

ORDINANCE 2009-17

ORIGINAL

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, AMENDING  
TITLE 13 OF THE SUNNYSIDE MUNICIPAL CODE TO PROVIDE  
NEW CHAPTER 13.30A PERTAINING TO  
STORMWATER ILLICIT DISCHARGE**

**WHEREAS**, the City Council of the City of Sunnyside has previously adopted ordinances codified at Title 13 of the Sunnyside Municipal Code pertaining to the City of Sunnyside water and sewer system; and

**WHEREAS**, Title 13 of the Sunnyside Municipal Code does not contain a chapter addressing the serious issue of stormwater illicit discharge; and

**WHEREAS**, the City Council finds and determines that Title 13 of the Sunnyside Municipal Code should be amended to provide new Chapter 13.30A pertaining to stormwater illicit discharge; and

**WHEREAS**, the City Council finds and determines that such amendment is in the best interest of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

**Section 1.** Title 13 of the Sunnyside Municipal Code is hereby amended to add a new Chapter 13.30A which shall read as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

**Section 2.** Except as amended herein, Title 13 of the Sunnyside Municipal Code shall remain unchanged.

**Section 3.** This ordinance shall be effective five days after passage, approval and publication as required by law.

PASSED this 10th day of August, 2009

  
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PABLO GARCIA, MAYOR

ATTEST:  
  
\_\_\_\_\_  
DEBORAH A. ESTRADA, CITY CLERK

APPROVED AS TO FORM:

MENKE JACKSON BEYER EHLIS & HARPER LLP  
Attorneys at Law

  
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EXHIBIT "A"

Chapter 13.30A

STORMWATER ILLICIT DISCHARGE

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**13.30A.010 Purpose**

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City of Sunnyside through the regulation of non-storm water discharges to the regulated Municipal Separate Storm Sewer System (MS4) and public Underground Injection Control (UIC) wells to the maximum extent practicable as required by federal and state law. This chapter establishes methods

for controlling the introduction of pollutants into the MS4 or public UICs in order to comply with requirements of the Eastern Washington Phase II Municipal Stormwater Permit process and Washington Department of Ecology's *Guidance for UIC Wells that Manage Stormwater*. The objectives of this chapter are:

A. To regulate the contribution of pollutants to the regulated municipal separate storm sewer system (MS4) and public UIC wells.

B. To prohibit illicit connections and discharges to the regulated municipal separate storm sewer system and public UIC wells.

C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.

### **13.30A.020 Applicability and Authority**

A. This chapter shall apply to all water or pollutants entering the municipal separate storm sewer system (MS4) and public UIC wells generated on any developed and undeveloped lands unless explicitly exempted by the City of Sunnyside Public Works Department.

B. This chapter is adopted pursuant to authority conferred by and in accordance with the provisions of the State of Washington Water Pollution Control Law Chapter 90.48, Revised Code of Washington, and the Federal Water Pollution Control Act (the Clean Water Act) Title 33 United States Code, Section 1251 et seq.

C. The Director of Public Works (hereinafter "the Director") of the City is hereby authorized and designated as the official responsible for the enforcement and administration of this chapter. The Director may designate employees within the Department of Public Works to act on his/her behalf.

### **13.30A.030 Compatibility with Other Permit and Ordinance Requirements**

This chapter 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 chapter should be considered minimum requirements, and where any provision of this ordinance 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. This chapter is intended to comply with the requirements of the City's National Pollutant Discharge Elimination System Permit and to the extent any provision in this chapter is incompatible with such Permit and the regulations, statutes, or other provision of law applicable to such Permit, this chapter shall be interpreted or modified as necessary to bring this chapter into compliance with such regulations, statutes, or other provision of law.

### **13.30A.040 Definitions**

This chapter provides definitions for the terms and phrases used in this title. Where any of these definitions conflict with definitions used in other titles of the City of Sunnyside Municipal Code, the definitions in this chapter shall prevail for the purpose of this chapter.

“Best Management Practices” or “BMPs” are the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by the Washington State Department of Ecology that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to receiving waters.

“Clean Water Act” or “CWA” means the federal Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended in Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 *et. seq.*

“Construction Activity” means clearing, grading and/or excavation. These activities are required to NPDES permit coverage in accordance with 40 CFR 122.26.

“Discharge” means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to City of Sunnyside UIC wells, waters of the State or the MS4.

“Hazardous Materials” means those wastes designated by 40 CFR Part 261, and regulated by the EPA.

“Illicit Discharge” means any discharge to a municipal separate storm sewer or public UIC that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer)

“Illicit Connection(s)” means a connection defined as either of the following:

1. Any drain or conveyance, but not limited to same, whether on the surface or subsurface, which allows an illicit discharge, including non-storm water discharge, sewage, process wastewater, and wash water to enter the MS4 or a public UIC and any connections to the MS4 or public UIC system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Director or,
2. Any drain or conveyance connected from a commercial or industrial land use to the MS4 or a public UIC which has not been documented in plans, maps, or equivalent records and approved by the Director.

“Industrial Activity” means manufacturing, processing or raw materials storage areas at an industrial plant. These activities are required to obtain NPDES permit coverage in accordance with 40 CFR 122.26.

“Municipal Separate Storm Sewer System” or “MS4” means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets,

catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2. In the County, the MS4 is that portion regulated by the Eastern Washington Phase II Municipal Stormwater Permit.

“National Pollutant Discharge Elimination System” or “NPDES” means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington State Department of Ecology.

“Non-Storm Water Discharge” means any discharge to the MS4 or public UIC that is not composed entirely of storm water.

“Person” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner’s agent.

“Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, domestic sewage sludge (biosolids), munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste. This term does not include sewage from vessels within the meaning of section 312 of the CWA, nor does it include dredged or fill material discharged in accordance with a permit issued under section 404 of the CWA.

“Pollution” means contamination or other alteration of the physical, chemical, or biological properties of waters of the state; including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life.

“Premise(s)” means any building, lot, parcel of land, or portion of land whether improved or unimproved including any structures thereon, adjacent sidewalks and parking strips.

“Process Wastewater” means any water which, during manufacturing or processing, comes into direct contact or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

“Public” as used in this chapter shall mean any real property, or interest therein, belonging to the City of Sunnyside or a trust or authority of which the City of Sunnyside is a beneficiary. Public development shall also include private development whenever all or a portion thereof will eventually be dedicated or provided for ownership, operation and/or maintenance to the City of Sunnyside or a public trust or authority of which the City of Sunnyside is a beneficiary.

“Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff, drainage and interflow.

“Underground Injection Control” or “UIC” or “UIC well” means a manmade sub-surface fluid distribution system designed to discharge fluids into the ground and consists of an assemblage of perforated pipes, drain tiles, or other similar mechanisms, or a dug hole that is deeper than the largest surface dimension. A public UIC is one owned, operated, and maintained by the City of Sunnyside and includes the collection system of catch basins, pipes, ditches, or other public infrastructure that collects and conveys stormwater to the UIC.

“Waters of the State” includes those waters as defined as “waters of the United States” in 40 CFR 122.2 within the geographic boundaries of Washington State and “waters of the state” as defined in Chapter 90.48 RCW which includes: lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and water courses within the jurisdiction of the State of Washington.

### **13.30A.050 Prohibition of Illicit Discharges**

A. No person shall discharge or cause to be discharged into the MS4 or a public UIC any materials, including but not limited to pollutants or waters containing any pollutants other than storm water.

B. The commencement, conduct or continuance of any illicit discharge to the MS4 or a public UIC is prohibited except as described as follows:

1. The following discharges are exempt:

a. Discharges resulting from emergency fire fighting activities.

2. The following discharges are exempt and shall only be illicit discharges if the City of Sunnyside has reason to consider that the discharge, whether singly or in combination with others, may cause or contribute to a violation of the City of Sunnyside’s NPDES stormwater permit, may cause the City of Sunnyside to violate Ecology’s UIC rules, or is causing or contributing to a water quality or flooding problem. In such cases, it shall be the responsibility of the discharger to provide evidence that the discharge is not illicit and complies with the following:

a. Diverted stream flows;

- b. Rising ground waters;
  - c. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
  - d. Uncontaminated pumped ground water;
  - e. Foundation drains;
  - f. Air conditioning condensation;
  - g. Irrigation water from agricultural sources that is commingled with urban stormwater;
  - h. Springs;
  - i. Water from crawl space pumps;
  - j. Footing drains; and
  - k. Flows from riparian habitats and wetlands.
  - l. Discharges from lawn watering and other irrigation runoff.
3. The following discharges are not exempt from discharge prohibitions established by this ordinance:
- a. Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, firefighting training and pipeline hydrostatic test water.
    - i. Planned discharges from potable water sources may be discharged to the MS4 or public UIC provided they are dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4 or public UIC.
  - b. Swimming pool discharges.
    - i. Discharges from swimming pools may be discharged to the MS4 or public UIC provided that they are dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4 or public UIC.
    - ii. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4 or public UIC.
  - c. Street and sidewalk wash water containing detergents, water used to control dust containing detergents, and routine external building wash down containing detergents.
    - i. Street and sidewalk wash water, water used to control dust, and routine external building wash down water may be discharged to the MS4 or public UIC provided:
      - A. It does not contain detergents.



B. Streets and sidewalks are swept and material removed prior to washing.

C. At active construction sites, street sweeping shall be performed prior to washing the street.

4. Discharges specified in writing by the Washington State Department of Ecology as being a significant source of pollutants to waters of the state are prohibited.

5. Dye testing is an allowable discharge, but requires a verbal notification to the City of Sunnyside prior to the time of the test.

6. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted from the City of Sunnyside for any discharge to the MS4 or public UIC.

#### **13.30A.060 Prohibition of Illicit Connections**

A. The construction, use, maintenance or continued existence of illicit connections to the MS4 or public UIC is prohibited.

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.

C. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4 or public UIC, or allows such a connection to continue.

#### **13.30A.070 Suspension due to Illicit Discharges in Emergency Situations**

The City may, without prior notice, suspend MS4 or public UIC discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, either illicit or which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or public UIC or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Director may take such steps as deemed necessary to prevent or minimize damage to the MS4, the public UIC or to minimize danger to persons.

#### **13.30A.080 Suspension due to the Detection of Illicit Discharge or Illicit Connection**

A. Any person discharging, or connected, to the MS4 or public UIC in violation of this ordinance may have their MS4 or public UIC access terminated if such termination would abate or reduce an illicit discharge or connection. The Director will notify a violator of the proposed termination of its MS4 or public UIC access. Persons must respond within 15 days of said notification to propose a voluntary correction.

B. A person commits a violation of this chapter if the person reinstates MS4 or public UIC access to premises terminated pursuant to this chapter without first obtaining approval by the Director.

### **13.30A.090 Right of Entry**

A. General. The Director, designated City employee or authorized representative is hereby authorized and directed to enforce the provisions of this chapter. The Director may employ, appoint and designate such City employees, representatives or officers to act on his/her behalf in the enforcement of this chapter under such control and supervision as he/she may specify. Any reference herein to the Director shall also refer to designated City employees and the Director's duly authorized representatives. The Director, designated City employee or authorized representative shall, either upon complaint or upon his/her own initiative, investigate potential violations of this chapter. It shall be the duty of all the City officers to assist the Director, designated City employee or authorized representative in the performance of this duty. It shall be the duty of all officers charged with the enforcement of the law to assist in the implementation of this chapter and its provisions.

B. Entry onto Private Property. When necessary to perform any duties under this chapter or to investigate upon reasonable cause or complaint the existence or occurrence of a violation of this chapter, the Director, designated City employee or authorized representative may enter onto property to inspect the same or to perform any duty imposed or authorized by this chapter. Provided, that if such property is occupied and not a public place he/she shall first present proper credentials, state the reason for entry, and request permission to enter; and if such property is unoccupied, he/she shall first make a reasonable effort to locate the owners or other persons having charge or control of the property and request permission to enter. If such permission is refused, the Director, designated City employee or authorized representative shall have recourse to every remedy provided by law to secure entry. The right of entry extends to any employee, officer, or authorized person that accompanies the Director or his authorized representatives.

C. Judicial Warrant. If the Director, designated City employee or authorized representative is refused access to the property or any part thereof, and if the Director, designated City employee or authorized representative has demonstrated a reasonable cause to believe that a violation of this chapter exists, or that there is a need to inspect as part of a routine inspection program of the City designed to verify compliance with this chapter or any order issued hereunder, then upon application

by the City Attorney, a judge of a court of competent jurisdiction will issue a search warrant describing the specific location subject to the warrant. The warrant will specify what may be searched and/or seized on the property described. The warrant will be served at reasonable hours by the Director, designated City employee or authorized representative in the company of a uniformed police officer of the City. In the event of an emergency that presents an imminent threat to public health, safety or welfare as determined by the Director, designated City employee or authorized representative, inspection may take place without the issuance of a warrant.

D. Scope of Entry. The right of entry extends to the following matters:

1. Entry upon the premises where a facility or activity is located or conducted, or where relevant records are kept;
2. Access to and copying, at reasonable times, relevant records;
3. Inspection at reasonable times of any facilities, equipment (including monitoring and control equipment), practices or operations regulated;
4. Sampling or monitoring for the purposes of ensuring compliance; and
5. Inspection of any production, manufacturing, fabricating or storage area where pollutants or non-stormwater discharges may originate, are stored or disposed of in the sewer system, the MS4 or public UIC.

#### **13.30A.100 Notification Of Spills**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water or the MS4 or public UIC, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Director in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within three (3) business days of the phone notice.

#### **13.30A.110 Notice of Violation**

Whenever the Director finds that a person is in violation of this chapter, or an order issued hereunder, the Director may serve upon said individual or entity written notice of the violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, including specific required actions, shall be submitted to the Director. Submission of this plan does not relieve the person of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section

shall limit the authority of the City to take action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

### **13.30A.120 Administrative Penalties and Measures**

Notwithstanding any other section of this chapter, any person who is found in violation of any provision of this chapter, or orders issued hereunder, is subject to penalties in an amount up to one thousand dollars (\$1,000) per violation. Each week on which noncompliance occurs or continues on a non-emergency basis, without an imminent threat to public health and safety, shall be deemed a separate and distinct violation. Each day on which noncompliance occurs or continues, with an imminent threat to public health and safety, shall be deemed a separate and distinct violation. Unpaid charges and penalties shall constitute a lien against the responsible person's property. Issuance of an administrative penalty shall not be a prerequisite for taking any other action against the person.

### **13.30A.130 Consent Orders**

A. The Director is hereby empowered to enter into consent decrees, agreed orders, officially accepted assurances of voluntary compliance or other similar documents establishing an agreement with the person responsible for the violation of this chapter. Such orders shall include specific action required by the person to correct the noncompliance within a time period specified by the consent decree, agreed order or other document of assurance of voluntary compliance. Such schedules may not extend the compliance date beyond applicable State or federal deadlines. Consent decrees shall have the same force and effect as compliance orders issued pursuant to SMC 13.12.690 and are enforceable in court.

B. Failure to comply with any terms or requirements of a consent decree, agreed order or other document of assurance of voluntary compliance by the person shall be an additional and independent basis for enforcement action authorized under this chapter as determined by the Director.

### **13.30A.140 Compliance Orders**

A. When the Director finds that a person has violated or continues to violate this chapter or any consent decree, agreed order or document of assurance of voluntary compliance issued hereunder, the Director may issue a compliance order to the person responsible for the violation directing compliance within a specified time period. Compliance orders may also contain such other requirements as necessary to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the MS4 or public UIC and other measures. A compliance order may not extend the deadline for compliance established by a state or federal requirement or standard, nor does a compliance order release the person from liability for any violation, including any continuing violation. Issuance of a compliance order shall not constitute a prerequisite for taking any other action against the person.

B. Failure to comply with any terms or requirements of a compliance order by the person shall be an additional and independent basis for enforcement action authorized under this chapter as determined by the Director.

#### **13.30A.150 Cease and Desist Orders**

When the Director finds that a person has violated or continues to violate this chapter or any order issued hereunder, the Director may issue an order to cease and desist all such violations and direct the responsible person to: (1) comply forthwith; and, (2) take such appropriate remedial or preventive action as necessary to address a continuing or threatened violation, including halting operations and terminating the illicit discharge. Issuance of a cease and desist order shall not constitute a prerequisite to taking any other action against the person as determined by the Director.

#### **13.30A.160 Recovery of Costs Incurred by the City**

Any person violating any of the provisions of this chapter who discharges or causes a discharge producing a deposit or obstruction or causes damage to or impairs the City's stormwater system shall be liable to the City for all costs, reasonable expenses, losses, fines or damage caused by such violation or discharge. Said person is subject to the costs incurred by the City for any cleaning, repair, replacement work, monitoring and testing or other damages caused by the violation or discharge. Refusal to pay the assessed costs shall constitute a violation of this chapter enforceable under the provisions of Sections 13.30A.200 of this chapter.

#### **13.30A.170 Emergency Suspension of Connection**

A. The Director may order the suspension of a connection after informal notice to the person if it appears to the City that an actual or potential connection: (1) presents or threatens a substantial danger to the health, safety or welfare of the public or to the environment; or, (2) threatens to interfere with the operation of the stormwater system or, (3) violates this chapter.

B. Any person notified of a suspension of the connection shall immediately cease all illicit discharges. In the event of a person's failure to promptly comply with the suspension order, the Director may take such measures as deemed necessary, including immediate severance of the stormwater connection, to prevent or minimize damage, including, but not limited to, the stormwater system, public UIC or receiving waters, or endangerment to the health, safety or welfare of the public. The City shall, subject to Section 13.30A.130, have the right of access to the person's private property to accomplish severance of the illicit connection line. The Director will permit recommencement of the discharge when the state Department of Ecology has addressed the endangerment in accordance with the state's requirements.

C. It is unlawful for any person to prevent or attempt to prevent the City from terminating an illicit stormwater connection in an emergency situation by barring entry, physically interfering with City employees or contractors, or by any other means.

D. Any person whose service has been suspended pursuant to this section shall have the right to a post-suspension hearing conducted in accordance with the procedures set forth in SMC 13.33A.180. A person responsible, in whole or in part, for imminent endangerment shall submit a detailed written statement to the Director describing the causes of the harmful contribution and the measures taken to prevent any future occurrence prior to the date of the post-suspension hearing.

### **13.30A.180 Administrative Hearing**

A. A person responsible for a violation of this chapter shall have the right to an administrative hearing to contest the City's determination: (1) to suspend the discharger's connection; (2) to terminate the connection; (3) to impose administrative penalties; (4) to bill the person for costs incurred by the City as a result of the violation or discharge; or, (5) that the discharger has violated a consent decree, agreed order, compliance order, cease and desist order or other agreement or order of the City imposed by this chapter.

B. Any hearing pursuant to this section must be requested in writing within fifteen (15) days after the receipt of notice of the City's determination and shall be filed with the Director. Failure to submit a timely notice shall be deemed a failure to exhaust administrative remedies and shall preclude further review. The City will conduct the hearing within twenty (20) days of the receipt of the request.

C. The administrative hearing authorized by this section will be held before the City Manager or the City Manager's designee. Formal rules of evidence will not apply but the person and the City shall have the right to present witnesses and documentary evidence. The City Manager or the City Manager's designee will issue a written decision within fifteen (15) days of the conclusion of the hearing.

D. Any person requesting a hearing shall have the right to make an electronic or stenographic record of the proceedings. Such record shall be made at the expense of the person requesting it.

E. Except as otherwise provided, all decisions by the City Manager or City Manager's designee shall be final and conclusive on all parties unless appealed to the City Council under SMC 13.33A.190.

### **13.30A.190 Appeal to the City Council**

A. Any decision of the City Manager or the City Manager's designee rendered pursuant to SMC 13.30A.180 may be reviewed by appeal to the City Council. The appellant must file written notice of appeal with the Clerk of the City Council within fifteen (15) days following legally acceptable receipt of the City Manager or the City Manager's designee's decision or action. Such notice of appeal shall set forth in detail the action or decision appealed and the person's specific grounds for reversal or modification thereof. Failure to submit a timely notice is deemed a failure to exhaust administrative remedies and shall preclude any further review.

B. Following receipt of such notice, the Clerk of the City Council will schedule a date for a public hearing by the City Council at which time the City Council shall consider the appeal. The date of the public hearing shall generally be no later than thirty (30) days following the date the Clerk of the City Council receives notice of

the appeal. The Clerk of the City Council shall mail written notice to all parties of record to apprise them of the time and date of the City Council's review.

C. The City Council's review of the facts shall be limited to the evidence and record previously presented to the City Manager or the City Manager's designee. The City Council may request additional information or memoranda in order to reach a decision; all parties of record shall be given an opportunity to respond to the information provided.

D. The City Council may adopt, amend or reverse the findings, conclusions and decision of the City Manager or the City Manager's designee, or remand the matter to the City Manager or the City Manager's designee for further action.

### **13.30A.200 Civil Penalties**

A. Any person who has violated or continues to violate an order of the City, or who fails to comply with: (a) any provision of this Title, or (b) any rule or order of the City, issued pursuant to this chapter, is subject to a civil penalty. The amount of such civil penalty shall be up to one thousand dollars (\$1,000) per violation, plus actual damages, costs and expenses incurred by the City. Each week on which non-compliance occurs or continues on a non-emergency basis, without an imminent threat to public health and safety, shall be deemed a separate and distinct violation. Each day on which non-compliance occurs or continues, with an imminent threat to public health and safety, shall be deemed a separate and distinct violation. Civil penalties that are not paid shall constitute a lien against the responsible person's property. In addition, the Director may recover reasonable attorney's fees and court costs associated with the enforcement activities, including sampling and monitoring expenses.

B. The Director may petition the Yakima County Superior Court to impose, assess and recover such civil penalties. In determining the amount of liability, the court will take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions, the compliance history of the person and any other relevant factors.

C. Filing suit for civil liability shall not be a prerequisite for taking any other action against a person.

### **13.30A.210 Falsifying Information.**

Any person who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this chapter (in addition to civil and/or criminal penalties otherwise provided by law) shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) per violation per day plus costs of prosecution or imprisonment not to exceed ninety (90) days or both.

### **13.30A.220 Criminal Penalties**



Except as otherwise specifically provided herein, any person who willfully, knowingly, recklessly or negligently violates any provision of this chapter through any act or omission shall, upon conviction, be guilty of a gross misdemeanor, punishable by a fine of not more than five thousand dollars (\$5,000) or imprisonment not to exceed one year, or by both such fine and imprisonment. Each violation and each day of violation shall constitute a separate offense.

#### **13.30A.230 Judicial Review**

The decision of the City Council on an appeal of the decision of the City Manager or the City Manager's designee shall be final and conclusive unless within twenty (20) days from the date of its decision, a petition for review is filed in Yakima County Superior Court in the manner prescribed by law.

#### **13.30A.240 Publication of Enforcement Actions**

A list of all persons or entities that experience a significant violation of this ordinance during the previous twelve (12) months may be published, at least annually, by the City in the largest local daily newspaper of general circulation. For the purposes of this provision, a violation is a significant violation if it meets one or more of the following criteria:

1. Any discharge of a pollutant that has caused imminent endangerment to public health, safety or welfare or to the environment or has resulted in the City's exercise of its emergency authority under SMC 13.30A.170 to halt or prevent such a discharge;
2. Any other violation or group of violations that causes the City to expend additional time or expense in tracking down the source of a non-stormwater discharge in the stormwater system or public UIC.

#### **13.30A.250 Judicial Remedies**

The Director, through the City Attorney, may commence an action for appropriate legal and/or equitable relief in Yakima County Superior Court against any person responsible for a non-stormwater discharge, including pollutants, into the City's MS4 or public UIC in violation of this ordinance or any order issued hereunder. Such judicial action may be in lieu of or in addition to any other administrative or legal enforcement proceedings authorized herein.

#### **13.30A.260 Injunctive Relief**

Whenever a person has violated or continues to violate the provisions of this chapter or any order issued hereunder, the Director, through the City Attorney, may petition the Yakima County Superior Court for the issuance of a temporary restraining order, preliminary or permanent injunction or all of the above which restrains or compels the activities of the responsible person. The Director shall have such remedies to collect fees as associated with legal costs as it has to collect other stormwater service charges. The City may also seek such other legal and/or equitable relief as deemed appropriate. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against the responsible person.



### **13.30A.270 Remedies Not Exclusive**

The remedies listed in this Title are not exclusive of any other remedies available under any applicable federal, state or local law.

### **13.30A.280 Compensatory Action**

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the Director may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup and other measures as specifically provided for in SMC 13.30A.120 to 13.30A150.

### **13.30A.290 Severability**

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Title 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.

### **13.30A.300 Effective Date**

The ordinance codified in this chapter shall go into effect within the City of Sunnyside five days after passage, approval and publication as required by law.