

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussing Ordinance No. 943 – Amending certain sections of Shoreline Municipal Code Chapter 13.10 Surface Water Utility for a New Source Control Program
DEPARTMENT:	Public Works
PRESENTED BY:	John Featherstone, Surface Water Utility Manager
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

The City is required to implement a new inspection program under the 2019-2024 Western Washington Phase II Municipal Stormwater Permit (Permit) which governs discharge of the City’s municipal stormwater into Waters of the State. The new Source Control Program (previously called the Business Inspection Source Control program under the 2018 Surface Water Master Plan) is intended to minimize the risk of stormwater pollution originating in areas of existing development by inspecting businesses and institutional sites prioritized as having higher risk for pollution-generating activities. The Permit requires the City to adopt an ordinance for this program no later than August 1, 2022. To accomplish this, updates to Shoreline Municipal Code (SMC) Chapter 13.10 are needed.

The updates proposed under proposed Ordinance No. 943 (Attachment A) would modify code language in SMC 13.10.105 Definitions, SMC 13.10.330 General requirements, and SMC 13.10.340 Inspections and investigations and illicit discharges (Attachment A, Exhibit A). This language expands the circumstances under which the City can inspect sites and require owners to implement best management practices (BMPs) to proactively reduce risk of surface water or groundwater pollution, rather than reactively in response to illicit discharges and spills. No changes are needed to SMC 13.10.400 Violations or Code enforcement sections (SMC 20.30.720 - 20.30.790).

Tonight, the City Council is scheduled to discuss proposed Ordinance No. 943. This proposed Ordinance is scheduled to be brought back to Council for action on May 2, 2022.

RESOURCE/FINANCIAL IMPACT:

The 2018 Surface Water Master Plan allocated an annual budget amount of \$86,780 for initial development and implementation of the Business Inspection Source Control program (as part of the Proactive Management Strategy selected by Council). This budget has been sufficient to date for Source Control Program development. Staff are currently reviewing and updating the estimated costs for implementing this program,

which will be integrated into the 2023-2024 biennial budget, and further reviewed and refined for future budgets under the 2024 Surface Water Master Plan Update.

RECOMMENDATION

No action is required by the City Council regarding proposed Ordinance No. 943 tonight. This meeting will provide an opportunity for the City Council to ask questions and provide staff direction on these proposed code amendments. Proposed Ordinance No. 943 amending the Shoreline Municipal Code Chapter 13.10 is scheduled to return to Council for action on May 2, 2022.

Approved By: City Manager **DT** City Attorney **JA-T**

INTRODUCTION

Stormwater is the runoff from natural precipitation such as rain and snow melt. Urban stormwater is runoff from developed surfaces such as roofs and pavement, which can cause flooding and create water quality issues when it flows through gutters, ditches, and pipes into streams, ponds, lakes, and other receiving waters. Since incorporation, the City has had stormwater management regulations. After initially relying on King County regulations, by 2009, the City had established its own regulations based on federal and state requirements.

The Washington State Department of Ecology (Ecology) oversees the [Western Washington Phase II Municipal Stormwater Permit](#) (Permit) , which authorizes the discharge of stormwater from the City's Municipal Separate Storm Sewer System (MS4) into Waters of the State (such as streams, lakes, and Puget Sound). As an MS4 owner and operator, the City is required to comply with Permit requirements. The City's Surface Water Utility (Utility) is primarily responsible for ensuring the City's compliance with the Permit.

The 2019-2024 issuance of the Permit (specifically, Section S5.C.8), requires all Permittees to implement a new Source Control Program to proactively reduce sources of potential pollutants entering runoff within areas of existing development. A first step of this requirement is for the City to develop and adopt an ordinance to codify support for this program no later than August 1, 2022. To comply with this Permit requirement, updates to the City's Surface Water Utility Code Chapter (SMC 13.10) are needed.

DISCUSSION

The Permit requires the City to begin conducting inspections for the new Permit-required Source Control program in 2023. The Source Control Program actions by City staff will focus on:

- Inspecting private and public sites assessed and prioritized as highest risk for being a source of stormwater pollutants.
- Providing education on the appropriate source control best management practices (BMPs) to prevent pollution to surface and groundwaters. Source control BMPs include "operational" BMPs which are action-based, and "structural" BMPs which are physical.
- Progressive enforcement approach that allows the City to utilize varying types and levels of compliance and enforcement techniques while working with public and private sites to address source control issues.

SMC Chapter 13.10 currently requires BMPs to be applied to any activity that might result in a prohibited discharge (SMC 13.10.330). To comply with the new Permit requirements, proposed Ordinance No. 943 (Attachment A) revises and expands this code section to manage surface water pollution risk in a broader set of circumstances and allow the Utility to conduct inspections ensuring proper source control BMPs are in place and maintained.

Specifically, proposed Ordinance No. 943:

- Adds new definitions for “Operational Source Control BMP”, “Source Control BMP”, and “Structural Source Control BMP” to this Code Chapter (SMC 13.10.105).
- Expressly requires source control BMPs for all properties within the City that are engaged in pollution generating activities that have the potential to discharge pollutants into the City’s MS4 or Waters of the State (SMC 13.10.330(A)).
- Allows the Public Works Director to require any property owner that is, or may be, the source of a prohibited discharge or stormwater pollutant to implement, at their own expense, additional operational or structural source control BMPs to prevent stormwater pollution or illicit discharges (SMC 13.10.330(A)).
- Expands allowable inspections to include inspections of any potential pollutant generating source on all public and private properties in the City (SMC 13.10.340(A)).
- Expands inspection activities to include the inspection of sites to ensure that the required source control BMPs have been adequately implemented (SMC 13.10.340(A)).

Proposed Ordinance No. 943 makes no changes to the Utility’s violation code (SMC 13.10.400) or the City’s enforcement policy (SMC 20.30.720 - 20.30.790). Review of these code sections found them already compliant with the new Permit requirements.

Inspection Site Inventory

The Permit requires the City to finalize the initial inventory of sites to be potentially subject to Source Control Program inspections by August 1, 2022. The Source Control site inventory includes only business and institutional sites considered higher-risk for pollution-generating activities. For example, while there are approximately 7,400 business licenses in the City, the estimated number of sites within the Source Control Program initial inventory is 550, which also includes a number of non-business governmental or institutional sites.

The City is required to conduct a number of annual Source Control inspections equal to 20% of the inventory, or approximately 110 inspections under the initial inventory. The specific sites inspected in a given year will be selected based on a pollution risk assessment of each site, which includes complaints, site history, and on-site activities and land uses. The inventory will be thoroughly reviewed and updated approximately every five years (once per Permit cycle) at minimum.

Inspection Process

For all sites within the Source Control Program inventory, the City is required to provide information (through education and technical assistance programs) about activities that may generate pollutants, and BMPs applicable to those activities. For inspected sites, if it is determined that a site has an unmanaged high risk of stormwater pollution and/or inadequate existing source control BMPs, the City will take appropriate follow-up actions, including communications and/or follow-up inspections as needed to work with the property owner to ensure proper source control BMPs are implemented to manage the pollution risk.

The Permit directs the City to take enforcement action for sites failing to adequately implement BMPs after the City's follow-up actions. Based on data from other jurisdictions, staff expect enforcement cases would be rare (estimated at 1% of inspected sites, or roughly one case per year) and would likely apply only to the most egregious cases of non-compliance, especially during the initial years of program implementation.

As noted above, Source Control Program enforcement does not require any code changes, and therefore enforcement for this program would be consistent with enforcement for any other code violations currently authorized under SMC 13.10.400. Such violations are subject to enforcement under SMC 20.30.720 through 20.30.790.

COUNCIL GOAL ADDRESSED

This proposed amendment supports the City Council's commitment to "deliver highly-valued public services through management of the City's infrastructure and stewardship of the natural environment" as stated in Council Goal #2 from the 2020-2022 work plan.

RESOURCE/FINANCIAL IMPACT

The 2018 Surface Water Master Plan allocated an annual budget amount of \$86,780 for initial development and implementation of the Business Inspection Source Control program (as part of the Proactive Management Strategy selected by Council). This budget has been sufficient to date for Source Control Program development. Staff are currently reviewing and updating the estimated costs for implementing this program, which will be integrated into the 2023-2024 biennial budget, and further reviewed and refined for future budgets under the 2024 Surface Water Master Plan Update.

RECOMMENDATION

No action is required by the City Council regarding proposed Ordinance No. 943 tonight. This meeting will provide an opportunity for the City Council to ask questions and provide staff direction on these proposed code amendments. Proposed Ordinance No. 943 amending the Shoreline Municipal Code Chapter 13.10 is scheduled to return to Council for action on May 2, 2022.

ATTACHMENTS

Attachment A – Proposed Ordinance No. 943

Attachment A, Exhibit A – Proposed Amendments to Shoreline Municipal Code Chapter 13.10 Surface Water Utility

ORDINANCE NO. 943

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON,
AMENDING SHORELINE MUNICIPAL CODE CHAPTER 13.10
SURFACE WATER UTILITY TO BE CONSISTENT WITH THE
WESTERN WASHINGTON PHASE II NPDES PERMIT.**

WHEREAS, the United States Environmental Protection Agency (EPA), under authority granted to it in the Clean Water Act's National Pollution Discharge Elimination System (NPDES) program, has adopted regulations for municipal stormwater systems; and

WHEREAS, as authorized by the EPA, the Washington State Department of Ecology (Ecology) updated and reissued the 2007 Western Washington Phase II Municipal Stormwater Permit (Phase II Permit) on July 1, 2019; it will be effective until July 31, 2024; and

WHEREAS, Chapter 13.10 Surface Water Utility of the Shoreline Municipal Code (SMC) seeks to protect and enhance water quality of water courses, water bodies, groundwater, and wetlands in a manner pursuant to and consistent with Ecology's Phase II Permit; and

WHEREAS, as an operator of a municipal separate storm sewer system (MS4), the City of Shoreline is subject to the Phase II Permit and must update its stormwater-related regulations to maintain consistency with the requirements of the Phase II Permit; and

WHEREAS, the Phase II Permit requires the City adopt regulations requiring the application of source control Best Management Practices (BMPs) for pollutant generating sources that have the potential to discharge contaminants to surface water, stormwater, or groundwater; and

WHEREAS, the City determined the necessary amendments to SMC Chapter 13.10 Surface Water Utility to ensure consistency with the Phase II Permit; and

WHEREAS, the proposed amendments to SMC Chapter 13.10 bear a substantial relationship to, and are necessary for, the public health, safety, and general welfare of the City and its residents, and will provide increased protection to the City's wetlands, streams and lakes, and groundwater resources; and

WHEREAS, on April 18, 2022, the City Council held a study session on the proposed amendments; and

WHEREAS, the City Council has considered all relevant information in the public record and all public comments, written and oral;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Amendment – Chapter 13.10 Surface Water Utility. SMC Chapter 13.10 Surface Water Utility is amended as set forth in Exhibit A to this Ordinance.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this Ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 3. 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 person or situation.

Section 4. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five (5) days after publication.

PASSED BY THE CITY COUNCIL ON MAY 2, 2022.

Mayor Keith Scully

ATTEST:

APPROVED AS TO FORM:

Jessica Simulcik Smith
City Clerk

Julie Ainsworth-Taylor, Assistant City Attorney, on
behalf of Margaret King, City Attorney

Date of Publication: _____, 2022
Effective Date: _____, 2022

Chapter 13.10

SURFACE WATER UTILITY

The following additional terms are added to SMC 13.10.105. The Code Reviser shall insert these terms alphabetically within the existing definitions:

13.10.105 Definitions.

“Operational Source Control BMP” means non-structural practices that prevent or reduce pollutants from entering stormwater.

“Source Control BMP” means a structure or operation that is intended to prevent pollutants from coming into contact with stormwater through physical separation of areas of careful management of activities that are sources of pollutants.

“Structural Source Control BMP” means a physical, structural, or mechanical device, or facilities that are intended to prevent pollutants from entering stormwater or remove pollutants from stormwater.

13.10.330 General requirements.

A. Requirement to Implement Best Management Practices.

1. Prohibited Discharges. Best management practices (BMPs) as specified in the Stormwater Manual shall be applied to any activity that might result in a prohibited discharge. Examples of aActivities that may result in prohibited discharges include, but are not limited to, the following:

- a. Land disturbing activity;
- b. Potable water line flushing;
- c. Lawn watering with potable water;
- d. Dust control;
- e. Vehicle and boat washing;
- f. Pavement and building washing;
- g. Swimming pool and hot tub maintenance;
- h. Auto repair and maintenance;
- i. Building repair maintenance;
- j. Landscape maintenance;
- k. Dangerous waste handling;
- l. Solid and food waste handling; and
- m. Pesticide application.

2. Source Control of Pollution. Source control BMPs shall be applied to all properties within the City that are engaged in pollution generating activities that have the potential to discharge pollutants into the stormwater drainage system or waters of the state, regardless of whether the property is covered under a separate NPDES

permit. Pollutants shall be controlled by implementing appropriate source control BMPs as specified in the Stormwater Manual. Pollutants associated with land uses or activities not addressed in the Stormwater Manual shall be controlled using BMPs reviewed and accepted by the City. The owner or operator of a residential, commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the stormwater drainage system or waters of the state through the use of structural and nonstructural BMPs as defined in the Stormwater Manual. The director may require any person responsible for a property or premises which is, or may be, the source of an illicit discharge to implement, at their own expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants into the stormwater drainage system.

3. If upon inspection of existing BMPs, the director determines that the BMPs are inadequate at controlling prohibited discharges or pollutants, the director may require any person responsible for a property or premises which is, or may be, the source of a prohibited discharge or pollutant to implement, at their own expense, additional operational or structural BMPs/facilities to prevent the further discharge of prohibited stormwater discharges or pollutants.

B. Watercourse Protection. Any person owning property through which surface water or waters of the state passes shall keep and maintain that part of the watercourse within the property free of any activities or items that would pollute or contaminate the flow of water through the watercourse.

C. Notification of Spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation has information of any known or suspected illegal discharge into the surface water, stormwater drainage system, or water of the state, 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 nonhazardous materials, said person shall notify the city no later than the next business day. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years after the date of the spill.

D. Declaration of Emergency. The director shall make determination of emergency as defined in this chapter and authorize representatives of the utility or enforcement officers to take necessary abatement action during an emergency situation, to conduct inspections, take remedial action, or to carry out other duties imposed or required by this code subject to the provisions of this chapter.

13.10.340 Inspections and investigations and illicit discharges.

A. The director is authorized to establish inspection programs. Inspection programs may include: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other pollutant or pollutants; inspection of any potential pollution generating source on all public and private properties in the City inspections of businesses or industries of a type associated with higher than usual discharges of pollutant or pollutants; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; screening for or tracking illicit discharges or illicit connections; inspecting land uses and potential pollution generating activities to ensure that appropriate source control BMPs are implemented and maintained, and evaluating the condition of drainage control facilities and other BMPs, including those located on private property.

B. Property owners shall allow access, with reasonable notice from the city, to all parts of the premises for the purpose of inspection, sampling, examination, abatement, and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law. In an event of emergency, reasonable notice is not required.

C. The director shall have the right to set up necessary equipment to conduct monitoring or sampling of discharge from stormwater facilities.

D. The director has the right to require the property owner to install stormwater facility monitoring equipment as necessary. Sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition at the property owner's expense. All devices used to measure stormwater flow and water quality shall be calibrated to ensure their accuracy.

E. Any temporary or permanent obstruction to the facility to be inspected and/or sampled shall be promptly removed by the property owner at the written or oral request of the director. Such obstructions shall not be replaced. The costs of removing obstructions shall be borne by the property owner.