

ORDINANCE NO. 3350

AN ORDINANCE OF THE CITY OF LONGVIEW CREATING A NEW CHAPTER 17.90 OF THE LONGVIEW MUNICIPAL CODE, TO BE ENTITLED “STORMWATER ILLICIT DISCHARGE PREVENTION,” TO PROHIBIT NON-STORMWATER, ILLICIT DISCHARGES TO THE MUNICIPAL STORMWATER SYSTEM AND SURFACE WATER BODIES AND DECLARING AN EMERGENCY.

WHEREAS, the City desires to provide for the health, safety, and general welfare of its citizens; and

WHEREAS, discharges to the City’s municipal separate storm sewer system that are not composed entirely of stormwater runoff contribute to increased surface and ground water pollution and degradation of receiving waters; and

WHEREAS, these non-stormwater discharges occur due to discharging, dumping, spills, and improper connections to the municipal separate storm sewer system; and

WHEREAS, the U. S. Environmental Protection Agency initiated NPDES Phase II requirements under the Federal Clean Water Act for small municipal separate storm sewer systems in 2003; and

WHEREAS, the Washington Department of Ecology issued NPDES Phase II stormwater permits for Western Washington municipalities in 2007 with the most recent permit issuance in 2013; and

WHEREAS, the Western Washington Municipal Phase II Stormwater Permit requires the City to implement an ordinance or other enforceable mechanism to effectively prohibit non-stormwater illicit discharges into the municipal separate storm sewer system to the maximum extent allowable under state and federal law; and

WHEREAS, the Permit requires said regulations to further address any category of discharges if identified as significant sources of pollutants to waters of the State; and

WHEREAS, the Permit requires said regulations to include escalating enforcement procedures and actions; and

WHEREAS, the City Council finds that in light of the timing of the consideration of this ordinance, it is necessary to declare an emergency so that this ordinance can take effect before the end of the month.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LONGVIEW DO  
ORDAIN AS FOLLOWS:

**Section 1** A new Chapter 17.90 of the Longview Municipal Code is adopted to read as follows; provided, manifest and numbering errors shall be corrected prior to publication:

## **Chapter 17.90** **STORMWATER ILLICIT DISCHARGE PREVENTION**

Sections:

- 17.90.010 Citation of chapter.
- 17.90.020 Purpose.
- 17.90.030 Applicability.
- 17.90.040 Definitions.
- 17.90.050 Administration.
- 17.90.060 Prohibition of illicit discharges.
- 17.90.070 Prohibition of illicit connections.
- 17.90.080 Notification of illicit discharges and spills.
- 17.90.090 Access and inspection of private property.
- 17.90.100 Violations, enforcement and penalties.
- 17.90.110 General provisions.

### **17.90.010 Citation of chapter.**

This chapter shall be known and may hereafter be cited as the “Longview stormwater illicit discharge prevention ordinance”

### **17.90.020 Purpose.**

(1) The purpose of this chapter is to protect, maintain and enhance the health, safety, and general welfare of the citizens of the city of Longview through the regulation of non-stormwater discharges to the municipal separate storm sewer system in order to:

- (a) Protect surface water and groundwater from water quality degradation, and to protect established beneficial uses of receiving waterbodies;
- (b) To meet the requirements of state and federal law and the city's Western Washington Phase II Municipal Stormwater Permit (NPDES) permit.

(2) The objectives of this chapter are to:

- (a) Prohibit illicit discharges and connections to the municipal separate storm sewer system;
- (b) Require notification of illicit discharges and spills to the municipal separate storm sewer system;
- (c) Establish legal authority and the necessary provisions to ensure compliance with this chapter; and

(d) Comply with all relevant provisions established under Chapter 173-218 WAC and the Western Washington Phase II Municipal Stormwater Permit.

**17.90.030 Applicability.**

The provisions of this chapter shall apply throughout the corporate area of the city of Longview and to all discharges to the municipal separate storm sewer system, Lake Sacajawea, waters of the CDID No.1, and other surface waters.

**17.90.040 Definitions.**

For the purposes of this chapter, the following definitions shall mean:

(1) “Authorized enforcement agency” means an agency authorized by federal, state, or local statutes or regulations to review, permit, and inspect development, commercial, or industrial activities, or to enforce environmental regulations.

(2) “CFR” means the Code of Federal Regulations.

(3) “City” means the city of Longview.

(4) “Clean Water Act (CWA)” means the federal Water Pollution Control Act (33 USC Section 1251 et seq.), and any subsequent amendments thereto.

(5) “Consolidated Diking Improvement District No. 1 (CDID No. 1)” means the diking district that operates in and around the city of Longview.

(6) “Director” means the city of Longview public works director or his/her designee.

(7) “Hazardous materials” means 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.

(8) “Hyperchlorinated water” means the water that contains more than 10 milligrams/liter chlorine.

(9) “Illicit connection” means either of the following:

(a) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the municipal separate storm sewer system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or

(b) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

(10) “Illicit discharge” means any direct or indirect non-stormwater discharge to the municipal separate storm sewer system, except as expressly exempted in LMC 17.90.060.

(11) “LMC” means the Longview Municipal Code.

(12) "Municipal Separate Storm Sewer System" means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, municipal streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- (a) Owned or maintained by the city;
- (b) Not a combined sewer; and
- (c) Not part of a publicly owned treatment works as defined at 40 CFR 122.2.

(13) "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the state from point sources. These permits are referred to as NPDES permits and, in the state, are administered by Ecology under authority delegated pursuant to 33 USC Section 1342(b).

(14) "Non-Stormwater Discharge" means any discharge to the storm drain system that is not composed entirely of stormwater.

(15) "Person" means any owner, individual, association, organization, partnership, firm, corporation or other entity recognized by law.

(16) "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking greases and oils; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

(17) "Pollution" means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

(18) "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent public rights-of-way to the edge of roadway pavement.

(19) "Public works" means the city of Longview department of public works, their authorized representatives, or such other department as may be designated by the city manager.

(20) "RCW" means the Revised Code of Washington.

(21) "Soil" means the unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

(22) "Stormwater" means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(23) "USC" means the United States Code.

(24) "WAC" means the Washington Administrative Code.

(25) "Waters of the CDID No.1" means the system of open ditches and drains, sloughs, culvert and drainageways and appurtenances that are owned, operated or maintained by CDID No. 1.

(26) "Western Washington Phase II Municipal Stormwater Permit" means the National Pollutant Discharge Elimination System (NPDES) permit issued by the Washington Department of Ecology under the Clean Water Act that authorizes the discharge of pollutants to surface waters of the state from a municipal

#### **17.90.050 Administration.**

The director shall administer, implement, and enforce the provisions of this chapter.

#### **17.90.060 Prohibition of illicit discharges.**

(1) Non-stormwater discharges into the municipal separate storm sewer system are prohibited with the exceptions noted in (2), (3), and (4) of this section. No person shall throw, drain, or otherwise discharge, cause or allow others under its control to throw, drain, or discharge into the municipal separate storm sewer system, Lake Sacajawea, waters of the CDID No.1, or other surface waters, any material other than stormwater or allowable non-stormwater discharges.

(2) Allowable Discharges. The following categories of non-stormwater discharges are exempt from LMC 17.90.060(1), unless they are identified by an authorized enforcement agency as a significant source of pollution:

- (a) Diverted stream flows.
- (b) Rising ground waters.
- (c) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(b)(20)).
- (d) Uncontaminated pumped ground water.
- (e) Foundation drains.
- (f) Air conditioning condensation.
- (g) Irrigation water from agricultural sources that is commingled with urban stormwater.
- (h) Springs.
- (i) Uncontaminated water from crawl space pumps.

(j) Footing drains.

(k) Flows from riparian habitats and wetlands.

(l) Discharges from emergency fire fighting activities.

(3) Conditionally-Allowed Discharges. The following categories of non-stormwater discharges are exempt from LMC 17.90.060(1) only if the stated conditions are met, unless they are identified by an authorized enforcement agency as a significant source of pollution:

(a) Discharges from potable water sources, including but not limited to water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 parts per million or less, pH-adjusted, if necessary, and volumetrically and velocity controlled to prevent re-suspension of sediments in the municipal separate storm sewer system.

(b) Dechlorinated swimming pool, spa and hot tub discharges. The discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 parts per million or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent resuspension of sediments in the municipal separate storm sewer system. Discharge shall be thermally controlled to prevent an increase in temperature of the receiving water. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the municipal separate storm sewer system.

(c) Nonstormwater discharges covered by another NPDES or state waste discharge permit; provided, that the discharger is in compliance with that permit, waiver, or order and other applicable laws and regulations; and provided, that written approval has been granted by the city for the discharge to the municipal separate storm sewer system.

(d) Other non-stormwater discharges, which are in compliance with the requirements of a pollution prevention plan reviewed by the city which addresses control of such discharges.

(e) Dye testing for tracing purposes, provided, that written approval has been granted by the city prior to the testing.

(f) Other non-stormwater discharges specified in writing by the director as being necessary to protect public health and safety.

(4) Other Conditional Discharges. The following shall be addressed through public education and water conservation efforts to prevent illicit discharges:

(a) Discharges from lawn and garden watering and other irrigation runoff are permitted but shall be minimized.

(b) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of water used is minimized. Sediment and debris shall be controlled in a manner as to not

discharge or otherwise convey into the municipal separate storm sewer system. At active construction sites, street sweeping must be performed prior to washing the street.

**17.90.070 Prohibition of illicit connections.**

- (1) The construction, connection, use, maintenance or continued existence of any illicit connections to the municipal separate storm sewer 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) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the municipal sanitary sewer system upon approval of the director.
- (4) 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 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 completed, 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.

**17.90.080 Notification of illicit discharges and spills.**

- (1) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation, has information regarding any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the municipal separate storm sewer system, or receiving waterbodies, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.
- (2) Said person shall notify the authorized enforcement agency in person or by phone, facsimile or in person of the nature, quantity and time of occurrence of the discharge no later than 24 hours after becoming aware of the known or suspected discharges. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city within three business days of the phone or in person notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain on-site written records of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five years.
- (3) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.
- (4) Failure to provide notification of a release as provided above is a violation of this chapter.

**17.90.090 Access and inspection of private property.**

(1) Access and Inspections.

(a) Request for Access. If the director has cause to believe that a violation of this chapter has been, is being, or is likely to be committed, the director shall obtain permission from the owner to enter the premises to inspect for compliance.

(b) Permit-related Inspections. By submitting an application or receiving a permit from the city for any building or development activity, the owner shall be considered to have granted permission to the director to enter any premises for which such permit has been granted, and the director shall be allowed ready access to all parts of the premises for the purposes of inspection, water quality sampling, examination and copying of records that must be kept under the conditions of a city or NPDES permit to discharge stormwater, and the performance of any additional duties as defined by local, state, or federal law.

(c) Presentation of Credentials. When entering a property, the director shall present identification credentials, state the reason for the inspection, and then enter the property to carry out the inspection.

(d) Premises Safety and Security. If an owner has safety and security measures in force which require proper clearance before entry into the premises, the owner shall make the necessary arrangements to allow access to representatives of the city.

(e) Access Obstructions. Any temporary or permanent obstruction to safe and easy access to the place or facility to be inspected and/or sampled shall be promptly removed by the owner 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 owner.

(f) Search Warrant. If the director does not have permission as provided in subsection (1)(a) or (b) of this section, or is unable to locate the owner, or is refused access to any part of the premises for which an inspection is to be performed, the director may obtain a search warrant from any court of competent jurisdiction to perform the inspection or sampling, by showing probable cause that he/she believes there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall health, safety, and welfare of the community or the environment.

(g) Imminent Hazard. If the director does not have permission as provided in subsection (1)(a) or (b) of this section or is unable to locate the owner or is refused access to any part of the premises from which an inspection is to be performed and he/she has good cause to believe the condition of the premises or of the private stormwater drainage system creates an imminent hazard to persons, property, or the environment, the director may enter solely to abate the danger and must then obtain permission or a search warrant as provided in subsection (1)(f) of this section for any further action.

(h) Delays. Any unreasonable delay in allowing the city access as provided under this section is a violation of this chapter.

### **17.90.100 Violations, enforcement and penalties.**

(1) It shall be unlawful for any person to violate the provisions or fail to comply with any of the requirements of this chapter. Enforcement of this chapter shall be in accordance with Chapter 1.33 LMC or other means available through applicable local, state and/or federal law.

(2) Notice of Violation. Whenever the city finds that a violation of this chapter has occurred, the director may order compliance by written notice of violation. The notice of violation shall contain:

- (a) The name and address of the person to whom the notice of violation is directed;
- (b) The address when available or a description of the location where the violation is occurring, or has occurred;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,

(3) Remedies. In order to obtain compliance with this chapter, a notice of violation may require remedies, including any one or more of the following, without limitation:

- (a) That violating discharges, practices, or operations shall cease and desist;
- (b) The elimination of illicit connections;
- (c) The performance of monitoring, analyses, and reporting to the city;
- (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (e) The implementation of pollution prevention and/or source control best management practices; and
- (f) Civil or criminal penalties pursuant to LMC 1.33 and applicable state or federal laws.

(4) Abatement. If abatement of a violation and/or restoration of affected property is required, the notice of violation shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the city or party authorized by the city may undertake remediation or restoration with the expenses thereof charged to and payable by the violator.

(5) Penalty Fee Recovery. Proceeds recovered from civil penalties for violations of this chapter shall be paid to the stormwater utility or provided as direct reimbursement for the costs and expenses incurred by other city programs or departments.

(6) Residential and Charity Car Washing. The city will take a public education approach to compliance for individual residential and charity car washing. These discharges shall be

minimized through, at a minimum, water conservation efforts and public education activities that encourage use of commercial car washes, redirection of washwaters to a sanitary sewer or to pervious surfaces such as grass or gravel, and the use of phosphate-free soap.

#### **17.90.110 General provisions.**

(1) Abrogation and Greater Restrictions. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(2) Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

(3) Severability. The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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.

(4) Liability. The requirements of this chapter are minimum standards and a person's compliance with the same shall not relieve such person from the duty of enacting all measures necessary to minimize the hydrologic impact of development and the pollution of receiving waters.

(5) Intent. The intent of this chapter is to place the obligation of complying with its requirements upon the owner. Neither the city nor any officer, agent, or employee thereof shall incur or be held as assuming any liability by reason or in consequence of any permission, inspection or approval authorized herein, or issued as provided herein, or by reason or consequence of any thing done or act performed pursuant to the provisions of this chapter.

**Section 2.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance and the same shall remain in full force and effect. The City of Longview hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

**Section 3.** That nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

**Section 4.** That the City of Longview City Clerk is hereby ordered and directed to cause this Ordinance to be published.

**Section 5.** Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

**Section 6.** The City Council finds that this Ordinance is necessary for the immediate preservation of public health, safety and peace therefore shall be a public emergency ordinance in full force and effect upon adoption.

Passed by the City Council this \_\_\_\_ day of \_\_\_\_\_, 2017.

Approved by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2017.

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MAYOR

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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James McNamara

City Attorney

Published: \_\_\_\_\_