicability.
- 15.30.040 Administration.
- 15.30.050 Compliance required.
- 15.30.060 Minimum standards.
- 15.30.070 Discharge prohibitions.
- 15.30.080 Suspension of MS4 access.
- 15.30.090 Industrial or construction activity discharges.
- 15.30.100 Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices (BMPs).
- 15.30.110 Watercourse protection.
- 15.30.120 Notification of illicit discharges.
- 15.30.130 Inspection and investigation.
- 15.30.140 Enforcement and penalties.
- 15.30.150 Appeals.
- 15.30.160 Records retention.
- 15.30.170 Construction – Intent.

15.30.010 Purpose.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of Port Orchard and to protect and enhance the water quality of watercourses and water bodies through the regulation of non-stormwater discharges, dumping and illicit connections to the storm drain system to the maximum extent practicable as required by federal and state law. This chapter is established in compliance with the Federal Clean Water Act (Title 33 United States Code Section 1251 et seq.), the requirements of the city's National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit, and the Port Orchard stormwater manuals as set out in Port Orchard Municipal Code Chapter 20.150.

The objectives of this chapter are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user utilizing best management strategies and source control, in conjunction with the provisions set out in POMC Title 13 and Chapter 20.150;
- (2) To prohibit illicit connections and discharges to the municipal separate storm sewer system;

(3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter; and

(4) To establish enforcement processes and penalties for violations of this chapter. (Ord. 019-09 § 2).

15.30.020 Definitions.

Definitions provided below and those set out in POMC 20.150.020 apply to this chapter, provided if there is a conflict between this chapter and POMC 20.150.020 as to a defined term, the definition set out in this chapter applies to the application of this chapter.

(1) “AKART” means all known available and reasonable methods of prevention, control, and treatment.

(2) “Best management practices (BMPs)” means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(3) “City” means Port Orchard, Washington, or as indicated by the context, the public works director, or other authorized representative of the governmental authority of the city of Port Orchard.

(4) “Director” means the public works director or designee(s).

(5) “Discharge” means to 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 to be thrown, drained, released, dumped, spilled, emptied, emitted, or poured into water.

(6) “Groundwater” means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

(7) “Hazardous materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(8) "Illicit connection" means (a) any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the city; or (b) any drain or conveyance connected from a residential, commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the city.

(9) "Illicit discharge" means any direct or indirect non-stormwater discharge to a municipal separate storm sewer or to surface or groundwater that is not composed entirely of stormwater, except discharges pursuant to an NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and those discharges expressly allowed conditionally by this chapter.

(10) "Industrial waste" means any liquid, gaseous or solid substance or a combination thereof which is an undesired by-product waste resulting from any process of industry, manufacturing, trade or business or from the development or recovery of any natural resources, except garbage.

(11) "Municipal separate storm sewer system (MS4)" means a conveyance or system of conveyances which is intended to convey only stormwater (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) and which are: (a) owned or operated by the city of Port Orchard; (b) designed or used for collecting or conveying stormwater; (c) are not part of a publicly owned treatment works (any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned); and (d) are not a combined sewer (a system that collects sanitary sewage and stormwater in a single sewer system).

(12) "National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit" means a permit issued by the Environmental Protection Agency (EPA) or by the Washington State Department of Ecology that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, group, or general area-wide basis.

(13) "Non-stormwater discharge" means any discharge to the storm drain system that is not composed entirely of stormwater.

(14) "Owner" or "person" includes any individual, association, organization, partnership, firm, corporation, business, leasee, or other entity recognized by law; acting as either the owner or

as the owner's agent, and/or having responsibility, charge, and/or control over any property that is subject to the provisions of this chapter.

(15) "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, 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.

(16) "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the city, state, or United States, 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 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.

(17) "Port Orchard stormwater manuals" or the "stormwater manuals" means as defined at POMC 20.150.060(3).

(18) "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved.

(19) "Sanitary sewer" means a conveyance system which transports sewage and to which storm, surface and groundwaters are not intentionally admitted.

(20) "Sewage" means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such groundwater, surface water and stormwater as may be inadvertently present. The admixture of sewage with industrial wastes as defined above or other wastes also shall be considered "sewage" within the meaning of this definition.

(21) "Stop work order" means an immediate order posted at site halting all operations except those required to correct improper activities.

(22) "Storm drainage system or storm drain system" means any publicly owned facility, including the city's municipal separate storm sewer system, by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal

streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

(23) “Storm water” or “stormwater” means any surface flow, runoff, and drainage consisting entirely of uncontaminated water from any form of natural precipitation, including snowmelt, during and following precipitation, and resulting from such precipitation that meets the nonpollutant requirements.

(24) “Stormwater pollution prevention plan” or “SWPPP” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

(25) Source Control BMPs – A structural or operation that is intended to prevent pollutants from encountering stormwater through physical separation of areas or careful management of activities that are sources of pollutants. Structural Source Control BMPs are physical, structural, or mechanical devices, or facilities that are intended to prevent pollutants from entering stormwater. Operational Source Control BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater.

(26) “Wastewater” means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

(27) “Watercourse” means a depression formed by runoff moving over the surface of the earth; any natural or artificial channel through which water flows; a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically.

(28) “Waters of the state” means lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington as defined in Chapter 90.48 RCW.

15.30.030 Applicability.

This chapter shall apply to all water entering the stormwater drainage system and waters of the state within the city’s jurisdiction, and to all new and existing development, public and private. The provisions of this chapter shall also apply to the maintenance responsibility of existing stormwater facilities.

Meeting the requirements of this chapter is the joint and severable responsibility of the owner(s) of the site and the person(s) responsible for maintenance on both new and existing facilities.

The city recognizes that the implementation of successful pollution and source control practices is most likely through prevention education effort for institutional sites, commercial sites, industrial sites, and the general public. The city will endeavor to provide education and technical assistance within the constraints of available resources to educate individuals as to how to implement pollution and source control practices.

15.30.040 Administration.

The public works director or designee shall administer, implement, and enforce the provisions of this chapter. The director shall have the authority to develop and implement procedures to administer and enforce this chapter.

15.30.050 Compliance required.

Property owners are responsible for the maintenance, operation and repair of stormwater systems and source control BMPs within their property. Property owners shall maintain, operate, and repair stormwater systems and source controls in compliance with the requirements of this chapter and the city's adopted codes and manuals, including the city's stormwater manuals as set out in Port Orchard Municipal Code Chapter 20.150.

15.30.060 Minimum standards.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants. (Ord. 019-09 § 7).

15.30.070 Discharge prohibitions.

(1) Prohibition of Illicit Discharges. It is unlawful for any person to throw, drain, or otherwise discharge, or cause or allow others under its control to throw, drain or otherwise discharge, any materials other than stormwater into the municipal storm drain system and/or surface and groundwaters of the city. Prohibited materials include, but are not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards. The commencement, conduct, or continuance of any illicit discharge to the storm drain system is prohibited.

Examples of prohibited discharges include, but are not limited to, the following: trash or debris; solid waste; construction materials; petroleum products including, but not limited to, oil, gasoline, grease, fuel oil, heating oil; antifreeze and other automotive products; fixed and mobile vehicle washes; metals in either particulate or dissolved form in excess of naturally occurring amounts; flammable or explosive materials; radioactive materials; batteries; acids, alkalis, or bases; paints, stains, resins, lacquers, or varnishes; degreasers or solvents; drain cleaners; commercial and household cleaning materials; carpet cleaning wastes; pesticides, herbicides, or fertilizers; steam cleaning wastes; laundry waste; soaps, detergents, or ammonia; swimming pool or spa filter backwash (diatomaceous earth); swimming pool cleaning wastewater; chlorine, bromine, and other disinfectants; heated water; chlorinated swimming pool or hot tub water; human and animal wastes; domestic or sanitary sewage; recreational vehicle waste; animal carcasses; food and food wastes; yard waste; bark and other fibrous materials (does not include large woody debris in approved restoration projects); collected lawn clippings, leaves, or branches; wastes associated with building construction; concrete and concrete by-products; silt, sediment, including dirt, sand, and gravel; dyes and ink (except as stated in subsection (2)(e) of this section); chemicals not normally found in uncontaminated water; any other process-associated discharge except as otherwise allowed in this section; and any hazardous material or waste not listed above.

(2) Conditional Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter if they meet the stated conditions or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

(a) Discharges from potable water sources, including water line flushing, hyper-chlorinated (> 10 mg/liter chlorine) water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the stormwater system;

(b) Discharges from lawn watering and other irrigation runoff; however, these shall be minimized through water conservation efforts;

(c) Dechlorinated spa or swimming pool discharges. The discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the stormwater system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water. Swimming pool

cleaning wastewater and filter backwash shall not be discharged to the storm drainage system;

(d) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents. The amount of street wash, dust control, and building wash water shall be minimized. At active construction sites, street sweeping must be performed prior to washing the street;

(e) Dye testing with verbal notification to the city a minimum of 24 hours prior to the time of the test;

(f) Nonstormwater discharges covered by another NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency or Washington State Department of Ecology; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted for any discharge to the storm drain system;

(g) Discharges resulting from maintenance, repair, or operation of firefighting equipment and facilities that are not directly associated with public firefighting, including discharges from public firefighting training exercises, unless city-approved best management practices are implemented;

(h) Other nonstormwater discharges shall be in compliance with the requirements of a stormwater pollution prevention plan reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or groundwater.

(3) Allowable Discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter if they do not contain pollutants or unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

(a) Diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in Title 40 of the Code of Federal Regulations: 40 CFR 35.2005(20)), uncontaminated pumped groundwater, foundation drains, air conditioning condensation, irrigation water from agricultural sources that is commingled with urban stormwater, springs, water from crawl space pumps, footing drains, flows from riparian habitats and wetlands, and discharges from emergency firefighting activities in accordance with "S2. Authorized Discharges" of the city's NPDES permit.

(b) Discharges specified in writing by the city as being necessary to protect public health and safety.

(c) If a person can demonstrate that there are no additional pollutants being discharged from the premises above the background conditions of the water entering the site, that person shall not be in violation of subsection (1) of this section.

(4) Prohibition of Illicit Connections.

(a) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(b) Any connection identified by the director that could convey anything not composed entirely of surface and stormwater directly into municipal drainage facilities is considered an illicit connection and is prohibited with the following exceptions: connections conveying allowable discharges or connections conveying discharges pursuant to an NPDES permit or a state waste discharge permit.

(c) Illicit connections must be disconnected and redirected, if warranted, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the city.

(d) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which is connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the city requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as a storm sewer, sanitary sewer, or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the city.

(5) Prohibition of Stormwater Discharge to Sanitary Sewer. Stormwater shall not be discharged into the sanitary sewer without written permission to do so from the city of Port Orchard.

(6) Prohibition of Waste Disposal. No person shall throw, deposit, leave, maintain, or keep in or upon any public or private property, the stormwater drainage system, or waters of the state any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, or

accumulations that may cause or contribute to pollution. Wastes deposited in proper nonleaking waste receptacles for the purposes of collection are exempt from this prohibition. (Ord. 007-18 § 1; Ord. 019-09 § 8).

15.30.080 Suspension of MS4 access.

(1) Suspension Due to Illicit Discharges in Emergency Situations. The city may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the public health or welfare, or to the MS4, or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the state, or to minimize danger to persons.

(2) Suspension Due to the Detection of Illicit Discharge. The city may terminate a person's MS4 access if such termination would abate or reduce an illicit discharge. The city will notify a violator of the proposed termination of its MS4 access. The violator may appeal such termination in accordance with POMC 15.30.150. No person shall reinstate MS4 access to premises terminated pursuant to this section, without the prior approval of the city. (Ord. 019-09 § 9).

15.30.090 Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit, in addition to meeting the requirements of this chapter and POMC Chapter 20.150, where applicable. Proof of compliance with a permit under this section shall be required in a form acceptable to the public works department prior to the city allowing any discharge to the municipal separate storm sewer. The public works director may allow a person to submit a copy of a new, existing, or renewed NPDES permit to meet the purposes of this subsection.

15.30.100 Requirement to prevent, control, and reduce stormwater pollutants by the use of source control best management practices (BMPs).

(1) General. Any person causing or allowing discharge to a storm water drainage system, surface waters or groundwater shall limit pollutants in the discharge by implementing source control best management practices (BMPs).

(2) The owner or operator of an institutional, commercial or industrial facility shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system, watercourses, surface water, or

groundwater through the use of structural and nonstructural source control BMPs set out in the stormwater manuals for the activity, facility or activity, provided those facilities or activities not identified in the stormwater manuals shall utilize structure and nonstructural source control BMPs which have been approved by the city for the activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the state.

(3) Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional operational, treatment, structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the NPDES permit.

(4) BMP Descriptions. BMPs are described in the stormwater manuals adopted by the city. The stormwater manuals describe the types of regulated activities, the types of contaminants generated by each activity, the contaminant's effect on water quality, the applicable required source control BMPs, and the available treatment BMPs. The stormwater manuals include information on design, maintenance, and allowable use of additional or alternative BMPs. Source control BMPs not included in the stormwater manuals may be approved by the director or designee if the director or designee determines that it provides equivalent effectiveness. The City may require additional source control BMPs and/or treatment BMPs or facilities if additional BMPs or facilities are deemed necessary by the director and/or his or her designee to eliminate an ongoing release of pollution, in accordance with the stormwater manuals.

(5) Priority of BMP Implementation. In applying the stormwater manuals, the Director shall first require the implementation of source control BMPs unless the stormwater manuals specifically require treatment BMPs. If source control BMPs (or treatment BMPs if required by the stormwater manuals) do not prevent contaminants from entering surface and stormwater or groundwater, the director may require implementation of additional source control BMPs and/or treatment BMPs, according to AKART.

(6) Prevention of Pollution of Surface and Groundwater. BMPs shall be applied as required herein, so that when all appropriate combinations of individual BMPs are utilized, pollution of surface or groundwater is prevented. If all BMPs required herein, or by the director are applied, and pollution still occurs, the discharger shall modify existing practices or apply further water pollution control measures, as specified by the director. In the absence of implementation of applicable BMPs, the director shall be authorized to conclude that individual activities are

causing pollution in violation of this section, and shall be authorized to enforce this chapter accordingly. (Ord. 019-09 § 11).

15.30.110 Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. (Ord. 019-09 § 12).

15.30.120 Notification of illicit discharges.

(1) Notwithstanding other requirements of law, as soon as any person, including any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, who has information of any known or suspected release of materials which are resulting, or may result in, illicit discharges or pollutants discharging into stormwater, the storm drain system, or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

(a) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911) and the public works department (360-876-4991).

(b) In the event of a release of non-hazardous materials, said person shall notify the public works department in person or by phone (360-876-4991) or facsimile (360-876-4980) within 48 hours after said discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city within three business days of the phone notice.

(2) If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained in accordance with POMC 15.30.160. (Ord. 019-09 § 13).

15.30.130 Inspection and investigation.

(1) Authorization.

(a) Whenever implementing the provisions of this chapter, or whenever there is cause to believe that a violation of this chapter has been or is being committed, the Director

or designee is authorized to inspect during regular working hours and at other reasonable times all stormwater facilities within the city of Port Orchard to determine compliance with the provisions of this chapter.

(b) The director may observe BMPs or examine and/or sample surface and stormwater or groundwater as often as may be necessary to determine compliance with this chapter. The director is further authorized, as set forth in subsections (2) and (4) of this section, to enter in or upon any public or private property for the purpose of inspecting and investigating conditions relating to the pollution of, or the possible pollution of, surface and/or groundwater. Whenever an on-site inspection of a property is made, the findings shall be documented. A copy of the inspection findings shall be furnished to the owner or the person in charge of the property after the conclusion of the investigation.

(2) Right of Entry. The director is authorized to enter at all reasonable times in or upon any property, public or private, for the purpose of inspecting and investigating any conditions relating to the provisions of this chapter or any regulation adopted under this chapter; provided, that the city shall first obtain from the owner or person responsible for such premises, permission to enter. If entry is refused, the city shall have recourse to every remedy provided by law to secure entry. The right of entry is subject to the provisions of subsection (4) of this section.

(a) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the director.

(b) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the facility operator.

(c) No person who is the owner or operator of a facility with an NPDES permit to discharge stormwater associated with industrial activity shall deny the city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter. Unreasonable delays in allowing the city access to a permitted facility is a violation of a stormwater discharge permit and of this chapter.

(3) Obstructing the Director. No person shall obstruct the director in the performance of his or her official duties in the enforcement of this chapter, including but not limited to:

(a) Intentional use of, or threat to use, force to obstruct a person he or she knows, or should reasonably know, is the director and is performing his or her official duties in the enforcement of stormwater system regulations; or

(b) Acting in a manner that he or she knows, or should reasonably know, will interfere with or obstruct a person known to be, or who should reasonably be known to be, responsible for the enforcement of stormwater system regulations; or

(c) Refusing to identify himself or herself and give his or her current address to the director for the enforcement of this chapter pursuant to an investigation of a violation upon request by the director.

(4) Inspection Requirements. The director is authorized to develop inspection procedures and requirements for all stormwater facilities in the city of Port Orchard. In addition to any procedures for inspections developed by the director, the following shall apply:

(a) Prior to making any inspections on private property, the director shall present identification credentials, state the reason for the inspection, and request entry.

(b) If the property, or any building or structure on the property, is unoccupied, the director 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.

(c) Unless entry is consented to by the owner or person(s) in control of the property, or portion of the property, or unless conditions are reasonably believed to exist in the opinion of the director which create immediate danger to public health or safety, the director shall obtain a search warrant or other remedy, prior to entry, as authorized by the laws of the state of Washington.

(d) Nothing in this section prevents the director from inspecting a stormwater system without consent of the property owner or a search warrant, provided the inspection can be conducted while remaining on public property or other property on which permission to enter is obtained.

(5) Monitoring, Sampling, and Analysis.

(a) Whenever the director determines that any person has violated or is violating the provisions of this chapter, the director may require the person responsible for the violation to sample and analyze any discharge, surface water, stormwater, groundwater, and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the director. When the director has reason to believe that a connection is resulting in an illicit discharge, the director may sample and analyze the

discharge and recover the costs from a person in an enforcement proceeding. When the discharge is likely to contain illicit discharges on a recurring basis, the director may conduct, or may require the person to conduct, ongoing monitoring (including sampling and testing) at the person's expense.

(b) The city shall have the right to set up on any facility such devices as are necessary in the opinion of the city to conduct monitoring and/or sampling of the facility's stormwater discharge.

(c) The city has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. When monitoring is required, the discharger shall sample and analyze any discharge, surface and stormwater, groundwater, and/or sediment, in accordance with sampling and analytical procedures or requirements determined by the director. A copy of the analysis shall be provided to the director. (Ord. 019-09 § 14).

15.30.140 Enforcement and penalties.

(1) Authorization. The director is authorized to enforce this chapter and any permit, order or approval issued pursuant to this chapter, against any violation or threatened violation thereof.

(2) Compliance. The director shall attain compliance with this chapter by requiring the implementation of source control BMPs. The director may initially rely on education and informational assistance to gain compliance with this chapter, unless the director determines a violation poses a hazard to public health, safety, or welfare, endangers any property, or adversely affects the safety and operation of city right-of-way, utilities and/or other property owned or maintained by the city, that should be addressed through immediate penalties. The director may demand immediate cessation of discharges and assess penalties for violations that are an imminent or substantial danger to the health or welfare of persons or danger to the environment. Enforcement actions shall escalate for non-compliance.

Enforcement shall include one or more of the following actions, singly or in combination, at the discretion of the director or designee. Responsibility for violations subject to enforcement under this chapter is joint and several, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for compliance.

The director may apply whatever enforcement action, or combination of actions, is determined appropriate within the following range of actions, regardless of the position in the range.

(a) Written warning with voluntary compliance. May be applied to first time, minor violations. Educational materials and informational assistance will be provided to the violator.

(b) Compensatory actions such as community service related to stormwater education or mitigation in lieu of penalty or enforcement proceedings. Requires a formal written agreement between the director and the violator.

(c) Written notice of violation ordering compliance, in accordance with subsection (3) of this section.

(d) Civil or criminal penalties. In accordance with subsections (4) and (5) of this section.

(e) Emergency cease and desist order. In circumstances where a violation poses a hazard to public health, safety, or welfare, endangers any property, or adversely affects the safety and operation of city right-of-way, utilities and/or other property owned or maintained by the city, the director is authorized to issue cease and desist orders. The cease and desist order may require immediate compliance with this chapter by halting operations and/or terminating discharges may be applied by means of the use of a stop work order.

(f) Disconnection from the MS4. Applies to illicit connections to MS4, to illicit discharges in emergency situations, or continued failure of the property owner to comply.

(g) Revocation of permit. Where the violation of this chapter provides a nuisance or poses a hazard to public health, safety and welfare, and has not previously been abated, the director may, upon written notice, revoke any and all permits associated with the site and/or issuance of an associated stop work order. Service of a written notice of revocation shall be in the same manner as service of a notice and order. Revocation of a permit by the director may be appealed within 10 working days of service of written notice. The appeal must be in accordance with POMC 15.30.150.

(3) Notice and Order.

(a) Contents. The director shall have authority to issue to an owner or person responsible for a violation of this chapter an order to maintain or repair a component of a stormwater facility or BMP to bring it into compliance with this chapter or other city regulations, to remove any illicit connection, to cease any illicit discharge, and to repair or remediate any damages to the environment caused by any such violation. The order shall include the following:

(i) The order identification number or permit number; and

- (ii) The street address, when available, and the tax parcel number of real property and/or description of personal property sufficient for identification of where the violation occurred or is located; and
- (iii) A description of the specific nature, extent and time of the violation and the damage that has occurred or potential damage that reasonably might occur; and
- (iv) A notice that the violation or the potential violation cease and desist; and
- (v) A statement of the corrective action required to be taken. If the director has determined that corrective work is required, the order shall require that all required permits be secured, that work physically be commenced, and that the work be completed within such times as the director determines are reasonable under the circumstances; and
- (vi) A statement advising that if any required work is not commenced or completed within the times specified, the director may proceed to cause abatement of the violation and cause the work to be done and charge the costs thereof as a lien against the property and as a joint and separate personal obligation of any person in violation; and
- (vii) Any requirements for monitoring, analyses and reporting; and
- (viii) A statement specifying the amount of any civil penalty assessed as a result of the violation and, if applicable, the conditions on which assessment of such civil penalty is contingent; and
- (ix) An order to the owner to provide the director a detailed plan showing drawings and steps that will be taken to achieve compliance within a specific time. The plan is subject to the approval of the director; and
- (x) A statement advising that the order shall become final unless, no later than 10 working days after the notice and order are served, any person aggrieved by the order requests an appeal in accordance with POMC 15.30.150.

(b) Service. Service of the notice and order shall be made upon all persons identified in the notice and order either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested. If the address of any such person cannot reasonably be ascertained, a copy of the notice and order shall be mailed to such person at the address of the location of the violation. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this chapter. Service by certified mail in the manner provided in this section shall

be effective on the date of postmark. The notice and order may be, but is not required to be, posted on the subject property.

(c) Appeal. Persons to whom the notice and order of the director is issued may appeal the same within 10 working days of service. The appeal must be in accordance with POMC 15.30.150.

(4) Civil Penalties.

(a) Conduct made unlawful by this chapter shall constitute a class one civil infraction and is subject to enforcement and fines as provided in Chapter 2.64 POMC. Each day of noncompliance with any of the provisions of this chapter shall constitute a separate offense.

(b) In addition to any other available sanction or remedial procedure, any person engaging in conduct made unlawful by this chapter shall be subject to a civil penalty in an amount not to exceed \$5,000 per occurrence, per day for each violation from the date set for compliance until the date of compliance, based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action, and whether or not the violation was intentional.

(c) Payment of a monetary penalty pursuant to this chapter does not relieve the person of the duty to correct the violation.

(d) Joint and Several Responsibility and Liability: Responsibility for civil penalties under this chapter is joint and several, and the city is not prohibited from seeking recovery against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for compliance.

(5) Criminal Prosecution. Any person violating or failing to comply with any of the provisions of this chapter shall be subject to criminal prosecution and upon conviction, shall be guilty of a misdemeanor for the first offense and a gross misdemeanor for any subsequent offense occurring within a five-year period. Each day of noncompliance with any of the provisions of this chapter shall constitute a separate offense.

(6) Recovery of Costs Incurred by the City. In addition to any costs for enforcement under this chapter, any person violating any of the provisions of this chapter shall be liable to the city for any expense, loss, or damage caused by such violation or discharge, including but not limited to

the costs for bringing the city back into compliance with its NPDES permit associated with any violation of these regulations, and any fines levied for violations of the city's NPDES permit.

(7) Violations Deemed a Public Nuisance. Any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(8) Summary Abatement.

(a) Whenever any violation of this chapter causes or creates a condition, the continued existence of which constitutes, in the opinion of the director, an immediate threat to the public health, safety or welfare or to the environment, the director may summarily and without prior notice, at the cost of the owner, abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(b) Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including labor and materials, legal expenses, administrative costs, and interest to the extent such costs are known. Persons to whom the assessment of costs of abatement is issued may appeal the same within 10 working days of service. The appeal must be in accordance with POMC 15.30.150. If the amount due is not paid within a timely manner as determined by the decision of the city or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(9) The owner shall pay the abatement costs in not more than twelve (12) equal payments. Such costs shall accrue interest at the rate set by the city's finance department per annum or the rate charged to the city for obtaining the funds necessary to abate, whichever interest is greater.

(10) Injunctive Relief. In addition to any other remedy provided by this chapter or the Port Orchard Municipal Code, the city may initiate injunction or abatement proceedings or any other appropriate action in courts against any person who violates or fails to comply with any provision of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the person violating and/or failing to comply with any provisions of this chapter shall be liable for the costs and reasonable attorneys' fees incurred by the city in bringing, maintaining, and/or prosecuting such action.

(11) Remedies Not Exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the city to seek cumulative remedies.

15.30.150 Appeals.

(1) The director's notice and order, revocation of a permit, or assessment of costs of abatement may be appealed to the city council by persons to whom the notice and order, revocation of a permit, or assessment of costs of abatement is issued. An appeal shall be considered timely if, but only if, it is filed in writing with the director within 10 working days of service, and the appeal fee adopted by the city council is paid in full. In addition to the appeal fee, if the director determines that the services of an independent consultant are reasonably necessary in adjudicating the appeal, the appellant shall make an initial cash deposit to pay for an independent review as the same may be reasonably required by the director. The initial deposit, which is only an estimate of the consultant's costs, shall be paid in advance of the hearing. If it is determined during any point in the appeal process that the initial deposit is insufficient to cover all reasonable consultant's costs, the appellant shall be required to make an additional deposit in an amount sufficient to cover the same. Any portion of the deposit that is not used to cover all reasonable consultant's costs shall be refunded to the appellant. The amount of the deposit shall be at least \$500.00 but not more than \$1,500, and it shall be determined by the director based upon a good faith estimate of permissible costs. The appellant shall be given equal access to any report prepared by the consultant.

(2) The director shall accept appeals that meet the requirements of this section and shall schedule such appeals for consideration by the city council. The city council hearing shall be scheduled within 60 days after the appeal is accepted. The director shall reject any appeal that fails to meet the filing and submittal requirements of this section. The appeal fee shall be refunded in the event the director rejects the appeal or in the event that the appellant files a statement with the director withdrawing the appeal at least 15 calendar days before the scheduled hearing. In all other cases, the appeal fee shall be nonrefundable.

(3) The written appeal shall contain all of the following information and attachments:

- (a) A copy of the notice and order, revocation of a permit, or assessment of costs of abatement being appealed;
- (b) The name of the property owner and, if applicable, the owner's agent;
- (c) The name and signature of each appellant and a statement showing that each is entitled to file the appeal under subsection (1) of this section; and

(d) A statement of appeal identifying each issue in the notice and order or assessment of costs of abatement that the appellant wishes to appeal, the reasons why each issue is in error as a matter of fact and/or law, and evidence relied upon.

(4) The city council, under its quasi-judicial authority, shall hear the appeal in an open record hearing. At least 10 business days before the hearing, notice of the same shall be mailed to parties who are entitled to notice of the decision. The notice of hearing does not need to be posted or published. The appeal shall be limited to those issues raised in subsection (3)(d) of this section, and shall be similar in format as other quasi-judicial matters that may from time to time come before the city council.

(5) At least 10 business days before the hearing, the director and appellant shall each submit, as part of the record, separate reports to the city council containing a statement of the issues and applicable laws, discussion and analysis, proposed findings of fact and conclusions of law, and copies of any pertinent document referenced therein. The burden shall be on the city to support the order of the director by a preponderance of the evidence. Reports, if any, prepared by the independent consultant referenced in subsection (1) of this section shall be part of the record. The city council shall decide as follows, based upon the record made during the course of the public hearing:

(a) Uphold the order, revocation, or assessment of costs of abatement of the director in its entirety; or

(b) Uphold the order, revocation, or assessment of costs of abatement of the director in part and reverse the order, revocation, or assessment of costs of abatement in part; or

(c) Reverse the order, revocation, or assessment of costs of abatement of the director in its entirety.

(6) The city council shall issue a final decision on the appeal supported by written findings and conclusions within 10 business days of the hearing. The decision shall also include venue information and limitations on filing judicial appeal(s) of the decision. The director shall serve a copy of the final decision to the appellant and other parties of record. Service shall be in the same manner as set forth in POMC 15.30.140(3)(b).

15.30.160 Records retention.

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall retain an on-site written record of the discharge and the actions taken to prevent its occurrence. Such records shall be kept and maintained on a permanent basis from the effective date of the ordinance codified in

this chapter. The record shall includes books, documents, memoranda, reports, and correspondence relating to any operation, maintenance, monitoring, sampling, and chemical analysis associated with the discharge and all records which pertain to matters which are the subject of any enforcement or litigation activities brought by the director pursuant to this chapter. Copies of any or all records shall be provided to the director upon his request.

15.30.170 Construction – Intent.

This chapter is enacted as an exercise of the city’s power to protect and preserve public health, safety, and welfare. Its provisions shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. This chapter is not enacted to create or otherwise establish or designate any particular class or group of persons who will, or should be, especially protected or benefited by the terms of this chapter. The primary obligation of compliance with this chapter is placed upon the person holding title to the property. Nothing contained in this chapter is intended to be, or shall be, construed to create or form a basis for liability for the city, its officers, employees or agents for any injury or damage resulting from the failure of the person holding title to the property (owner of record) to comply with the provisions of this chapter, or by reason or in consequence of any act or omission, to act in connection with the implementation or enforcement of this chapter by the city, its officers, employees, or agents.

15.30.180 City’s non-liability.

The primary obligation of compliance with this chapter shall be placed upon the person holding title to the property. Nothing contained in this chapter is intended to be or shall be construed to create or form a basis for liability for the City or agents for any injury or damage resulting from the failure of the person holding title to the property to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter by the City.

Exhibit B – Amendments to POMC 20.150.270**20.150.270 Enforcement.**

(1) Violations of This Chapter. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter or of any notice or lawful order issued hereunder. The City may enforce any such violation, at the city's discretion, through the enforcement and penalty provisions of Chapter 20.02 POMC, Administration and Enforcement and/or Chapter 15.30 POMC.

(2) Emergency Access and Reparation. In the event the violation constitutes an immediate danger to public health or safety, the director is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking further relief or applying other penalties as provided in this chapter.

(3) Violation of Additional Laws. Any person who violates any provision of this chapter may also be in violation of the Federal Clean Water Act, NPDES Phase II permit, and/or Chapter 90.48 RCW and may be subject to sanctions associated with each, including civil and criminal penalties. Any enforcement action authorized under this chapter shall also include written notice to the violator of such potential liability.