

**ORDINANCE NO. XXXX**

**AN ORDINANCE AMENDING ORDINANCE NO. 1600 AND ORDINANCE NO. 1634 THAT REGULATE THE PUBLIC USE OF THE CITY OF KALISPELL STORMWATER FACILITIES THROUGH THE REGULATION OF CONSTRUCTION ACTIVITIES THAT IMPACT THE CITY STORMWATER SYSTEM PURSUANT TO THE NPDES PHASE II STORMWATER PROGRAM OF THE ENVIRONMENTAL PROTECTION AGENCY, THROUGH THE REGULATION OF POST-CONSTRUCTION STORMWATER MANAGEMENT FACILITIES PURSUANT TO THE NPDES PHASE II STORMWATER PROGRAM OF THE ENVIRONMENTAL PROTECTION AGENCY, AND THROUGH THE REGULATION OF THAT REGULATE THE INTRODUCTION OF POLLUTANTS INTO THE CITY MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PURSUANT TO THE NPDES PHASE II STORMWATER PROGRAM OF THE ENVIRONMENTAL PROTECTION AGENCY REQUIREMENTS OF THE MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) PERMIT PROCESS, DIRECTING THE CITY ATTORNEY TO CODIFY SAME, AND DECLARING AN EFFECTIVE DATE.**

**WHEREAS** the City of Kalispell owns, operates and maintains stormwater facilities for the benefit and welfare of its inhabitants; and

**WHEREAS** the City of Kalispell has the obligation to comply with all federal and state regulations regarding the operation and maintenance of its stormwater facilities to minimize the risks to people and the environment that may be compromised by stormwater discharge; and

**WHEREAS** the purpose of regulating, and controlling the design, construction, use, and maintenance of any development or other activity which disturbs or breaks the topsoil or results in the movement of earth on land in the city is to safeguard persons, protect property, prevent damage to the environment and promote the public welfare, as well as meet the requirements set forth in the NPDES Phase II Storm Water Program of the Environmental Protection Agency as administered by the Montana State Department of Environmental Quality; and

**WHEREAS** the purpose of regulating, and controlling the maintenance and function of post—construction stormwater management controls in the city is to safeguard persons, protect property, prevent damage to the environment and promote the public welfare, as well as meet the requirements set forth in the NPDES Phase II Storm Water Program of the Environmental Protection Agency as administered by the Montana State Department of Environmental Quality; and

**WHEREAS,** the purpose of regulating the introduction of pollutants into the municipal separate storm sewer system (MS4) is to comply with requirements set forth in the NPDES Phase II Storm Water Program of the Environmental Protection Agency as administered by the Montana State Department of Environmental Quality and to ultimately protect the environment as well as the health, safety, and general welfare of the citizens of Kalispell; and

**WHEREAS,** it is necessary and prudent to update the stormwater regulations from time to time in order to maintain compliance with federal and state law and to insure that the ordinances are consistent and unambiguous.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KALISPELL, MONTANA, AS FOLLOWS:

**SECTION 1** Ordinances No. 1600 and Ordinance No. 1634, codified at Chapter 23A of the Kalispell Municipal Code shall be and are amended as set forth in Exhibit “A”, attached hereto and incorporated fully herein.

**SECTION 2** The City Attorney is directed to cause this Ordinance to be codified in the Kalispell Municipal Code.

**SECTION 3** This Ordinance shall be effective thirty (30) days from and after the date of its final passage and approval.

PASSED AND APPROVED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR  
THIS \_\_ DAY OF \_\_\_\_\_, 2019.

ATTEST:

\_\_\_\_\_  
Mark Johnson  
Mayor

\_\_\_\_\_  
Aimee Brunckhorst, CMC  
City Clerk

## EXHIBIT "A"

### Kalispell Municipal Code Chapter 23A

#### *Article 1 TITLE AND DEFINITIONS*

##### 23A-1 Title.

The City of Kalispell hereby adopts the following ordinance codified in this chapter, which shall be entitled REGULATION OF STORMWATER DISCHARGES RESULTING FROM CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES.

23A-2 Definitions. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this chapter, except where the context clearly indicates a different meaning:

AUTHORIZED ENFORCEMENT AGENCY: The City of Kalispell and its employees and agents as designated by the City Manager. ~~Employees or designees of the director of the municipal agency designated to enforce this article.~~

BELOWGROUND INSTALLATIONS: Activity that causes sediment laden water, concrete sawing wash water, wash water or drilling mud pumped from an excavation or structure and shall be treated as sediment laden runoff for erosion control purposes.

BEST MANAGEMENT PRACTICES (BMPS): Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

~~BMPS: Best management practices.~~

CITY: The City of Kalispell and its employees designated by the City Manager with the authority to inspect or enforce stormwater compliance.

CLEAN WATER ACT: The federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITIES: Construction activities that require a building permit, activities subject to MPDES construction permits and/or activities subject to City Construction Stormwater management Permits. These include construction projects resulting in land disturbance in which the total volume of material disturbed, stored, disposed of or used as fill exceeds five (5) cubic yards or the area disturbed exceeds one thousand (1000) square feet. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

CONSTRUCTION SITE BMP MANUAL: The Montana Department of Transportation Erosion and Sediment Control Best Management Practices (BMP) Reference Manual and Field Manual, as amended from time to time. ~~A current copy of the manuals shall be kept on file in the Kalispell City Public Works Office and shall be available to the public for the cost of reproduction.~~

EPA: Environmental Protection Agency.

ESC: Erosion and sediment control.

FINAL APPROVAL: Completion of a project, site or building in accordance with City requirements and ordinances. In the case of a building, a certificate of occupancy is issued. In case of a subdivision, when the two (2) year warranty and maintenance bond has been submitted and the appointed public works employee certifies all work is complete.

HAZARDOUS MATERIALS: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLEGAL DISCHARGE: Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 23A-13 of this article.

ILLICIT CONNECTIONS: An illicit connection is defined as:

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

INDUSTRIAL ACTIVITY: Activities subject to NPDES industrial stormwater permits as defined in 40 CFR, Section 122.26 (b)(14).

LAND DISTURBING ACTIVITY: Any activity, including, but not limited to, excavation, planting, tilling, and grading, which disturbs the natural or improved vegetative ground cover so as to expose soil to the erosive forces of rain, stormwater runoff or wind. All installations and maintenance of franchise utilities such as telephone, gas, electric, etc., shall be considered land disturbing activities.

~~MS4: Municipal separate storm sewer system.~~

MPDES: The Montana Pollutant Discharge Elimination System as administered by the State Department of Environmental Quality.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Kalispell and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

NPDES: The National Pollutant Discharge Elimination System as administered by the Environmental Protection Agency.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)  
STORMWATER DISCHARGE PERMIT: A permit issued by EPA (or by a state under authority delegated pursuant to 33 U.S.C Section 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

NON-STORMWATER DISCHARGE: Any discharge to the storm drain system that is not composed entirely of stormwater.

OFF-SITE BORROW AREA: A source of earth fill material used in the construction of embankments or other earth fill structures, that is located on another parcel of property within the City limits other than where the principal construction is occurring.

OFF-SITE SEDIMENTATION: Deposit of soil material beyond the limits of the property undergoing land disturbing activity or in City streets, alleys or drainage facilities in an amount sufficient to constitute a threat to public safety and comfort or to the environment.

OFF-SITE SPOIL AREA: An area on another parcel of property, within the City limits, other than where the principal construction is occurring, where excess earth, rock or construction material is disposed.

~~PERMANENT EROSION CONTROL DEVICES (FINAL STABILIZATION): Devices or Practices installed prior to final approval and maintained after final approval to prevent or minimize the erosion and deposit of soil materials. Such controls devices may include, but shall not be limited to, permanent seeding, sod, landscaping/vegetation, and hydroseed. storm drain channels, channel linings, storm drainpipes, outlet velocity control structures and stormwater detention structures.~~

~~PERMANENT GROUND COVER: Permanent vegetative cover on all bare soil areas of a property not covered by a permanent structure or landscaping improvements, including, but not~~

~~limited to, live sod, perennial grasses or other materials which lessen runoff and soil erosion on the property.~~

PERSON: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; sediment, refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; detergents, pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

POST-CONSTRUCTION STORMWATER MANAGEMENT CONTROLS: Best management practices (BMPs) which are used to control stormwater and potential pollutants in stormwater discharges that will occur after construction operations have been completed. Such controls may include, but shall not be limited to, biofiltration swale, bioretention, dispersion, extended detention basin, infiltration basin, proprietary treatment devices, and wet detention basin.

PREMISES: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

RELATED LAND AREA: Includes the property where the principal land disturbing activity is taking place, all adjacent property, off-site borrow areas, off-site spoil areas, off-site properties necessary for required utility extensions, and off-site areas for required street improvements.

RESPONSIBLE PARTY: A business entity, franchised utility company, developer, property owner, contractor or holder of a building stormwater permit who is required to comply with the terms of this chapter.

STAGING AREA: An on-site or off-site location used by a contractor to store materials for a project, to assemble portions of equipment or structures, to store equipment or machinery, to park vehicles, or for other construction-related uses.

STOP WORK ORDER: The suspension of all City permits with no approvals or inspections of work for the site or project being performed. Apart from stabilizing ESC BMPs, no work shall be done on the site.

STORM DRAINAGE SYSTEM: Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

STORMWATER: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORMWATER MANAGEMENT PLAN: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

~~TEMPORARY EROSION CONTROL DEVICES: Devices installed or practices implemented and maintained during land disturbing activities to prevent, minimize or control the erosion and deposit of soil materials.~~

WASTEWATER: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

## **Article 2 ~~EROSION CONTROL PLAN CONSTRUCTION SITE STORMWATER~~ MANAGEMENT**

### **23A-3 Required Best Management Practices (BMPs) ~~Erosion Control Required.~~**

A. *Duty of Party in Control of Property to Prevent Soil, Mud, Rock, Pollutants or Debris From Washing, Tracking or Being Carried by the Wind, Off-Site Onto Public Streets, Alleys, etc.:* It shall be unlawful and shall constitute a public nuisance for any person or business entity, whether owner, lessee, agent, employee, or otherwise, having control of real property within the city to permit soil, mud, rock, pollutants or debris to wash, slide, erode or otherwise be moved from said real property onto streets, alleys, utility facilities, storm drains, rights-of-way or easements or receiving waters. It shall be the duty of each party in control thereof to prevent soil, mud, rock, pollutants or debris from such real property being deposited or otherwise transported onto the streets, alleys, storm drains, utility facilities, rights-of-way, easements or receiving waters of the city.

B. ~~Erosion Control Plan~~ *Implementation and Compliance of Best Management Practices:* A responsible party engaging in any land disturbing activity, or any construction activities shall prepare and submit a Construction Stormwater management Permit to the Kalispell Department of Public Works. If applicable, a building permit will not be issued for the site until the associated Construction Stormwater Permit is approved.

1. Greater or Equal to One Acre: Land disturbing activity of one acre or greater or construction activity that is part of larger common plan of development or sale that would disturb one acre or more shall submit shall prepare and submit a Construction Stormwater management Permit, for review and approval by the City of Kalispell Public Works Department, containing the following:

- a. A copy of the notice of intent (NOI), the stormwater pollution prevention plan (SWPPP), and the ~~notice of termination~~ confirmation letter in accordance with the Montana Pollutant Discharge Elimination System General Permit for Stormwater Discharges Associated with Construction Activity, permit number MTR100000;
- b. A complete Construction Stormwater management Permit application form;
- c. ~~A complete stormwater management checklist.~~ A map of the construction site showing the location of the selected BMPs;
- d. A City of Kalispell Construction Stormwater Permit fee of forty-five dollars (\$45.00) for one acre or greater shall be submitted by the responsible party at the time of filing.

2. Less Than One Acre: Land disturbing activity of less than one acre is not required to comply with MPDES general permit number MTR100000, but shall prepare and submit a Construction Stormwater Permit management plan, for review and approval by the City of Kalispell Public Works Department, containing the following:

- a. A complete Construction Stormwater Management Permit application form;
- b. ~~A checklist with a narrative statement of erosion and sediment controls to be used at the construction site;~~
- c. ~~A checklist with a narrative statement of pollution prevention practices to be used at the construction site;~~
- d. A map of the construction site showing the locations of the selected BMPs.
- c. A City of Kalispell Construction Stormwater Permit fee of ten dollars (\$10.00) for less than one acre shall be submitted by the responsible party at the time of filing.

3. Notice of Termination (NOT): Land disturbing activity with a Construction Stormwater Permit shall submit an NOT once permanent erosion control has been established on seventy percent (70%) or greater of disturbed areas. Additionally, for NOT approval all temporary BMPs must be removed, all construction equipment and vehicles must be removed, and all potential pollutant-generating activities due to construction activity must cease.



C. *Implementation and Maintenance of Best Management Practices* ~~Erosion Control Measures~~: Each responsible party shall implement and maintain BMPs ~~erosion control measures~~ to minimize the erosion and the transport of silt, earth, topsoil, etc., by water runoff or construction activities, beyond the limits of the responsible party's site onto city streets, drainage easements, drainage facilities, storm drains or other City property prior to beginning any land disturbing activity. On all regulated construction projects, the construction stormwater minimum standards described as Non-Numeric Technology Based Effluent Limits in the most current Montana DEQ General Permit for Storm Water Discharges Associated with Construction shall be implemented. ~~A City of Kalispell stormwater management permit fee of ten dollars (\$10.00) for less than one acre by the responsible party at the time of filing the building permit and forty five dollars (\$45.00) for one acre or greater shall be submitted by the responsible party at the time of filing.~~

D. *Off-Site Borrow, Spoil and Staging Areas*: Where applicable, off-site borrow areas, spoil areas and construction staging areas within the City limits shall be considered as part of the project site and shall be governed by this chapter.

E. *Related Land Areas*: The erosion control requirements of this chapter shall apply to all related land areas. Additionally, when land disturbing activity occurs on a project, all disturbed land areas related to the project shall have permanent erosion control BMPs established before final occupancy of structures located thereon or final acceptance of the subdivision may be obtained. This subsection applies whether or not a building permit is required.

F. *Below-Ground Installations*: All discharges resulting from below-ground installations shall be passed through City-approved BMPs ~~erosion control device(s)~~ or removed from the site and properly disposed.

G. *Exclusions*: ~~No site development~~ Construction Stormwater Permit is required for the following activities: Any emergency activity that is immediately necessary for the protection of life, property or natural resources.

#### 23A-4 Stormwater Management Plan Requirements Generally.

~~Each erosion control plan required by this chapter shall clearly identify all erosion and sediment control measures to be installed and maintained throughout the duration of the project for which that plan is submitted. For land disturbing activity of one acre or greater, the responsible party shall install and maintain erosion control devices in accordance with MPDES or NPDES general permit for stormwater discharges associated with construction activity requirements.~~

#### 23A-46 Franchised Utilities Companies.

Subject to the terms of its franchise agreement with the City, including, but not limited to, terms regarding permits, a franchised utility company engaging in land disturbing activities within the City shall comply with the following:

A. *Construction Stormwater ~~Management~~ Permit*: Prior to beginning any land disturbing activity a Construction Stormwater management Permit shall be obtained as outlined in Section 23A-3, Required Best Management Practices (BMPs) Erosion Control Required.

B. *Emergency Construction*: Construction activity in response to emergencies where services are being restored by a franchised utility company are not subject to the requirements for filing a Construction Stormwater management Permit. At the conclusion of emergency construction activity, the utility company responsible for construction activities should take any needed action to clean up or contain sediment or debris resulting from the emergency construction activity.

#### 23A-5 Design Requirements.

A. *Design Criteria*: Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the Erosion and Sediment Control Best Management Practices (BMP) Reference Manual, and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the City.

B. *Clearing and Grading*:

1. Clearing and grading of natural resources, such as water bodies and wetlands, shall not be permitted, except when in compliance with all other required permits.

2. Clearing techniques that retain natural vegetation and retain natural drainage patterns, as described in the Construction Site BMP Manual, shall be used to the satisfaction of the City.

3. Phasing shall be required on all sites disturbing equal to or greater than thirty acres, with the size of each phase to be established at plan review and as approved by the City.

4. Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.

C. *Erosion Control*:

1. Soil must be stabilized using recommended methods described in the Construction Site BMP Manual.

a. Erosion seeding is the immediate seeding on cut and fill slopes steeper than 3:1 that will not undergo further disturbance.

b. Temporary seeding is the establishment of a temporary vegetative cover on areas with a slope of 3:1 or flatter that will be exposed for longer than fourteen (14) days and can undergo further disturbance.

2. Soil stockpiles must be stabilized or covered at the end of each workday.
3. Techniques shall be employed to prevent the blowing of dust or sediment from the site.
4. Techniques that divert upland runoff past disturbed slopes shall be employed.

D. *Sediment Controls:*

1. Sediment controls shall be provided in the form of settling basins or sediment traps or tanks, temporary seeding, perimeter controls or other methods described in the Construction Site BMP Manual.
2. Where possible, settling basins shall be designed in a manner that allows adaptation to provide long-term stormwater management.
3. Adjacent properties shall be protected by the use of a vegetative buffer, silt fence, fiber rolls, or other BMPs outlined in the Construction Site BMP Manual.

E. *Winterization:*

1. Winterization BMPs described in the Construction Site BMP Manual shall be implemented on projects prior to seasonal shut downs or downtime of one month or longer.

F. *Waterways and Watercourses:*

1. When a watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided and an approval obtained from the City and all other authorized permitting agencies.
2. When in-channel work is conducted, the channel shall be stabilized before, during and after work.
3. All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the current edition of the City of Kalispell Standards for Design and Construction.
4. Stabilization adequate to prevent erosion must be provided at the outlets of all pipes and paved channels.

G. *Construction Site Access:*

1. A temporary access entrance shall be provided at all sites and shall be in accordance with the current edition of the City of Kalispell Standards for Design and Construction.
2. Other measures may be required at the discretion of the City in order to ensure that sediment is not tracked onto public streets by construction vehicles, or washed into storm drains.

H. *Removal of Temporary BMPs ~~Erosion Control Devices~~:* Upon establishing seventy percent (70%) or greater permanent ground cover on a lot, all temporary erosion control devices shall be removed.

**~~Article 3 STORMWATER MANAGEMENT~~**

**23A-67 Construction Waste Management.**

Construction site operators must, at a minimum, control waste such as discarded building materials, concrete truck washout water, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. This includes:

- A. Operators must keep solid waste materials in either a secure enclosed container or an enclosed waste collection area on site that does not receive a substantial amount of runoff from upland areas and that does not drain directly to a water body, and that prohibits pollutant runoff from the construction site, and that does not allow wind-blown debris to leave the site.
- B. Chemicals, paint, petroleum, fertilizer, and pesticides must be stored in a covered enclosure
- C. Above ground petroleum storage tanks must be placed in a bermed enclosure.
- D. Empty/unused chemical containers must be disposed of in accordance with label instructions.
- E. Potentially hazardous waste must be segregated from nonhazardous waste.
- F. Daily cleanup of construction sites must ensure that all litter is contained in an appropriate enclosure or container so as not to accumulate on the ground.
- G. All construction site wastes must be disposed of at authorized disposal facilities.
- H. Recycling of waste material is encouraged where feasible.

I. Concrete truck washout water that is contained on site shall be in a designated washout pit, and concrete residue removed at conclusion of construction.

J. Sanitary waste facilities should be located a minimum of fifteen feet (15') from storm drain inlets and receiving waters, and the facilities must be self-contained.

#### 23A-78 Inspection and Review.

A. ~~Site plan~~ Permit review and inspection programs aid in compliance and enforcement, and provide an opportunity for guidance and education.

1. The City shall perform a site plan review for consideration of potential water quality impacts at the time of filing the Construction Stormwater management Permit.

2. The City shall establish appropriate frequencies for inspection of construction stormwater pollution prevention measures at all active construction sites.

3. The City shall require notification from a construction site operator prior to start or upon completion of various stages of construction on a schedule approved by the City.

B. The permittee or his or her agent will be required to perform regularly scheduled site inspections (at least every fourteen (14) days) and after major storm events to ensure all accepted BMPs have been constructed and are functioning properly. The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in written form and made available for review by the City.

### **Article 3 POST-CONSTRUCTION STORMWATER MANAGEMENT**

#### 23A-8 Applicability.

This program applies to the permitting of post-construction stormwater control structures within the MS4 area of the City of Kalispell. Both new and existing structures that meet the criteria will be permitted.

#### 23A-9 Agency Inspections.

The City of Kalispell's Public Works Department or an authorized inspection agent may inspect, at a reasonable time and in a reasonable manner, anything that affects or may affect the quality of the waters of the state, including but not limited to the premises of existing post-construction stormwater control structures; or the premises for which an application has been filed with the department for plan or permit approval; or the premises for which the department has issued a stormwater construction permit or stormwater maintenance permit.

## 23A-10 Stormwater Maintenance Permit.

### A. Permit Application

1. Projects required to obtain and maintain a stormwater maintenance permit are projects that require post-construction stormwater management practices under the City of Kalispell's Standards for Design and Construction. The application is initiated during the City of Kalispell's engineering plan review.
2. The developer and owner of a site must certify that the application is being submitted on their behalf.
3. To obtain a permit, an owner must file an application on the Public Works Department's website. The application must be accompanied by the following:
  - a. Permanently responsible party, including the name and contact information for the person or company designated to inspect and maintain the practices;
  - b. An operation and maintenance manual, in an electronic format acceptable to the department;
  - c. As-built plan of the site's stormwater management practices, including inverts in and out of all structures, at a scale no less than 1" to 50' in an electronic format acceptable to the department signed and sealed by a qualified professional;
  - d. Notice of termination (NOT) submitted electronically for the related construction stormwater management permit.

### B. Permits for post-construction stormwater management practices are not required for the following:

1. Development projects that do not trigger a post-construction stormwater management practice under the City of Kalispell Standards for Design and Construction; and
2. Installation of underground, linear utilities, such as gas lines, fiber-optic cable, cable TV, electric, telephone, sewer mains, and water mains where surface will be restored to the existing condition and no stormwater facility is constructed.

### C. Permit Conditions

1. Perform an inspection every year by October 1. The owner or owner's representative must electronically file inspections to the department that certify

the stormwater management practices are operating as designed. Inspections forms are located on the Public Works Department's website.

a. Permits approved after April 1 will not be required to submit an inspection until the subsequent year.

2. The owner of the site must renew the stormwater maintenance permit every five years. An electronic application for renewal found on the Public Works Department's website must be submitted by October 1 of the fifth year and must be accompanied by a report certified by a professional engineer that the stormwater management practices are operating as designed.

a. At a minimum, the report must include an inspection of the control comparing the as-built plan and operation and maintenance manual to determine if the control is operating as designed and if maintenance is required. If the control requires maintenance or other changes, the report shall contain mitigation measures required and a timeline to complete measures prior to the next required inspection.

3. A licensed professional engineer must perform inspections and certifications of any post-construction stormwater management practices that include structural components.

4. The owner of the site must notify the department of any sale or conveyance of the premises and must provide the name of and contact information for the new owner.

*D. Modification of a post-construction stormwater management practice design covered by a stormwater maintenance permit*

1. Should the owner wish to modify the design of a stormwater management practice covered by a stormwater maintenance permit, the owner must submit notification of the modification for engineering review and approval by Public Works.

2. The modification of the stormwater maintenance permit must include calculations and supporting documentation to demonstrate that the practice is at least as protective of water quality as the existing practice and that it controls stormwater flows as required by the City of Kalispell's Standards for Design and Construction.

3. The department will review the modification and supporting material following the criteria for new stormwater maintenance applications.

*E. Agency Inspections.* The City of Kalispell's Public Works Department or an authorized inspection agent may conduct periodic inspections to ensure that post-

construction stormwater management practices are maintained in good working condition to meet the applicable design and water quality standards.

F. *Recordkeeping.* The owner must keep and maintain records of all inspections and tests required after construction for five years after performance of such inspections or tests. The owner must keep and maintain all as-built drawings for the life of the post-construction stormwater management facility.

## ***Article 45 CONTROL OF POLLUTANTS INTO STORM SEWER SYSTEM***

### **23A-11 Definitions.**

For the purposes of this article, the following terms shall mean:

~~AUTHORIZED ENFORCEMENT AGENCY: Employees or designees of the director of the municipal agency designated to enforce this article.~~

~~BEST MANAGEMENT PRACTICES (BMPS): Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.~~

~~CITY: The City of Kalispell, the Department of Public Works and its designees.~~

~~CLEAN WATER ACT: The federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.~~

~~CONSTRUCTION ACTIVITY: Activities subject to MPDES construction permits and city stormwater management permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.~~

~~HAZARDOUS MATERIALS: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.~~

~~ILLEGAL DISCHARGE: Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 23A-18 of this article.~~

~~ILLICIT CONNECTIONS: An illicit connection is defined as:~~



1. — Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allows any non-stormwater discharge including sewage, process wastewater, and/or wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency, or

2. — Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

~~INDUSTRIAL ACTIVITY: Activities subject to NPDES industrial stormwater permits as defined in 40 CFR, Section 122.26 (b)(14).~~

~~MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Kalispell and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.~~

~~NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT: A permit issued by EPA (or by a state under authority delegated pursuant to 33 U.S.C Section 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.~~

~~NON-STORMWATER DISCHARGE: Any discharge to the storm drain system that is not composed entirely of stormwater.~~

~~PERSON: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.~~

~~POLLUTANT: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; sediment, refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; detergents, pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.~~

~~PREMISES: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.~~

~~STORM DRAINAGE SYSTEM: Publicly owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets,~~

~~gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.~~

~~STORMWATER: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.~~

~~STORMWATER MANAGEMENT PLAN: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.~~

~~WASTEWATER: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.~~

#### 23A-11 Applicability.

This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Kalispell.

#### 23A-1213 Responsibility for Administration.

~~The Kalispell City Department of Public Works~~ City of Kalispell, through the Office of City Manager and those he shall delegate within the Department of Public Works or as agents of the City shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the ~~Kalispell City Department of Public Works~~ City of Kalispell may be delegated in writing by the ~~City Manager~~ Director of the Public Works Department to persons or entities acting in the beneficial interest of or in the employ of the ~~City Department~~.

#### 23A-1317 Discharge Prohibitions.

A. *Prohibition of Illegal Discharges.* No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this article:
  - a. A discharge or flow resulting from fire fighting by the Fire Department;
  - b. A discharge or flow from lawn watering, or landscape irrigation;
  - c. A discharge or flow from a riparian habitat or wetland;

- d. A discharge of flow from a diverted stream flows, or natural spring;
- e. Uncontaminated ground water infiltration, and rising ground waters;
- f. A discharge or flow from individual residential car washing;
- g. Uncontaminated discharge of flow from a foundation drain, crawl space pumps, or footing drains;
- h. A discharge of flow from a potable water sources not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
- i. A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
- j. De-chlorinated drainage from private residential swimming pool and hot tubs; drainage from swimming pool and hot tub filter backwash is prohibited.

2. The following discharges are exempt from discharge prohibitions established by this article with written permission from the Director of Public Works:

- a. A discharge flow from water line flushing or disinfection that contains no harmful quality of total residual chlorine or any other chemical used in line disinfection;
- b. A discharge or flow of uncontaminated stormwater and groundwater pumped from an excavation;
- c. A discharge or flow from pumped uncontaminated groundwater;
- d. A discharge or flow from water used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
- e. Discharges associated with dye testing;
- f. Discharges associated with non-commercial or charity car washes.

3. The prohibition shall not apply to any non-stormwater discharge permitted under an MPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Montana Department of Environmental Quality (DEQ) provided that the discharger is in full compliance

with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has also been granted for such discharge to the storm drain system by the City of Kalispell Director of Public Works.

B. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
4. Improper connections in violation of this article must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Public Works Department.
5. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City of Kalispell requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of Kalispell Public Works Department.

23A-1418 Watercourse Protection.

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

23A-1519 Industrial and Construction Activity.

- A. Submission of Notice of Intent (NOI), Stormwater Pollution Prevention Plan (SWPPP) and Confirmation Letter from the State Department of Environmental Quality (DEQ) to City of Kalispell.

1. Any person subject to an industrial or construction activity MPDES discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Kalispell Public Works prior to the allowing of discharges to the MS4.
2. The operator of a facility, including construction sites, required to have an MPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the Notice of Intent (NOI), Stormwater Pollution Prevention Plan (SWPPP), and Confirmation Letter from the State Department of Environmental Quality (DEQ) to the City of Kalispell Public Works Department at the same time the operator submits the original NOT and SWPPP to the State Department of Environmental Quality (DEQ) as applicable.
3. The copy of the NOI, SWPPP shall be delivered electronically to the City of Kalispell Public Works Department, ~~either in person or by mailing it to:~~

~~City of Kalispell  
Public Works Department  
201 First Avenue East  
Kalispell, MT 59901~~

4. A person commits a violation of this Chapter ~~an offense~~ if the person operates a facility that is discharging stormwater associated with industrial activity without having submitted a copy of the NOI, SWPPP, and Confirmation Letter from the State Department of Environmental Quality (DEQ) ~~to do so~~ to the City of Kalispell Public Works Department.

#### 23A-1620 Compliance Monitoring.

##### *A. Right of Entry: Inspection and Sampling.*

The City of Kalispell shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article.

1. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City.
2. Facility operators shall allow the City of Kalispell ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an MPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

3. The City shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's stormwater discharge.

4 The City has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Unreasonable delays in allowing the City access to a permitted facility is a violation of a stormwater discharge permit and of this article. A person who is the operator of a facility with an MPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.

B. *Search Warrants.* If the City has been refused access to any part of the premises from which stormwater is discharged, and it is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

23A-1724 Requirement to Prevent, Control and Reduce Stormwater Pollutants by the Use of Best Management Practices.

The City of Kalispell will adopt requirements identifying best management practices for any activity, operation, or facility that may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premises that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid MPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the

provisions of this section. These BMPs shall be part of a storm pollution prevention plan (SWPPP) as necessary for compliance with requirements of the MPDES permit.

#### 23A-1822 Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City of Kalispell Director of Public Works in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Kalispell Department of Public Works within seven (7) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment 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 five (5) years. Failure to provide notification of a release as provided above is a violation of this Chapter article.

### ***Article 5 ENFORCEMENT, PENALTIES AND EXEMPTIONS***

#### 23A-19 Enforcement.

Enforcement of this Chapter will follow the procedures outlined in the most current Enforcement Response Plan (ERP) for Stormwater Management as approved by Resolution of the Kalispell City Council.

A. Violations of Article 2 of this Chapter: It is unlawful for any person to violate any provision or fail to comply with any of the requirements of Article 2 of this Chapter. Any person who has violated or continues to violate the provisions of this article, may be subject to the enforcement actions outlined in this section and the ERP or may be restrained by injunction or otherwise abated in a manner provided by law. Violations of Article 2 of this Chapter shall be a municipal infraction pursuant to Chapter 1, Article 2 of the Kalispell City Code for a responsible party or a third party performing work on a project to violate any of the requirements of those articles, including, but not limited to, the following:

1. Conducting any land disturbing or construction activity of greater than one acre without submitting a notice of intent to comply with NPDES or MPDES general permit for stormwater discharge associated with construction activity requirements for the location where the land disturbing activity occurred.

2. Failing to install BMPs erosion control devices or to maintain BMPs erosion control devices throughout the duration of land disturbing activities

3. Failing to obtain an approved Construction Stormwater Permit from the City prior to any land disturbing activity-

34. Failing to remove off-site sedimentation that is a direct result of land disturbing activities where such off-site sedimentation results from the failure to implement or maintain erosion control devices BMPs as specified in this chapter-

45. Allowing sediment laden water resulting from belowground installations to flow from a site without being treated through a BMP an erosion control device.

56. Failing to repair damage to existing BMPs erosion control devices, including replacement of existing grass or sod-

67. Failing to provide adequate measures to contain and properly dispose of solid waste, sanitary waste, hazardous waste, chemicals, petroleum products, or concrete truck washout at or from a construction site-

~~B.—*Notice of Violation:* Written notice of violation of Article 2 and Article 3 of this Chapter shall be given to the responsible party or his or her job site representative as identified in the Construction Stormwater management Permit for a site. Such notice shall identify the nature of the alleged violation and the action required to obtain compliance with the approved BMPs erosion control plan within twenty four (24) hours. At the end of the twenty four (24) hour cure period, the City shall reinspect the site. If, at the time of such reinspection, the BMPs erosion control devices at the site have not been brought into compliance with the approved erosion control plan, the City may~~

~~1.—Issue a stop work order and issue a citation of municipal infraction for each violation of this chapter and seek alternative remedies for abatement and fines; and/or~~

~~2.—Clean the public way and bill the owner directly for the actual cost of such cleanup and a two hundred dollar (\$200.00) administrative fee.~~

~~Correction shall include sediment cleanup, BMP erosion control device repair, BMP erosion control device maintenance and/or installation of additional BMPs erosion control devices to prevent recurrence of the violation. The twenty four (24) hour cure period may be extended for inclement weather or other factors at the discretion of the City.~~

~~C.—*Municipal Infraction:* Any person or corporation, whether owner, lessee, principal agent, employee, or otherwise, who violates any provisions of Article 2 or Article 3 of this Chapter these regulations or permits any such violation or fails to comply with any of the requirements thereof, may be subject to penalties as a municipal infraction pursuant to~~



~~Chapter 1, Article 2 of the Kalispell City Code. Each day of continued violation shall constitute a separate, additional violation. The City Manager of Kalispell Public Works Director or his or her authorized agent is hereby authorized to enforce this chapter by issuing a civil citation.~~

~~23A-10~~ B. *Exemptions.*

The following activities are exempt from the requirement of Article 2 to obtain a permit and from following the above-described procedures:

- A1. Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards.
  
- B2. Any activity where the total volume of material disturbed, stored, disposed of or used as fill does not exceed five (5) cubic yards or the area disturbed does not exceed one thousand (1000) square feet provided it does not obstruct a watercourse, and is not located in a floodplain.

~~23A-23~~ Violations, Enforcement, and Penalties.

C. *Violations of Article 3 of this Chapter.* It is unlawful for any person to violate any provision or fail to comply with any of the requirements of Article 3 of this Chapter. Any person who has violated or continues to violate the provisions of this article, may be subject to the enforcement actions outlined in this section and the ERP or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the City of Kalispell is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City is authorized to seek costs of the abatement as outlined in this article. Violations of Article 3 of this Chapter shall be a municipal infraction pursuant to Chapter 1, Article 2 of the Kalispell City Code for a responsible party or a third party performing work on a project to violate any of the requirements of those articles, including, but not limited to, the following:

- 1. Failure to obtain a stormwater maintenance permit
  
- 2. Failure to submit an annual inspection to the Public Works Department for a post-construction stormwater control
  
- 3. Failure to renew a stormwater maintenance permit
  
- 4. Failure to notify the Public Works Department of a change of ownership
  
- 5. Failure to get approval to modify a practice covered by a stormwater maintenance permit

6. Failure to maintain a post-construction stormwater control in good working condition to meet the applicable design and water quality standards

7. Failure to keep and maintain records

D. Stormwater Maintenance Permit Inspections: If the required annual inspections are not being completed, the City may perform the inspections or hire a contractor to perform the required maintenance and invoice the HOA, POA, or responsible property owner the cost to perform and administer the work.

E. Maintaining Stormwater Maintenance Permit Facilities: If the required maintenance and repairs are not being performed and inhibit the intended function of the stormwater system, the City may hire a contractor to perform the required maintenance and invoice the HOA, POA, or responsible property owner the cost to perform and administer the work.

F. Stormwater Maintenance Districts: In the event the HOA, POA, or responsible property owner fail to perform the required maintenance and repairs to the stormwater facility and inhibit the intended function of the stormwater system, a stormwater maintenance district program may be formed in accordance with 7-12-4102 MCA incorporating all the lots within a development. The taxes levied within the maintenance district shall be determined by the Public Works Department with approval of the Kalispell City Council.

GA. Violations of Article 4 of this Chapter. It is unlawful for any person to violate any provision or fail to comply with any of the requirements of Article 4 of this Chapter. Any person who has violated or continues to violate the provisions of this article, may be subject to the enforcement actions outlined in this section and the ERP or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the City of Kalispell is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City is authorized to seek costs of the abatement as outlined in ~~Section 23A-26~~ this article. Violations of Article 4 of this Chapter shall be a municipal infraction pursuant to Chapter 1, Article 2 of the Kalispell City Code for violations any of the requirements of those articles, including, but not limited to, the following:

1. Dumping household toxins in a storm drain

2. Contractor discharging paint, concrete wash water, or other deleterious substance into a storm drain

3. Restaurant or business discharging fat, oil, grease, or mop wash water into a storm drain

4. Direct connection of anything other than stormwater or clean groundwater to a storm sewer

5. Discharging wastewater from RV, camper, or another source to a storm sewer

~~FB.—*Warning Notice.* When the City finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the city may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this subsection shall limit the authority of the City to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.~~

~~GC.—*Notice of Violation.* Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this article, the City may order compliance by written notice of violation to the responsible person. The notice of violation shall contain:~~

- ~~1.—The name and address of the alleged violator;~~
- ~~2.—The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;~~
- ~~3.—A statement specifying the nature of the violation;~~
- ~~4.—A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action;~~
- ~~5.—A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;~~
- ~~6.—A statement that the determination of violation may be appealed to the Kalispell Municipal Court by filing a written notice of appeal within twenty (20) days of service of notice of violation; and~~
- ~~7.—A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.~~

Such notice may require without limitation:

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

HD.—~~*Suspension of MS4 Access.*~~

1.—~~Emergency Cease and Desist Orders. When the City finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the City Manager of Kalispell Director of Public Works may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:~~

- a.—~~Immediately comply with all article requirements; and~~
- b.—~~Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.~~

~~Any person notified of an emergency order directed to it under this subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the City may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The City may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the City Director of Public Works that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this article. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the City Department of Public Works within three (3) days of receipt of the emergency order. Issuance of an emergency cease~~

and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

~~2.—*Suspension Due to Illicit Discharges in Emergency Situations.* The City may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.~~

~~3.—*Suspension Due to the Detection of Illicit Discharge.* Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City will notify a violator of the proposed termination of its MS4 access. The violator may petition the City Manager Director of Public Works for a reconsideration and hearing.~~

~~4.—A person violates Article 4 commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.~~

~~54.—*Civil Penalties.* In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the City shall deem appropriate, after the City has taken one or more of the actions described above, the City may impose a penalty not to exceed one thousand dollars (\$1,000.00) (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.~~

~~65.—*Criminal Prosecution.* Any person that has violated or continues to violate this article shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of five hundred dollars (\$500.00) per violation per day and/or imprisonment for a period of time not to exceed one hundred eighty (180) days. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.~~

H. *Violation Response:* Dependent on the severity of the violation, the proper response(s) will be identified and initiated. Escalation will follow the ERP. The City's response remedies are described below.

1. *Warning Notice:* A warning notice will be used to obtain additional information pertaining to a potential violation or to resolve an infrequent violation. The initial contact will take place within 24 hours of determining a potential violation. At a minimum, the conversation shall be documented with the following information:

1. date/time of contact,
2. the City staff member who initiated contact,
3. the person contacted (responsible party), and
4. the content of the conversation.

2. Notices of Violation: The NOV will be issued as a warning for significant violations of the City's stormwater ordinances and requirements or in cases where a verbal warning for a minor infraction has been ignored for at least 7 days. The NOV documents the initial attempts of the City to resolve the violation. The NOV will include the following information:

1. the specific violation,
2. photos (if possible),
3. timeframe and actions required to return to compliance, and
4. a warning that further enforcement action may be taken for failure to comply.

Such notice may require without limitation:

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

3. Compliance Schedule: A compliance schedule directs the responsible party to address the violation and restore compliance by a specified date. The compliance schedule will include the following:

1. the specific violation,

2. the City's previous correspondence and attempts to achieve compliance,
3. required actions to be completed by the responsible party, and
4. dates by which the actions must be completed to return to compliance.

Issuance of a compliance schedule does not necessarily relieve the responsible party of having to meet any existing stormwater control commitments, nor protect the responsible party.

4. Meeting: A meeting will be requested with the responsible party within 2 working days (or a timeframe deemed appropriate for the situation) of the initial contact without fully mitigating the violation, or in the opinion of the Stormwater Coordinator, when the responsible party is not putting forth a good faith effort. The meeting will serve to educate the responsible party regarding the violation and to discuss necessary measures for correction. The meeting will be conducted by the Stormwater Coordinator or another delegated City employee. At a minimum, the meeting shall be documented with the following information:

1. meeting location,
2. date/time of meeting,
3. meeting attendees,
4. content of the conversation, and
5. agreements made at the meeting.

5. Stop Work Order: A stop work order (SWO) is a notice which informs the construction site operator of an ongoing stormwater management violation and requires a termination of work until the matter is resolved. No City permits, payments, or approvals of any kind will be issued for any project the owner or contractor is involved with as long as the SWO is in effect. The SWO will be issued for failure to comply with an NOV or for extreme violations of the City's construction site stormwater requirements. The SWO will include the following information:

1. the specific violation,
2. contact information for the City personnel who must be contacted to discuss required remediation procedures,
3. the mitigation goals necessary to remove the stop work order, and

4. a warning notifying the site operator of additional enforcement actions for continued noncompliance.

A stop work order will not be removed until the situation is completely resolved as determined by the issuer of the stop work order.

6. Administrative Order: An administrative order is a formal enforcement document that requires the responsible party to either cease the specified activity or implement specified corrective measures. An administrative order will be issued when informal remedies have been pursued and have not resulted in compliance.

7. Order to Show Cause: An Order to Show Cause (OSC) directs the responsible party to appear before the City Manager explain their noncompliance, and show cause why more severe enforcement actions should not be pursued. An OSC will be issued when an administrative order or other enforcement remedy has been disputed and has not resulted in compliance.

8. Municipal Infraction: A municipal infraction is a civil offense punishable by a civil penalty. An administrative fine is assessed by the Municipal Court Judge to the responsible party for a violation of the City's stormwater management requirements. The fine is considered punitive in nature and is not related to any specific cost borne by the City. The amount of the fine will be proportional to the harm caused by the violation at the discretion of the Municipal Court Judge. The City may also recover damages to its MS4 or for the cost of fixing/maintaining stormwater infrastructure as stated in City ordinances.

9. Suspend Service: The City has the authority to suspend water service, solid waste removal, and any other City services deemed applicable. These actions will be used against a responsible party that fails to comply with previous remedies or to stop discharges considered to pose an immediate risk to the public or the environment.

10. Injunctive Relief: An injunction is a court order which directs the responsible party to cease a specified action or behavior. The City will seek injunctive relief if the responsible party refuses to comply with an administrative order or if delays in filing a civil suit would result in irreparable harm to the MS4 or receiving waterbody.

11. Consent Decree: A consent decree is an agreement between the City and the responsible party reached after a lawsuit has been filed. A consent decree will be pursued when the City and the responsible party can reach a suitable agreement.

12. Civil Penalties: If necessary, a civil suit will be used to recover costs borne by the City in responding to the responsible party's noncompliance.



13. Criminal Penalties: Criminal prosecution is a formal process of charging the responsible party with violations of ordinance provisions punishable by fines and/or imprisonment. Criminal prosecution will be pursued when the responsible party has ignored all previous corrective actions for 2 weeks and in the view of the Kalispell City Attorney or the State DEQ, the responsible party is not taking sufficient action to mitigate the violation. The filing of criminal charges may be started sooner at the discretion of the Kalispell City Attorney.

23A-24 I. Appeal of Notice of Violation.

Any person receiving a notice of violation may appeal the determination of the City ~~Manager~~ Director of Public Works. The notice of appeal must be received within ten (10) days from the date of the notice of violation. Hearing on the appeal before the City Council shall take place within twenty (20) days from the date of receipt of the notice of appeal. The decision of the City Council shall be final.

23A-25J. Enforcement Measures After Appeal.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within ten (10) days of the decision of the City Council upholding the decision of the City ~~Manager~~ Director of Public Works, then representatives of the City shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It is unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

23A-2026 Cost of Abatement of the Violation.

Within twenty (20) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of ten (10) percent per annum shall be assessed on the balance beginning on the twentieth (20th) day following discovery of the violation. The property owner may file a written protest objecting to the amount of the assessment within twenty (20) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

~~Any person violating any of the provisions of this article shall become liable to the City of Kalispell by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of ten (10) percent per annum shall be assessed on the balance beginning on the twentieth (20th) day following discovery of the violation.~~

### 23A-2127 Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be abated or restored at the violator's expense, pursuant to City article, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

### *Article 5 General Terms*

#### 23A-2228 Remedies Not Exclusive.

The remedies listed in this Chapter article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

The City may recover all attorneys fees, court costs and other expenses associated with enforcement of this Chapter article, including sampling and monitoring expenses.

#### 23A-2314 Compatibility with Other Regulations.

This Chapter article is not intended to modify or repeal any other chapter, article, rule, regulation, or other provision of law. The requirements of this Chapter article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other article, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

#### 23A-2415 Severability.

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

#### 23A-2516 Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this Chapter article are minimum standards; therefore this Chapter article does not intend or imply that compliance by any person of this Chapter article will ensure that there will be a determination of no contamination, pollution, or unauthorized discharge of pollutants by a state or federal agency.