# EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**
An Ordinance regarding storm water and storm drainage and amending Ordinance No. 3168-10 and 2182-96, as amended (Chapter 14.28 EMC)

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|---|---|
| 12/7/16 | Briefing |
| | Proposed Action |
| | Consent |
| | Action |
| 12/7/16 | First Reading |
| 12/14/16 | Second Reading |
| 12/21/16 | Third Reading |
| | Public Hearing |
| | Budget Advisory |

| | |
|---|---|
| COUNCIL BILL # | CB1611-54 |
| Originating Department | Public Works |
| Contact Person | Heather Griffin |
| Phone Number | (425) 257-7206 |
| FOR AGENDA OF | December 7, 2016 |

Initialed by:
Department Head
CAA
Council President

| Location | Preceding Action | Attachments | Department(s) Approval |
|---|---|---|---|
| | Adoption of Ordinance No. 3168-10 | Ordinance | Public Works, Legal |

| | | |
|---|---|---|
| Amount Budgeted | -0- | |
| Expenditure Required | -0- | Account Number(s): |
| Budget Remaining | -0- | |
| Additional Required | -0- | |

**DETAILED SUMMARY STATEMENT:**

The Washington State Department of Ecology and the Phase II National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit require that the City adopt amendments to minimum standards for control of stormwater flow and quality during development, redevelopment and post-development within the City effective December 31, 2016. The NPDES permit also requires the City to make Low Impact Development the preferred and commonly-used approach to site development.

The attached proposed Ordinance would meet these requirements. It also would adopt the most current version of the Washington State Department of Ecology Stormwater Management Manual for Western Washington as the City's Stormwater Management Manual.

**RECOMMENDATION:**

Adopt an Ordinance regarding storm water and storm drainage and amending Ordinance No. 3168-10 and 2182-96, as amended (Chapter 14.28 EMC).

ORDINANCE NO._____

**AN ORDINANCE regarding storm water and storm drainage and amending Ordinance 3168-10 and 2182-96 as amended (Chapter 14.28 EMC).**

WHEREAS, an expanding population and increased development of land, coupled with inadequate drainage controls, has led to drainage and runoff problems; and

WHEREAS, these drainage and runoff problems contribute to increased sedimentation in the ponds, creeks, and streams, thereby degrading water quality; and

WHEREAS, these drainage and runoff problems also contribute to water quality degradation through excessive discharge of nutrients, metals, oil and grease, toxic materials, and other detrimental substances; and

WHEREAS, inadequate surface and subsurface drainage planning and practices lead to erosion and property damage, and risk to life; and

WHEREAS, excess water runoff on streets and highways poses a safety hazard to both lives and property; and

WHEREAS, the City Council finds that future problems could be avoided if developers, both private and public, provide for adequate drainage of their property; and

WHEREAS, the City was issued a Phase II National Pollutant Discharge Elimination System (NPDES) Stormwater Permit (Permit) on January 16, 2015, and the requirements therein include adoption of prescribed minimum standards for control of stormwater flow and quality during development, redevelopment, and post-development; and

WHEREAS, the Permit requires the City to make Low Impact Development (LID) the preferred and commonly-used approach to site development;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

**SECTION 1: PURPOSES.**

**Section 1 of Ordinance 2182-96 (previously amended by Ord. 3168-10 § 1 and Ord. 2196-97 § 1 and currently codified at EMC 14.28.010), which reads as follows:**

The City Council finds that this Ordinance is necessary in order to promote sound development guidelines and construction procedures which respect and preserve the City's water resources; to minimize water quality degradation and control the sedimentation of creeks, streams, ponds, lakes and other water bodies; to protect property owners adjacent to developing and developed land from increased runoff rates which could cause erosion of abutting property; to protect downstream owners; to preserve and enhance the suitability of waters for contact recreation and fishing; to preserve and enhance the aesthetic quality of the waters; to maintain and protect valuable groundwater resources; to minimize adverse effects of alterations in groundwater quantities, locations, and flow patterns; to provide for the safety of City roads and right of way; to decrease drainage related damage to public and private property; and to comply with requirements in the Phase II National Pollutant Discharge Elimination System Stormwater Permit as issued by the Washington State Department of Ecology.

**is hereby amended to read as follows**:

The City Council finds that this Ordinance is necessary in order to promote sound development guidelines and construction procedures which respect and preserve the City's water resources; to minimize water quality degradation and control the sedimentation of creeks, streams, ponds, lakes and other water bodies; to protect property owners adjacent to developing and developed land from increased runoff rates which could cause erosion of abutting property; to protect downstream owners; to preserve and enhance the suitability of waters for contact recreation and fishing; to preserve and enhance the aesthetic quality of the waters; to maintain and protect valuable groundwater resources; to minimize adverse effects of alterations in groundwater quantities, locations, and flow patterns; to provide for the safety of City roads and right of way; to decrease drainage related damage to public and private property; to minimize

impervious surfaces, native vegetation loss, and stormwater runoff and make Low Impact Development (LID) the preferred and commonly used approach to new and redevelopment; and to comply with requirements in the Phase II National Pollutant Discharge Elimination System Stormwater Permit as issued by the Washington State Department of Ecology.

**SECTION 2: DEFINITIONS.**

**Section 2 of Ordinance 2182-96 (previously amended by Ord. 3168-10 § 2 and Ord. 2196-97 § 2 and currently codified at EMC 14.28.020), which reads as follows:**

(1) "Basin Plan" refers to a detailed analysis for each drainage basin which compares the capabilities and needs for runoff accommodation due to various combinations of development, land use, structural and non-structural management alternates. The plan recommends the form, location and extent of quantity and quality control measures which optimally would meet the legal constraints, water quality standards, and community standards, as well as identifying the institutional and funding requirement for plan implementation.

(2) "Best Management Practice (BMP) – Shall mean the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices, that when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington state.

(3) "City Engineer" shall mean the City Engineer and/or his designee.

(4) "Critical Area" shall refer to areas that are highly susceptible to erosion or flooding such as steep or bare slopes, potential slides, flood plains, stream banks, drainage channels, silt bars, wetlands, bogs, marshes, and poorly drained areas.

(5) "Detention Facilities" shall mean facilities designed to hold runoff while gradually releasing it at predetermined maximum rates.

(6) "Developer" shall mean the owning individual(s) or corporation(s) or their representative applying for the permits or approvals described in Section 3(1) of this ordinance.

(7) "Drainage Area" shall mean the watershed contributing water runoff to and including the subject property.

(8) "Effective Impervious Surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system.

(9) "Environmentally Sensitive Areas" (as defined in the City Zoning Code)- means any of those areas of the City which are subject to natural hazards or those landform features which carry, hold, or purify water and/or support unique, fragile or valuable natural resources including fish, wildlife, and other organisms and their habitat. Sensitive areas include the following features: geologically hazardous areas; wetlands; streams; flood hazard areas; fish and wildlife conservation areas; and ground water discharge areas (EMC 37.040).

(10) "Impervious Surface" – means a hard surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development and causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, or other surfaces which similarly prevent the natural infiltration of stormwater.

(11) "Native Vegetation" shall mean vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site.

(12) "New Development" – means the following activities: land disturbing activities, including Class IV general forest practices that are conversions from timber land to other uses structural development, including construction, installation or expansion of a building or

other structure; creation of impervious surfaces; and subdivision and short subdivision, and binding site plans as defined and applied in Chapter 58.17 RCW.

(13) "Natural Location" of drainage system shall refer to the location of those channels, swales, and other conveyance systems as defined by the topographic contours existing for the subject property, from City of Everett aerial topographic maps dated 4-8-69 and 4-25-71. In cases where the above maps are inconclusive, "natural location", shall refer to the existing features unless it can be shown from documented maps or photographs that the features have existed less than ten (10) years. In cases of disagreement, the decision of the City Engineer as to "natural location" shall be final.

(14) "Planned Residential Development" shall mean a land development project comprehensively planned as an entire via a single site plan which permits flexibility in building siting, (lot size, setback lines, etc.), mixture of housing types, useable open space and preservation of sufficient natural feature.

(15) "Pollutant-generating Impervious Surface (PGIS)" shall mean those impervious surfaces considered to be a significant source of pollutants in stormwater runoff. Such surfaces include those which are subject to: vehicular use; industrial activities; or storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall. Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the rainfall runoff. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating).

A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads, unvegetated road shoulders, bike lanes within the traveled lane of a roadway,

driveways, parking lots, unfenced fire lanes, vehicular equipment storage yards, and airport runways.

The following are not considered regularly-used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles, fenced fire lanes, and infrequently used maintenance access roads.

(16) "Pollutant-generating Pervious Surface" shall mean any non-impervious surface subject to use of pesticides and fertilizers or loss of soil. Typical PGPSs include lawns, landscape areas, golf courses, parks, cemeteries, and sports fields.

(17) "Project Site" shall mean that portion of a property, properties, or right-of-way subject to land disturbing activities, new impervious surface, or replaced impervious surface.

(18) "Receiving Bodies of Water" shall mean all water courses including creeks, streams, lakes, and other bodies of water into which waters are directed, either naturally, in manmade ditches, or in closed conduit systems.

(19) "Redevelopment" shall mean a site that is already substantially developed (i.e., has 35% or more of existing impervious surface coverage), the creation or addition of impervious surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of impervious surface that is not part of a routine maintenance activity; and land disturbing activities.

(20) "Retention Facilities" shall mean facilities designed to hold water for a considerable length of time and then consume it by evaporation, plant transpiration, or infiltration into the soil.

(21) "Runoff Control Facilities" shall mean any facility installed or constructed in conjunction with a drainage plan for the purpose of treatment or abatement of urban storm water runoff, excluding retention or detention facilities.

(22) "Site" shall mean the area defined by the legal boundaries of a parcel or parcels of land that is (are) _ subject to new development or redevelopment. For road projects, the length of the project and the right-of-way boundaries define the site.

(23) "Stormwater Management Manual" shall mean the manual of technical and administrative procedures established by the City Engineer which delineates methods to be used, the level of analysis required, and other details for implementation of the provisions of this ordinance.

(24) "Stormwater Site Plan" shall mean the comprehensive report containing all of the technical information and analysis necessary for the City to evaluate a proposed new development or redevelopment for compliance stormwater requirements.

(25) "Subject Property" shall mean the tract of land which is the subject of the permit and/or approval action, as defined by the full legal description of all parcels involved in the proposed development.

(26) "Threshold Discharge Area" shall mean an onsite area draining to a single natural discharge location or multiple natural discharge locations that combine within one-quarter mile downstream (as determined by the shortest flowpath).

**is hereby amended to read as follows:**

(1) "Basin Plan" refers to a detailed analysis for each drainage basin which compares the capabilities and needs for runoff accommodation due to various combinations of development, land use, structural and non-structural management alternates. The plan recommends the form, location and extent of quantity and quality control measures which optimally would meet the legal constraints, water quality standards, and community standards, as well as identifying the institutional and funding requirement for plan implementation.

(2) "Best Management Practice (BMP) – Shall mean the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices, that when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington state.

(3) "City Engineer" shall mean the City Engineer and/or his designee.

(4) "Commercial Agriculture" shall mean those activities conducted on lands defined in RCW 84.34.020(2) and activities involved in the production of crops or livestock or commercial trade. An activity ceases to be considered commercial agriculture when the area on which it is conducted is proposed for conversion to a nonagricultural use or has lain idle for more than five years, unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance or irrigation ditches, laterals, canals, or drainage ditches related to an existing and ongoing agricultural activity.

(5) "Converted vegetation (areas)" shall mean the surfaces on a project site where native vegetation, pasture, scrub/shrub, or unmaintained non-native vegetation (e.g., Himalayan blackberry, Scotch Broom) are converted to lawn or landscaped areas, or where native vegetation is converted to pasture.

(~~4~~6) "Critical Area" shall refer to areas that are highly susceptible to erosion or flooding such as steep or bare slopes, potential slides, flood plains, stream banks, drainage channels, silt bars, wetlands, bogs, marshes, and poorly drained areas.

(~~5~~7) "Detention Facilities" shall mean facilities designed to hold runoff while gradually releasing it at predetermined maximum rates.

(~~6~~8) "Developer" shall mean the owning individual(s) or corporation(s) or their representative applying for the permits or approvals described in Section 3(1) of this ordinance.

(9~~7~~) "Drainage Area" shall mean the watershed or geologic and hydrologic subunits thereof that contribut~~ing~~es stormwater runoff to and including the subject property.

(~~8~~10) "Effective Impervious Surface" means those impervious surfaces that are connected via sheet flow or discrete conveyance to a drainage system.

(~~9~~11) "Environmentally Sensitive Areas" (as defined in the City Zoning Code)- means any of those areas of the City which are subject to natural hazards or those landform features which carry, hold, or purify water and/or support unique, fragile or valuable natural resources including fish, wildlife, and other organisms and their habitat. Sensitive areas include the following features: geologically hazardous areas; wetlands; streams; flood hazard areas; fish and wildlife conservation areas; and ground water discharge areas (EMC 37.040).

(12) "Hard Surface" shall mean an impervious surface, permeable pavement, or a vegetated roof.

(~~10~~13) "Impervious Surface" – means a non-vegetated~~hard~~ surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development and causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development.

Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, or other surfaces which similarly prevent the natural infiltration of stormwater.

(14) "Land Disturbing Activity" shall mean any activity that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to clearing, grading, filling, and excavation. Compaction that is associated with stabilization of structures and road construction shall also be considered a land disturbing activity. Vegetation maintenance practices, including landscape maintenance and gardening, are not considered land-disturbing activity.

Stormwater facility maintenance is not considered land disturbing activity if conducted according to established standards and procedures.

(15) "Low Impact Development (LID)" shall mean a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

(16) "LID Best Management Practices" shall mean distributed stormwater management practices, integrated into a project design, that emphasizes pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, minimal excavation foundations, vegetated roofs, and water re-use.

(17) "LID Principles" shall mean land use management strategies that emphasize conservation, use of on-site natural features, and site planning to minimize impervious surfaces, native vegetation loss, and stormwater runoff.

(18) "Maintenance" includes repair and maintenance activities conducted on currently serviceable structures, facilities, and equipment that involves no expansion or use beyond that previously existing and results in no significant adverse hydrologic impact. It includes those usual activities taken to prevent decline, lapse, or cessation in the use of structures and systems. Those usual activities may include replacement of dysfunctional facilities, including cases where environmental permits require replacing an existing structure with a different type structure, as long as the functioning characteristics of the original structure are not changed. One example is the replacement of a collapsed, fish blocking, round culvert with a new box culvert under the same span, or width of roadway. In regard to stormwater facilities, maintenance includes assessment to ensure ongoing proper operation, removal of built up pollutants (i.e. sediments), replacement of failed or failing treatment

media, and other actions taken to correct defects as identified in the maintenance standards of the City's stormwater management manual.

(~~11~~19) "Native Vegetation" shall mean vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site.

(~~13~~20) "Natural Location" of drainage system shall refer to the location of those channels, swales, and other conveyance systems as defined by the topographic contours existing for the subject property, from City of Everett aerial topographic maps dated 4-8-69 and 4-25-71. In cases where the above maps are inconclusive, "natural location", shall refer to the existing features unless it can be shown from documented maps or photographs that the features have existed less than ten (10) years. In cases of disagreement, the decision of the City Engineer as to "natural location" shall be final.

(~~12~~21) "New Development" – means the following activities: land disturbing activities, including Class IV general forest practices that are conversions from timber land to other uses structural development, including construction, installation or expansion of a building or other structure; creation of ~~impervious~~hard surfaces; and subdivision, ~~and~~ short subdivision, and binding site plans as defined and applied in Chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

(22) "Permeable Pavement" shall mean pervious concrete, porous asphalt, permeable pavers or other forms of pervious or porous paving material intended to allow passage of water through the pavement section. It often includes an aggregate base that provides structural support and acts as a stormwater reservoir.

(23) "Pervious Surface" shall mean any surface material that allows stormwater to infiltrate into the ground.

(24) "Pollution-generating hard surface (PGHS)" shall mean those hard surfaces considered to be a significant source of pollutants in stormwater runoff. See the listing of surfaces under pollution-generating impervious surface.

(~~14~~25)"Planned Residential Development" shall mean a land development project comprehensively planned as an entire via a single site plan which permits flexibility in building siting, (lot size, setback lines, etc.), mixture of housing types, useable open space and preservation of sufficient natural feature.

(~~15~~26) "Pollutant-generating Impervious Surface (PGIS)" shall mean those impervious surfaces considered to be a significant source of pollutants in stormwater runoff. Such surfaces include those which are subject to: vehicular use; industrial activities (as defined in the City's stormwater management manual); ~~or~~ storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall; metal roofs unless they are coated with an inert, non-leachable material (e.g., baked on enamel coating); or roofs that are subject to venting significant amounts of dusts, mists, or fumes from manufacturing, commercial, or other indoor activities. ~~Erodible or leachable materials, wastes, or chemicals are those substances which, when exposed to rainfall, measurably alter the physical or chemical characteristics of the rainfall runoff. Examples include erodible soils that are stockpiled, uncovered process wastes, manure, fertilizers, oily substances, ashes, kiln dust, and garbage dumpster leakage. Metal roofs are also considered to be PGIS unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating).~~

~~A surface, whether paved or not, shall be considered subject to vehicular use if it is regularly used by motor vehicles. The following are considered regularly-used surfaces: roads, unvegetated road shoulders, bike lanes within the traveled lane of a roadway, driveways, parking lots, unfenced fire lanes, vehicular equipment storage yards, and airport runways.~~

~~The following are not considered regularly-used surfaces: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles, fenced fire lanes, and infrequently used maintenance access roads.~~

(27) "Pollutant-generating Pervious Surface" (PGPS) shall mean any non-impervious surface subject to vehicular use, industrial activities (as further defined in the City's stormwater management manual); or storage of erodible or leachable materials, wastes, or chemicals, and that receive direct rainfall or run-on or blow-in of rainfall, use of pesticides and fertilizers, or loss of soil. Typical PGPS include permeable pavement subject to vehicular use, lawns, and landscaped areas including: golf courses, parks, cemeteries, and sports fields (natural and artificial turf).

~~(16) "Pollutant-generating Pervious Surface" shall mean any non-impervious surface subject to use of pesticides and fertilizers or loss of soil. Typical PGPSs include lawns, landscape areas, golf courses, parks, cemeteries, and sports fields.~~

(28) "Pre-developed condition" shall mean the native vegetation and soils that existed at a site prior to the influence of Euro-American settlement. The pre-developed condition shall be assumed to be a forested land cover.

(~~17~~29) "Project Site" shall mean that portion of a property, properties, or right-of-way subject to land disturbing activities, new impervious surface, or replaced impervious surface.

~~(18) "Receiving Bodies of Water" shall mean all water courses including creeks, streams, lakes, and other bodies of water into which waters are directed, either naturally, in manmade ditches, or in closed conduit systems.~~

(30) "Receiving waterbody or Receiving waters" shall mean bodies of water or surface water systems to which surface runoff is discharged via a point source of stormwater or via sheet flow. Ground water to which surface runoff is directed by infiltration.

(~~19~~31) "Redevelopment" shall mean on a site that is already substantially developed (i.e., has 35% or more of existing hard~~impervious~~ surface coverage), the creation or addition of hard~~impervious~~ surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a

building or other structure; replacement of hard~~impervious~~ surface that is not part of a routine maintenance activity; and land disturbing activities.

(32) "Replaced hard surface" shall mean, for structures, the removal and replacement of hard surfaces down to the foundation. For other hard surfaces, the removal down to bare soil or base course and replacement.

(33) "Replaced impervious surface" shall mean for structures, the removal and replacement of impervious surfaces down to the foundation. For other impervious surfaces, the removal down to bare soil or base course and development.

(~~20~~34) "Retention Facilities" shall mean facilities designed to hold water for a considerable length of time and then consume it by evaporation, plant transpiration, or infiltration into the soil.

(~~21~~35) "Runoff Control Facilities" shall mean any facility installed or constructed in conjunction with a drainage plan for the purpose of treatment or abatement of urban storm water runoff, excluding retention or detention facilities.

(~~22~~36) "Site" shall mean the area defined by the legal boundaries of a parcel or parcels of land that is (are) subject to new development or redevelopment. For road projects, the length of the project and the right-of-way boundaries define the site.

(~~23~~37) "Stormwater Management Manual" shall mean the most current Washington State Department of Ecology Stormwater Management Manual for Western Washington, along with any technical and administrative procedures established by the City Engineer which provide details for implementation of the provisions of this chapter.~~manual of technical and administrative procedures established by the City Engineer which delineates methods to be used, the level of analysis required, and other details for implementation of the provisions of this ordinance.~~

(~~24~~38) "Stormwater Site Plan" shall mean the comprehensive report containing all of the technical information and analysis necessary for the City to evaluate a proposed new development or redevelopment for compliance with stormwater requirements.

(~~25~~39) "Subject Property" shall mean the tract or tracts of land which is the subject of the permit and/or approval action, as defined by the full legal description of all parcels involved in the proposed development.

(~~26~~40) "Threshold Discharge Area" shall mean an onsite area draining to a single natural discharge location or multiple natural discharge locations that combine within one-quarter mile downstream (as determined by the shortest flowpath).

(41) "Vehicular Use" shall mean regular use of an impervious or pervious surface by motor vehicles. The following are subject to regular vehicular use: roads, un-vegetated road shoulders, bike lanes within the traveled land of a roadway, driveways, parking lots, unrestricted access fire lanes, vehicular equipment storage yards, and airport runways.

The following are not considered subject to regular vehicular use: paved bicycle pathways separated from and not subject to drainage from roads for motor vehicles, restricted access fire lanes, and infrequently used maintenance access roads.

(42) "Wetlands" shall those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but no limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

**<u>SECTION 3: NEW DEVELOPMENT AND REDEVELOPMENT - APPLICABILITY</u>**

**Section 3 of Ordinance 3168-10 (currently codified at EMC 14.28.030 through EMC 14.28.080), which reads as follows:**

(1) NEW DEVELOPMENT AND REDEVELOPMENT- APPLICABILITY

A. All new development and redevelopment shall comply with Minimum Requirements #2.

B. The following new development and redevelopment shall comply with Minimum Requirements #1 through #5 for the new and replaced impervious surfaces and the land disturbed:

(a) Creates or adds 2,000 square feet or greater of new, replaced, or total of new plus replaced impervious surface area, or

(b) Has land disturbing activity of 7,000 square feet or greater.

C. The following new development and redevelopment shall also comply with Minimum Requirement #6 for the new and replaced pollutant generating impervious surfaces:

(a) Creates or adds 5,000 square feet or greater of new, replaced, or total of new plus replaced impervious surface area.

D. The following new development and redevelopment shall also comply with Minimum Requirements #7 through #9 for the new impervious surfaces and the converted pervious surfaces:

(a) Creates or adds 5,000 square feet or more of new impervious surfaces, or

(b) Converts ¾ acres, or more, of native vegetation to lawn or landscaped areas, or

(c) Converts 2.5 acres, or more, of native vegetation to pasture.

(2) ADDITIONAL REQUIREMENTS FOR REDEVELOPMENT SITES

A. For redevelopment projects that disturb an acre or more of land, or that are part of a larger common plan of development or sale that disturbs an acre or more of land, the following additional requirements apply:

(a) Road related redevelopment projects shall meet all the Minimum Requirements for the replaced and new impervious surfaces (including pavement, shoulders, curbs, and sidewalks) if the new impervious surfaces total 5,000 square feet or more and total 50% or more of the existing impervious surface within the project limits. The project limits shall be defined as the length of the project and the width of the right-of-way.

(b) Other types of redevelopment projects shall comply with all the Minimum Requirements for the replaced and new and impervious surfaces if the total of the new plus replaced impervious surface is 5,000 square feet or more and the valuation of the proposed improvements – including interior improvements – exceeds 50% of the assessed value of the existing site improvements.

(3) EXEMPTIONS

A. **Forest practices:** Forest practices regulated under Title 222 WAC, except for Class IV General Forest practices that are conversions from timber land to other uses, are exempt from the provisions of the minimum requirements.

B. **Commercial agriculture:** Commercial agriculture practices involving working the land for production are generally exempt. However, the conversion from timber land to agriculture, and the construction of impervious surfaces are not exempt.

C. **Oil and Gas Field Activities or Operations:** Construction of drilling sites, waste management pits, and access roads, as well as construction of transportation and treatment infrastructure such as pipelines natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations are exempt. Operators are encouraged to implement and maintain Best Management Practices to minimize erosion and control

sediment during and after construction activities to help ensure protection of surface water quality during storm events.

D. **Road Maintenance:**

1. The following road maintenance practices are exempt: pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regarding drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, and vegetation maintenance.
2. The following road maintenance practices are considered redevelopment, and therefore are not categorically exempt. The extent to which the minimum technical requirements apply is explained for each circumstance.
   (a) Removing and replacing a paved surface to base course or lower, or repairing the roadway base: If impervious surfaces are not expanded, Minimum Requirements #1-#5 apply. However, in most cases, only Minimum Requirement #2, Construction Stormwater Pollution Prevention, will be applicable. Where appropriate, project proponents are encouraged to look for opportunities to use permeable and porous pavements.
   (b) Extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders: These are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for redevelopment projects are met.
   (c) Resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete; or upgrading from a bituminous surface treatment ("chip seal") to asphalt or concrete: these are considered new impervious surfaces and are subject to the minimum requirements that are

triggered when the thresholds identified for redevelopment projects are met.

E. **Underground utility projects:** Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement #2, Construction Stormwater Pollution Prevention.

(4) MINIMUM TECHNICAL REQUIREMENTS

A. Minimum Requirement #1: Stormwater Site Plan Preparation

A Stormwater Site Plan (SSP) shall be prepared for City review and approval. Stormwater Site Plans shall be prepared in accordance with the City's Stormwater Management Manual.

B. Minimum Requirement #2: Construction Stormwater Pollution Prevention

All new development and redevelopment projects are responsible for preventing erosion and discharge of sediment and other pollutants into receiving waters. Construction Stormwater Pollution Prevention shall be provided in accordance with the City's Stormwater Management Manual.

C. Minimum Requirement #3: Source Control of Pollution

All known, available and reasonable source control BMPs shall be applied to the project site. Source control BMPs shall be selected, designed, and maintained according to Volume IV of the City's Stormwater Management Manual.

D. Minimum Requirement #4: Preservation of Natural Drainage Systems and Outfalls

Natural drainage patterns shall be maintained, and discharges from the project site shall occur at the natural location, to the maximum extent practicable. The manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters and/or down-gradient properties.

E. Minimum Requirement #5: On-Site Stormwater Management

On-site stormwater management BMPs shall be provided to infiltrate, retain, and disperse stormwater runoff on site to the maximum extent feasible without causing flooding or erosion impacts. On-site stormwater management shall be provided in accordance with the City of Everett's Stormwater Management Manual.

F. Minimum Requirement #6: Runoff Treatment

The following projects require design and construction of stormwater treatment facilities in accordance with the City's Stormwater Management Manual:

(a) Projects in which the total of effective, new and/or replaced pollution-generating impervious surface (PGIS) is 5,000 square feet or more in a threshold discharge area of the project, or

(b) Projects in which the total of new pollution-generating pervious surfaces (PGPS) is three-fourths of an acre or more in a threshold discharge area, and from which there is a surface discharge in a natural or man-made conveyance system from the site.

That portion of any development project in which the above PGIS or PGPS thresholds are not exceeded in a threshold discharge area shall have onsite stormwater management BMPs in accordance with Minimum Requirement #5.

G. Minimum Requirement #7: Flow Control

The following projects that discharge stormwater directly or indirectly through a conveyance system into a fresh water require construction of flow control facilities and/or land use management BMPs in accordance with the City of Everett's Stormwater Management Manual.

(a) Projects in which the total of effective impervious surfaces is 5,000 square feet or more in a threshold discharge area

(b) Projects that convert three-fourths of an acre or more of native vegetation to lawn or landscape, or convert 2.5 acres or more of native vegetation to pasture in a threshold discharge area,

and from which there is a surface discharge in a natural or man-made conveyance system from the site.

(c) Projects that through a combination of effective impervious surfaces and converted pervious surfaces cause a 0.1 cubic feet per second increase in the 100-year flow frequency from a threshold discharge area.

That portion of any project in which the above thresholds are not exceeded in a threshold discharge area shall have onsite stormwater management BMPs in accordance with Minimum Requirement #5.

H. Minimum Requirement #8: Wetlands Protection

Projects that discharge stormwater into a wetland, either directly or indirectly through a conveyance system, shall do so in accordance with the City of Everett Stormwater Management Manual.

I. Minimum Requirement #9: Operation and Maintenance

A Maintenance Plan is required for all stormwater facilities and BMPSs designed and constructed in accordance with this ordinance. The Maintenance Plan shall be developed in accordance with the City of Everett Stormwater Management Manual.

(5) ADJUSTMENTS

Adjustments to the Minimum Requirements may be granted by the City provided the applicant prepares and the City approves a written finding of fact that addresses the following:

A. The adjustment provided substantially equivalent environmental protection.

B. Based on sound Engineering practices, the objectives of safety, function, environmental protection and facility maintenance, are met.

(6) EXEMPTIONS

A. Exceptions/variances (exceptions) to the Minimum Requirements may be granted following legal public notice of an application for an exception or variance, legal public notice of the City's decision on the application, and written findings of fact that documents the City's determination to grant an exception.

B. The City may grant an exception to the minimum requirements if such application imposes a severe and unexpected economic hardship. For the City to determine whether the application imposes a severe and unexpected economic hardship on the project applicant, the project applicant must consider and document with written findings of fact the following:

(a) The current (pre-project) use of the site, and

(b) How the application of the minimum requirements(s) restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the Minimum Requirements; and

(c) The possible remaining uses of the site if the exception were not granted; and

(d) The uses of the site would have been allowed prior to the adoption of the Minimum Requirements; and

(e) A comparison of the estimated amount and percentage of value loss as a result of the minimum requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the Minimum Requirements; and

(f) The feasibility for the owner to alter the project to apply the Minimum Requirements.

C. In addition any exception must meet the following criteria:

(a) The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and

(b) The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.

**is hereby amended to read as follows:**

(1) NEW DEVELOPMENT ~~AND REDEVELOPMENT~~- APPLICABILITY

A. All new development ~~and redevelopment~~ shall be required to comply with Minimum Requirement~~s~~ #2.

B. The following new development ~~and redevelopment~~ shall comply with Minimum Requirements #1 through #5 for the new and replaced hard~~impervious~~ surfaces and the land disturbed:

(a) ~~Creates or adds~~Results in 2,000 square feet, or greater, ~~of new, replaced, or total~~ of new plus replaced ~~impervious~~ hard surface area, or

(b) Has land disturbing activity of 7,000 square feet or greater.

C. The following new development ~~and redevelopment~~ shall ~~also~~ comply with Minimum Requirement #1-9~~6~~ for the new and replaced ~~pollutant generating~~ hard~~impervious~~ surfaces and converted vegetation areas:

(a) Results in~~Creates or adds~~ 5,000 square feet, or greater, ~~of new, replaced, or total~~ of new plus replaced impervious surface area, or~~.~~

(b) Converts ¾ acres, or more, of vegetation to lawn or landscaped areas, or

~~(a)~~(c) Converts 2.5 acres, or more, of native vegetation to pasture.

(2) REDEVELOPMENT – APPLICABILITY

A. All redevelopment shall be required to comply with Minimum Requirement #2.

B. The following redevelopment shall comply with Minimum Requirement #1 through #5 for the new and replaced hard surfaces and the land disturbed:

(a) Results in 2,000 square feet, or more, of new plus replaced hard surface area, or

(b) Has land disturbing activity of 7,000 square feet or greater.

~~D.~~C. The following ~~new development and~~ redevelopment shall ~~also~~ comply with Minimum Requirements #~~7~~1 through #9 for the new hard~~impervious~~ surfaces and the converted vegetation areas ~~pervious surfaces~~:

(a) ~~Creates or~~ Aadds 5,000 square feet or more of new hard~~impervious~~ surfaces, or

(b) Converts ¾ acres, or more, of ~~native~~ vegetation to lawn or landscaped areas, or

(c) Converts 2.5 acres, or more, of native vegetation to pasture.

~~(2)~~(3) ADDITIONAL REQUIREMENTS FOR REDEVELOPMENT PROJECT SITES

~~A. For redevelopment projects that disturb an acre or more of land, or that are part of a larger common plan of development or sale that disturbs an acre or more of land, the following additional requirements apply:~~

~~B.~~A. For r~~R~~oad-~~-~~related ~~redevelopment~~ projects, runoff from ~~shall meet all the Minimum Requirements for~~ the replaced and new hard~~impervious~~ surfaces (including pavement, shoulders, curbs, and sidewalks) and the converted vegetated areas shall meet all Minimum Requirements if the new hard~~impervious~~ surfaces total 5,000 square feet or more and total 50% or more of the existing hard~~impervious~~ surfaces within the project limits. The project limits shall be defined as the length of the project and the width of the right-of-way.

~~C.~~B. Other types of redevelopment projects shall comply with all the Minimum Requirements #1 through #9 for the ~~replaced and~~ new and replaced hard~~impervious~~ surfaces and the converted vegetated areas if the total of the new plus replaced hard~~impervious~~ surface is 5,000 square feet or more and the valuation of the proposed improvements – including interior improvements – exceeds 50% of the assessed value of the existing site improvements.

~~(3)~~(4) EXEMPTIONS

A. **Forest practices:** Forest practices regulated under Title 222 WAC, except for Class IV General Forest practices that are conversions from timber land to other uses, are exempt from the provisions of the minimum requirements.

B. **Commercial agriculture:** Commercial agriculture practices involving working the land for production are generally exempt. However, the conversion from timber land to agriculture, and the construction of impervious surfaces are not exempt.

C. **Oil and Gas Field Activities or Operations:** Construction of drilling sites, waste management pits, and access roads, as well as construction of transportation and treatment infrastructure such as pipelines natural gas treatment plants, natural gas pipeline compressor stations, and crude oil pumping stations are exempt. Operators are encouraged to implement and maintain Best Management Practices to minimize erosion and control sediment during and after construction activities to help ensure protection of surface water quality during storm events.

D. **Pavement~~Road~~ Maintenance:**

1. The following pavement~~road~~ maintenance practices are exempt: pothole and square cut patching, overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage, shoulder grading, reshaping/regarding drainage systems, crack sealing, resurfacing with in-kind material without expanding the road prism, pavement preservation activities that do not expand the road prism, and vegetation maintenance.

2. The following pavement~~road~~ maintenance practices ~~are considered redevelopment, and therefore~~ are not categorically exempt. The extent to which the minimum technical requirements apply is explained for each circumstance.

   (a) Removing and replacing a paved surface to base course or lower, or repairing the pavement~~roadway~~ base: If impervious surfaces are not expanded, Minimum Requirements #1-#5

apply. ~~However, in most cases, only Minimum Requirement #2, Construction Stormwater Pollution Prevention, will be applicable. Where appropriate, project proponents are encouraged to look for opportunities to use permeable and porous pavements.~~

(b) Extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders: These are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for new or redevelopment projects are met.

(c) Resurfacing by upgrading from dirt to gravel, asphalt, or concrete; upgrading from gravel to asphalt, or concrete; or upgrading from a bituminous surface treatment ("chip seal") to asphalt or concrete: T~~t~~hese are considered new impervious surfaces and are subject to the minimum requirements that are triggered when the thresholds identified for new or redevelopment projects are met.

E. **Underground utility projects:** Underground utility projects that replace the ground surface with in-kind material or materials with similar runoff characteristics are only subject to Minimum Requirement #2, Construction Stormwater Pollution Prevention.

~~E.~~F. **Combined Sewer System:** Project sites, or portions of project sites, that potentially contribute stormwater to the City's latest designated Combined Sewer System shall not be subject to the Minimum Requirements. The Combined Sewer System routes stormwater for treatment at the publicly owned treatment works. Requirements for detention and flow control are determined by evaluating the capacity of the Combined Sewer System.

~~(4)~~(5) MINIMUM TECHNICAL REQUIREMENTS

A. Minimum Requirement #1: Stormwater Site Plan Preparation

A Stormwater Site Plan (SSP) shall be prepared for City review and approval. Stormwater Site Plans shall use site-appropriate development principles to retain native vegetation and minimize impervious surfaces to the extent feasible. Stormwater Site Plans shall be prepared in accordance with the City's Stormwater Management Manual.

B. Minimum Requirement #2: Construction Stormwater Pollution Prevention

All new development and redevelopment projects are responsible for preventing erosion and discharge of sediment and other pollutants into receiving waters. Construction Stormwater Pollution Prevention shall be provided in accordance with the City's Stormwater Management Manual.

C. Minimum Requirement #3: Source Control of Pollution

All known, available and reasonable source control BMPs shall be applied to the project site. Source control BMPs shall be selected, designed, and maintained according to Volume IV of the City's Stormwater Management Manual.

D. Minimum Requirement #4: Preservation of Natural Drainage Systems and Outfalls

Natural drainage patterns shall be maintained, and discharges from the project site shall occur at the natural location, to the maximum extent practicable. The manner by which runoff is discharged from the project site must not cause a significant adverse impact to downstream receiving waters and/or down-gradient properties. All outfalls require energy dissipation in accordance with the City's Stormwater Management Manual.

E. Minimum Requirement #5: On-Site Stormwater Management

On-site stormwater management BMPs shall be provided to infiltrate, retain, and disperse stormwater runoff on site to the ~~maximum~~ extent feasible without causing flooding or erosion impacts. On-site stormwater management shall be ~~provided~~ selected, designed, constructed, and maintained in accordance with the City ~~of Everett~~'s Stormwater Management Manual.

F. Minimum Requirement #6: Runoff Treatment

The following projects require BMP selection, design, ~~and~~ construction, and maintenance of stormwater treatment facilities in accordance with the City's Stormwater Management Manual:

(a) Projects in which the total of ~~effective, new and/or replaced~~ pollution-generating hard~~impervious~~ surface (PGH~~I~~S) is 5,000 square feet or more in a threshold discharge area of the project, or

(b) Projects in which the total of ~~new~~ pollution-generating pervious surfaces (PGPS) - not including permeable pavement - is three-fourths (3/4) of an acre or more in a threshold discharge area, and from which there will be~~there is~~ a surface discharge in a natural or man-made conveyance system from the site.

~~That portion of any development project in which the above PGIS or PGPS thresholds are not exceeded in a threshold discharge area shall have onsite stormwater management BMPs in accordance with Minimum Requirement #5.~~

G. Minimum Requirement #7: Flow Control

The following projects that discharge stormwater directly or indirectly through a conveyance system into a fresh water ~~require~~body require selection, design, construction, and maintenance ~~of flow control facilities and/or land use management BMPs~~ of flow control BMPs in accordance with the City ~~of Everett~~'s Stormwater Management Manual.

(a) Projects in which the total of effective impervious surfaces is 5,000 square feet or more in a threshold discharge area, or

(b) Projects that convert three-fourths of an acre or more of ~~native~~ vegetation to lawn or landscape, or convert 2.5 acres or more of native vegetation to pasture in a threshold discharge area, and from which there is a surface discharge in a natural or man-made conveyance system from the site~~.~~, or

~~(c) Projects that through a combination of effective impervious surfaces and converted pervious surfaces cause a 0.1 cubic feet per second increase in the 100-year flow frequency from a threshold discharge area.~~Projects that through a combination of hard surfaces and converted vegetation areas cause a 0.15 cubic feet per second (cfs) increase or greater in the 100-year-flow frequency from a threshold discharge area as estimated using the Western Washington Hydrology Model or other approved model and 15-minute time steps.

~~(d) That portion of any project in which the above thresholds are not exceeded in a threshold discharge area shall have onsite stormwater management BMPs in accordance with Minimum Requirement #5.~~

If the discharge is to a stream that leads to a wetland, or a wetland that has an outflow to a stream, both this minimum requirement (Minimum Requirement #7) and Minimum Requirement #8 shall apply.

H. Minimum Requirement #8: Wetlands Protection

Projects that discharge stormwater into a wetland, either directly or indirectly through a conveyance system, shall do so in accordance with the City's ~~of Everett~~ Stormwater Management Manual.

The thresholds identified in Minimum Requirement #6 – Runoff Treatment, and Minimum Requirement #7 – Flow Control shall also be applied to determine the applicability of this requirement to discharges to wetlands.

I. Minimum Requirement #9: Operation and Maintenance

A Maintenance and Operations Manual~~Plan~~ is required for all stormwater facilities and BMPSs designed and constructed in accordance with this ordinance. The Maintenance and Operations Manual ~~Plan~~ shall be developed in accordance with the City's ~~of Everett~~ Stormwater Management Manual.

~~(5)~~(6) ADJUSTMENTS

Adjustments to the Minimum Requirements may be granted by the City provided the applicant prepares and the City approves a written finding of fact that addresses the following:

A. The adjustment provided substantially equivalent environmental protection.
B. Based on sound Engineering practices, the objectives of safety, function, environmental protection and facility maintenance, are met.

~~(6)~~(7) ~~EXEMPTIONS~~EXCEPTIONS/VARIANCES

A. Exceptions/variances (exceptions) to the Minimum Requirements may be granted following legal public notice of an application for an exception or variance, legal public notice of the City's decision on the application, and written findings of fact that documents the City's determination to grant an exception.
B. The City may grant an exception to the minimum requirements if such application imposes a severe and unexpected economic hardship. For the City to determine whether the application imposes a severe and unexpected economic hardship on the project applicant, the project applicant must consider and document with written findings of fact the following:
    (a) The current (pre-project) use of the site, and
    (b) How the application of the minimum requirements(s) restricts the proposed use of the site compared to the restrictions that existed prior to the adoption of the Minimum Requirements; and
    (c) The possible remaining uses of the site if the exception were not granted; and
    (d) The uses of the site would have been allowed prior to the adoption of the Minimum Requirements; and

(e) A comparison of the estimated amount and percentage of value loss as a result of the minimum requirements versus the estimated amount and percentage of value loss as a result of requirements that existed prior to adoption of the Minimum Requirements; and

(f) The feasibility for the owner to alter the project to apply the Minimum Requirements.

C. In addition any exception must meet the following criteria:

(a) The exception will not increase risk to the public health and welfare, nor be injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state; and

(b) The exception is the least possible exception that could be granted to comply with the intent of the Minimum Requirements.

**SECTION 4: DEVELOPMENT IN CRITICAL AREAS.**

**Section 4 of Ordinance 2182-96 (previously amended by Ord. 3168-10 § 4 and Ord. 2196-97 § 4 and currently codified at EMC 14.28.390) remains in effect and is not amended by this ordinance.**

**SECTION 5: CITY ENGINEER REVIEW AND APPROVAL OF REQUIRED PLANS.**

**Section 5 of Ordinance 2182-96 (previously amended by Ord. 2196-97 § 5 and currently codified at EMC 14.28.400) remains in effect and is not amended by this ordinance**

**SECTION 6: ESTABLISHMENT OF REGIONAL FACILITIES.**

**Section 6 of Ordinance 2182-96 (previously amended by Ord. 3168-10 § 6 and Ord. 2196-97 § 6 and currently codified at EMC 14.28.410) remains in effect and is not amended by this ordinance.**

**SECTION 7: BONDS AND LIABILITY INSURANCE REQUIRED.**

**Section 7 of Ordinance 2182-96 (previously amended by Ord. 3168-10 § 7 and Ord. 2196-97 § 7 and currently codified at EMC 14.28.420), which reads as follows:**

A. The City Engineer is authorized to require developers constructing retention/detention and/or other drainage treatment/abatement facilities serving areas larger than one acre to post surety bond(s) or other form of guarantee acceptable to the City.

B. Where such developers have previously posted, or are required to post, other such bonds on the facility itself or on other construction related to the facility, such person may, with the permission of the City Engineer and to the extent allowable by law, combine all such bonds into a single bond, provided that at no time shall the amount thus bonded by less than the total amount which would have been required in the form of separate bonds, and provided further that such a bond shall on its face clearly delineate those separate bonds which it is intended to replace.

C. Performance Bond. Prior to commencing construction, the developer constructing the facility shall post a performance bond in an amount of one hundred twenty percent of the cost of construction per the approved drainage plans. After determination by the City Engineer that all facilities are constructed in compliance with the approved plans, the performance bond shall be released. Alternatively, an equivalent cash deposit to an escrow account administered by a local bank designated by the City may be acceptable.

D. Maintenance Warranty Bonds. After satisfactory completion of the facilities and release of the performance bond by the City, the developer constructing the facility shall commence a two-(2) year period of satisfactory maintenance of the facility. A warranty bond to be used at the discretion of the City Engineer to correct deficiencies in said maintenance affecting public health, safety and welfare must be posted and maintained throughout the two year maintenance period. The amount of the warranty bond shall be ten percent of the estimated construction cost of the drainage facilities. In addition, the warranty bond shall cover the cost of design defects and/or failures in workmanship of the facilities throughout the two year maintenance period. Alternatively, an equivalent

cash deposit to an escrow account administered by a local bank designated by the City may be acceptable.

E. Liability Insurance. The developer constructing the facility shall maintain a liability insurance policy in the amount of five hundred thousand dollars per individual, one million dollars per occurrence, and five hundred thousand dollars property damage, which shall name the City as an additional insured and which shall protect the City from any liability up to those amounts for any accident, negligence, failure of the facility, or any other liability whatsoever, relating to the construction or maintenance of the facility. Said liability policy shall be maintained for the duration of the facility by the owner of the facility, provided that in the case of facilities assumed by the City for maintenance pursuant to Section 8 of this ordinance, said liability policy shall be terminated when City Council accepts the facility and City maintenance responsibility commences.

**is hereby amended to read as follows:**

A. The City Engineer is authorized to require developers constructing retention/detention and/or other drainage treatment/abatement facilities ~~serving areas larger than one acre~~ to post surety bond(s) or other form of guarantee acceptable to the City.

B. Where such developers have previously posted, or are required to post, other such bonds on the facility itself or on other construction related to the facility, such person may, with the permission of the City Engineer and to the extent allowable by law, combine all such bonds into a single bond, provided that at no time shall the amount thus bonded by less than the total amount which would have been required in the form of separate bonds, and provided further that such a bond shall on its face clearly delineate those separate bonds which it is intended to replace.

C. Performance Bond. Prior to commencing construction, the developer constructing the facility shall post a performance bond in an amount of one hundred twenty percent of the cost of construction per the approved drainage plans. After determination by the City Engineer that all facilities are constructed in compliance with the approved plans, the performance bond shall be released. Alternatively, an equivalent cash deposit to an escrow account administered by a local bank designated by the City may be acceptable.

D. Maintenance Warranty Bonds. After satisfactory completion of the facilities and release of the performance bond by the City, the developer constructing the facility shall commence a two-(2) year period of satisfactory maintenance of the facility. A warranty bond to be used at the discretion of the City Engineer to correct deficiencies in said maintenance affecting public health, safety and welfare must be posted and maintained throughout the two year maintenance period. The amount of the warranty bond shall be ten percent of the estimated construction cost of the drainage facilities. In addition, the warranty bond shall cover the cost of design defects and/or failures in workmanship of the facilities throughout the two year maintenance period. Alternatively, an equivalent cash deposit to an escrow account administered by a local bank designated by the City may be acceptable.

E. Liability Insurance. The developer constructing the facility shall maintain a liability insurance policy in the amount of five hundred thousand dollars per individual, one million dollars per occurrence, and five hundred thousand dollars property damage, which shall name the City as an additional insured and which shall protect the City from any liability up to those amounts for any accident, negligence, failure of the facility, or any other liability whatsoever, relating to the construction or maintenance of the facility. Said liability policy shall be maintained for the duration of the facility by the owner of the facility, provided that in the case of facilities assumed by the City for maintenance pursuant to Section 8 of this ordinance, said liability policy shall be terminated when City Council accepts the facility and City maintenance responsibility commences.

**SECTION 8: CITY ASSUMPTION OF OPERATION AND MAINTENANCE.**

**Section 8 of Ordinance 2182-96 (previously amended by Ord. 3168-10 § 8 and Ord. 2196-97 § 8 and currently codified at EMC 14.28.430) remains in effect and is not amended by this ordinance.**

**SECTION 9: RETROACTIVITY RELATING TO CITY MAINTENANCE.**

**Section 9 of Ordinance 2182-96 (previously amended by Ord. 2196-97 and currently codified at EMC 14.28.440) remains in effect and is not amended by this ordinance.**

**SECTION 10: APPLICABILITY TO GOVERNMENTAL ENTITIES.**

**Section 10 of Ordinance 2182-96 (previously amended by Ord. 3168-10 § 10 and Ord. 2196-97 § 10 and currently codified at EMC 14.28.450) remains in effect and is not amended by this ordinance.**

**SECTION 11: ENFORCEMENT.**

**Section 11 of Ordinance 2182-96 (previously amended by Ord. 3168-10 § 11 and Ord. 2196-97 § 11 and currently codified at EMC 14.28.460) remains in effect and is not amended by this ordinance.**

**SECTION 12: SEVERABILITY.**

Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that anyone or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

**SECTION 13: THIRD PARTY LIABILITY.**

It is expressly the purpose of this ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group or persons who will or should be especially protected or benefited by the terms of this ordinance. It is the specific intent of this ordinance that no provision nor any term used in this ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees, for whom the implementation and enforcement of this ordinance shall be discretionary and not mandatory. Nothing contained in this ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this ordinance by its officers, employees or agents.

**SECTION 14: SAVINGS.**

The enactment of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or before the City or in any way modify any obligation, right or liability, civil or criminal, which may exist by virtue of any of the ordinances herein amended.

**SECTION 15: CODIFICATION**

The City and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references, thereto.

**SECTION 16: EFFECTIVE DATE**

This Ordinance shall become effective December 31, 2016.

_____
Ray Stephanson, Mayor

Attest:

_____
City Clerk

Passed:
Valid:
Published:
Effective: