

AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE TO CREATE TITLE 12 SETTING FORTH REGULATIONS RELATING TO THE PROTECTION AND IMPROVEMENT OF SURFACE WATERS AND THE DISCHARGE OF STORMWATER AND DECLARING AN EMERGENCY.

WHEREAS, the current Albany Municipal Code does not contain any comprehensive regulations governing the protection of surface waters in Albany and the discharge of stormwater to Albany's stormwater system; and

WHEREAS, it is necessary to provide for the health, safety, and general welfare of the citizens of Albany and to protect and enhance the water quality and natural functions of watercourses and water bodies in Albany; and

WHEREAS, it is necessary to minimize or prevent the introduction of various pollutants into the municipal stormwater system, into receiving waters, waters of the state, and the environment; and

WHEREAS, it is necessary to minimize or prevent the introduction of stormwater into the sanitary sewer system; and

WHEREAS, it is necessary to prohibit illicit connections and discharges to the stormwater system; and

WHEREAS, it is necessary to establish legal authority to carry out all inspections, surveillance, and monitoring procedures required to protect and improve surface waters in Albany; and

WHEREAS, it is necessary to authorize the collection of in-lieu-of assessment fees for properties that have not participated in the cost of constructing public stormwater facilities; and

WHEREAS, it is necessary to establish penalties for violations of regulations that protect and improve the surface waters in Albany; and

WHEREAS, the proposed amendments to the Albany Municipal Code (AMC) have been made and are attached to this ordinance.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:


Section 1: AMC Title 12 is hereby created as provided in Exhibit "A," attached hereto.

Section 2: Inasmuch as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the city of Albany, an emergency is hereby declared to exist; and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by Council: September 12, 2001

Approved by Mayor: September 12, 2001

Effective Date: September 12, 2001

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

# EXHIBIT A

## TITLE 12 SURFACE WATER

### Chapters:

- 12.01 GENERAL PROVISIONS
- 12.10 PROHIBITED DISCHARGES
- 12.20 PERMITS FOR CONNECTION OR CONSTRUCTION
- 12.30 STORMWATER MANAGEMENT FEES
- 12.40 EROSION PREVENTION AND CONTROL
- 12.50 CONNECTIONS OF UNASSESSED PROPERTIES
- 12.60 FLOODPLAIN PRESERVATION AND MANAGEMENT
- 12.70 STREAM BUFFERS/RIPARIAN ZONE PROTECTION - OPEN WATERWAYS
- 12.80 ENFORCEMENT

### Chapter 12.01 GENERAL PROVISIONS

### Sections:

- 12.01.010 Intent and Purpose
- 12.01.020 Objectives
- 12.01.030 Abbreviations
- 12.01.040 Definitions
- 12.01.050 Applicability
- 12.01.060 Responsibility for Administration
- 12.01.070 Severability
- 12.01.080 Ultimate Responsibility of the Discharger

#### 12.01.010 INTENT AND PURPOSE.

The intent and purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city of Albany and to protect and enhance the water quality and natural functions of watercourses and water bodies through the regulation of stormwater discharges; to set forth uniform requirements for direct and indirect contributors to the stormwater system; and to enable the City of Albany to comply with applicable state and federal laws.

#### 12.01.020 OBJECTIVES.

The objectives of this chapter are:

- (1) To prevent the introduction of pollutants into the municipal stormwater system, into receiving waters, waters of the State, and the environment;
- (2) To prohibit illicit connections and discharges to the stormwater system;
- (3) To protect, maintain and restore the integrity of waterways for their natural functions;
- (4) To prevent and control non-point source pollution, land surface erosion, sedimentation, and stream channel erosion;
- (5) To limit the effect of land-disturbing activities on the waters of the state;
- (6) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this chapter;
- (7) To authorize the collection of in-lieu-of-assessment fees for properties that have not participated in the cost of constructing public stormwater facilities;
- (8) To authorize the imposition of a systems development charge fee and user charges for the construction, operation, and maintenance of stormwater system and facilities;
- (9) To protect and maintain the functions and values of areas within floodplains.

#### 12.01.030 ABBREVIATIONS.

- (1) ENR. Engineering News Record
- (2) NPDES. National Pollutant Discharge Elimination System

#### **12.01.040 DEFINITIONS.**

- (1) **City.** The City of Albany, a municipal corporation of the state of Oregon.
- (2) **City Manager.** The person chosen by the Albany City Council to meet the requirements of Section 22 of the Albany Charter or such person as may be designated by the City Manager to act in his/her name and capacity.
- (3) **Clean Water Act.** The federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and any subsequent amendments thereto.
- (4) **Director.** The person, or the duly authorized representative, designated by the City Manager to supervise the Public Works Department and who is charged with certain duties and responsibilities by this Chapter.
- (5) **Discharger.** Any person who discharges or causes to be discharged any pollutant into the stormwater system.
- (6) **Floodplain.** The relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other water body that has been, or may be, inundated temporarily by floodwater.
- (7) **Hazardous Materials.** 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) **Illegal Discharge.** Any direct or indirect non-stormwater discharge to the stormwater system, excepted as exempted by Section 12.10.010 of this Chapter.
- (9) **Illicit Connection.** An illicit connection is defined as either of the following:
  - (a) Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the stormwater system including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the stormwater system and any connections to the stormwater system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or
  - (b) Any drain or conveyance connected from a commercial or industrial land use to the stormwater system that has not been documented in drawings, maps, or equivalent records and approved by the City.
- (10) **Nonpoint Source.** Causes of water pollution that are not associated with point sources. Examples include: fertilizer/pesticide runoff; sediment runoff from construction; materials from deicing activities (salt or sand). Nonpoint sources may enter a discrete conveyance system and become a point source.
- (11) **Non-Stormwater Discharge.** Any discharge to the stormwater system that is not composed entirely of stormwater.
- (12) **Person.** Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.
- (13) **Point Source.** Any discernable, confined, and discrete conveyance, including but not limited to pipes, ditches, channels, tunnels, or conduits, from which pollutants are or may be discharged to a receiving water.
- (14) **Pollutant.** Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oils; automotive fluids; non-hazardous liquid and solid wastes and yard wastes; any liquid having a temperature that could have an adverse effect on the receiving streams; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal bacteria and pathogens; dissolved and particulate metals; animal wastes; residues that result from constructing a building or a structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.
- (15) **Pollution.** The human-made or human-induced alteration of the quality of waters by waste to a degree that unreasonably affects, or has the potential to unreasonably affect the waters of the state.
- (16) **Premises.** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(17) **Stormwater System.** Any watercourse or facility by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems or ditches, 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.

(18) **Stormwater.** Any surface flow, runoff, and drainage consisting entirely of water from precipitation events.

(19) **Water or Waters of the State.** Any lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the state of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(20) **Watercourse.** Watercourse means a channel in which a flow of water occurs, either continuously or intermittently, and if the latter with some degree of regularity. Watercourses may be either natural or artificial.

**12.01.050 APPLICABILITY.**

This Chapter shall apply to all water entering the stormwater system generated on any developed and undeveloped lands unless explicitly exempted by Section 12.10.010 of this Chapter.

**12.01.060 RESPONSIBILITY FOR ADMINISTRATION.**

The Director shall administer, implement, and enforce the provisions of this Chapter. Any powers granted or duties imposed upon the Director may be delegated in writing by the Director to persons or entities acting in the beneficial interest of or in the employ of the City.

**12.01.070 SEVERABILITY.**

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

**12.01.080 ULTIMATE RESPONSIBILITY OF THE DISCHARGER.**

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

**Chapter 12.10  
PROHIBITED DISCHARGES**

**Sections:**

- 12.10.010 Illegal Discharges**
- 12.10.050 Illicit Connections**
- 12.10.070 Waste Disposal Prohibitions**
- 12.10.080 Watercourse Protection**
- 12.10.090 Discharges in Violation of NPDES Permit**
- 12.10.100 Notification of Spills**
- 12.10.120 Requirement to Eliminate Illegal Discharges**
- 12.10.140 Requirement to Eliminate Illicit Connections**
- 12.10.143 Requirement to Remediate**
- 12.10.147 Requirement to Monitor and Analyze**
- 12.10.150 Suspension of Access**
- 12.10.160 Damage to the Stormwater System**

**12.10.010 ILLEGAL DISCHARGES.**

No person shall cause any pollutant to be discharged to any waters of the state or cause any pollutant to be placed in a location where such pollutant is likely to escape or be carried into the stormwater system and by said stormwater systems into the waters of the state.

The commencement, conduct, or continuance of any illegal discharge is prohibited except as described as follows:

The prohibition shall not apply to any non-storm discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the State of Oregon under the authority of the Federal Environmental Protection Agency, 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 the written approval has been granted by the City of Albany for any discharge to the stormwater system.

**12.10.050 ILLICIT CONNECTIONS.**

No person shall construct, use, maintain, or allow the continued existence of an illicit connection to the stormwater system. Existing illicit connections are expressly prohibited, without limitation, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

**12.10.070 WASTE DISPOSAL PROHIBITIONS.**

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained, or kept in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the stormwater system, or waters of the State, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution.

**12.10.080 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, and other obstacles that would pollute, contaminate, or retard the flow of water through the watercourse. In addition, the owner or lessee shall remove or 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. No person shall remove native vegetation in the vicinity of a watercourse except where it poses an imminent hazard to human health and safety or nearby structures. No person shall remove vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. Within the limits established through any required state or federal permits, the property owner or lessee shall maintain and stabilize the banks of the watercourse within their property lines in order to protect against erosion and degradation of the watercourse. Watercourse banks shall be stabilized using planted vegetation and natural materials instead of hard materials (e.g., concrete, asphalt, rock, logs, lumber, etc.) wherever practicable.

**12.10.090 DISCHARGES IN VIOLATION OF INDUSTRIAL OR CONSTRUCTION ACTIVITY NPDES STORMWATER DISCHARGE PERMIT.**

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

**12.10.100 NOTIFICATION OF SPILLS.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials that is resulting or may result in illegal discharges or pollutants discharging into stormwater, the stormwater system, or waters of the State, said person shall take all necessary steps to ensure the discovery, immediate notification, containment, and cleanup of such release.

(1) 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. In the event of a release of non-hazardous materials, said person shall notify the Public Works Department immediately in

person or by phone. Notification of the emergency response agencies or the Public Works Department does not relieve the discharger of their responsibility to also notify appropriate state and federal agencies.

Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Albany Public Works Director within five (5) business days of the original notice. The notice shall include a detailed written statement submitted by the discharger describing the causes of the discharge, measures taken to mitigate the spill, and the measures taken to prevent any future occurrence.

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

(2) The person responsible for the discharge of pollutants or hazardous materials to the environment shall be responsible for all clean-up costs. All related City expenses including, but not limited to, costs for identification, hazard assessment, and containment shall also be fully reimbursed.

(3) In general, reimbursement costs are those incident costs that are eligible, reasonable, necessary, and allocable to the incident. Costs allowable for reimbursement may include, but are not limited to:

- (a) Disposable materials and supplies provided, consumed and expended specifically for the purpose of the incident for which reimbursement is being requested,
- (b) Compensation of the employees for the time devoted specifically to the incident,
- (c) Rental or leasing of equipment used specifically for the incident,
- (d) Replacement costs for equipment or property owned by the City that is contaminated or damaged beyond reuse or repair,
- (e) Decontamination of equipment that was used during the incident,
- (f) Special technical services required for the incident, and
- (g) Laboratory expenses for the purpose of analyzing samples taken during the incident.

#### **12.10.120 REQUIREMENT TO ELIMINATE ILLEGAL DISCHARGES.**

The Director may require, by written notice, that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges.

#### **12.10.140 REQUIREMENT TO ELIMINATE ILLICIT CONNECTIONS.**

The Director may require, by written notice, that a person responsible for an illicit connection to the stormwater system immediately, or by a specified date, comply with the requirements of this Chapter to eliminate the connection, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this Chapter.

If, subsequent to eliminating a connection found to be in violation of this Chapter, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request City approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

#### **12.10.143 REQUIREMENT TO REMEDIATE.**

Whenever the Director finds that an illegal discharge is taking place or has occurred that will result in or has resulted in pollution of stormwater, the stormwater system, or waters of the State, the Director may require by written notice to the owner of the property and/or the responsible person that the pollution be remediated and the affected property restored within a specified time pursuant to the provisions of Sections 12.80.010 through 12.80.090.

#### **12.10.147 REQUIREMENT TO MONITOR AND ANALYZE.**

The Director may require, by written notice, that any person engaged in any activity and/or owning or operating any facility that may cause or contribute to stormwater pollution, illegal discharges, and/or non-stormwater discharges to the stormwater system or waters of the State, to undertake at said person's expense such monitoring and analyses and furnish such reports to the City of Albany as deemed necessary to determine compliance with this Chapter.

#### **12.10.150 SUSPENSION OF ACCESS.**

The City of Albany may, without prior notice, suspend access to the stormwater system when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, to the stormwater system, or waters of the State.

If the violator fails to comply with a suspension order, the City of Albany may take such steps as deemed necessary to prevent or minimize damage to the stormwater system, prevent or minimize danger to the environment, or to prevent or minimize danger to persons.

**12.10.160 DAMAGE TO THE STORMWATER SYSTEM.**

When a discharge causes obstruction, damage, or other impairment to the stormwater system, the Director may assess a charge against the discharger for the work required to clean or repair the facility. If the discharger fails to pay said charge, the costs to clean or repair the facility may be assessed against the property pursuant to Section 12.80.050 of this Chapter.

**Chapter 12.20  
PERMITS FOR CONNECTION OR CONSTRUCTION**

**Sections:**

<b>12.20.010</b>	<b>Permits Required</b>
<b>12.20.020</b>	<b>Approval of Drawings</b>
<b>12.20.030</b>	<b>Construction to Conform to Standards</b>
<b>12.20.040</b>	<b>Inspection, Approval of Construction</b>
<b>12.20.050</b>	<b>Connection to Stormwater Mains</b>
<b>12.20.060</b>	<b>Extension of Stormwater Systems</b>
<b>12.20.070</b>	<b>Tapping of Manholes</b>

**12.20.010 PERMITS REQUIRED.**

Prior to commencing any work on a building storm drain or public stormwater system, all applicable permits from the City of Albany and other agencies must be secured and all associated permit fees paid in full. The permits necessary may include, but are not limited to, a plumbing permit, a permit to construct public facilities, and an encroachment permit. The permit shall set forth at what point the connection is to be made, the location, size of facility, type of construction, and other details as the Director or his/her designee may reasonably require.

**12.20.020 APPROVAL OF DRAWINGS.**

Drawings for all public stormwater systems shall be approved by the Director or his/her designee prior to construction. Unless otherwise approved by the Director, such drawings shall conform to applicable stormwater system master plans as well as City of Albany Standard Construction Specifications. Such approval shall be required in addition to any other approval required by state law.

**12.20.030 CONSTRUCTION TO CONFORM TO STANDARDS.**

All public stormwater systems, whether publicly or privately constructed, shall conform to City of Albany Standard Construction Specifications and the City of Albany Design Standards with regard to legal and design requirements, materials, and workmanship. Failure to meet tests for performance and workmanship shall be grounds for refusal of acceptance by the City. Permits to connect to stormwater systems that have not been accepted will not be issued until the system has been approved and accepted.

**12.20.040 INSPECTION, APPROVAL OF CONSTRUCTION.**

Reasonable notice and access shall be given to allow inspection of all work in connection with the construction or reconstruction of any public stormwater facilities. Use of the stormwater facilities will not be allowed until the building storm sewer and the public improvement receive final approval.

**12.20.050 CONNECTION TO STORMWATER MAINS.**

Piped storm drain connections shall be made only to the single wye branch designated for use by the connecting property. If no wye is available, connection shall be made by tapping the stormwater main line in accordance with City Standard Construction Specifications and only after securing all necessary permits and paying all required permit fees.

**12.20.060 EXTENSION OF STORMWATER SYSTEMS.**

The following rules shall apply to all stormwater system extensions:

(1) The minimum size of stormwater mains or other stormwater system components to be installed shall be in conformance with the most recent version of the City of Albany Design Standards where a

larger size is not needed to provide an adequate system, conform with the size of the existing system, meet future needs, or conform to the size specified by the City of Albany's stormwater system facility plan.

(2) All stormwater system facilities serving more than one property shall be public, installed in public rights-of-way or public utility easements. The normal routing for stormwater system extensions shall be in a dedicated right-of-way.

(3) All stormwater system extensions shall extend to the extreme property line of the development or lot. If the property has excess frontage on the right-of-way and only partial development is to occur, then some consideration may be given to shortening the initial extension, provided sufficient assurance is given to ensure the completion of the extension at the time other development occurs. Where systems are being extended into the interior of a property or development, the systems shall be extended through to the boundaries of the property at all such points as shall be needed to provide current or future service to adjacent properties.

**12.20.070 TAPPING OF MANHOLES.**

Tapping of building storm drains directly into manholes is prohibited except where shown in construction drawings that have been approved by the Director or his/her designee.

**Chapter 12.30  
STORMWATER MANAGEMENT FEES**

**Sections 12.30.010 through 12.30.999 Reserved.**

**Chapter 12.40  
EROSION PREVENTION AND CONTROL**

**Sections 12.40.010 through 12.40.999 Reserved.**

**Chapter 12.50  
CONNECTIONS OF UNASSESSED PROPERTIES**

**Sections:**

<b>12.50.010</b>	<b>Purpose</b>
<b>12.50.050</b>	<b>Permit Requirements</b>
<b>12.50.060</b>	<b>Fees</b>

**12.50.010 PURPOSE.**

The City of Albany adopts the policies and procedures set forth in this Chapter for in-lieu-of-assessment fees when properties that have not previously participated in the cost to construct public stormwater facilities propose to connect to the City stormwater system.

**12.50.050 PERMIT REQUIREMENTS.**

Any person desiring to connect a private stormwater facility to any part of the City stormwater system shall first apply for a permit to do so as set forth in Sections 12.20.010 – 12.20.070 of this Chapter.

**12.50.060 FEES – PAYMENT PROCEDURES.**

(1) Except where the existing public stormwater system facilities (and services) have been constructed privately by the owner of the connecting property or a previous owner of the property under the provisions of a permit to construct public facilities, upon making an application to connect to the existing stormwater system, a stormwater in-lieu-of assessment fee shall be due in an amount equal to that established by Council resolution.

(2) The fee described in subsection (1) shall be adjustable from year to year to reflect the actual cost of stormwater system construction using the change in the Engineering News Record (ENR) Construction Cost Index or other method as may be approved by the City Council.

(3) In-lieu-of assessment fees levied under the provisions of this Chapter may be paid over time in installments subject to the provisions of State law and City policy.



(4) All monies received from the stormwater in-lieu-of assessment charges plus interest, if any, shall be deposited in the stormwater management fund.

**Chapter 12.60  
FLOODPLAIN PRESERVATION AND MANAGEMENT**

**Sections 12.60.010 through 12.60.999 Reserved.**

**Chapter 12.70  
STREAM BUFFERS/RIPARIAN ZONE PROTECTION - OPEN WATERWAYS**

**Sections 12.70.010 through 12.70.999 Reserved.**

**Chapter 12.80  
ENFORCEMENT**

**Sections:**

<b>12.80.010</b>	<b>Notice of Violation</b>
<b>12.80.020</b>	<b>Compliance Schedule</b>
<b>12.80.030</b>	<b>Appeal</b>
<b>12.80.040</b>	<b>Abatement by City</b>
<b>12.80.050</b>	<b>Recovery of Abatement Costs</b>
<b>12.80.060</b>	<b>Immediate Abatement</b>
<b>12.80.070</b>	<b>Penalties for Violations</b>
<b>12.80.080</b>	<b>Compensatory Action</b>
<b>12.80.090</b>	<b>Violations Deemed a Public Nuisance</b>

**12.80.010 NOTICE OF VIOLATION.**

Whenever the Director finds that a person has violated a provision of this Chapter, the Director may order compliance by written Notice of Violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or illegal discharges;
- (3) That violating discharges, practices, or operations cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) The implementation of source controls or treatment best management practices; and
- (6) The submittal of a compliance schedule.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which a compliance schedule for such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore the affected property within the deadlines established by and agreed to in the compliance schedule, the work will be done by the City or a contractor designated by the Director and the expense thereof shall be the responsibility of the violator pursuant to Sections 12.80.040 through 12.80.060.

**12.80.020 COMPLIANCE SCHEDULE.**

Following a release to the environment, the Director may require the discharger to submit a compliance schedule. This schedule will be a detailed outline of actions to be taken to correct, clean, remediate, or restore the environment, structures, or property harmed by the release. The schedule will also address measures to prevent recurrence of the problem. The following conditions shall apply to this schedule:

- (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the user meeting applicable standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction).
- (2) No increment referred to in paragraph (1) shall exceed nine months.

(3) Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the Director.

(4) Any other information as may be deemed by the City to be necessary to evaluate the schedule.

(5) The schedule shall be signed by an executive officer and, when required by the City, a qualified engineer, where applicable. Within 30 days after full evaluation and acceptance of the data furnished, the City shall notify the user of the City's acceptance or rejection thereof.

#### **12.80.030 APPEAL.**

Notwithstanding the provisions of Section 12.80.060 below, any person receiving a Notice of Violation under Section 12.80.010 above may appeal the determination of the Director. The appeal must be in writing and must be received by the City Manager within seven (7) days of receipt of the Notice of Violation. If requested in writing, a hearing on the appeal shall be scheduled before the City Council of the City of Albany, or such Appeal Hearings Officer as the City may appoint for such purpose. The City Manager shall have the authority and discretion to appoint a Hearings Officer or direct the appeal to the City Council. Thereafter, the City Council or the Appeal Hearings Officer may render its decision based upon the record of the hearing on the Notice of Violation, grant an additional hearing to take additional evidence, or conduct a de novo hearing.

The City Council, or Appeal Hearings Officer, in consultation with the City Attorney, shall establish rules and procedures for the conduct of the appeal in order to accord the discharger minimum due process. The burden of proof, on appeal, shall remain with the City by a preponderance of the evidence. The City Council or Appeal Hearings Officer, shall affirm, reverse, or modify the findings, conclusions, and requirements of the Notice of Violation and shall serve its decision, in writing, upon the discharger. The decision of the City Council or Appeal Hearings Officer shall be final.

#### **12.80.040 ABATEMENT BY CITY.**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in the event of an appeal under Section 12.80.030, within 10 days of the decision of the City Council or Appeal Hearings Officer upholding the decision of the Director, then the City or a contractor designated by the Director shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the City or designated contractor to enter upon the premises for the purposes set forth above.

#### **12.80.050 RECOVERY OF ABATEMENT COSTS.**

(1) Within 30 days after abatement of the nuisance by City, the Director or his designee shall prepare a recap of all costs incurred to abate the nuisance, including administrative costs.

(2) A summary of costs shall be mailed by registered or certified mail to the same person or persons to whom the notice of violation was sent per Section 12.80.010 above, or their successors in title, and shall advise of the City's intent to assess said costs against the real property and shall further advise the owner/owners of their right to a hearing before the City Council prior to assessment upon receipt by the Director, within 15 days of the date of mailing, of a written request for a hearing.

(3) If the costs of abatement are not paid to the City within 30 days from the date of the mailing of the summary of costs, said summary shall be presented to the City Council and if the Council finds said costs to be reasonable, the Council shall pass an ordinance directing the amount of said costs be entered in the docket of City liens; and upon such entry being made, said costs shall constitute a lien upon the property in question. Prior to passing said ordinance, the Council will afford the property owner/owners a right to be heard by the Council if a written request for hearing has been received by the Director within 30 days of the date of mailing of the aforesaid summary of costs.

(4) The lien shall be enforced and shall bear interest at a rate to be determined by the Council at the time of the ordinance referred to above. The interest shall commence from the date of entry of the lien in the lien docket and shall have priority over all other liens and assessments to the maximum extent permitted by law.

(5) An error in the name of the property owner/owners/agents shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

**12.80.060 IMMEDIATE ABATEMENT.**

The Director is authorized to require immediate abatement of any violation of this Chapter that constitutes an immediate threat to the environment or the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the Director, the City of Albany is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the City of Albany 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 other and further relief authorized under this Chapter.

**12.80.070 PENALTIES FOR VIOLATIONS.**

(1) It shall be a misdemeanor punishable under the general penalty provisions of Albany Municipal Code 1.04 for any person to violate any provision or fail to comply with any of the requirements of this Chapter. The maximum fine or penalty imposed by the municipal court shall be no less than \$250 for each violation and no part of the fine shall be suspended. Each day upon which a violation occurs or continues shall constitute a separate violation.

(2) The City may commence an action for appropriate legal and/or equitable relief in the appropriate local court to enforce the penalty or remedy imposed by the City hereunder.

**12.80.080 COMPENSATORY ACTION.**

In-lieu-of enforcement proceedings, penalties, and remedies authorized by this Chapter, the Director may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**12.80.090 VIOLATIONS DEEMED A PUBLIC NUISANCE.**

In addition to the enforcement processes and penalties herein before provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the environment, public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the City at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City.