

CHAPTER 23. STORM WATER UTILITY

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Article 23-1. Storm Water Utility

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23-1-1. Findings.

The City Council makes the following findings regarding storm water runoff and the City's storm water system:

A. The City's existing storm water system consists of a network of man-made and natural facilities, structures, and conduits, including groundwater and aquifers, that collect and route storm water runoff.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-2015-0027, Amended 08/25/2015)

B. The City's existing storm water system does not adequately handle the storm water runoff generated in the City.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-2015-0027; Amended 08/25/2015)

C. The City's anticipated growth will place increased demands on the already inadequate storm water system.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-2015-0027; Amended 08/25/2015)

D. Uncontrolled or inadequately controlled storm water runoff endangers the City's groundwater supply.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

E. Uncontrolled or inadequately controlled storm water runoff causes erosion and property damage.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

F. Uncontrolled or inadequately controlled storm water runoff hinders the City's ability to provide emergency services to its residents.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

G. Uncontrolled or inadequately controlled storm water runoff impedes the regular flow of traffic in the City.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

H. Uncontrolled or inadequately controlled storm water runoff poses health hazards to the citizens of the community.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

I. Storm water runoff carries concentrations of oil, grease, nutrients, chemicals, heavy metals, toxic materials, and other undesirable materials that may jeopardize the integrity of ground waters and receiving waters, including the City's culinary water supply.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

J. All developed properties in the City contribute to the need for the storm water system by converting natural ground cover into impervious surfaces.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-2015-0027; Amended 08/25/2015)

K. All developed properties in the City make use of or benefit from the City's operation and maintenance of the storm water system.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

L. The State Department of Environmental Quality (DEQ) has determined that some of the City's storm water sumps must be included on the prioritized contamination sources for culinary wells.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

M. The EPA and the DEQ are developing additional storm water permitting requirements that will apply to cities of Orem's size.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

N. Absent effective maintenance, operation, regulation, and control, existing storm water drainage conditions in the City constitute a potential hazard to the health, safety, and general welfare of the City, its residents, and its businesses.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

O. A Storm Water Utility is the most equitable and efficient method of managing storm water in the City and ensuring that each property in the City pays its fair share of the amount that the property contributes to,

benefits from, and otherwise uses the storm water system.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-2015-0027; Amended 08/25/2015)

23-1-2. Purpose.

The purpose of this ordinance is to protect the health, safety and welfare of the City and its inhabitants by improving the City's storm water system, managing and controlling storm water runoff, protecting property, preventing polluted waters from entering the City's water supply and other receiving waters, and establishing a viable and fair method of financing the construction, operation and maintenance of the storm water system.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

23-1-3. Definitions.

The following bolded words and phrases shall be defined as follows:

A. **Developed parcel.** Any parcel that has been altered from its natural condition by grading, filling, or the construction of improvements or other impervious surfaces.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

B. **Equivalent Service Unit ("ESU").** The average amount of impervious surface, expressed in square feet, on developed single family residential parcels in Orem. One ESU equals 2,700 square feet of impervious surface area.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

C. **Impervious surface.** Any hard surface, other than the natural surface, that prevents or retards the absorption of water into the soil, or that causes water to run off the surface in greater quantities or at a greater rates of flow than the natural surface.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-02-0033, Amended, 09/24/2002)

23-1-4. Storm Water Utility.

A. **Creation.** The City Council hereby creates and establishes a storm water utility as part of the City's overall sewer system. The storm water utility shall plan, design, construct, maintain, administer, and operate the City's storm water system.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

B. **Enterprise Fund.** The City Council hereby establishes a storm water utility enterprise fund to handle all income, expenses, and other financial

transactions related to the storm water utility. All storm water utility service charges shall be deposited in the enterprise fund. Money in the storm water utility enterprise fund shall not be commingled with or transferred to other City funds. However, the storm water utility may pay other City funds for services and expenses directly attributable to the storm water utility. The enterprise fund shall be operated according to State law and City policy.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

C. **Facilities and Assets.** The storm water utility shall operate independently of City operations funded by the general fund. The storm water utility shall have the same relationship to the City as other City utilities, such as the water utility and the sanitary sewer (waste water) utility. Upon creation of the utility, all of the City's storm water facilities and assets (other than streets and other facilities and assets designated by the City Manager) shall be transferred to the storm water utility in consideration for the storm water utility's agreement to take primary responsibility for planning, designing, constructing, maintaining, administering and operating the City's storm water system.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

D. **Administration.** The storm water utility shall be administered by the City's Public Works Director.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

23-1-5. Storm Water Utility Fee.

A. **Imposed.** Each developed parcel of real property in the City shall be charged a storm water utility fee.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

B. **ESU.** The fee shall be based on the number of equivalent service units (ESUs) contained in the parcel. The City Council finds that the ESU is the most accurate measurement for determining the amount that each parcel contributes to, benefits from, and otherwise uses the storm water utility. Based on a study completed by an independent engineer, the City Council finds and establishes that one ESU equals 2,700 square feet of impervious surface area.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

C. **Calculation.** The City Council finds that each single family residential parcel contributes approximately the same amount of storm water runoff; therefore, each developed single family residential parcel shall pay a base rate of one (1) ESU. All nonsingle family residential parcels shall pay a multiple

of this base rate, expressed in ESUs, according to the measured impervious area on the parcel. The City Council may adopt separate rates for PRDs, condominiums and other uses that are not easily handled under the standard rate schedule.

(Ord. No. O-96-0006, Enacted, 03/26/96)

D. Charge per ESU. The amount charged for each ESU shall be established by resolution of the City Council.

(Ord. No. O-96-0006, Enacted, 03/26/96)

E. Exemptions and Credits. The City Council may establish exemptions and credits to the storm water utility fee by resolution.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

F. Policies. The Public Works Director may adopt policies, consistent with this ordinance and any resolutions passed by the City Council, to assist in the application, administration, and interpretation of this ordinance and any resolutions related to the storm water utility.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

G. Appeals. Any person or entity that believes that this ordinance, or any storm water utility rate resolution, was interpreted or applied erroneously may appeal to the Public Works Director ("Director"). The appeal shall be in writing, shall state any facts supporting the appeal, and shall be made within ten (10) days of the decision, action, or bill being appealed. The Director may elect to hold a hearing on the appeal. The Director shall decide the appeal within ten (10) days of when the appeal is filed. If the person or entity is not satisfied with the Director's decision, a further appeal may be made to the City Manager (or his or her designee). The appeal to the City Manager shall follow the same procedure as the appeal to the Director. The City Manager's decision shall be final and binding on all parties.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

23-1-6. Billing.

The City Council finds that the City's storm water system, sanitary sewer system, culinary water system, and solid waste collection system are interrelated services that are part of a unified City plan to provide for the health, safety, and welfare of the City and its residents in an environmentally responsible manner. Therefore, the storm water utility fee shall be included on the City's regular monthly utility bill for any given property. If there is no regular utility bill for the property, the storm water utility fee shall be charged to

the owner of the property. The fee shall be deemed a civil debt owed to the City by the person or entity paying for the City utility services provided to the property. All properties shall be charged the fee, regardless of whether or not the owner or occupant of the property requests the storm water utility service. Failure to pay any portion of the utility bill may result in termination of water service.

(Ord. No. O-96-0006, Enacted, 03/26/96; Ord. No. O-2015-0027; Amended 08/25/2015)

Article 23-2. Definitions

23-2-1. Definitions.

23-2-1. Definitions.

The following bolded words and phrases shall be defined as follows for the purpose of Articles 23-3, 23-4, and 23-5:

Applicant. A property owner or agent of a property owner who has filed an application for any storm water management permit or plan required by this Chapter.

Ord. No. O-2015-0027; Enacted 08/25/2015

Administrative Fine. A fine assessed by the Director against a property owner or developer for violating one or more of the provisions of this Chapter.

Ord. No. O-2015-0027; Enacted 08/25/2015

Best Management Practices (BMPs). A wide range of management procedures, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices which have been demonstrated to effectively control the quality and/or quantity of storm water runoff and which are compatible with the planned land use. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material storage. A list of sample BMPs and their effectiveness ratings can be found in the current City of Orem Storm Water Quality Credit Package (available at the City of Orem Public Works Department or as found in this Chapter).

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-2015-0027; Amended 08/25/2015)

Building. Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Catch Basin. A drain inlet designed to keep out large or obstructive matter.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002)

Channel. A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

City Manager. The City of Orem City Manager or his or her designee.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002)

City Public Works Officer. A city employee(s) designated by the City to enforce this ordinance.

(Ord. No. O-08-0036, Enacted 12/09/2008)

Common Plan of Development is a plan to subdivide a parcel of land into separate parts for separate sale. This can be for a residential, commercial, or industrial development. The plan originates as a single parcel which is separated into parts. The original plan is considered the "common plan of development or sale" whether phased or completed in steps. If a further plan is conceived that was not foreseen during the original plan, or the original plan is added onto but the addition was conceived later and was not included in any part of the original plan concept and/or development, and it develops after the completion of the construction of the entire original plan, it would be a separate "common plan of development or sale". More than one owner of developable land can purposely join together and develop a single common plan of development or sale, but without a determined effort and coordinated planning, land owned by different owners would not be considered part of a single common plan of development or sale.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Debris. Any dirt, rock, sand, vegetation, rubbish, or litter.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Dechlorinated Water. Water with all traces of chlorine removed.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Dedication. The deliberate appropriation of property by its owner for general public use.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Detention. The temporary storage of storm water runoff in a storm water management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Detention Basin. A stabilized or landscaped depression designed to detain storm water runoff until downstream storm water resources are less heavily taxed. A detention basin contains an inlet and an outlet, allows debris to settle out, and regulates water flow.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Developer. A person(s) who undertakes land disturbance activities.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Development. Any manmade change to improved or unimproved real estate, including but not limited to site preparation, filling, grading, paving, excavation, and construction of buildings or other structures.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Director. The Public Works Director of the City of Orem or his duly appointed deputy, agent, or representative.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Disturb. To alter the physical condition, natural terrain or vegetation of land by clearing, grubbing, grading, excavating, filling, building or other construction activity.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Drain Inlet. A point of entry into a sump, detention basin, or storm water system.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Drainage facility. A natural or constructed or engineered feature that collects, conveys, stores or treats surface and storm water runoff. Drainage facilities shall include but not be limited to all constructed or engineered streams, pipelines, channels, ditches, gutters, lakes, wetlands, closed depressions, flow control or water quality treatment facilities, erosion and sedimentation control facilities, and other drainage structures and appurtenances that provide for drainage.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Erosion and Sediment Control Plan. A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Groundwater. Water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Hazardous Material. 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 presence or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed. Hazardous material includes, but is not limited to, any hazardous substance designated under 40 CFR part 116 pursuant to section 311 of the Clean Water Act.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Hearing Officer. The person(s) designated to hear appeals pursuant to Article 23-5. The Hearing Officer shall be the Orem City Manager or his or her designee. The designee need not be a City employee. The City Manager may also appoint a committee to function as the Hearing Officer.

(Ord. No. O-08-0036, Enacted 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Illicit Connection. Illicit connection means either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm water system. Examples include, but are not limited to, any conveyances which allow nonstorm water discharge such as sewage, process wastewater, or wash water to enter the storm water system, and any connections to the storm water system from indoor drains or sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or
2. Any drain or conveyance connected to or discharging to the storm water system, which has not been (1) documented in plans, maps, or equivalent records submitted to the City, and (2) approved in writing by the City.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Illicit Discharge. Any nonstorm water discharge to the storm water system. Illicit discharges include both direct connections (e.g. wastewater piping either mistakenly or deliberately connected to the storm water system) and indirect connections (e.g. infiltration into the storm water system or spills collected by drain inlets).

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended,

09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Impaired Waters. Those waters (rivers, lakes, streams) that currently do not meet their designated use classification and associated water quality standards under the Clean Water Act.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Industrial Storm Water Permit. A Utah Pollutant Discharge Elimination System permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial storm water discharges or specifies on-site pollution control strategies.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Infiltration. The process of percolating storm water into the subsoil.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Infiltration Facility. Any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Land Development. Any development of a parcel, lot, subdivision plat or site plan. If there is more than one lot in the subdivision plat or site plan, all lots in the subdivision plat or site plan shall jointly be considered to be part of the land development.
(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Land Disturbance Activity. Any activity on property that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, redevelopment, demolition, construction, reconstruction, clearing, grading, filling, and excavation.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Land Disturbance Permit means City land disturbance permit issued pursuant to Article 23-4-7 of this ordinance.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Landowner. The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Long-term Storm Water Management Plan. The concept and final plan that must be approved for post

construction storm water best management practices and maintenance pursuant to Section 23-4-8.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Low Impact Development (LID). Is an approach to development (or redevelopment) that works with nature to more closely mimic predevelopment hydrologic functions. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treats storm water as a resource rather than a waste product.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Maintenance Agreement. A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water best management practices.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Nonstorm Water Runoff. Any runoff other than storm water.
(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

MS4. Small Municipal Separate Storm Sewer System.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Nonpoint Source Pollution. Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Nonstorm Water Runoff. Any runoff other than storm water.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Notice of Intent (NOI). An application to notify the permitting authority of a facility's intention to be covered by a general permit.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

NPDES. National Pollutant Discharge Elimination System.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Person. Any individual, corporation, partnership, association, company, or body politic, including any agency of the State of Utah and the United States government.
(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended,

09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Point Source. Is any discernible, confined, and discrete conveyance from which pollutants are or may be discharged.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Pollutant. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal and agricultural waste, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, that 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 (including but not limited to sediments, slurries, and concrete resins); and noxious or offensive matter of any kind.
(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Pollution. Alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life and/or is unsuitable with reasonable treatment for use as present or possible future sources of public water supply; and/or is unsuitable for its designated use.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Pretreatment. A structure or process that removes sediment, oils, and floatables from storm water.
(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Redevelopment. Alterations of a property that change the footprint of a site or building.
(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Responsible Person. The person(s) responsible for correcting or abating a violation pursuant to this ordinance. The responsible person includes the landowner and any person, who causes or permits a

violation to occur or remain upon property in the City, and includes but is not limited to the landowner(s), lessor(s), lessee(s), or other person(s) entitled to control, use, and/or occupy property where a violation occurs. In cases where there is more than one responsible persons the City may proceed against one, some, or all of them.

(Ord. No. O-08-0036, Enacted 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Storm Drain. A closed conduit for conducting collected storm water.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Storm Water System. The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, detention basins, curbs, gutters, ditches, man-made channels, sumps, storm drains, and ground water) owned and operated by the City, which is designed and used for collecting or conveying storm water. The storm water system is also referred to as a "MS4".

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Storm Water Connection Permit. The permit that must be obtained pursuant to Section 23-3-4.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Storm Water. Any flow that occurs during or following any form of natural precipitation. Storm water includes only the portion of such flow that is composed of precipitation.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008)

Storm Water Management Facility. Any drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed of.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

2. Storm Water Management Plan. Any plan or permit required by this ordinance that has been approved by the City and requires any storm water management practices which includes but is not limited to a Storm Water Connection Permit, Land Disturbance Permit, or a Final Long-term Storm Water Management Plan.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

3. Storm Water Management Permit. Any and all permits issued pursuant to this ordinance.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

4. Storm Water Pollution Prevention Plan (SWPPP). A document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonable be expected to affect the quality of storm water discharges. In addition, the document shall describe and ensure the implementation of best management practices and other practices that will be used to reduce pollutants in storm water discharges.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Storm Water Runoff. Water that is generated by storm water flows over land, including snowmelt runoff, surface runoff, and drainage.
(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Sump. A formalized underground structure, surrounded by drain rock that acts as a detention basin to allow the slow release of water into the surrounding sub-soil. Sumps usually receive storm water runoff from paved areas such as streets, parking lots, etc. Sumps are also known as Class V injection wells.
(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-1; Ord. No. O-02-0033, Amended, 09/24/2002; Ord. No. O-08-0036, Renumbered 12/09/2008; Ord. No. O-2015-0027, Amended 08/25/2015)

Total Maximum Daily Load (TMDL). Refers to a study that 1) quantifies the amount of a pollutant in a stream, lake or other water body; 2) identifies the sources of the pollutant; and 3) recommends regulatory or other actions that may need to be taken in order for the stream to meet water quality standards.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Watercourse. A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

UPDES refers to the Utah Pollutant Discharge Elimination System.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

Article 23-3. Storm Water System.**23-3-1. Purpose.****23-3-2. Prohibited Obstructions.****23-3-3. Requirements for Sumps.****23-3-4. Storm Water Connection Permit.****23-3-5. Easements.****23-3-6. Authority to Inspect.****23-3-7. Requirement to Monitor and Analyze.****23-3-8. Damage to Storm Water System or Irrigation Lines.****23-3-9. Manhole Covers.****23-3-1. Purpose.**

The purposes of this Article are as follows:

A. To minimize the introduction of pollutants into the storm water system.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-2; Ord. No. O-02-0033, Rep&ReEn, 09/24/2002; Ord. No. O-2015-0027, Amended 08/25/2015)

B. To comply with State and Federal laws and regulations.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-2; Ord. No. O-02-0033, Rep&ReEn, 09/24/2002)

C. To provide a means to monitor and control discharges to the Storm Water System.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-2; Ord. No. O-02-0033, Rep&ReEn, 09/24/2002; Ord. No. O-2015-0027, Amended 08/25/2015)

23-3-2. Prohibited Obstructions.

A. **Unlawful Obstructions.** It is unlawful for any person to:

1. Obstruct the flow of water in the storm water system.

2. Contribute to the obstruction of the flow of water in the storm water system.

3. Cover or obstruct any drain inlet.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-3; Ord. No. O-02-0033, Rep&ReEn, 09/24/2002; Ord. No. O-2015-0027, Amended 08/25/2015)

B. **Exceptions.** The following obstructions are exempt from the prohibitions of this section:

1. Street and/or storm water improvement projects authorized by the City.

2. Flood control and prevention activities performed by the City.

3. Obstructions approved by the City as part of a site's storm water management plan.

4. Obstructions occurring during clean-up periods established by the City, provided that the materials are placed according to City directions and do not obstruct drain inlets.

(Ord. No. O-93-0003, Enacted, 02/02/93; Ord. No. O-96-0006, Rep&ReEn, 03/26/96, 16-4-3; Ord. No. O-02-0033, Rep&ReEn, 09/24/2002; Ord. No. O-2015-0027, Amended 08/25/2015)

23-3-3. Requirements for Sumps.

It is unlawful for any person to construct a sump in the City unless (1) the sump has been approved by the City, (2) the sump is designed to separate sediments, oil and grease, and floatables from the storm water, (3) the sump complies with applicable City Construction Standards and Specifications, and (4) the new sump installation has been reported to the Utah Department of Water Quality (DEQ)..

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

23-3-4. Storm Water Connection Permit.

A. **Permit Required.** Except as provided for in Section 23-4-7, no person shall connect to the City's storm water system without first obtaining a Storm Water Connection Permit (Permit) from the City. The requirement to obtain a Storm Water Connection Permit applies to direct connections to the storm water system (e.g. a piped connection to a piped portion of the storm water system) and indirect connections to the storm water system (e.g. discharges to sumps that are located on private property, or overland discharges to sumps that are part of the storm water system). The Storm Water Connection Permit described in this Section is a long-term permit designed to protect the storm water system, and is separate and distinct from the shorter term Land Disturbance Permit described in Section 23-4-7, which is designed to protect the storm water system during specified construction activities.

(Ord. No. O-02-0033, Enacted, 09/24/2002; Ord. No. O-2015-0027, Amended 08/25/2015)

B. **Construction and Redevelopment.** Without affecting the generality of subsection A above, any person beginning any type of construction requiring a building permit that is not governed by Section 23-4-7 shall obtain a Storm Water Connection Permit before commencing construction.

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

C. **Exempt Connections.** The following connections to the storm water system are exempt from the requirement to obtain a Storm Water Connection Permit:

1. Connections from a detached single family residence, provided that the runoff from the residence is handled according to a plat or site plan approved by the City. However, any person desiring to use a basement pump, foundation drain, or other related fixture directly or indirectly

connecting to the storm water system must obtain a Storm Water Connection Permit.

2. **Connections made by the City.**

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

D. Application. The applicant for a Storm Water Connection Permit shall submit the following to the City’s Development Services Department:

1. **Application Form.** A completed application form. If the applicant proposes to obtain the Storm Water Connection Permit in conjunction with another development activity requiring City approval (e.g. building permit, subdivision plat, site plan, or conditional use permit), the application for the Storm Water Connection Permit will be included as part of the application form for the other development activity. If the applicant proposes to obtain the Permit independent of any other City approval, the applicant shall apply for the Permit on a separate form prepared by the City. Application forms will be available at the City’s Public Works and Development Services Departments.

2. **BMP Plan.** A Best Management Practices (BMP) plan.

a. **Requirements.** The BMP plan shall designate specific BMPs that the applicant will use to regulate, control, and facilitate storm water discharges from the site. All BMP plans shall provide for pretreatment of storm water unless the applicant demonstrates to the satisfaction of the Development Review Committee (DRC) that pretreatment is not necessary because of (1) lack of pollutants in the storm water from the site, or (2) insufficient quantity of storm water from the site.

b. **Purpose of BMPs.** The BMPs shall be designed to ensure that the quality and quantity of storm water discharged to the City’s storm water system meet the requirements of federal, state, and local laws and regulations and the City’s UPDES permit, and will not exceed the designed capacity of the storm water system or jeopardize the integrity of the storm water system.

c. **Acceptable BMPs.** BMPs may be structural and/or nonstructural, depending on the needs of the site. The applicant may propose BMPs designed specifically for a given site, or may propose BMPs that have been preapproved by the City. The City shall establish a menu of preapproved BMPs by administrative policy. The policy may

designate specified areas of the City where certain types of BMPs may or may not be used.

d. **City Approval of BMP Plan.** The applicant’s BMP Plan must be approved by the City. The BMP Plan will be reviewed as part of the Storm Water Connection Permit review process described below.

3. **Maintenance Plan.** A plan outlining how the applicant will maintain the storm water improvements listed in the application.

4. **Plans with Engineer’s Stamp.** Plans showing permanent storm water improvements to be made on the site. These plans shall be submitted with an engineer’s stamp.

5. **Fee.** A fee in an amount set by resolution of the City Council.

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

E. Review of Application. The Storm Water Connection Permit application shall be reviewed by the DRC and either approved, approved with conditions, or denied.

1. **Factors.** When deciding whether to approve, conditionally approve, or deny a Storm Water Connection Permit application, the DRC shall consider the following factors:

a. Whether the application complies with applicable City ordinances and policies.

b. Whether the application complies with the City of Orem Storm Drainage Master Plan.

c. Whether the application includes an effective BMP plan. The BMP plan shall be considered effective if (1) it complies with the City’s menu of preapproved BMPs, or (2) it ensures that the quality and quantity of storm water discharged to the City’s storm water system meets the requirements of federal, state and local laws and regulations and the City’s UPDES permit, and will not exceed the designed capacity of the storm water system or jeopardize the integrity of the storm water system.

d. Whether the proposed connection introduces pollutants into the storm water system.

e. Whether the proposed connection creates a safety hazard.

f. Whether the proposed connection affects the integrity of the storm water system infrastructure.

g. Whether the proposed connection endangers the City’s drinking water.

h. Whether the applicant has submitted a maintenance plan ensuring the proper

maintenance and upkeep of the applicant's connection and on-site storm water improvements.

2. **Appeals.** Either the permit applicant or the City may appeal the DRC's decision to the City Manager. The appeal shall be made according to procedures established by the City Manager.

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

F. **As-Builts.** Any person connecting to the storm water system shall provide the City's Storm Water Utility with "as-built" plans showing the details and the location of the connection. The plans shall be in a format that is acceptable to the City.

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

G. **Failure to Comply with Permit.** Failure to construct or maintain storm water improvements in accordance with an approved Storm Water Connection Permit (including the BMP plan and/or the maintenance plan) shall be a violation of this ordinance and enforcement shall be in accordance with Article 23-5.

(Ord. No. O-02-0033, Enacted, 09/24/2002; Ord. No. O-2015-0027, Amended 08/25/2015)

23-3-5. Easements.

The Director may enter all private properties through which the City holds an easement for the purposes of inspecting, observing, measuring, sampling, repairing or maintaining any portion of the storm water facilities lying within the easement, or the performance of any other duties pertinent to the operation of the storm water system. All entry and subsequent work, if any, on an easement, shall be completed according to any special terms of the easement.

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

23-3-6. Authority to Inspect.

Whenever necessary to make an inspection to enforce any provision of this Chapter, or whenever the City has cause to believe that there exists, or potentially exists, a condition which constitutes a violation of this Chapter, the City may enter the premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the landowner or occupant refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

23-3-7. Requirements to Monitor and Analyze.

If City tests or inspections indicate that a site is causing or contributing to storm water pollution, illegal discharges, and/or nonstorm water discharges to the storm water system or waters of the United States, and if the violations continue after notice from the City, the City may require any person engaged in the illicit activity and/or the owner or operator of the site to provide, at their own expense, monitoring and analyses required by the City to determine compliance with this Chapter.

(Ord. No. O-02-0033, Enacted, 09/24/2002 ; Ord. No. O-2015-0027, Amended 08/25/2015)

23-3-8. Damage to Storm Water System or Irrigation Lines.

Any person who damages any portion of the storm water system, a City-owned irrigation line, or a City-maintained irrigation line shall be responsible for repairing the damages. The damages shall be repaired by a licensed contractor bonded to do work in the City and shall be repaired in accordance with the City's Construction Standards and Specifications. It is unlawful to remove or alter any portion of the storm water system without written permission from the Director.

(Ord. No. O-02-0033, Enacted, 09/24/2002; Ord. No. O-2015-0027, Amended and Ren 08/25/2015)

23-3-9. Manhole Covers.

It shall be unlawful to open any storm water manhole or other storm water fixture (such as grates, lids or inlets) without written permission from the Director.

(Ord. No. O-02-0033, Enacted, 09/24/2002; Ord. No. O-2015-0027, Amended and Ren 08/25/2015)

Article 23-4. Best Management Practices

- 23-4-1. Purpose.**
- 23-4-2. Prohibition of Illegal Discharges.**
- 23-4-3. Prohibition of Illicit Connections.**
- 23-4-4. Watercourse Protection.**
- 23-4-5. Prohibited Storage and Littering.**
- 23-4-6. Drinking Water Protection.**
- 23-4-7. Land Disturbance Permit.**
- 23-4-8. Long-term Storm Water Runoff Control.**

23-4-1. Purpose.

The purpose of this Article is to provide guidance, options and tools that can be used to:

- A. Protect water quality;
(Ord. No. O-2015-0027; Enacted 08/25/2015)
- B. Protect the health and safety of the public;
(Ord. No. O-2015-0027; Enacted 08/25/2015)
- C. Enhance water availability;
(Ord. No. O-2015-0027; Enacted 08/25/2015)
- D. Reduce flooding potential through effective storm water management;
(Ord. No. O-2015-0027; Enacted 08/25/2015)
- E. Provide for monitoring and enforcement of the requirements of this Article; and
(Ord. No. O-2015-0027; Enacted 08/25/2015)
- F. Comply with all federal and state storm water program requirements. .
(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-2. Prohibition of Illegal Discharges.

A. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water including illegal dumping and sanitary sewer overflows. The commencement, conduct, or continuance of any illegal discharge to the storm water system or a storm water management facility is prohibited except as described as follows:

- 1. The following discharges are exempt from discharge prohibitions established by this Section:
 - a. water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing,

flows from riparian habitats and wetlands, dechlorinated water from swimming pool discharges.

b. Discharges or flow from emergency firefighting, and other discharges specified in writing by the Director as being necessary to protect public health and safety.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. The prohibition referred to in Section 23-4-2(A). shall not apply to any nonstorm water discharge permitted under an Utah Pollutant Discharge Elimination System (UPDES) permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm water system.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-3. Prohibition of Illicit Connections.

A. The construction, use, maintenance or continued existence of illicit connections to the storm water system is prohibited.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. A person is considered to be in violation of this Section if the person connects a line conveying pollutants, water, or any other substance to the MS4, or allows such a connection to continue.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. Improper connections in violation of this Section must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Director.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

E. The landowner or occupant of the property, where any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm water system, shall be required to obtain a Storm Water Connection Permit and/or the approval of a Long-term Storm Water Management Plan (if applicable), and shall be

responsible for relocating the drain or conveyance upon receipt of written notice of violation from the Director. Such notice will specify a reasonable time period within which the relocation of the drain or conveyance is to be determined and shall require that the drain or conveyance be identified as storm water, sanitary sewer or other system, and that the outfall location or point of connection to the storm water system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Director.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-4. Watercourse Protection.

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

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-5. Prohibited Storage and Littering.

It is unlawful for any person to maintain, store, keep, deposit, or leave any pollutant or hazardous material, or any item containing a pollutant or hazardous material, in a manner that is likely to result in the discharge of the pollutant or hazardous material to the storm water system.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-6. Drinking Water Protection.

All storm water and nonstorm water discharges shall comply with the City's drinking water source protection ordinance

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7. Land Disturbance Permit.

- 23-4-7(1). Purpose and Intent.**
- 23-4-7(2). Land Disturbance Permit – When Required.**
- 23-4-7(3). Land Disturbance Permit – Application.**
- 23-4-7(4). Land Disturbance Permit – Proper Operation and Maintenance.**
- 23-4-7(5). Land Disturbance Permit – Inspection and Entry.**
- 23-4-7(6). Land Disturbance Permit – Revocation, Suspension, and Reinstatement**

23-4-7(7). Land Disturbance Permit – Appeals.

23-4-7(8). Prohibited Activities.

23-4-7(9). Mud, Dirt and Debris on City Streets.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(1). Purpose and Intent.

The purpose of Section 23-4-7 is to prevent the discharge of sediment and other construction-related pollutants from construction sites. Sediment and debris from construction sites are a major source of pollution to waterways and water systems located within the City and surrounding areas. Each year storm water runoff carries tons of sediment from construction sites into local drainage systems, irrigation systems, canals, rivers, and lakes. Sediment from storm water runoff also clogs and obstructs storm drains, culverts, and canals and causes damage to private property, wildlife habitat and water quality.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(2). Land Disturbance Permit – When Required.

A. Permit Required. A Land Disturbance Permit (or "Permit") is required before any person or entity may landscape, excavate, grub and clear, grade, or perform any type of land disturbance activity that will disrupt or cause a change in the natural landscape upon any parcel of property located in the City.

B. Exemptions. The following activities are exempt from the permit requirements of this Section:

1. Actions by a public utility, the City, or any other governmental entity to remove or alleviate an emergency condition, including the restoration of utility service or the reopening of a public thoroughfare to traffic;
2. Actions by any other person when the City determines, and documents in writing, that the actions are necessary to remove or alleviate an emergency condition;
3. Land disturbance activities disturbing less than 500 square feet of land surface area;
4. Residential gardening;
5. Bona fide agricultural and farming operations, provided that the agricultural and farming operations constitute the principal use of the parcel and provided that such use of the parcel does not conflict with the City's zoning ordinance;

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(3). Land Disturbance Permit – Application.

Any person or entity desiring a Land Disturbance Permit must first file an application with the Development Services Department.

A. **Application Form.** The application shall be submitted on a form approved by the City. If the applicant proposes to obtain the Permit in conjunction with another development activity requiring City approval (e.g. building permit, subdivision plat, site plan, or conditional use permit), the application for the Land Disturbance Permit will be included as part of the application form for the other development activity. If the applicant proposes to obtain the Permit independent of any other City approval, the applicant shall apply for the Permit on a separate form prepared by the City. Application forms will be available at the City’s Public Works and Development Services Departments. (Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Storm Water Pollution Prevention Plan.

The applicant shall submit a Storm Water Pollution Prevention Plan with the application. The Storm Water Pollution Prevention Plan (the Plan) shall contain the following information:

1. **Site Description.** A site description (including a map with spot elevations and contour lines) which includes a description of the nature and location of the land disturbance activity, a description of the intended sequence of major activities which will disturb soils for major portions of the site (e.g. grubbing, excavation, grading, utilities, and infrastructure installation, etc.), and estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;
2. **Control Description.** A description of the proposed control measures that will be implemented during the land disturbance activity and/or while the site is not stable. The Plan must clearly describe the times during the construction process that the measures will be implemented for each major activity identified pursuant to subsection (1). The Plan shall also state the name, address, and phone number of the person or entity responsible for implementation of each control measure.
3. **Control Measures.** Control measures meeting the following goals and criteria:
 - a. **Prevent or Minimize Discharge.** The proposed control measures shall be designed to prevent or minimize, to the maximum extent practicable, the discharge of sediment, debris and other construction related pollutants from

the construction site by storm water runoff into the storm water system.

b. **Prevent or Minimize Construction Debris.** The proposed control measures shall be designed to prevent or minimize, to the maximum extent practicable, the deposit, discharge, tracking by construction vehicles, or dropping of mud, sediment, debris or other potential pollutants onto public streets and rights-of-way.

c. **Use of BMPs.** The proposed control measures shall include BMPs available at the time that the Plan is submitted. BMPs may include, but shall not be limited to, temporary silt or sediment fences, sediment traps, concrete washout, washing of applicators and containers used for paint, concrete, stucco or other materials, and detention ponds, gravel construction entrances and wash down pads to reduce or eliminate off-site tracking, straw bale sediment barriers, establishment of temporary grasses and permanent vegetative cover, use of straw mulch as a temporary ground cover, erosion control blankets, temporary interceptor dikes and swales, storm drain inlet protection, check dams, subsurface drains, pipe slope drains, level spreaders, rock outlet protection, reinforced soil retaining systems, and gabions. BMPs shall also include opportunities for use of low impact design (LID) and green infrastructure to be incorporated into the site design.

d. **Stabilize Site.** The proposed control measures shall be designed to preserve existing vegetation, where possible. Disturbed portions of the site shall be stabilized. Stabilization practices may include temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Use of impervious surfaces for stabilization should be avoided. Stabilization measures shall be initiated as soon as practicable in disturbed portions of the site where land disturbance activities have temporarily or permanently ceased, but in no case more than 14 days after the land disturbance activity in that portion of the site has temporarily or permanently ceased, except under the following circumstances:

- i. If the initiation of stabilization measures by the 14th day after land disturbance activity temporarily or permanently ceases is precluded by snow

cover or frozen ground conditions, stabilization measures shall be initiated as soon as practicable; or

ii. If land disturbance activity on a portion of the site is temporarily ceased, and earth disturbing will resume within 21 days, temporary stabilization measures need not be initiated on that portion of the site.

e. **Minimize Risk of Discharge of Other Materials.** The proposed control measures shall be employed to minimize the risk of discharge of construction-related pollutants (such as paint, thinners, solvents and other chemicals) from the land disturbance site. Such measures may include implementation of storage practices to minimize exposure of the material to storm water as well as spill prevention and response.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Timing for Filing Application. The applicant shall file the application on or before the following dates:

1. **Subdivision.** The date that the applicant submits the preliminary subdivision plat application if the applicant proposes to develop a subdivision.

2. **Site Plan.** The date that the applicant submits a site plan application if the applicant proposes to develop a site plan or amended site plan.

3. **Conditional Use Permit.** The date that the applicant submits a conditional use permit application if the applicant proposes to develop a conditional use.

4. **Building Permit.** The date that the applicant submits a building permit application if the applicant proposes to construct a building on an existing lot or parcel.

5. **Other.** At least two (2) weeks before the developer intends to perform any type of work not listed above that would require a Land Disturbance Permit pursuant to this Section.

If an applicant's development comes under more than one of the categories listed above, then the applicant shall submit the Land Disturbance Permit application on the earliest of the listed dates. Failure to comply with the application dates set forth above is not a criminal offense, but may delay the applicant's project. Failure to acquire a required Land Disturbance Permit is grounds for denying a related subdivision application, site plan application, conditional use permit application, or building permit application. It is unlawful to

commence work (move dirt) on a development site before obtaining a required Land Disturbance Permit.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. Fee. The applicant for a Land Disturbance Permit shall pay a fee in an amount set by resolution of the City Council.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

E. Land Disturbance Permit/SWPPP Bond. The Storm Water Utility Manager may require a person engaging in a land disturbance activity to post a Land Disturbance/SWPPP bond as follows:

1. The minimum amount of the bond shall be based on the street frontage of the property with the building permit calculated as follows:

a. ≤ 100 ft. of street frontage \$4,000.00

b. ≤ 200 ft., but more than 100 ft. of street frontage \$6,000.00

c. ≤ 300 ft., but more than 200 ft. of street frontage \$8,000.00

d. > 300 ft. of street frontage \$10,000.00

(Ord. No. O-2015-0027; Enacted 08/25/2015)

F. Application Approval. The Storm Water Utility Manager or designee shall approve the application and grant the Permit if the application is complete and the Plan meets the requirements of this Section. The Storm Water Utility Manager shall deny the application or approve the application with conditions if he or she determines that the measures proposed in the Plan fail to meet the criteria set forth in Section 23-4-7(3). Conditions the Storm Water Utility Manager may impose in connection with the approval of a Permit include, but are not limited to, the establishment of specific measures and controls to prevent erosion and the discharge of sediment, debris and other construction-related pollutants from the site by storm water.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

G. Appeals. A Permit applicant whose application has been denied may appeal the decision to the City Manager. The appeal shall be made according to procedures established by the City Manager.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

H. Term. Unless otherwise revoked or suspended, a Land Disturbance Permit shall be in effect for the full period of the land disturbance activity. The land disturbance activity will not be considered to be completed until the developer has complied with the applicable requirements of this ordinance, the City has conducted a final inspection, and the following events occur:

1. Subdivisions. For Permits associated with a subdivision plat approval:

a. The developer must complete all required subdivision improvements; and

b. One of the following three events must occur:

i. The City issues a final certificate of occupancy for each lot in the subdivision, or

ii. Individual Land Disturbance Permits have been issued for each lot in the subdivision not having a final occupancy permit, or

iii. The property has been revegetated or landscaped in a manner that eliminates erosion and sediment discharge or that brings the property back to its natural state.

2. Site Plans. For Land Disturbance Permits associated with a site plan approval, the date that the developer has completed all required landscaping and all outside construction work associated with the site plan.

3. Building Permits. For Land Disturbance Permits associated with a building permit application, the date that the City issues a final occupancy permit for the structure covered by the building permit.

4. Other. For Land Disturbance Permits issued that are not tied to other approvals from the City, the date that the developer has completed all work associated with the Land Disturbance Permit and takes steps required by the permit to prevent further erosion and runoff from the site. No Land Disturbance Permit shall be considered terminated until the developer submits a Notice of Termination of Land Disturbance Activity (Notice) to the City and the Notice is accepted by the City. The City shall accept the Notice if the developer has met the requirements of the Land Disturbance Permit and this ordinance. The developer shall keep and maintain all Land Disturbance Permit-required improvements on the site until the City accepts the Notice.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

I. **Amendments.** In the event that the proposed land disturbance activity for a site to which a Permit pertains is materially altered from that described in an original Plan in a way that may have a significant impact upon the effectiveness of the measures and controls described in the original Plan, the developer shall file an amended Storm Water Pollution Prevention Plan which meets the criteria set forth in section 23-4-7(3).B.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(4). Land Disturbance Permit – Proper Operation and Maintenance.

The recipient of a Land Disturbance Permit shall install the erosion and sediment control measures required by the approved Plan before commencing any land disturbance activity on the site to which the Plan applies or at such times indicated in the Plan. The erosion and sediment control measures shall be properly installed and maintained in accordance with the Land Disturbance Permit, the manufacturers’ specifications, and good engineering practices. The developer shall maintain such measures on the site until the City accepts the termination of the Permit pursuant to Section 23-4-7(3).H.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(5). Land Disturbance Permit – Inspection and Entry.

The developer shall allow any authorized employees and representatives of the City, representatives of the State of Utah Division of Water Quality, and representatives of the EPA, to enter the site to which a Permit applies at any time and to inspect the erosion and sediment control measures maintained by the developer. The developer shall also allow inspection of any records pertaining to the conditions of the Permit.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(6). Land Disturbance Permit – Revocation, Suspension, and Reinstatement.

A Land Disturbance Permit may be revoked, suspended, and reinstated pursuant to Section 23-5-2.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(7). Land Disturbance Permit – Appeals.

An applicant for a Land Disturbance Permit may appeal any decision or directive made by the City following the procedures set forth in Section 23-5-2(C).

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(8). Prohibited Activities.

The following activities are prohibited and unlawful, and shall be considered a nuisance under Article 11-1 of the City Code and a violation under Article 23-5, regardless of whether or not the violator has a Land Disturbance Permit:

A. **Covering Sidewalk.** Covering any portion of a curb, gutter or sidewalk with mud, dirt or debris and failing to remove the mud, dirt or debris before leaving the site. In no case shall the mud, dirt or debris be left overnight.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Washing Vehicles and Equipment. Washing any vehicle or equipment in a manner that (1) leaves concrete, mud, dirt, or debris on a public or private street or on any portion of the public right-of-way, or (2) allows concrete, mud, dirt, or debris to enter the storm water system.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-7(9). Mud, Dirt and Debris on City Streets.

A. Clean-up Required. Any person or entity that tracks, spills, deposits, discharges or drops any mud, dirt or other debris on a public or private street or a public right-of-way within the City must remove the mud, dirt or other debris within twenty-four (24) hours of when it is left on the street or right-of-way. Failure to do so shall be a violation of this ordinance and shall also be considered a nuisance that may be enforced and/or abated pursuant to Article 11-1 and Article 23-5 of the City Code. The requirement to clean mud, dirt and other debris from streets and rights-of-way applies regardless of whether or not the responsible parties are acting pursuant to a Land Disturbance Permit.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Responsible Parties. The following people and entities shall be considered to be responsible parties for the purpose of enforcing this section:

1. Driver. The driver of the vehicle leaving the mud, dirt or debris; and

2. General Contractor. The general contractor or owner in charge of the job site from which the mud, dirt, or debris came.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Possible Remedies. The City may avail itself of any of the following nonexclusive remedies to enforce this section if the mud, dirt, or debris is not removed as required herein:

Public Improvement and Repair Bond. The City may clean (or may hire an independent contractor to clean) the mud, dirt or debris, and may deduct the cost of the clean-up, plus an administrative charge in an amount set by resolution of the City Council, from the Public Improvement and Repair Bond posted by the contractor on the job site from which the mud, dirt or debris came. The City may make draws against the public improvement and repair bond as specified in Section 7-3-2 of the City Code.

1. Nuisance Abatement. The violation may be treated as a nuisance under Article 11-1 of the City Code and enforced by one of the City's neighborhood preservation officers.

2. Notice of Violation, Administrative Citation, or Criminal Prosecution. The City may

fine, penalize, or prosecute the violation pursuant to Article 23-5-5.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8. Long-term Storm Water Runoff Control.

23-4-8(1) Purpose

23-4-8(2) Applicability

23-4-8(3) Exemptions

23-4-8(4) Compatibility with Other Permit and Ordinance Requirements

23-4-8(5) Storm Water Design Manual

23-4-8(6) Powers and Duties

23-4-8(7) General Performance Criteria for Storm Water Management

23-4-8(8) Long-term Storm Water Management Plan – Procedures and Requirements

23-4-8(9) Inspection and Monitoring

23-4-8(10) Maintenance and Repair of Storm Water Facilities

23-4-8(11) Appeals

23-4-8(12) Liability

23-4-8(1). Purpose.

The purpose of this Section is to establish minimum storm water management requirements and controls to protect and safeguard the long-term general health, safety, and welfare of the public residing within the City and surrounding watersheds, and to control the adverse effects of post construction storm water runoff and nonpoint and point source pollution associated with development and redevelopment projects. This ordinance seeks to meet that purpose through the following objectives:

A. Minimize the impact of storm water runoff from any development or redevelopment activities in order to reduce flooding, siltation, and pollution of waters of the State of Utah.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Minimize increases in nonpoint source pollution caused by storm water runoff from development and redevelopment projects which could otherwise degrade local water quality.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Minimize the total annual volume of surface water runoff which flows from any specific site, during and following development or redevelopment, to not exceed the predevelopment hydrologic regime to the maximum extent practicable.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. Reduce storm water runoff rates and volumes, soil erosion and nonpoint source pollution, wherever

possible, through storm water management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

E. Provide long-term responsibility for and maintenance of storm water management facilities.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

F. Establish legal authority to carry out all the inspection and monitoring procedures necessary to ensure compliance with this Section.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

G. Regulate the contribution of pollutants to the City’s MS4 by storm water discharges from development and redevelopment activities.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

H. Enable the City to comply with the Utah Pollution Discharge Elimination System Permit (UPDES) and applicable federal regulations.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

I. Facilitate compliance with state and federal standards and permits by landowners, owners of construction sites, developments, and permanent storm water management facilities within the City.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(2). Applicability

This Section shall be applicable to:

A. All subdivision or site plan applications greater than 1 acre in size;
(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Any new development or redevelopment that changes ten percent (10%) or more of any building footprint located on the property;
(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Any new development or redevelopment regardless of size that is identified by the City to be in an area where the land use has the potential to generate highly contaminated runoff; or
(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. Any land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development
(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(3). Exemptions

The following activities are exempt from this Section:

A. Individual single-family or duplex residential lots that are not part of a larger sub-division or phased development project that is otherwise subject to this Section.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Additions or modifications to existing single-family or duplex residential structures.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Projects that are exclusively for agricultural uses. Agricultural roads that are used to access other land uses subject to this Section are not exempt.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. Maintenance and repair to any storm water BMP deemed necessary by the City.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

E. Any emergency project that is immediately necessary for the protection of life, property, or natural resources.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

F. Linear construction projects, such as pipeline or utility line installation, that do not result in the installation of any new impervious surface, as determined by the City.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(4). Compatibility with Other Permit and Ordinance Requirements.

This Section is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this Section should be considered minimum requirements, and where any provision of this Section imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(5). Storm Water Design Manual

Currently, the City of Orem does not have a Storm Water Design Manual. It reserves the right that in the future additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this Section and may provide such information in the form of a Storm Water Design Manual.
(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(6). Powers and Duties.

The City, Department of Public Works- Storm Water Utility, shall administer and enforce this Section, and may furnish additional policy, criteria and information including specifications and standards, for the proper implementation of the requirements of this Section.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(7). General Performance and Site Design Criteria for Long-term Storm Water Management.

A. Performance Criteria. The following performance criteria shall be addressed for storm water management at all sites governed by this Section:

1. All site designs shall establish storm water management practices to mirror predevelopment hydrology of the previously undeveloped site or to improve the hydrology of a redeveloped site to the maximum extent practicable. The best available technology and information shall be used for analysis and design of a storm water management system to meet the requirements of this Section.

2. These practices should seek to utilize low impact development (LID) for storm water treatment and to infiltrate storm water runoff from driveways, sidewalks, parking lots, and landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity. The process shall include evaluations of BMPs considered and rationale as to why or why not they have been selected. All rooftop drainage is required to drain to landscaped areas unless otherwise approved by the City Engineer.

3. All storm water runoff generated from new development or redevelopment sites shall not discharge untreated storm water directly into a wetland or waters of the State of Utah including the storm water system without treatment to the maximum extent practical. In no case shall the impact on wetlands be any less than allowed by the Army Corps of Engineers (USACE).

4. Each plan shall include an assessment of post construction storm water impacts upon downstream and upstream properties. The assessment of storm water quality and quantity impacts shall be based on the standards contained within this Section, at a minimum. The assessment of upstream impacts must be provided, at a minimum, for property or properties located immediately upstream and/or adjacent to the proposed development or redevelopment. The assessment of downstream impacts shall be made by evaluating a site's contribution to storm water runoff to a suitable downstream point.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Minimum Control Requirements.

1. For the development or redevelopment site, all storm water management practices will be designed to accommodate a minimum of a 25 year storm event with a maximum release rate of 60 gallons per minute per acre. All sites must retain the first .30 inches of precipitation or incorporate LID into the designs that accomplish the same results. Sites located outside City of Orem Wellhead Protection areas and outside poor percolation areas as defined in drawings SD-14 and SD-15 of the City's Construction Standards and Specification, shall use LIDs and/or sumps to retain all projected storm water flows for a 25 year storm event. All water storage and water quality standards must meet this storm event, unless the City grants the applicant a waiver from such requirements.

2. Owners of development and redevelopment projects are hereby encouraged to use LID that will aid storm water quality and quantity management by reducing impervious surfaces, increasing the use of natural conveyances, maintaining natural vegetation areas, increasing infiltration of surface waters (except where prohibited for the protection of drinking waters), and other practices that result in the betterment of storm water runoff quality and reduced quantity.

3. If hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the City reserves the right to impose any and all additional requirements deemed necessary to control the volume, timing, rate of runoff and pollutant loading.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Site Design Feasibility. Storm water management practices for a site shall be chosen based on the physical conditions of the site. Among the factors that should be considered:

1. Topography
2. Drainage Area(s)
3. Soils
4. Slopes
5. Terrain
6. Location in relation to environmentally sensitive features
7. Receiving waters

(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. Conveyance Issues. All storm water management practices shall be designed to convey storm water to allow for the maximum removal of pollutants and reduction in flow velocities.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

E. Pretreatment Requirements. Every storm water treatment practice shall have an acceptable form of water quality pretreatment. The proposed pretreatment shall address the anticipated pollutants that would normally be expected from the proposed development. Approval by City of pretreatment devices is required before work can begin. The use of LIDs is encouraged and evaluation documentation is required. (Ord. No. O-2015-0027; Enacted 08/25/2015)

F. Landscaping Requirements. All storm water management practices must have a landscaping plan detailing both the vegetation to be in practice and how and who will manage and maintain this vegetation. Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development or redevelopment activities and is not part of an actual building construction or a future parking area shall be revegetated within fourteen (14) days from the substantial completion of such clearing and construction. The following criteria shall apply to revegetation efforts:

1. Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over ninety percent (90%) of the seeded area.
2. Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.
3. Any area of revegetation must exhibit survival of a minimum of seventy percent (70%) of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum seventy percent (70%) survival for one (1) year is achieved.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(7).

G. Maintenance Agreements. All storm water practices shall be maintained in accordance with the approved and deeded storm water maintenance agreement and Long-term Storm Water Management Plan. All storm water treatment practices shall have an enforceable operation and maintenance activities to ensure the system functions as designed. This agreement will include any and all maintenance easements required to access and inspect the storm water treatment practices, and to perform routine maintenance as necessary to ensure proper functioning

of the storm water treatment practice. In addition, the agreement needs to specify the parties responsible for the proper maintenance of all storm water treatment practices prior to issuance of any permits for development or redevelopment activities. (Ord. No. O-2015-0027; Enacted 08/25/2015)

H. Nonstructural Storm Water Practices. The evaluation and use of at least one nonstructural storm water treatment practices is required on all new and redeveloped sites. The use of additional nonstructural storm water treatment practices is encouraged in order to minimize the reliance on structural practices. These nonstructural practices include practices found in the Storm Water Credit Program Manual as well as in manuals, pamphlets, booklets, etc. that discusses LIDs for construction sites. (Ord. No. O-2015-0027; Enacted 08/25/2015)

I. Protection of Point of Discharge. Discharge from any on-site storm water management system into any natural or surface drainage channel or feature, shall be designed and constructed so that the discharge does not cause damage to the receiving system. (Ord. No. O-2015-0027; Enacted 08/25/2015)

J. Protection of Receiving Channels and Waters. Receiving channels and water bodies (on-site and/or off-site) shall be evaluated to ensure that downstream conveyances are not eroded and/or degraded by altered storm water flows from development or redevelopment. Acceptable mitigation alternatives include on-site detention to reduce post construction runoff rates and volumes and channel stabilization measures to control channel degradation. (Ord. No. O-2015-0027; Enacted 08/25/2015)

K. Design of Water Impounding Structures (Dams). Any proposed water impounding structure (dam) shall be designed in accordance with Utah Dam Safety standards, and if required, shall be reviewed and approved by the Utah Dam Safety Engineer. Proof of compliance with this requirement shall be provided by the applicant. (Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(8). Long-term Storm Water Management Plan – Procedures and Requirements.

A. Long-term Storm Water Management Plan Required for All Developments.

No development or redevelopment activity will commence on a site subject to this Section until a Long-term Storm Water Management Plan detailing in concept how storm water runoff and associated water quality impacts resulting from the development or redevelopment will be controlled or managed. This plan

must be prepared by an individual approved by the City and must indicate whether storm water will be managed on-site or off-site and, if on-site, the general location and type of practices that will be employed.

1. The Final Long-term Storm Water Management Plan must be signed by a Utah licensed professional engineer, or CPESC who will verify that the design of all storm water management practices meet the submittal requirements. If applicable, no building, grading, or other storm water management permit shall be issued until a satisfactory Final Long-term Construction Storm Water Management Plan has undergone a review and been approved by the City after determining that the plan or any waiver is consistent with the requirements of this Section.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Long-term Storm Water Management Concept Plan Requirements.

A storm water management concept plan shall be required with all permit and/or plan applications and will include sufficient information (e.g., maps, hydrologic calculations, soil types, etc.) to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing storm water generated at the project site. The intent of this conceptual planning process is to determine the type of storm water management measures necessary for the proposed project, and ensure adequate planning for management of storm water runoff from future development or redevelopment. To accomplish this goal the following information shall be included in the concept plan:

1. A map (or maps) indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural storm water management and sediment control facilities. The map(s) will also clearly show proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; the limits of clearing and grading. A written description of the site plan and justification of proposed changes in natural conditions may also be required.

2. Sufficient engineering analysis to show that the proposed storm water management measures are capable of controlling runoff from the site in compliance with this Section.

3. A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation

to the project site. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development or redevelopment.

4. A written description of the required maintenance burden for any proposed storm water management facility. For development or redevelopment occurring on a previously developed site, the party submitting the concept plan shall be required to include within the concept plan measures for controlling existing storm water runoff discharges from the site in accordance with the standards of this Section to the maximum extent practicable. With redevelopment, any existing storm water facility shall be looked at as a new structure and shall fall under the provisions of this Section unless otherwise exempt.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Final Long-term Storm Water Management Plan Requirements.

After review of the storm water management concept plan and modifications to that plan as deemed necessary by the City, a final storm water management plan must be submitted to the Department for approval. The final storm water management plan (Long-term Storm Water Management Plan), in addition to the information from the concept plan, shall include:

1. Contact Information. The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.

2. Topographic Base Map. A 1" = 200' topographic base map of the site which extends a minimum of 200 feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown.

3. Calculations. Hydrologic and hydraulic design calculations for the predevelopment and post-development conditions for the design storms specified in this Section. Such calculations shall include (i) description of the design storm frequency, intensity and duration, (ii) time of concentration, (iii) Soil Curve Numbers or runoff coefficients, (iv) peak runoff rates and total runoff volumes for each watershed area, (v) infiltration

rates, where applicable, (vi) culvert capacities, (vii) flow velocities, (viii) data on the increase in rate and volume of runoff for the design storms required by the City, and (ix) documentation of sources for all computation methods and field test results.

4. Soils Information. If a storm water management control measure depends on the hydrologic properties of soils (e.g., infiltration basins, injection wells, etc.), then a soils report shall be submitted unless it is determined that the City Engineer has sufficient knowledge of pit soils to waive this requirement. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measure.

5. Maintenance and Repair Plan. The design and planning of all storm water management facilities shall include detailed maintenance and repair procedures to ensure their continued function. These plans will identify the parts or components of a storm water management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

6. Landscaping Plan. The applicant must present a detailed plan for management of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

7. Maintenance Easements. The applicant must ensure access to all storm water treatment facilities and practices at the site for the purpose of inspection and repair by securing all the maintenance easements needed on a permanent basis. These easements will be recorded with the plan and will remain in effect even with transfer of title to the property.

8. Maintenance Agreement. The applicant must execute an easement and an inspection and maintenance agreement binding on all subsequent owners of land served by an on-site storm water management measure in accordance with the specifications of this Section. This agreement must be recorded with the Utah County Recorder.

9. Erosion and Sediment Control Plans for Construction of Storm Water Management

Measures. The applicant must prepare an erosion and sediment control plan for all construction activities related to implementing any on-site storm water management practices.

10. Other Environmental Permits. The applicant shall assure that all other applicable environmental permits have been acquired for the site prior to approval of the final storm water design plan.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. Performance Bond/Security.

1. The City may, at its discretion, require the submittal of a performance security or bond prior to approval of a Final Long-term Storm Water Management Plan in order to ensure that the storm water management practices are installed as required by the approved Final Long-term Storm Water Management Plan. The amount of the installation performance security shall be the total estimated construction cost of the storm water management practices approved under the permit, plus 25%. The performance security shall contain forfeiture provisions for failure to complete work specified in the Final Long-term Storm Water Management Plan.

2. The security or bond required by this section shall be released in full only upon submission of the As-Built Plans and written certification by a registered professional engineer that the storm water practices have been installed in accordance with the approved final plan and other applicable provisions of this Chapter. The City will make a final inspection of the storm water management practices to ensure that they are in compliance with the approved final plan and the provisions of this Chapter.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(9). Inspection and Monitoring.

A. **Inspections:** Whenever necessary to make an inspection to enforce any provision of this Section, or whenever the City has cause to believe that there exists, or potentially exists, a condition which constitutes a violation of this Section, the City may enter the premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the landowner or occupant refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Monitoring. In addition to any requirements associated with any other permit or plan required by this Chapter, a developer must comply with the following for any project or development that requires the submission and approval of a Final Storm Water Management Plan:

1. **Notice of Construction Commencement.** The applicant must notify the City in advance before the commencement of construction for which a Final Plan for Long-term Storm Water Management is required. Regular inspections of the site will be conducted by the City to ensure compliance with this Section. All inspections shall be documented and written reports prepared that contain the following information:

- a. The date and location of the inspection;
- b. Whether construction is in compliance with the approved Final Storm Water Management Plan;
- c. Variations from the approved Final Long-term Storm Water Management Plan;
- d. Any violations that exist.

2. If violations are found, the City shall issue a Notice of Violation pursuant to Article 23-5 and no added work shall proceed until the violation is corrected.

3. **As Built Plans.** Upon completion of a project, all applicants are required to submit actual as built plans for any storm water management practices located on-site. The owner of the development or redevelopment shall certify that the completed project is in accordance with the approved Long-term Storm Water Management Plan. The as-built plans shall show the final design specifications for the entire storm water management system and must be certified by a Utah licensed professional engineer. As-built plans shall include field location, size, depth, and planted vegetation of all structural BMP's and other measures, controls, conveyances and devices as installed. The designer of the storm water management system shall certify that the as-built storm water management system is in compliance with the approved storm water management system and with the requirements of this ordinance. A final inspection and approval by the City shall occur before the release of any bond or performance securities. Electronic as-built plans are encouraged.

4. **Permanent Structural Storm Water Management Facilities.** These facilities must be inspected by the City at least once during installation.

5. **Notice of Termination (NOT).** Subsequent to final installation and stabilization of all storm

water BMP's shown in the Final Long-term Storm Water Management Plan, submission of all necessary as-built plans, and final inspection and approval by the City, the developer, contractor, landowner, or other representative must notify the City of the project's completion and a certificate of completion or notice of termination shall be issued by the City signifying that all work has been satisfactorily completed in conformance with this Section.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(10) Maintenance and Repair of Storm Water Facilities.

A. Maintenance Easement. Prior to commencing development or redevelopment activities on a site, the applicant or owner of the site must execute a maintenance easement agreement that shall be binding on all subsequent owners of land served by a storm water management facility. The agreement shall provide for access to the facility at reasonable times for periodic inspection by the City, or their contractor or agent, and for regular or special assessments of landowners to ensure that the facility is maintained in proper working condition to meet design, water quality standards and any other provisions established by this Section. The City shall record the easement agreement with Utah County Recorder.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Maintenance Agreements. Maintenance of all storm water management facilities shall be ensured through the creation of a formal maintenance agreement that must be approved by the City and recorded into the land record prior to Final Long-term Storm Water Management Plan approval. As part of the agreement, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the storm water management facilities. The agreement shall also include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts.

1. All storm water management facilities must undergo, at the minimum, an annual inspection to document maintenance and repair needs and ensure compliance with the requirements of this Section and accomplishment of its purposes. These needs may include; removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of

the storm water management facility. At its discretion and as reflected in the maintenance agreement, the City may authorize the use of private inspectors to conduct and document post construction maintenance inspections.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Records of Installation and Maintenance Activities. Parties responsible for the operation and maintenance of a long-term storm water management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to the City during inspection of the facility and at other reasonable times upon request. These records shall contain all of the following:

1. The name and address of the landowner,
2. A statement that an inspection was made of all structural BMP's.
3. The date the inspection was made.
4. A statement that all inspected structural BMP's are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. Failure to Maintain Practices. If a responsible party fails or refuses to meet the requirements of the maintenance agreement, the City, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the storm water management facility becomes a danger to public safety or public health, the City shall notify the party responsible for maintenance of the storm water management facility in writing. Upon receipt of that notice, the person responsible shall have five (5) calendar days to effect maintenance and repair of the facility in an approved manner. After proper notice, the City may assess the owner(s) of the facility for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(11). Appeals

Any applicant whose Final Post Construction Storm Water Management Plan has been rejected by the City may appeal the decision to the City Manager. The appeal shall be made according to procedures established by the City Manager.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-4-8(12). Liability

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

(Ord. No. O-2015-0027; Enacted 08/25/2015)

Article 23-5. Violations, Enforcement, and Penalties

Article 23-5-1. Enforcement Authority

Article 23-5-2. Notice of Violation

Article 23-5-3. Administrative Citation

Article 23-5-4. Criminal Prosecution

Article 23-5-5. Nonexclusive Remedies

Article 23-5-6. Severability

23-5-1. Enforcement Authority.

A. The Storm Water Utility may adopt procedures and rules for the implementation and administration of this Chapter and to provide for the enforcement of the provisions contained herein.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Authorized code enforcement personnel working under the direction of the City Manager are hereby declared to be public officials within the meaning of Section 77-7-18 Utah Code as amended, and these public officials are hereby authorized to issue misdemeanor and/or administrative citations and/or notices of violations, and/or stop work orders for violations of this Chapter or City Construction Standards and Specifications.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. Whenever the City finds that a person has violated a prohibition or failed to comply with any requirement(s) of this Chapter, the City will order compliance through a written notice of violation, administrative citation to the responsible person(s), or criminal prosecution. Administrative citation or notices of violation may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
5. Payment to cover administrative, remediation, monitoring, analyses, and reporting costs; or
6. The implementation of source control or treatment BMPs.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-5-2. Notice of Violation.

A. A **Notice of Violation** (NOV) may be issued when the City finds that a person has violated or failed to comply with any requirements of this Chapter

including those requirements found in any permit or plan authorized by this Chapter.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. Issuance and Enforcement of NOV:

1. Contents. The NOV shall state the location and nature of the noncompliance and shall also specify what action is required for the person to avoid revocation or suspension of any permit or plan issued pursuant to this Chapter. The NOV shall be mailed to the address listed for the responsible person in any permit, plan, or application or to the landowner.

2. Corrective Action. The NOV shall allow the person a reasonable time to take the necessary corrective action to avoid revocation or suspension of any permit or plan which time, in the absence of exceptional circumstances, shall not be less than ten (10) nor more than thirty (30) days.

a. Exceptional Circumstances. For purposes of this Section, exceptional circumstances include, but are not limited to, situations which involve a risk of injury to persons, damage to storm water facilities, or damage to other property or the environment. The City may take any steps the City deems necessary to alleviate any such exceptional circumstances as defined above, and may bill the landowner, developer, or contractor responsible for creating the exceptional circumstances for the cost of alleviating said circumstances.

3. Suspension or Revocation. If the person fails to correct the problems identified in the notice during the time specified in the notice, the Director or his designee may suspend or revoke any permit or plan by mailing or delivering written notice of the suspension or revocation to the person.

4. Stop Work Order. A stop work order may be issued upon the revocation or suspension of a permit or plan, upon discovery of work in violation of or not in accordance with a permit or plan, or upon the discovery of work being conducted without a required permit or plan. The stop work order may be issued by inspectors in the Development Services Department or a City Public Works Official. No land disturbance or other construction activity may be commenced or continued on any site for which a permit or plan has been revoked or suspended until the permit or plan has been reinstated or reissued.

5. Reinstatement. The NOV may provide for reinstatement of any permit or plan upon correction of the violation and compliance with any plan or permit issued or approved under this Chapter.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. **NOV Appeals.** The person receiving the NOV may appeal any decision or directive made by the City. The party desiring to appeal shall file a notice of appeal at the City Manager’s Office within 10 days of the decision or directive being appealed. The notice of appeal shall contain the following information:

1. The appellant’s name, address and daytime telephone number;
2. A short statement describing the basis for the appeal; and
3. The relief sought by the appellant.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. **Hearing.** Upon receipt of the notice of appeal, the City Manager shall set a date for an informal hearing to consider the appeal. The informal hearing shall be conducted in accordance with policies established by the City Manager. The City Manager shall uphold the decision or directive being appealed unless the City Manager finds that there has been an error in the interpretation or implementation of this ordinance. The City Manager shall render a decision on the appeal within 10 days of the informal hearing with the appellant. The City Manager shall have authority to affirm, reverse, or modify any decision or directive appealed pursuant to this section.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-5-3. Administrative Citation.

A. **Administrative Citation.** When a City Public Works Officer determines that a violation of this Chapter exists, the City Public Works Officer may issue an administrative citation to the responsible person.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. **Content of Administrative Citation.** The administrative citation shall include the following:

1. The name and address of the responsible person;
2. The street address of the violation or a description sufficient for identifying the building, structure, premises, or land upon or within which the violation is occurring;
3. A description of the violation and the City
4. Code section violated;
5. An order prohibiting the continuation or repeated occurrence of the code violation described on the Administrative Citation;
6. An order to the responsible person to correct the violation(s) within the time specified, and an explanation of the consequences of failure to correct the violation(s), including the fine for the violation;
7. The amount of the fine and/or penalty and interest for the violation(s);

8. An explanation of how the fine shall be paid and the time period by which it shall be paid;

9. The time for appealing the administrative citation to the Hearing Officer and the procedure for filing an appeal; and

10. A statement that the City may abate the violation and assess costs and expenses of abatement and a monetary fine against the responsible person if the correction is not completed by the responsible Person and approved by the City Public Works Director before the Completion Date.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

C. **Service of Administrative Citation.** The City Public Works Officer shall serve the administrative citation upon the responsible person, either personally or by mailing, certified, return receipt requested, a copy of the administrative citation to the Responsible Person at his/her last known address. If the responsible person cannot after due diligence be personally served within Utah County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the administrative citation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting, the facts showing that due diligence was used in attempting to serve the person personally or by mail.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

D. **Fine Amounts.**

1. The amounts of the fines imposed for violations of this Chapter shall be set forth in the regular schedule of fines established by a Resolution of the City Council.

2. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within any twelve (12) month period from the date of the preceding administrative citation.

3. Each and every day a violation of the provisions of the code exists constitutes a separate and distinct offense and shall be subject to a citation.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

E. **Failure to Pay Fines.** The failure of any person to pay the civil fines assessed by an Administrative Citation within the time specified on the citation or after an administrative hearing will result in the collection of the fine by the City. The City may pursue any available legal remedy to collect civil fines,

including but not limited to judgments, liens, small claims actions, and collections. The City may also recover its collections costs according to proof.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

F. Stop Work Order. Upon the occurrence of a third violation the City may issue a Stop Work Order in conjunction with the Administrative Citation.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

G. No Extension. No extension of the time specified in the administrative citation for correction of the violation may be granted, except by order of the Hearing Officer.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

H. Appeals.

1. Grounds. Any person receiving an administrative citation may appeal the administrative citation to the Hearing Officer. Only the following issues may be appealed to the Hearing Officer:

a. The person charged in the administrative citation as the responsible person, is not the responsible person as defined by this ordinance.

b. The condition described as a violation in the administrative citation is not a violation as defined by this ordinance.

c. The responsible person claims that the requirement(s) of the administrative citation violates his/her constitutional rights.

2. Filing.

a. A person desiring to appeal an administrative citation must file a notice of appeal at the City's Public Works Office within ten (10) days of being served with the administrative citation or within fifteen (15) days of the mailing date if the administrative citation is mailed.

b. The notice of appeal shall clearly and concisely set forth all the reasons for the appeal. The Hearing Officer shall examine the notice of appeal to determine whether a valid appeal has been stated. If the appellant has not stated a valid cause for appeal, as set forth in Section 23-5-3.H., or if the appellant has failed to show by a preponderance of the evidence, that he/she has an appealable issue, the appeal shall be denied and no hearing shall be held.

c. If the appellant has not shown due diligence and/or substantial progress in correcting the violation or has made no attempt to correct the violation, the filing of an appeal will not stop the accrual of the fines.

d. If the appellant has filed an appeal, the filing of such appeal will not prevent law enforcement officers from responding to the property on reports of new violations.

3. Hearing. The hearing before the Hearing Officer shall be informal according to rules and procedures established by the Hearing Officer. The appellant may, but is not required to, bring an attorney or other representative to assist him or her. The appellant and the City Public Works Officer may each call witnesses at the hearing. The Hearing Officer may, with or without the parties present, visit the site of the alleged violation. If the Hearing Officer allows the parties at the site visit, both parties must be given the opportunity to be present. The Hearing Officer shall endeavor to schedule the hearing within thirty (30) days of when the notice of appeal is filed with the City. The City Attorney, or his designee, shall be present for the hearing and act as legal adviser for the Hearing Officer.

4. Burden of Proof.

a. In appellant's notice of appeal, the appellant shall have the initial burden of proof to demonstrate by a preponderance of the evidence that he/she has stated a legitimate grounds for an appeal based upon reasons as set forth in Section 23-5-3.H.

b. If the appellant has timely filed his/her appeal and a hearing has been scheduled, the burden then shifts to the City to show by a preponderance of the evidence that a violation does exist.

c. The determination of the City Public Works Officer as to the need for the required corrective action shall be accorded substantial weight by the Hearing Officer in determining the reasonableness of the corrective action.

5. Authority of Hearing Officer. The Hearing Officer shall have authority to affirm or vacate the administrative citation, or to modify or waive specific provisions of the administrative citation. If the appellant fails to attend the hearing, the Hearing Officer shall affirm the administrative citation. The Hearing Officer shall not vacate the administrative citation unless he/she finds that no violation exists. The Hearing Officer shall modify the administrative citation if he/she finds that a violation exists, but that one or more of the requirements of the administrative citation is improper or inappropriate. A requirement is improper if it is contrary to this ordinance. A requirement is inappropriate if the Hearing Officer finds that there is a better means of resolving the problem or that the proposed solution is

inappropriate given the nature or severity of the problem. When determining whether to waive or modify a requirement of the administrative citation, the Hearing Officer may also consider:

- a. Whether the appellant responded to the City Public Works Officer's attempts to contact the appellant and cooperated with efforts to correct the violation;
- b. Whether the appellant has shown due diligence and/or substantial progress in correcting the violation;
- c. The financial ability of the appellant and the amount, if any, that the appellant has benefited financially by maintaining the violation; and
- d. Any other relevant factors.

6. Order. The Hearing Officer shall issue a written Order to the appellant and the City notifying them of his/her decision. The Order shall include the Hearing Officer's findings of fact and ultimate decision. If the Hearing Officer modifies or waives provisions of the administrative citation, the Order shall specify which portions are modified and how they are modified. The Hearing Officer shall mail a copy of the Order to the appellant and the City within five (5) working days of the close of the hearing.

7. Appeal to District Court. Either the City or the appellant may appeal the Hearing Officer's Order by filing a petition for review of the Order. The petition must be filed in the Fourth District Court within thirty (30) calendar days from the date the Hearing Officer's Order was mailed to the appellant. In the petition, the plaintiff may only allege that the Hearing Officer's order was arbitrary, capricious, or illegal. The Hearing Officer shall transmit to the reviewing court the record of its proceedings, including any minutes, findings, orders and, if available, a true and correct transcript of its proceedings. If, in the opinion of the District Court, there is a sufficient record to review the Hearing Officer's Order, the Court's review is limited to the record provided by the Hearing Officer. The District Court may not accept or consider any evidence outside of the Hearing Officer's record unless the evidence was offered to the Hearing Officer and the Court determines that it was improperly excluded by the Hearing Officer. If, in the opinion of the District Court, there is not a sufficient record to review the Hearing Officer's Order, the Court may call witnesses and take evidence. No petition or appeal may be filed in District Court unless the responsible person first appeals to the Hearing Officer pursuant to the terms set forth in this ordinance.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-5-4. Criminal Prosecution

A. Violations of this Chapter are class C misdemeanors.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

B. The City may immediately proceed with criminal action against the violator if (1) the violator has committed the same violation in the past, or (2) the violation, in the opinion of the City, creates a serious risk and/or hazard to persons, the environment or property, or (3) the City deems the violation to constitute an emergency.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-5-5. Nonexclusive Remedies.

The City may take any or all of the abovementioned remedies (administrative, civil, or criminal) to abate a violation and/or to punish any person or entity that creates, causes, or allows a violation to exist. The abatement of a violation does not prejudice the right of the City or any person to recover damages or penalties for its past existence.

(Ord. No. O-2015-0027; Enacted 08/25/2015)

23-5-6. Severability

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this ordinance

(Ord. No. O-2015-0027; Enacted 08/25/2015)