

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12.01.010 INTENT AND PURPOSE, AND AMENDING CHAPTER 12.01.040 DEFINITIONS, AND CREATING CHAPTER 12.30, STORMWATER UTILITY, OF THE ALBANY MUNICIPAL CODE.

WHEREAS, the Federal Environmental Protection Agency and the State Department of Environmental Quality will require Albany to prepare a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase II permit application and management plan to reduce stormwater pollution under the authority of the Federal Clean Water Act; and

WHEREAS, the City of Albany, as a designated management agency (DMA), is required to manage stormwater to minimize impacts to the Willamette River in accordance with the City's Water Quality Management Plan adopted to comply with the State Department of Environmental Quality's Willamette River Total Maximum Daily Load (TMDL); and

WHEREAS, the existing stormwater system assets of piped and open conveyances are valued at more than \$100 million and should be properly managed and maintained; and

WHEREAS, the City Council finds that in order to properly manage and maintain the stormwater system, and to comply with regulatory requirements such as the Willamette River TMDL and NPDES MS4 Phase II requirements, the City's stormwater system must be funded in a manner enabling on-going maintenance, operation, regulation, and improvement of the system; and

WHEREAS, the City Council finds that if not properly managed, existing stormwater may cause property damage and erosion; may carry concentrations of nutrients, heavy metals, oil and toxic materials into receiving waters and ground water; may degrade the integrity of City streets and the transportation system; may reduce citizen access to emergency services; and may pose hazards to both residents and property; and

WHEREAS, the City Council of the City of Albany (the "City") has determined that the City's physical growth and urban development will continue to increase the volume of stormwater collected in and routed through the City's man-made and natural stormwater facilities and system; and

WHEREAS, the City Council has determined that stormwater must be managed in a manner that protects the public health, safety, and welfare; and

WHEREAS, the City Council has determined that there is inadequate funding available to properly operate, maintain, repair, or replace the existing stormwater system in Albany.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Albany Municipal Code Chapter AMC 12.01.010, Intent and Purpose, is hereby amended:

The intent and purpose of this title is **to enable the City of Albany to comply with applicable State and Federal laws**; to provide for the **effective management of stormwater to protect the health, safety, and general welfare of the citizens of the City of Albany**; **and to protect the health and safety of City employees working in the stormwater system**; **to facilitate the orderly development and extension of the stormwater system**; 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 help meet the City of Albany's environmental stewardship responsibilities.** ~~and to enable the City of Albany to comply with applicable State and Federal laws.~~

Formation of a stormwater utility with appropriate resources, responsibility, and authority is the most effective way to manage, improve, and control the stormwater system and to address the purposes set forth herein.

Notwithstanding the forgoing, nothing herein shall be deemed to impose a duty on the City to protect the property, health, or safety of third parties. (Ord. 5727 § 1, 2010; Ord. 5498 § 1, 2001).

Section 2: Albany Municipal Code Chapter AMC 12.01.040, Definitions, is hereby amended as follows:

(1) "Agricultural activity" means private or commercial activities directly engaged in the production of nursery stock, sod, fruits, vegetables, forages, cover crops, field crops (grain, corn, oats, beans, etc.), timber, and livestock, or other related activities determined by the Director to conform to this definition, but shall not include construction or other activities for structures associated with agricultural activities.

(2) "Best management practices (BMPs)" means schedules of activities; prohibitions of deleterious practices; general good housekeeping practices; physical, structural, or chemical interventions; pollution prevention and educational activities; maintenance activities; and other management practices that prevent or minimize to the greatest extent practicable the discharge of pollutants directly or indirectly to public rights of way, the municipal stormwater system, receiving waters, or Waters of the State.

(3) "City" means the City of Albany, a municipal corporation of the State of Oregon.

(4) "City Manager" means 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.

(5) "Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and any subsequent amendments thereto.

(6) "Construction activity" means activities related to any land development or construction project, including but not limited to clearing and grubbing, grading, excavating, and demolition.

(7) "Director" means the person designated by the City Manager to supervise the Public Works Department and who is charged with certain duties and responsibilities by this title, or the duly authorized representative.

(8) "Discharger" means any person who discharges or causes to be discharged any pollutant onto public rights of way or into the municipal stormwater system, receiving waters, or Waters of the State.

(9) "Floodplain" means 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.

(10) "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.

(11) "Illegal discharge" means any direct or indirect pollutant-bearing discharge to the municipal stormwater system, receiving waters, or Waters of the State, except as exempted by AMC 12.10.010.

(12) "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.

(13) "Impervious surface" means an improved, altered, or constructed surface which generally prevents infiltration of surface water, including but not limited to paved streets, graveled or paved areas such as parking lots and driveways, oiled, macadam or other treated surfaces, walkways, roof surfaces, and patios.

(14) "Land-disturbing activity" means any activity that exposes the soil to erosion.

(15) "National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit" means a permit issued by the Environmental Protection Agency or the State of Oregon that authorizes the

discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(16) "New development" means a project that creates and/or expands the area of impervious surfaces, including but not limited to:

- (a) Structural development, including construction of a new building or other structure;
- (b) Expansion or alterations of an existing structure that result in an increase in the area of impervious surfaces;
- (c) Construction of new parking lots, roads, alleys, pathways, and other impervious surfaces; and
- (d) Expansion or alterations of parking lots, roads, alleys, pathways, and other impervious surfaces that results in an increase in the area of impervious surfaces.

(17) "Nonpoint source" means any source of water pollution that is not associated with point sources. Generally, a nonpoint source is a diffuse or unconfined source of pollution that can either enter into or be conveyed by the movement of water into the municipal stormwater system, receiving waters, or Waters of the State.

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

(19) "Person" means 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.

(20) "Point source" means any discernible, 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(s).

(21) "Pollutant" means any material or substance that may alter the chemical, physical, biological, and/or radiological condition of the Waters of the State.

(22) "Pollution" means the human-made or human-induced contribution of any pollutant into the municipal stormwater system, receiving waters, or Waters of the State.

(23) "Post-construction stormwater quality" means the quality of stormwater runoff, after construction is complete, from a development or redevelopment project.

(24) "Post-construction stormwater quality facility" means permanent stormwater infrastructure incorporated into a development or redevelopment project designed to reduce pollutant loads and runoff velocity from impervious surfaces, and which may also include improvements constructed to reduce the quantity of stormwater runoff leaving the site.

(25) "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(26) "Property owner (owner)" means the person(s) or entity(ies) holding legal title to the subject property.

(27) "Redevelopment" means a project that alters or improves the "footprint" of an existing site and/or building. Redevelopment includes the replacement, alteration, or upgrade of an impervious surface that is not part of a routine maintenance activity.

(28) "Stormwater Fund" means an Enterprise fund through which the cost of providing utility service will be primarily user fee financed and is analogous in its structure and operation to other Enterprise funds maintained by the City, such as the sewer and water funds.

~~(2829)~~ "Stormwater system" means 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. The municipally-owned portion of the stormwater system may also be referred to as a municipal separate storm sewer system (MS4).

~~(2930)~~ "Stormwater" means any surface flow, runoff, and drainage consisting entirely of water from precipitation events.

~~(3031)~~ "Toxic" means any substance or combination of substances listed as toxic in regulations promulgated by the Environmental Protection Agency in Section 307(a)(1) of the Clean Water Act or Title III Section 313 of the Superfund Amendments and Reauthorization Act.

(3132) "Vegetated post-construction stormwater quality facility" means a post-construction stormwater quality facility wherein the primary means of stormwater treatment is by filtration through soil and plant material. This may also be referred to as a low impact development (LID) facility.

(3233) "Water or Waters of the State" means all natural waterways, intermittent streams, constantly flowing streams, lakes, wetlands, and all other navigable and nonnavigable bodies of water which are wholly or partially within or bordering the State or within its jurisdiction.

(3334) "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. (Ord. 5841 § 3, 2014; Ord. 5727 § 1, 2010; Ord. 5498 § 1, 2001).

Section 3: Albany Municipal Code Chapter AMC 12.30, Stormwater Management Fees, is hereby created as follows:

Chapter 12.30, Stormwater Management Fees is hereby re-titled to **Stormwater Utility**.

12.30.010 Stormwater Utility

There is created and established a stormwater utility with the assets, authority, and responsibility for administration, planning, design, construction, maintenance, and operation of stormwater conveyances and facilities. Additional specific mandates, authority, and delegations may occur, from time to time, by appropriate City Council actions. All references to "the Utility" in this title refer to the Stormwater Utility. The administration of the Utility shall be as set forth herein.

12.30.020 Stormwater Fund.

The "stormwater fund" is created and established.

- (1) **Service Charge Imposed.** A stormwater service charge shall be imposed on all persons or premises that contribute to the stormwater system or that otherwise use or benefit from the stormwater system, and said persons shall be responsible for paying the stormwater service charge. All monies received from stormwater service charges shall be deposited into the stormwater fund.
- (2) **Service Charge Rates Set by Council Resolution.** Stormwater service charge rates will be set by Council resolution. The stormwater service charge shall be developed and implemented such that it is not a tax subject to the property tax limitation of Article XI, Section 11b of the Oregon Constitution. The Director shall recommend adjustments to the stormwater service charge rates to the City Council as it becomes necessary. The City Council shall consider such recommendations and may approve or further adjust the stormwater service charges as the Council deems necessary to meet policy objectives, to meet the Utility's revenue requirements, or to meet the overall financial needs of the Utility.
- (3) **Customer Classification.** Customer account classification and other stormwater charge-related calculations shall be determined by the Director or the duly authorized representative. Any appeal of the Director's determination shall be made in writing to the Director in accordance with Council policy. Any request for review of the Director's appeal determination shall be made in writing to the City Manager. The City Manager's determination will be final.

12.30.030 Adjustments, back-billing, and refunds.

The Utility may make adjustments, back-bill, pay refunds, or waive fees and charges in accordance with City Council policy. If no Council policy exists, the Utility may make adjustments where it is deemed necessary on a case-by-case basis as determined by the Director for the proper conduct of the business of the Utility. A full explanation of the reason for the adjustment or refund must be filed with the office records and, subject to Oregon public records law, will be made available upon request. Refunds are to be made to the party that made the payment.

12.30.040 System Development Charges.

When adopted in accordance with Chapter 15.16 of the Albany Municipal Code, all monies received from stormwater system development charges shall be deposited into the stormwater fund. Such funds shall be accounted for separately from those received from stormwater service charges.

Section 4: Utility Assets. Relevant stormwater-related property and assets assigned to the Public Works Department, including but not limited to real property, easements, pipes, manholes, inlets, outfalls and equipment, known by the City to exist, are hereby transferred to the Utility and shall be separately accounted for in official City records per customary municipal accounting principles. Stormwater-related property and assets may from time to time be added to or removed from the Stormwater Utility asset inventory, and the authority to make those changes is hereby delegated to the Public Works Director or the duly authorized representative.

Section 5: Effective Date. Because this ordinance is intended to provide a complete legislative framework for the creation and administration of the Utility, this ordinance shall take effect and be in force thirty (30) days after its passage and approval.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk