

ORDINANCE NO. 1799

ORDINANCE OF THE CITY OF SELAH, WASHINGTON, ADOPTING A NEW CHAPTER 9.23 TO THE SELAH MUNICIPAL CODE ENTITLED, "STORMWATER MANAGEMENT FOR DEVELOPMENT AND REDEVELOPMENT"

WHEREAS, the Federal Clean Water Act, 33 U.S.C. 1251 et seq. (the Act), requires certain local governments such as the City of Selah to implement stormwater management programs and regulations within prescribed time frames, and pursuant to said Act the United States Environmental Protection Agency (EPA) has adopted rules for such stormwater programs and regulations; and

WHEREAS, the EPA has delegated authority to the Washington State Department of Ecology (Ecology) to administer such stormwater programs and regulations, and Ecology has issued the Eastern Washington Phase II Municipal Stormwater Permit, effective February 16, 2007 through February 15, 2012, and modified on June 17, 2009, which requires local governments such as the City of Selah to implement numerous stormwater management requirements, including adopting Ecology's Stormwater Management Manual for Eastern Washington and related regulations; and

WHEREAS, stormwater management in areas undergoing new development or redevelopment is necessary because runoff from these areas has been shown to significantly affect water quality; and

WHEREAS, there are generally two forms of impacts of post-construction runoff - an increase in the type and quantity of pollutants in stormwater, and an increase in the volume of water generated as a result of increasing the impervious area; and

WHEREAS, the City Council has determined that it is important to safeguard persons, protect property, and prevent damage to the environment as a result of stormwater impacts from new development and redevelopment activities;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, does ordain, as follows:

Section 1. New Selah Municipal Code Chapter 9.23 entitled "Stormwater Management for Development and Redevelopment" adopted.

A new Chapter 9.23 of the Selah Municipal Code is adopted as follows:

Stormwater Management for Development and Redevelopment

9.23.010 DEFINITIONS

The terms as used in this chapter shall have the following meanings:

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| A. | Best Management Practices (BMPs) | Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention, educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or to the storm sewer system. 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. |
| B. | City | The City of Selah |

C.	Clearing	Any construction activity that removes the vegetative surface cover.
D.	Construction Activity	Clearing, grading, excavation, and any other activity which results in a land disturbance. Such activities may include, but are not limited to, road building, construction of residential homes, office buildings, commercial establishments, parking lots, industrial facilities, and demolition activity.
E.	Construction Stormwater General Permit	National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction Activity.
F.	Development	Any construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure within the jurisdiction of the City of Selah as well as any manmade change or alteration to the landscape, including but not limited to, mining, drilling, dredging, grading, paving, excavating and filling.
G.	Drainage Way	Any channel that conveys surface runoff throughout the site.
H.	Erosion Control	A measure that prevents erosion.
I.	Erosion and Sediment Control Specialist	A person who has received training and is authorized by the City to inspect and maintain erosion and sediment control practices.
J.	Grading	Excavation or fill of material, including the resulting conditions thereof.
K.	Municipal Separate Storm Sewer System (MS4)	Also known as "storm sewer system." City-owned facilities 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 (i) designed or used for collecting or conveying stormwater; (ii) which is not a combined sewer; and (iii) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
L.	NPDES Permit	A National Pollutant Discharge Elimination System (NPDES) permit issued by the United States Environmental Protection Agency (EPA) or the Washington State Department of Ecology that authorizes the discharge of pollutants to waters of the U.S.
M.	Perimeter Control	A barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.
N.	Permittee	Any individual, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or

duties.

- O. Person Any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner of premises, or as the owner's agent.
- P. Phasing Clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.
- Q. Pollutant Anything which causes or contributes to pollution. Pollutants may include, but are not limited to, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste; paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, 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.
- R. Pollution Contamination or other alteration of the physical, chemical, or biological properties of waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will, or is likely to, create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
- S. Premises Any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- T. Redevelopment A project for which a building permit is typically required that proposes to add, replace, and/or alter impervious surfaces affecting the existing drainage system, other than routine maintenance, resurfacing, or repair. Projects that include the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; or structural development including construction, installation or expansion of a building or other structure shall be considered redevelopment.
- U. State Regulatory Threshold Refers to the 1-acre size of new development and redevelopment projects that shall be regulated under the terms of the *Construction Stormwater General Permit*. The threshold includes construction site activities and new development and redevelopment projects that result in a land disturbance of equal to or greater than 1-acre and

construction activities and projects less than 1-acre that are part of a larger common plan of development or sale.

V.	Sediment Control	Measures that prevent eroded sediment from leaving the site.
W.	Site	A parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.
X.	Stabilization	The use of practices that prevent exposed soil from eroding.
Y.	Start of Construction	The first land-disturbing activity associated with construction activities, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.
Z.	Stormwater	Any surface flow, runoff, or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation. Stormwater includes runoff from melting snow and ice.
AA.	Stormwater Management Manual for Eastern Washington	The latest edition the <i>Stormwater Management Manual for Eastern Washington</i> published by the Washington State Department of Ecology.
BB.	Stormwater Pollution Prevention Plan (SWPPP)	A document which describes the Best Management Practices and activities to be implemented by a person, permittee or business to identify sources of pollution or contamination at a site, and the actions to eliminate or reduce pollutant discharges to stormwater, the storm sewer system, and/or receiving waters to the maximum extent practicable.
CC.	Underground Injection Control (UIC) Wells	Class V underground injection control wells as defined in WAC 173-218. In the context of stormwater management, these are subsurface infiltration facilities meeting the definition of an injection point. UIC wells are to be registered with the Washington Department of Ecology.
DD.	Watercourse	Any body of water including, but not limited to, lakes, ponds, rivers, streams, irrigation ditches and canals, and bodies of water delineated by the City.
EE.	Waterway	A channel that directs surface runoff to a watercourse or to the public storm drain.
FF.	WDOE	The Washington State Department of Ecology

9.23.020 GENERAL REQUIREMENTS

All developments and redevelopments shall make provisions for the control of pollutants in, and the collection, retention and disposal of storm and other water runoff. The method of storm drainage handling will be dependent on the location of the development or redevelopment, but in all cases shall at a minimum comply with the latest edition of the *Stormwater Management Manual for Eastern Washington*.

- A. It is the intent of this section to adequately provide for suitable drainage provision in all short plats or regular subdivisions. All subdivisions shall provide for drainage such that their development does not conflict with present drainage patterns, or create a drainage problem within itself or for its neighbors.
- B. A drainage plan, where required, shall be prepared by a licensed engineer registered in the state of Washington and submitted to the City for review and approval for any proposed land development or redevelopment that will increase the quantity of or in any way alter the drainage runoff occurring prior to development or redevelopment.
- C. Design calculations for peak flow and peak volume storage requirements shall be in accordance with the provisions of the latest edition of the City of Selah Construction Standards for the Private Construction of Public Facilities unless it is determined by the City that the development or redevelopment is located in a drainage problem area, whereby the design storm frequency, or other design parameters, may be adjusted as required to address the drainage problem.
- D. The drainage plan shall provide for the on-site detention and/or retention of the total water intercepted and collected by the development or redevelopment and the areas (improved or unimproved) lying and draining presently to and through the proposed development or redevelopment, for the design storm, unless other natural or man-made systems are available for use.
- E. Detention and/or retention of stormwater runoff from any proposed land development or redevelopment shall be accomplished by stormwater holding facilities either open or closed or by introduction, on-site, of stormwater into permeable soils via an infiltration system.
- F. The drainage plan shall incorporate all calculations required by and in the latest edition of the City of Selah Construction Standards for the Private Construction of Public Facilities. Collection systems shall be either gravity pipe systems, open channels, or a combination of the two.
- G. The overflow of runoff in excess of the design storm quantities must be situated or directed to where it would have overflowed under the conditions existing prior to proposed development or redevelopment. The capacity of the drainage course downstream of the development or redevelopment may be required to be evaluated. The submitted drainage plan shall incorporate, among other data, a topographical map to clearly define:
 - 1. The proposed development or redevelopment;
 - 2. All areas, improved or unimproved, lying upstream and draining to and across the proposed development redevelopment; and
 - 3. Drainage course, natural or otherwise, to which the proposed development or redevelopment shall drain.
- H. The plans shall be prepared in accordance with the latest edition of the City of Selah Construction Standards for the Private Construction of Public Facilities.

9.23.030 MINIMUM REQUIREMENTS

New development or redevelopment projects located within the city limits shall meet the following minimum requirements:

No. 1 – Preparation of a Stormwater Site Plan: Stormwater facilities shall be shown on the site plan. For complicated developments, a separate stormwater site plan shall be prepared to adequately depict the proposed stormwater improvements. To the maximum extent practicable, all runoff shall be retained and disposed of on site. Where subsurface conditions do not allow the use of infiltration as a treatment and disposal method, other methods will be considered. When runoff

must exit the site, the runoff rate shall not exceed the rate of runoff from pre-developed conditions and appropriate BMPs shall be utilized.

No. 2 - Erosion and Sediment Control: Sediment and erosion control shall be provided for land-disturbing activities. Exposed soils shall be stabilized to prevent erosion and sediment transport by either wind or water. The plan may be pictorial or narrative and shall include all BMPs proposed for erosion and sediment control. For projects meeting the State Regulatory Threshold, a Stormwater Pollution Prevention Plan (SWPPP) shall be prepared.

No. 3 - Construction Access: Access shall be limited to one route. Access points shall be stabilized with quarry spall or crushed rock to minimize the tracking of sediment and pollutants onto roads.

No. 4 - Source Control BMPs: Source control BMPs shall be implemented to remove pollutants from the stormwater. Source control BMPs are described in Chapter 8 of the *Stormwater Management Manual for Eastern Washington*. Typically, source control BMPs are needed on sites that generate pollutants that cannot be removed using runoff treatment BMPs.

No. 5 - Runoff Treatment BMPs: All projects shall provide approved treatment of stormwater before the water leaves the project property via infiltration or as surface runoff. At a minimum, sediment removal shall be provided prior to infiltration, and basic treatment BMPs, as defined in the *Stormwater Management Manual for Eastern Washington*, shall be utilized for all projects discharging directly or indirectly to surface water that create 5,000 square feet of pollutant-generating impervious surface area. All subsurface infiltration systems subject to the UIC requirements shall be registered with the State of Washington.

No. 6 - Preservation of Natural Drainage Systems: Natural drainage systems and runoff patterns shall be maintained, and upstream flows allowed to pass through the site at the rate and volume existing before site development. If discharge is required from a site, it shall not exceed the discharge rate for the pre-developed conditions and shall occur at its natural location.

No. 7 - Streambank Erosion Control: Erosion control shall be provided when stormwater is discharged directly or indirectly to a stream or waterway.

No. 8 - Off-Site Analysis and Mitigation: All projects located on or adjacent to a waterway shall examine impacts 1/4-mile downstream from their site and shall mitigate impacts of the development.

No. 9 - Protection of Adjacent Properties: Appropriate BMPs shall be used to protect adjacent properties from sediment deposition and from damage due to runoff from the developed site.

No. 10 - Water Quality Sensitive Areas: When determined by the City, more stringent controls will be imposed in water quality sensitive areas. For example, additional runoff treatment may be required when infiltration systems are used in wellhead protection areas.

No. 11 - Basin Plans: Basin plans may be developed and implemented to address stormwater problems over larger areas, rather than addressing problems on a parcel-by-parcel basis. The level of protection shall be equal to or greater than if only the minimum requirements were imposed on a parcel-by-parcel basis.

No. 12 - Operation and Maintenance: For all stormwater facilities located on private property, an operation and maintenance schedule shall be provided for all proposed stormwater facilities and BMPs, and the party (or parties) responsible for maintenance shall be identified. After completion, all BMPs shall be regularly inspected and maintained.

No. 13 - Financial Liability: Performance bonding or other appropriate financial instruments shall be required for all projects constructing public stormwater facilities to assure compliance with the stormwater standards.

No. 14 - Other BMPs: The City may require that other BMPs be used to mitigate the effects of increased runoff and to improve stormwater quality.

9.23.040 EXEMPTION FROM REQUIREMENTS

The following development activities are exempt from the provisions of this chapter and the requirements of providing stormwater management measures:

- A. Land disturbing activities on agricultural land for production of plants and animals useful to man, except that the construction of agricultural structures and other major buildings which require the issuance of a building permit shall require the submittal and approval of a stormwater management plan prior to the start of the land disturbing activity.
- B. Improvements to existing single family structures or their accessory buildings that disturb less than 5,000 square feet of land, or add less than 5,000 square feet of impervious area. However, construction site sediment controls as specified in Selah Municipal Code Chapter 9.24 pertaining to construction site access and tracking of sediment onto public roads shall apply.
- C. Stormwater from any site covered under an existing NPDES individual permit in which stormwater management and/or treatment requirements are included for all stormwater discharges associated with construction activity.

9.23.050 PERMIT REQUIREMENTS AND OTHER APPROVALS

- A. The approved stormwater management plan shall contain certification by the applicant that all land clearing, construction, development, and drainage will be done according to the stormwater management plan or previously approved revisions. Any and all permits may be revoked at any time if the construction of stormwater management facilities is not in strict accordance with approved plans.
- B. A building permit for a project that includes construction of storm water facilities, alters drainage patterns, or creates more than 5,000 square feet of new impervious area shall not be issued without the following:
 - 1. Site plan showing drainage patterns, stormwater facilities, and site access point.
 - 2. Easements for stormwater management facilities.
 - 3. Stormwater facility inspection and maintenance agreements for private stormwater facilities when so required by Section 9.23.110.
 - 4. Right of entry for inspections.
 - 5. Any off-site easements needed for stormwater or drainage facilities.
- C. A final occupancy permit for a project that includes construction of storm water facilities, alters drainage patterns, or creates more than 5,000 square feet of new impervious area shall not be issued without the following:
 - 1. Recorded easements for stormwater management facilities.
 - 2. Recorded stormwater facility inspection and maintenance agreements for private stormwater facilities when so required by Section 9.23.110.
 - 3. Receipt of an as-built plan which includes a certification the storm drainage system complies with the original project design or a stormwater management plan.
 - 4. Verification that UIC wells have been registered with the WDOE.

- D. A site grading permit shall not be issued or modified without the following:
1. Right of entry for emergency maintenance of stormwater management facilities, if necessary.
 2. Right of entry for inspections.
 3. Any off-site easements needed for stormwater or drainage facilities.
 4. Site plan showing drainage patterns, erosion and sediment control facilities, and site access point.
 5. A WDOE-approved SWPPP for projects meeting the State Regulatory Threshold.
- E. In addition to other platting requirements, final plats shall not be approved until the following stormwater requirements are met:
1. Any off-site easements needed have been obtained and recorded.
 2. Any necessary drainage easements are noted on the plat.
 3. Any inspection and maintenance agreements for private stormwater facilities, when so required by Section 9.23.110, are recorded.
 4. Verification that UIC wells have been registered with the WDOE.
- F. In addition to the plans and permits required by the Federal EPA and the Washington Department of Ecology, applicants shall obtain all City permits required for the proposed development.

9.23.060 PERMIT SUSPENSION AND REVOCATION

- A. Any one or all permits described in section 9.23.050 of this chapter may be suspended or revoked if one or more of the following violations have been committed:
1. Violation(s) of the conditions of the stormwater management plan approval;
 2. Construction not in accordance with the intent of the approved plans;
 3. Non-compliance with correction notice(s) or stop work order(s); or
 4. The existence of an immediate danger in a downstream area in the judgment of the City.
- B. If one or more of these conditions is found, a written notice of violation(s) shall be served upon the owner or authorized representative and an immediate stop-work order may be issued. The notice shall set forth the measures necessary to achieve compliance. Correction of these violations must be started immediately or the owner shall be deemed in violation of this chapter.

9.23.070 FEES

A list of fees for plan review and other fees associated with this chapter can be found in the unified fee schedule, Selah Municipal Code, Title 20.

9.23.080 OWNERSHIP OF STORMWATER MANAGEMENT FACILITIES

- A. All stormwater management facilities shall be privately owned and maintained unless the City accepts the facility for public ownership and maintenance. The owner of all private facilities shall grant to the City a perpetual, non-exclusive easement which allows for public inspection and emergency repairs.
- B. Most regional stormwater management facilities will be publicly owned and/or maintained.

9.23.090 CITY PARTICIPATION

- A. When the City determines that additional storage capacity, or other stormwater management improvement, beyond that required by the applicant for on-site stormwater management, is necessary to enhance or provide for the public health, safety, and general welfare, to correct unacceptable or undesirable existing conditions, or to provide protection in a more desirable manner for future development, the City may:

1. Require that the applicant grant any necessary easements over, through, or under the applicant's property to provide access to or drainage for such a facility;
2. Participate financially in the construction of such facility to the extent that such facility exceeds the facility required for on-site stormwater management as determined by the City; and
3. Obtain from the owners of other adjacent property over, through, or under where the stormwater management facility is to be located, any easements necessary for the construction and maintenance of same.

- B. To implement this provision, both the municipality and developer must be in agreement with the proposed facility that includes the additional capacity for stormwater management and jointly develop a cost-sharing plan that is agreeable to all parties.

9.23.100 MAINTENANCE AND INSPECTION

- A. Any stormwater discharge control facility which services a single lot or commercial and industrial developments shall be privately owned and maintained; provided, however, the owner thereof shall grant to the City a perpetual, non-exclusive easement which allows for public inspection and emergency repair.
- B. All regional stormwater discharge control facilities, identified on City stormwater discharge control master plans, shall be publicly owned and/or maintained.
- C. All other stormwater discharge control facilities shall be publicly owned and/or maintained only if accepted for maintenance by the City.
- D. Private maintenance requirements shall be a part of the deed to the affected property.
- E. When necessary to perform any of his duties under this chapter, or to investigate upon reasonable cause or complaint the existence or occurrence of a violation of this chapter, the Public Works Director, or his/her designated representative, may enter onto property to inspect the same or to perform any duty imposed or authorized by this chapter. If the property is unoccupied, the Public Works Director, or his/her designated representative, shall make reasonable effort to locate the owners or other persons having charge or control of the property. To enter on private property, the Public Works Director, or his/her designated representative, shall:
1. Present identification credentials;
 2. State the reason for entry;
 3. Request and obtain permission to enter; and
 4. Access the property at reasonable times;

If entry is refused, the City shall have recourse to every remedy provided by law to secure entry. If access has been refused to any part of the premises from which water is discharged, and the City is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

9.23.110 MAINTENANCE AND INSPECTION AGREEMENT (PRIVATELY OWNED FACILITIES ONLY)

- A. An inspection and maintenance agreement shall be required for all private on-site stormwater discharge control facilities for all sites of 1-acre or more, or for sites less than 1-acre that are part of a larger common plan of development or sale. The inspection and maintenance agreement shall be submitted to the City prior to the issuance of necessary permits or City approvals. Such agreement shall be in form and content acceptable to the City. Such agreement shall provide for access to the facility by virtue of a non-exclusive perpetual easement in favor of the City at reasonable times for regular inspection by the Public Works Director, or his/her designated

representative. The agreement will identify who will have the maintenance responsibility. Possible arrangements for this maintenance responsibility might include the following:

1. Use of homeowner associations,
2. Arrangements to pay the City for maintenance,
3. Private maintenance by development owner(s), or
4. Contracts with private maintenance companies.

B. All maintenance agreements shall contain without limitation the following provisions:

1. A description of the property on which the stormwater management facility is located and all easements from the site to the facility;
2. Size and configuration of the facility;
3. A statement that properties which will be served by the facility are granted rights to construct, use, reconstruct, repair, maintain, and access the facility;
4. A statement that each lot served by the facility is responsible for repairs and maintenance of the facility and any unpaid ad valorem taxes, public assessments for improvements and unsafe building and public nuisance abatement liens charged against the facility, including all interest charges together with attorney fees, cost, and expenses of collection. If an association is delegated these responsibilities, then membership into the association shall be mandatory for each parcel served by the facility and any successive buyer, the association shall have the power to levy assessments for these obligations, and that all unpaid assessments levied by the association shall become a lien on the individual parcels; and
5. A statement that no amendments to the agreement will become effective unless approved by the City.

C. The agreement shall provide that the Public Works Director, or his/her designated representative, at his option, may make preventive maintenance inspections of stormwater management facilities. Without limiting the generality of the foregoing, the Public Works Director or his/her designated representative's inspection schedule may include an inspection during the first year of operation and once every year thereafter, and after major storm events, e.g., 5- or 10-year floods.

D. Inspection reports shall be maintained by the Public Works Director, or his/her designated representative.

E. The agreement shall provide that if, after an inspection, the condition of a facility presents an immediate danger to the public health, safety, or general welfare because of unsafe conditions or improper maintenance, the City shall have the right, but not the duty, to take such action as may be necessary to protect the public and make the facility safe. Any cost incurred by the City shall be paid by the owner.

F. The agreement shall be recorded by the owner at the County Auditor's Office prior to the final inspection and approval.

G. The agreement shall provide that the Public Works Director, or his/her designated representative, shall notify the owner(s) of the facility of any violation, deficiency, or failure to comply with this chapter. The agreement shall also provide that upon a failure to correct violations requiring maintenance work, within thirty (30) days after notice thereof, the City may provide for all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the costs of the work performed by the City pursuant to this subsection and there shall be a lien on all property of the owner which property utilizes or will utilize such facility in achieving discharge control, which lien, when filed in the County Auditor's Office, shall have the same status and priority as liens for ad valorem taxes. Should such a lien be filed, portions of the affected property may be released by the City following the payments by the owner of such owner's pro-rata share of the lien amount based upon the acreage to be released with such release amount to be determined by the Public Works Director, or his/her designated representative, in his/her reasonable discretion.

H. The City, at its sole discretion, may accept the certification of a registered civil engineer in lieu of any inspection required by this chapter.

9.23.120 CONSTRUCTION AND INSPECTION

- A. The requirements for erosion and sediment control during construction, the necessary inspections, and access to construction sites are specified in Selah Municipal Code Chapter 9.24.

9.23.130 VARIANCES FROM REQUIREMENTS

- A. If a severe and unexpected economic hardship would result from strict application of the requirements of this chapter, a person may request a variance.
1. To determine whether the application imposes a severe and unexpected economic hardship on the project applicant, the Permittee must consider and document with written findings of fact the following:
 - The current (pre-project) use of the site, and
 - How the application of the minimum requirement(s) found in this chapter restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the minimum requirements; and
 - The possible remaining uses of the site if the exception were not granted; and
 - The uses of the site that would have been allowed prior to the adoption of the minimum requirements; and
 - A comparison of the estimated amount and percentage of value loss as a result of the minimum requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the minimum requirements; and
 - The feasibility for the owner to alter the project to apply the minimum requirements.
 2. In addition any exception must meet the following criteria:
 - The exception will not increase risk to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and
 - The exception is the least possible exception that could be granted to comply with the intent of the minimum requirements found in this chapter.
- C. Any substantial variance from the stormwater management plan or concept plan shall be referred to all agencies that reviewed the original plan.
- D. If the City of Selah Public Works Director, or his/her designated representative, denies a request for variance, the denial may be appealed in writing to the City Council within ten (10) days of notice of denial. The City Council shall provide the aggrieved party with a hearing date and an opportunity to present argument in favor of the variance request. The City Council will not accept additional supporting documentation if the information was not reasonably available at the time the request for variance was made and could have been submitted to the Public Works Department.

9.23.140 ENFORCEMENT

- A. Whenever the City finds that a violation has occurred or a requirement of this chapter has not been met, the City 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, construction site or polluted stormwater discharges;
 3. That violating discharges, practices, or operations shall cease and desist;

4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 5. Payment of a fine to cover administrative and remediation costs; and
 6. The implementation of source control or treatment BMPs.
- B. If abatement of a violation and/or restoration of affected property are required, the Notice shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- C. Stop-Work Order; Revocation of Permit. In the event that any person violates the terms of a permit or implements site development or redevelopment in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the area so as to be materially detrimental to the public welfare or injurious to property or the environment, the City may issue a stop-work order, or suspend or revoke a permit.
- D. Violation and Penalties. No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this chapter. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and each day during which any violation of any of the provisions of this chapter is committed, continued, or permitted, shall constitute a separate offense. Upon conviction of any such violation, such person, partnership, or corporation shall be punished by a fine of not more amount listed in Section 9.23.190 for each offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this chapter shall be required to bear the expense of such restoration.
- E. For projects meeting the State Regulatory Thresholds, the City may defer to the enforcement actions taken by the WDOE.

9.23.150 APPEALS - GENERAL

Any person aggrieved by a decision of the Public Works Director, or his/her designated representative, may appeal same by filing a written notice of appeal with the Public Works Director within thirty (30) calendar days of the issuance of said decision. The Public Works Director can then reverse his/her decision or send this notice to the City Council with comments. A notice of appeal shall state the specific reasons why the decision of the Public Works Director is alleged to be in error and the Public Works Director shall prepare and send to the City Council and Appellant, within thirty (30) days of receipt of the notice of appeal, a written response to said notice of appeal.

All such appeals shall be heard by the City Council, which is hereby granted specific authority to hear and determine such appeals in a quasi-judicial capacity. Said appeal shall be heard by the City Council at its next regularly scheduled meeting date, not to exceed thirty (30) days after receipt of the notice of appeal, or at such other time as may be mutually agreed upon in writing by the Appellant and the Mayor, or his designee.

9.23.160 APPEALS - NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation. Hearing on the appeal before the City or his/her designee shall take place within thirty (30) days from the date of receipt of the notice of appeal. The decision of the City shall be final.

9.23.170 ENFORCEMENT MEASURES AFTER APPEAL

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, within 10 days of the decision of the City, then representatives of the City shall enter upon the subject private property and are 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 or agent 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.

9.23.180 COST OF ABATEMENT OF THE VIOLATION

Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) days. If the amount due is not paid in 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. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation. The liability shall be paid in not more than twelve (12) equal monthly payments. Interest at the rate of twelve (12) percent per annum shall be assessed on the balance beginning on the 30th day following discovery of the violation.

9.23.190 PENALTIES

The following penalties shall be assessed for the first and ongoing violations of this chapter. Each written Notice of Violation shall be considered a separate violation. An ongoing violation is defined as a repeated violation for which a written Notice of Violation was previously issued, the violation was not corrected, and one or more subsequent Notice of Violations are required.

- A. For a first violation, a written Notice of Violation shall be issued outlining requirements for compliance.
- B. For a second violation, the offender shall be subject to a civil penalty of one hundred dollars;
- C. For a third violation, the offender shall be subject to a civil penalty of five hundred dollars;
- D. For a fourth violation, and each ongoing violation thereafter, the offender shall be subject to a civil penalty of one thousand dollars and/or removal of and discontinuance of city water and sewer utility services.

9.23.200 INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

9.23.210 COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the City may consider alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

9.23.220 VIOLATIONS DEEMED A PUBLIC NUISANCE

In addition to the enforcement processes and penalties provided, 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.

9.23.230 CRIMINAL PROSECUTION

Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution for a misdemeanor crime to the fullest extent of the law, and shall be subject to a criminal penalty of the amount listed above in Section 9.23.190 and/or imprisonment for a period of time not to exceed ninety (90) days. The City may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

9.23.240 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.

9.23.250 SEVERABILITY

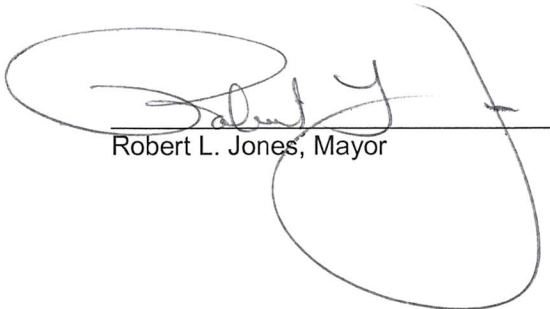
The provisions and sections of this chapter are herein declared severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application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

9.23.260 LIABILITY


Neither the approval of a plan under the provisions of this chapter nor the compliance with the provisions of this chapter shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law, nor shall it impose any liability upon the City for damage to any person or property.

Section 2. Effective Date. This ordinance shall take effect thirty (30) days after its publication.

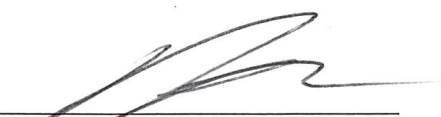
PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON this 8th day of June, 2010.


Robert L. Jones, Mayor

ATTEST:


Dale Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:


Robert F. Noe, City Attorney

ORDINANCE NO. 1799