



**Regular Session**

**RS**

**Milwaukie City Council**

**COUNCIL REGULAR SESSION**

City Hall Council Chambers, 10501 SE Main Street  
 & Zoom Video Conference ([www.milwaukieoregon.gov](http://www.milwaukieoregon.gov))

**AGENDA**

NOVEMBER 19, 2024

**Council will hold this meeting in-person and by video conference.** The public may come to City Hall, join the Zoom webinar, or watch on the [city's YouTube channel](#) or Comcast Cable channel 30 in city limits. For Zoom login visit <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-383>.  
 Written comments may be delivered to City Hall or emailed to [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov).

**Note:** agenda item times are estimates and are subject to change.

**Page #**

1. **CALL TO ORDER** (6:30 p.m.)
  - A. **Pledge of Allegiance**
  - B. **Native Lands Acknowledgment**
  
2. **ANNOUNCEMENTS** (6:31 p.m.) **2**
  
3. **PROCLAMATIONS AND AWARDS**
  - A. **Outstanding Milwaukie High School (MHS) Student – Award** (6:35 p.m.)  
 Presenter: Kim Kellogg, MHS Principal
  
4. **SPECIAL REPORTS**
  - A. **None Scheduled.**
  
5. **COMMUNITY COMMENTS** (6:50 p.m.)  
 To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed at the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov)), or in person to city staff.**
  
6. **CONSENT AGENDA** (6:55 p.m.)  
 Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.
  - A. **Approval of Council Meeting Minutes of:** **5**
    1. **October 8, 2024, study session,**
    2. **October 13, 2024, Council dinner,**
    3. **October 15, 2024, work session, and**
    4. **October 15, 2024, regular session.**
  - B. **Authorization of a Vehicle Purchase – Resolution** **14**
  - C. **Approval of a Collective Bargaining Agreement (CBA) with the American Federation of State, County, and Municipal Employees (AFSCME) – Motion** **17**
  - D. **Approval of a Cost-of-Living Adjustment (COLA) for Management and Non-Represented Employees – Motion** **19**

## 7. BUSINESS ITEMS

- A. **Future Regional Housing Funding – Report** (7:00 p.m.)  
Presenter: Christine Lewis, Metro Councilor
- B. **Stormwater and Erosion Control Code Amendments Adoption – Ordinance** (7:30 p.m.) **22**  
Staff: Peter Passarelli, Public Works Director, and  
Katie Gavares, Climate & Natural Resources Manager
- C. **Federal Emergency Management Administration (FEMA) Flood Control Code Amendments – Discussion** (7:45 p.m.) **73**  
Staff: Brett Kolver, Senior Planner
- D. **Milwaukie Police Department (MPD) Leadership – Update** (8:15 p.m.)  
Staff: Emma Sagor, City Manager, and  
Ryan Burdick, Police Chief

## 8. PUBLIC HEARINGS

- A. **None Scheduled.**

## 9. COUNCIL REPORTS (8:45 p.m.) **87**

## 10. ADJOURNMENT (9:00 p.m.)

### Executive Session.

After the meeting, Council will meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

### Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) or phone at 503-786-7502. To request Spanish language translation services email [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov) at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's YouTube channel](#) and Comcast Channel 30 in city limits.

### Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a [ocr@milwaukieoregon.gov](mailto:ocr@milwaukieoregon.gov) o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov) al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

### Executive Sessions

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.



**RS Agenda Item**

**2**

# **Announcements**





# Mayor's Announcements – November 19, 2024

- **City Manager Open Door Session – Fri., Nov. 22 (9-10 AM)**
  - Ask questions, raise concerns, or just find out more about the city.
  - No sign-up is necessary. First come, first served.
  - City Hall (Council Chambers), 10501 SE Main St.
- **Free Leaf Drop – Saturdays - Nov. 23 and Dec. 7 & 14 (7 AM – 2 PM)**
  - Bring along a utility bill as proof of residency.
  - Service is free, but non-perishable food is being collected for local families for anyone that would like to donate.
  - Johnson Creek Building, 6101 SE Johnson Creek Blvd.
- **Kellogg Creek Restoration Project Walking Tour & Volunteer Planting – Sat., Nov. 23 (9 – 10 AM Walking Tour / 10 AM – 12 PM Volunteer Planting)**
  - Volunteers will plant native plants on upland banks of park.
  - Walking tour participants will meet at Milwaukie Bay Park at 9 a.m.
  - Registration is required to participate.
- **Thanksgiving Farmers Market – Sun., Nov. 24 (9:30 AM – 2 PM)**
  - Stock up on the freshest farm grown produce and ingredients for the holidays.
  - Parking lot at SE Harrison St. and SE Main St. downtown
- **Transportation System Plan Community Event – Thu., Dec. 5 (5:30 – 7:30 PM)**
  - See the progress made so far on the Transportation System Plan Update.
  - Share how you get around and what can be done to improve safety and flow.
  - All attendees will be entered into a raffle for two \$50 gift cards.
  - Attendees can pick up a free set of bicycle wheel lights while supplies last.
  - Ledding Library (Community Room), 10660 SE 21<sup>st</sup> Ave.
- **Umbrella Parade and Tree Lighting – Sat., Dec. 7 (4 – 6 PM)**
  - Join the tradition of decorating umbrellas and marching through downtown!
- **LEARN MORE AT [WWW.MILWAUKIEOREGON.GOV](http://WWW.MILWAUKIEOREGON.GOV) OR CALL 503-786-7555**

**Neighbors, yes  
Together we can  
Do big things**

- *Nils Tilstrom, City of Portland*

Share your Milwaukie Haiku!  
Email yours to [bateyl@milwaukieoregon.gov](mailto:bateyl@milwaukieoregon.gov)



**RS Agenda Item**

**3**

**Proclamations  
& Awards**

# Gustavo Barraza

RS 3. A. 11/19/24  
Presentation



Gustavo has a 4.0 GPA

- Working toward an Honors Diploma
- National Honor Society

## Sabin Schellenberg Classes

- Programing/Coding
  - Engineering
- Law Enforcement  
Architecture Design

## MHS Classes

- AP World
  - AP Biology
  - AP Lit & Comp
  - AP Calculus
- AP US History  
AP Lit & Lang  
Pre-Calculus

## Extracurricular & Work

- Student Government
- 4-years Soccer - 4 years of Track
- REAP
- Intern at Portland State - Mech. Eng.



## **Kelsey Balint**

Gustavo is President of the class of 2025. He leads by example, kindness, and passion. Gustavo frequently checks in with me to see if there's anything extra that needs to be done and makes an effort to come early to events he's working. This year Gustavo has volunteered to fundraise for our Mystery Mustang Holiday Family Adoption on two occasions. He also planned our Panera food night.

## **Juan Gudino**

Gustavo is an outstanding team player who consistently puts the team first. He is always willing to lend a helping hand to his teammates, whether it's offering support on the field or encouraging others to push through challenges during school. His selflessness and commitment to the team's success make him a valuable asset to the team. His positive attitude, work ethic, and dedication to teamwork elevate the entire group, making him a true leader on and off the field.

The **City of Milwaukie**  
is proud to recognize for

# Outstanding Student Achievement

in academics, civic engagement, and extra-curricular activities at Milwaukie High School

## Gustavo Barraza

Let it be known to all that on this nineteenth day of November 2024, the City Council of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, recognized this student as an excellent example of the bright future of this community and nation.



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Lisa M. Batey, Mayor





**RS Agenda Item**

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# **Consent Agenda**

**COUNCIL STUDY SESSION**

City Hall Community Room, 10501 SE Main Street  
& Zoom Video Conference ([www.milwaukeeoregon.gov](http://www.milwaukeeoregon.gov))

**MINUTES**

OCTOBER 8, 2024

**Council Present:** Councilors Will Anderson, Adam Khosroabadi, Rebecca Stavenjord, and  
Council President Robert Massey, and Mayor Lisa Batey

**Staff Present:** Nicole Madigan, Deputy City Recorder                      Michael Osborne, Finance Director  
Emma Sagor, City Manager

**Mayor Batey** called the meeting to order at 5:20 p.m.

**1. Metro's Regional System Facilities Plan (RSFP) – Report**

**Marta McGuire**, Metro Director of Water Prevention and Environmental Services, and **Luis Sandoval**, Metro Environmental Services Prevention Planner, provided an overview of Metro's Regional Waste Plan, noting facility improvements, recycling events, and the development of the RSFP that meant to expand and upgrade waste facilities. The group remarked on the community and commercial drop-off, organic programming, transfer stations, and reuse and repair facilities proposed in the RSFP. They noted placement requirements, costs, and projected benefits of each type of facility. **Sandoval** noted next steps in Metro's work to take public comment and adopt the RSFP.

**Josh Brown**, with Waste Connections, remarked on the challenges facing Metro in locating waste facilities across the region.

**Councilor Stavenjord, McGuire, Sandoval, and Sagor** discussed financial impacts of the RSFP on current and projected residential waste fees for residential customers. They also commented on where the reuse facilities would be located, how inflation had been factored into the plan costs, and how increased Metro fees would play out in different jurisdictions across the region depending on local city and waste hauler fees.

**Councilor Khosroabadi and McGuire** discussed how Metro holds its transfer stations accountable to low recycling recovery rates, noting that the Metro South Transfer Station was limited in its ability to recover recyclable materials due to a lack of space.

**Councilor Anderson, Sandoval, and McGuire** noted the role of host community advisory committees in helping Metro locate the facilities that would generate new jobs.

**McGuire** provided an overview of Metro's budget process which included a new Regional Waste Advisory Committee and the development and adoption of solid waste fees. The group remarked on why the fees had gone up so much for the current fiscal year and how Metro's solid waste handling and recycling recovery operations were held accountable.

**2. Solid Waste Franchise Agreements – Discussion**

**Osborne** acknowledged a mistake in the staff report relating to the length of the term and renewal point of solid waste franchise agreements, provided a history of the city's solid waste franchise agreements including why rolling renewals were beneficial for the haulers.



**Brown** remarked on haulers' support for a ten-year rolling renewal franchise agreement, noting regulations and infrastructure haulers were required to maintain, and commenting on Waste Connections' customer service and the compost service provided to customers.

**David Huber** and **Mike Jefferies** with Waste Management discussed the city's solid waste franchise agreement terms, noting the importance of haulers having the long-term assurance to invest in their staff and infrastructure, and that Waste Management operates the annual bulky waste event. The group remarked on the bulky waste day event and **Huber** invited Council to tour Waste Management's waste facility.

**Terrell Garrett** of Greenway Recycling remarked on how waste recovery facilities were rated and how drop boxes were handled by the current waste haulers and encouraged Council to allow more haulers to compete for solid waste franchise agreements.

**Beth Vargas** of Oregon Refuse and Recycling Association (ORRA) commented on how Waste Connections and Waste Management worked with Metro and local governments to manage solid waste, expressed support for the ten-year rolling franchise agreements, and discussed differences between wet and dry waste transfer facilities.

**Mayor Batey** reported on solid waste hauler franchise agreement terms and rate amounts in other Clackamas County cities.

**Council President Massey** remarked on the ten-year franchise agreement term, observing it seemed like a big commitment, and the group discussed how Milwaukie's hauler fee compared to other cities in the county. **Osborne** and **Sagor** noted that a solid waste fee revision would be on Council's October 15, 2024, regular session agenda.

**Councilor Khosroabadi**, **Mayor Batey**, and **Sagor** commented on Council's ability to amend solid waste franchise agreements, noting that changes to existing franchises would not take effect for ten years. **Council President Massey** was concerned about a lack of flexibility in the agreements and the group noted community member issues with the current haulers' service.

**Sagor** summarized on follow-up research and steps staff would take, including looking at other city rates and getting feedback from the city attorney on next steps in amending franchises. **Council President Massey** and **Sagor** noted that the ten-year renewing franchise agreements renewed automatically.

**Mayor Batey** and **Councilor Khosroabadi** expressed support for messaging to solid waste customers about options to downsize waste bins to pay less. **Council President Massey** suggested residents be surveyed on solid waste habits and **Councilor Stavenjord** suggested the city use the Engage Milwaukie online platform to seek public feedback. **Sagor** suggested staff could take Council's feedback and look at ways to engage the community about solid waste and recycling services. The group remarked on how to connect the city's climate action goals and solid waste service options.

**Sagor** summarized that staff would conduct legal and financial analysis on solid waste services and bring that information back to Council. **Mayor Batey** suggested the city needed to revise solid waste franchise agreements. There was Council consensus that Councilor Khosroabadi would be the Council point person on solid waste agreements and that Councilor Stavenjord was interested in recycling programs.

### **3. Council Reports**

**Councilor Massey** reported on the North Clackamas Watershed Council's (NCWC) recent work on its strategic plan and goals, and increasing community engagement in

watershed work. **Mayor Batey** and **Massey** remarked on the involvement of the North Clackamas Parks and Recreation District (NCPRD) and other cities in NCWC's work. The group noted that NCWC's work involved setting diversity goals.

**Councilor Anderson** reported on upcoming state transportation legislation work.

**Councilor Stavenjord** thanked Council for attending the Clackamas Service Center (CSC) grand opening event. **Sagor** and **Councilor Stavenjord** noted that it would be best to wait until the city's liaison to the Clackamas County Coordinating Committee (C4) was officially updated before notifying C4 members.

**Councilor Khosroabadi** reported on recent Clackamas County Community Action Board (CAB) work to set service delivery and engagement goals.

**Mayor Batey** and **Councilor Stavenjord** noted the location of the upcoming Hillside Park redevelopment project groundbreaking event. **Batey** reported on a recent Clackamas County Children's Commission dinner and work to open a new childcare facility in Milwaukie and remarked on recent NCPRD Board statements about the city and district efforts to fund the completion of Milwaukie Bay Park.

#### **4. Adjourn**

**Mayor Batey** announced that after the meeting Council would meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(d) to conduct deliberations with persons designated by the governing body to carry on labor negotiations.

**Mayor Batey** adjourned the meeting at 7:55 p.m.

Respectfully submitted,

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Scott Stauffer, City Recorder

**COUNCIL DINNER**

Mayor Lisa Batey's Residence, 11912 SE 19<sup>th</sup> Avenue  
([www.milwaukieoregon.gov](http://www.milwaukieoregon.gov))

**MINUTES**

OCTOBER 13, 2024

**Council Present:** Councilors Will Anderson, Adam Khosroabadi, Rebecca Stavenjord, and Council President Robert Massey, and Mayor Lisa Batey

**Staff Present:** Emma Sagor, City Manager

Members of Council and staff participated in a social dinner starting at 5:30 p.m. The group did not discuss city business, and the dinner ended at 8:17 p.m. Council took no actions.

Respectfully submitted,

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Emma Sagor, City Manager

## COUNCIL WORK SESSION

City Hall Council Chambers, 10501 SE Main Street  
& Zoom Video Conference ([www.milwaukieoregon.gov](http://www.milwaukieoregon.gov))

## MINUTES

OCTOBER 15, 2024

**Council Present:** Councilors Will Anderson, Adam Khosroabadi, and Council President Robert Massey, and Mayor Lisa Batey

**Council Absent:** Councilor Rebecca Stavenjord

**Staff Present:** Katie Gavares, Climate & Natural Resources Manager  
Justin Gericke, City Attorney  
Vera Koliás, Senior Planner  
Peter Passarelli, Public Works Director  
Emma Sagor, City Manager  
Scott Stauffer, City Recorder  
Laura Weigel, Planning Manager

**Mayor Batey** called the meeting to order at 4:05 p.m.

### 1. Stormwater Code Amendments – Discussion

**Passarelli** reviewed the proposed erosion control and stormwater code amendments, explaining that the changes were required by modifications to the city’s National Pollutant Discharge Elimination System (NPDES) permit. **Council President Massey, Passarelli,** and **Mayor Batey** remarked on how staff would enforce the new code requirements, noting how erosion control code violations would be reported.

**Councilor Anderson, Passarelli,** and **Mayor Batey** discussed the proposed changes to the definition of “permeable pavement” in the stormwater and erosion control part of the code and whether the new definitions would impact other parts of the code.

**Mayor Batey** and **Passarelli** noted unclear references to “manager,” violations deemed a nuisance section, and how violation fees were calculated. The group remarked on how the city and local watershed councils inform the public about the health risks of using pesticides, and how the city’s Bee City USA designation would support that outreach.

**Mayor Batey** and **Passarelli** discussed how the code could encourage green bioswales in commercial and residential parking lots and noted an ongoing investigation into foaming that had occurred in Johnson Creek.

The group discussed the requirement that a developer or contractor keep a printed physical copy of an approved permit on site during a construction project.

**Council President Massey, Passarelli,** and **Mayor Batey** noted the recent work of the North Clackamas Watersheds Council (NCWC) to adopt new watershed plans and monitor a toxic chemical applied to vehicle tires that had been detected in local creeks.

**Passarelli** summarized that an ordinance to adopt the code changes would be prepared.

### 2. Oregon Senate Bill (SB) 1537 Compliance – Discussion

**Koliás** provided an overview of the housing supply and affordability requirements established by SB1537, including a requirement that cities grant specific design standard variances for certain housing types. The group remarked on the variance appeal process.

**Koliás** and **Weigel** explained that SB1537 provided an exemption process that the city would be eligible for except for one existing code requirement related to maximum

housing density. Staff recommended that density maximum be removed from the city's code, and that the city seek the SB1537 exemption once the code was revised.

The group remarked on what type of housing could be allowed if the current density prohibition were removed and whether removing the density prohibition would impact rental rates. Staff noted the city had granted all the density variances to date even with the prohibition in place. The group remarked on the impacts of SB1537 on communities across the state and why a sunset clause had been included in the bill.

**Councilor Anderson** wondered if there were other changes to make to the housing density part of the code right now. **Weigel** suggested it would be best to focus on the current proposed SB1537-related code changes. **Kolias** noted there were other processes to bring housing density code changes at a later date.

**Councilor Khosroabadi** was concerned about the lack of opportunity for public comment in the variance appeal process. The group commented on how few appeals the city had in recent years and how SB1537 had been revised based on input from cities and developers.

**Mayor Batey** and **Weigel** summarized there was Council consensus to move forward with the code change as recommended by staff.

### **Council Reports**

**Mayor Batey** noted that the scheduled executive session had been canceled.

**Council President Massey** reported on Regional Water Providers Consortium activities, noting the City of Newberg was leaving the consortium. **Mayor Batey** remarked on the coming-and-going of cities from the consortium. The group commented on how some water providers generate electricity off their pressurized water system.

**Mayor Batey** reported on a Metro transit study, Metro's community transformation grant program, that the city may receive funds from Metro for the Kellogg Dam removal project, and Clackamas County's plans to study the urban growth boundary (UGB) and purchase a North Clackamas Parks and Recreation District (NCPRD) site for a recovery center.

**Mayor Batey** and **Sagor** reported on recent communications with NCPRD on changes to the district's zone-based parks funding and completing Milwaukie Bay Park. The group discussed next steps in communicating with the NCPRD Board about funding and completing Milwaukie Bay Park. **Sagor** summarized that there was Council consensus to draft a letter to the NCPRD Board.

**Councilor Khosroabadi** noted that the Clackamas County Community Action Board (CAB) strategic plan would be included in the Council meeting record.

### **3. Adjourn**

**Mayor Batey** adjourned the meeting at 5:53 p.m.

Respectfully submitted,

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Scott Stauffer, City Recorder

**COUNCIL REGULAR SESSION**

City Hall Council Chambers, 10501 SE Main Street  
& Zoom Video Conference ([www.milwaukieoregon.gov](http://www.milwaukieoregon.gov))

**MINUTES**

OCTOBER 15, 2024

**Council Present:** Councilors Will Anderson, Adam Khosroabadi, Rebecca Stavenjord, and Council President Robert Massey, and Mayor Lisa Batey

**Staff Present:** Justin Gericke, City Attorney  
Michael Osborne, Finance Director

Emma Sagor, City Manager  
Scott Stauffer, City Recorder

**Mayor Batey** called the meeting to order at 6:32 p.m.

**1. CALL TO ORDER**

**A. Pledge of Allegiance.**

**B. Native Lands Acknowledgment.**

**2. ANNOUNCEMENTS**

**Mayor Batey** announced upcoming activities, including the Ledding Library fall author series, an Elk Rock Island restoration event, the city's Arbor Day celebration, a prescription drug drop-off and document shredding event, a no ivy day at Homewood Park, and Halloween themed events across Milwaukie.

**Mayor Batey** read a voting-themed Haiku poem. **Council President Massey** and **Mayor Batey** thanked Clackamas County election workers for their work.

**3. PROCLAMATIONS AND AWARDS**

**A. Outstanding Milwaukie High School (MHS) Student – Award**

**Kim Kellogg**, MHS Principal, introduced Helen Beecher and Council congratulated the student on their academic and extracurricular activities.

**Mayor Batey** noted that Councilor Stavenjord joined the meeting via Zoom at 6:50 p.m.

**4. SPECIAL REPORTS**

**A. City of Portland Administrator Introduction**

**Michael Jordan**, Interim Portland City Administrator, and **Shoshanah Oppenheim**, Portland Charter Transition Project Manager, provided an overview of the governance structure transition under way in Portland, noting the elected leadership and organizational structure and voting changes that would take effect January 1, 2025. They expressed the City of Portland's hope to build better relationships with neighboring cities.

**Mayor Batey**, **Jordan**, and **Oppenheim** commented on who would set Portland City Council agendas, noting the council president and mayor would play roles in the agenda.

**Councilor Khosroabadi**, **Jordan**, and **Oppenheim** remarked on the intent of Portland voters in removing the mayor from the council.

**Council President Massey** wished Portland luck in changing structures and asked what the important attribute of Portland's next administrator will be. **Jordan** suggested an



administrator should be vulnerable and acknowledge they don't know all the answers. **Jordan** and **Oppenheim** expressed Portland's interest in being a better neighbor and partner for Milwaukie and the region. The group discussed the possibility of Milwaukie City Council members mentoring newly elected Portland City Council members.

**Councilor Anderson, Jordan, and Oppenheim** discussed how the staff for the new Portland City Council and city administrator will be organized and when the new council will adopt operating rules.

The group commented on Multnomah County's work to facilitate Portland's new ranked choice voting ballot and process and how long the vote counting will take.

**Mayor Batey** commented on the Portland-Milwaukie relationship and thanked **Jordan** and **Oppenheim** for coming to Milwaukie.

**Councilor Stavenjord** asked if the new Portland City Council's committees would interact with existing agencies, joint committees, and groups, and how the decisions of the current Portland City Council would be reviewed. **Oppenheim** and **Jordan** reviewed plans to train and orient newly elected council members to existing issues.

## **5. COMMUNITY COMMENTS**

**Mayor Batey** reviewed the comment procedures. **Sagor** reported there was no follow-up report from the October 1 comments. No audience member wished to address Council.

## **6. CONSENT AGENDA**

It was moved by **Councilor Anderson** and seconded by **Council President Massey** to approve the Consent Agenda as presented.

### **A. City Council Meeting Minutes:**

1. **September 3, 2024, work session,**
2. **September 3, 2024, regular session,**
3. **September 10, 2024, study session,**
4. ~~September 17, 2024, work session, and~~
5. ~~September 17, regular session.~~ (removed from the agenda)

### **B. A motion to adopt updated Council Committee assignments.**

**C. Resolution 54-2024: A resolution of the City Council of the City of Milwaukie, Oregon, authorizing a transfer of appropriation authority for the 2025-2026 biennium.**

**D. Resolution 55-2024: A resolution of the City Council of the City of Milwaukie, Oregon, clarifying Section 17 Solid Waste of the Consolidated Fees and Charges.**

**E. Resolution 56-2024: A resolution of the City Council of the City of Milwaukie, Oregon, authorizing an intergovernmental agreement (IGA) with the Clackamas County Development Agency (CCDA) for the Stanley Avenue Improvements Project.**

~~**F. A resolution of the City Council of the City of Milwaukie, Oregon, authorizing a collective bargaining agreement (CBA) with the American Federation of State, County, and Municipal Employees (AFSCME).**~~ (removed from the agenda)

~~**G. A motion authorizing a cost-of-living adjustment (COLA) for management and non-represented staff.**~~ (removed from the agenda)

**Motion passed with the following vote: Councilors Anderson, Khosroabadi, Massey, and Stavenjord and Mayor Batey voting "aye." [5:0]**

## **7. BUSINESS ITEMS**

**A. None Scheduled.**

## **8. PUBLIC HEARING**

**A. None Scheduled.**

## **9. COUNCIL REPORTS**

**Councilor Khosroabadi** noted that an exhibit from the October 8, 2024, study session had been added to that meeting record. **Sagor** and **Khosroabadi** confirmed that a city tree permit had been issued to the North Clackamas Parks and Recreation District (NCPRD) for the removal of a tree in Wichita Park.

## **10. ADJOURNMENT**

**It was moved by Councilor Anderson and seconded by Council President Massey to adjourn the Regular Session. Motion passed with the following vote: Councilors Abma, Khosroabadi, Massey, and Stavenjord and Mayor Batey voting “aye.” [5:0]**

**Mayor Batey** adjourned the meeting at 7:44 p.m.

Respectfully submitted,

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Scott Stauffer, City Recorder



**COUNCIL STAFF REPORT**

**To:** Mayor and City Council  
Emma Sagor, City Manager

**Date Written:** Oct. 15, 2024

**Reviewed:** Jherica Zink (as to form), Administrative Specialist II

**From:** Shane Hart, Wastewater/Stormwater Supervisor, and  
Peter Passarelli, Public Works Director

**Subject: Vehicle Purchase: Combination Truck**

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**ACTION REQUESTED**

Council is asked to authorize the city manager to approve the purchase of a replacement combination cleaning truck in the amount of \$567,338.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

2014: A Vactor combination truck was purchased by the city.

June 2024: Council adopted the Biennial Budget for 2025-2026, which included funding to replace the Vactor combination truck.

**ANALYSIS**

The city currently owns a Vactor combination truck used by the storm water division of the public works department. Combination trucks are built to jet (clean) build up in sewer/storm lines and vacuum out debris. This type of machine allows the crew to clean the storm mainlines and remove debris through a hydro-excavation process. This process is much safer than having a staff member go into the manhole for manual retrieval of debris and is also safer to excavate with when around other underground utilities.

The current truck is a Vactor brand, built on a 2015 Sterling chassis. As an older vehicle, it is nearing the end of its life cycle. Repairs are becoming more costly and more often. The auxiliary motor is a John Deere engine and is also at its end-of-life cycle and repairs are becoming more often and costly.

Public works staff tested several new combination trucks and have selected a Vactor 2100i combination truck with a hydro excavator integrated into the system. This means that the truck can excavate the earth with water pressure and not heavy equipment. This will result in improved efficiency as the truck provides a safer means of excavating, resulting in fuel (up to 20%), and time savings. The Vactor 2100i combination truck is built on a Kenworth chassis and meets all current federal Environmental Protection Agency (EPA) certified diesel emissions requirements. All vacuum and jetting functions are powered solely by the chassis engine so there would no longer be a need for an auxiliary engine to power the unit. This decreases maintenance costs over time. Further research by staff indicates that there are not currently any commercially available electric vehicle (EV) combination trucks.

In accordance with section 10.085B of the city's Public Contracting Rules (PCRs), the city will use Sourcewell (contract 101221-VTR), a joint cooperative purchasing program that has

established a price agreement with Owens Equipment, to purchase the new truck. Since the purchase exceeds \$250,000, the city will publish a public notice of intent to establish a purchase from Owens Equipment in accordance with Oregon Revised Statute (ORS) 279A.215(2) (a-d).

### **CLIMATE IMPACTS**

A [2013 assessment published in the Journal of Geophysical Research: Atmospheres](#) concluded that after carbon dioxide, black carbon is the second most impactful pollutant in the atmosphere in terms of its global warming impacts in the near-term, and that diesel exhaust is one of the predominant sources of black carbon emissions. The Vactor 2100i combination truck meets these standards and will result in a reduction in air pollutants. Fuel savings will result in lower transportation emissions, the second largest emissions sector in Milwaukie according to the 2016 community greenhouse gas inventory.

### **BUDGET IMPACTS**

The total purchase price is \$567,338, which is within the total Storm water vehicles budget of \$800,000.

### **WORKLOAD IMPACTS**

By replacing the current truck with the Vactor 2100i combination truck, the city will improve sewer/storm cleaning and hydro excavating efficiency and realize time, fuel, and water savings.

### **COORDINATION, CONCURRENCE, OR DISSENT**

Fleet staff provided input during the evaluation process and agreed that the proposed Vactor 2100i combination truck was acceptable.

### **STAFF RECOMMENDATION**

Staff recommend that Council authorize the city manager to approve the purchase of the Vactor 2100i combination truck in the amount of \$567,338

### **ALTERNATIVES**

Council could decide to defer the purchase of the truck.

### **ATTACHMENTS**

1. Resolution

**COUNCIL RESOLUTION No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE PURCHASE OF A REPLACEMENT SEWER COMBINATION TRUCK.**

**WHEREAS** sewer cleaning and debris removal is required in the day-to-day operation of the city’s public works’ stormwater division; and

**WHEREAS** the city’s current storm combination truck is 10 years old, outdated, has seen heavy use and nearing the end of its lifecycle, and has been budgeted for replacement in the current biennial budget; and

**WHEREAS** in accordance with section 10.085B of the city’s Public Contracting Rules (PCRs), city staff identified the need to purchase a Vactor 2100i combination truck through Sourcewell (contract #101221-VTR), a joint cooperative purchasing program that has established a price agreement with Owens Equipment, in the amount of \$567,338.

**Now, Therefore, be it Resolved** by the City Council of the City of Milwaukie, Oregon, the city manager is authorized to approve the purchase of a Vactor 2100i combination truck as a replacement for the existing storm combination truck used by the public works department, in the amount of \$567,338.

Introduced and adopted by the City Council on **November 19, 2024.**

This resolution is effective immediately.

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Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

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Scott S. Stauffer, City Recorder

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Justin D. Gericke, City Attorney

To: Mayor and City Council  
Through: Emma Sagor, City Manager  
Reviewed: Scott Stauffer, City Recorder, and  
Michael Osborne, Finance Director  
From: Katherine Hopkins, Human Resources Director

Date: Nov. 14, 2024

Subject: **American Federation of State, County and Municipal Employees Local  
350-5 (AFSCME) Two-Year Collective Bargaining Agreement**

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### **ACTION REQUESTED**

Council is asked to approve a two-year successor AFSCME Collective Bargaining Agreement (CBA) effective July 1, 2024 – June 30, 2026. AFSCME has ratified the CBA.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Council approved the current AFSCME CBA, which expired on June 30, 2024.

### **ANALYSIS**

The CBA includes a 6% cost of living adjustment (COLA) effective June 24, 2024 (the first day of the first pay period of FY 2025), a 2% COLA effective June 24, 2025, and a 2% COLA effective December 24, 2025. The CBA includes a match to association members' \$25 per pay period contribution to their health reimbursement arrangement (HRA) employees' beneficiary association (VEBA) tax-free medical expense accounts, effective the first pay period after ratification of this agreement. The CBA allows employees to voluntarily request a full time-employee (FTE) reduction in hours and will commensurate reduction in pay. The agreement also accelerates the second tier of vacation accruals after three years of employment. The city's first 1% longevity pay increase is also accelerated to five years from the current seven years of employment.

The CBA includes a memorandum of understanding between the city and AFSCME to collaborate on a market and internal equity study for all city job classifications represented by the association. The group will prepare a joint recommendation to the city manager proposing a range adjustment strategy for all AFSCME-represented positions. Conducting a market and internal equity study will allow the city to determine an appropriate salary strategy to remain competitive in the years to come.

The Consumer Price Index for All Urban Consumers (CPI-U West) – Size Class B/C for the prior year (2024) was 3.6% but increased dramatically from 2021 to 2023. Salary increase rates will vary by jurisdiction but will likely be in the 4.0% to 5.0% range; many of our comparator agencies experienced larger than average COLAs in the past two years. The July 2024 to June 2026 CBA will keep the city competitive in terms of salaries, benefits, and work/life balance.

### **BUDGET IMPACTS**

The city's budget includes COLA increases at 6% in year one of this agreement and 4% in the second year. The current biennium budget can absorb the COLA increases, 5 year 1% longevity

bonus and VEBA match based on the adopted budget and from under-expending throughout the biennium should Council decide to approve the CBA.

**CLIMATE, EQUITY, & WORKLOAD IMPACTS**

Climate Impacts: None

Equity Impacts: The MOU agreed between the city and AFSCME will lead to a comprehensive pay equity assessment of all AFSCME represented salary ranges.

Workload: The market and internal equity study will increase the workload of the city's two-person human resources department. The department is developing strategies to streamline current workflows to generate the needed capacity.

**COORDINATION, CONCURRENCE, OR DISSENT**

No dissent has been reported.

**STAFF RECOMMENDATION**

Staff recommends Council approve the two-year AFSCME CBA as bargained between the city and AFSCME, in consultation with the Council.

**ALTERNATIVES**

Council could direct staff to return to the bargaining table to continue negotiations through the State mediation process.

**ATTACHMENTS**

None.

To: Mayor and City Council  
Through: Emma Sagor, City Manager  
Reviewed: Scott Stauffer, City Recorder; and  
Michael Osborne, Finance Director  
From: Katherine Hopkins, Human Resources Director  
Subject: **Management/Non-Represented Cost of Living Adjustment (COLA)**

Date: Nov. 14, 2024

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### **ACTION REQUESTED**

Council is asked to approve a 6.0% management/non-represented cost of living adjustment (COLA) effective retroactively to June 24, 2024, a 2% COLA effective June 24, 2025, and a 2% COLA effective December 24, 2025.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Council has discretion to grant a COLA to management and other non-represented personnel. In addition to management, there are two non-union represented staff (payroll specialist and human resources analyst) due to their roles in collective bargaining. The decision to grant the management COLA is not automatic. In recent years, Council has granted management and non-represented staff an identical COLA as negotiated by the American Federation of State County and Municipal Employees (AFSCME).

### **ANALYSIS**

The requested 6% year one COLA, 2% year two, and 2% mid-year two matches the July 2024 – June 2026 collective bargaining agreement ratified by AFSCME.

The Consumer Price Index for All Urban Consumers (CPI-U West)—Size Class B/C for the prior year (2024) was 3.6% but increased dramatically from 2021 to 2023. Salary increase rates will vary by jurisdiction but will likely be in the 4.0% to 5.0% range; many of our comparator agencies experienced larger-than-average COLAs in the past two years.

### **BUDGET IMPACTS**

The city's budget includes COLA increases at approximately 6.0% year one and 4% in year two. The current biennium budget can absorb the COLA increases based on the adopted budget and from under-expending throughout the biennium should Council decide to approve these adjustments.

### **CLIMATE, EQUITY, & WORKLOAD IMPACTS**

None.

### **COORDINATION, CONCURRENCE, OR DISSENT**

No dissent has been reported.

### **STAFF RECOMMENDATION**

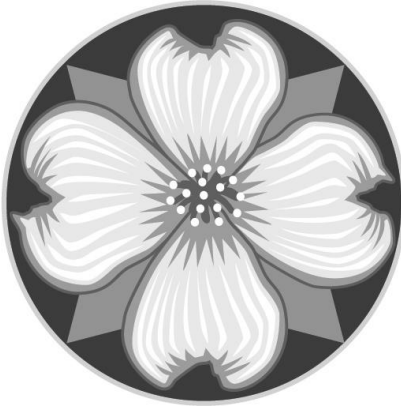
Staff recommends that Council approve the presented compensation changes (COLA) for management and non-represented staff.

**ALTERNATIVES**

Council may decide to keep management salary as it is currently (with no COLA) or grant an amount other than the recommended amount.

**ATTACHMENTS**

None.



**RS Agenda Item**

**7**

**Business Items**



# **Future Regional Funding for Housing and Homeless Services**

Milwaukie City Council

November 19, 2024



# Presentation overview

Where we are

What we've heard

Metro Council direction

Next steps

## Presenting today

Christine Lewis

Metro Councilor, District 2

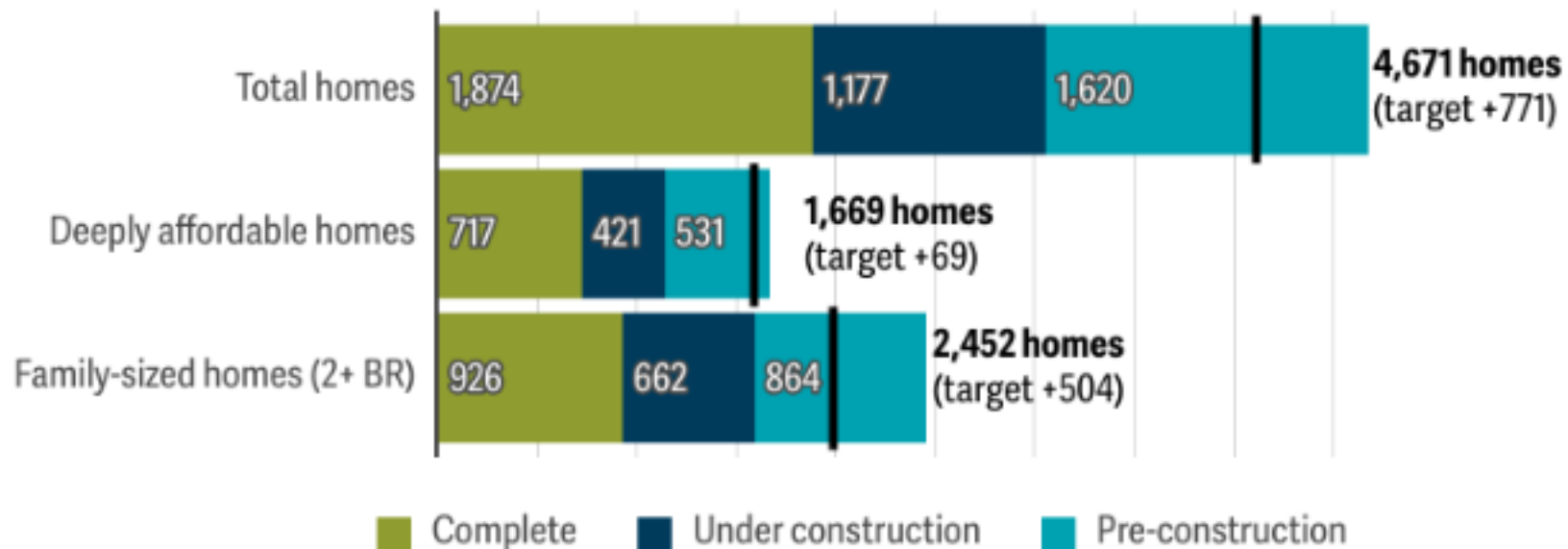
[christine.lewis@oregonmetro.gov](mailto:christine.lewis@oregonmetro.gov)

Andy Shaw

Director of Government Affairs and  
Policy Development

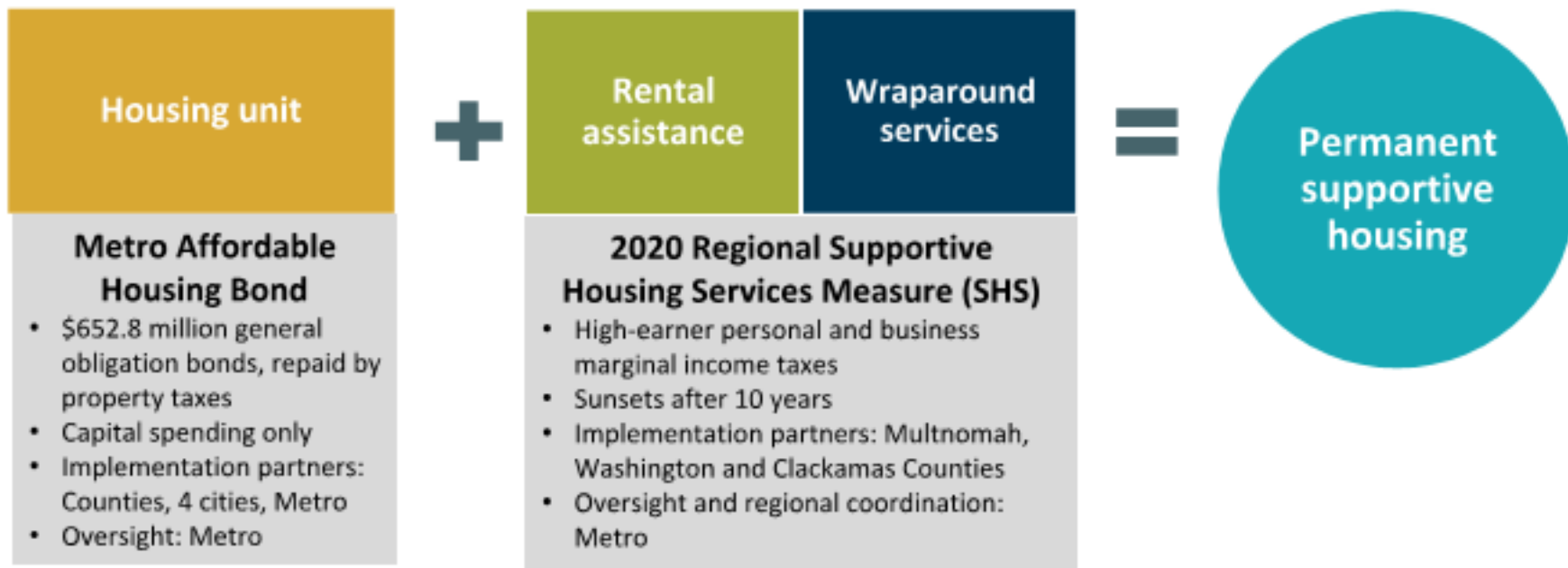
[andy.shaw@oregonmetro.gov](mailto:andy.shaw@oregonmetro.gov)

# 2018 Metro Affordable Housing Bond: Exceeding goals



Metro's housing bond is projected to achieve about 120% of its production target, providing affordable housing for 9,000 to 15,000 people.

# Aligned to address homelessness



# SHS is making a difference.



**6,297**

households placed  
in housing



**15,073**

eviction  
preventions



**1,890**

shelter units created  
or sustained

3-year tri-county totals, July 2021 through June 2024

# Where we are

- Metro housing bond successful, yet soon will be complete; SHS taxes end in 2031
- Housing need continues, especially at lowest incomes and in communities of color
- Clear links between cost of housing and homelessness, cascading impacts across region

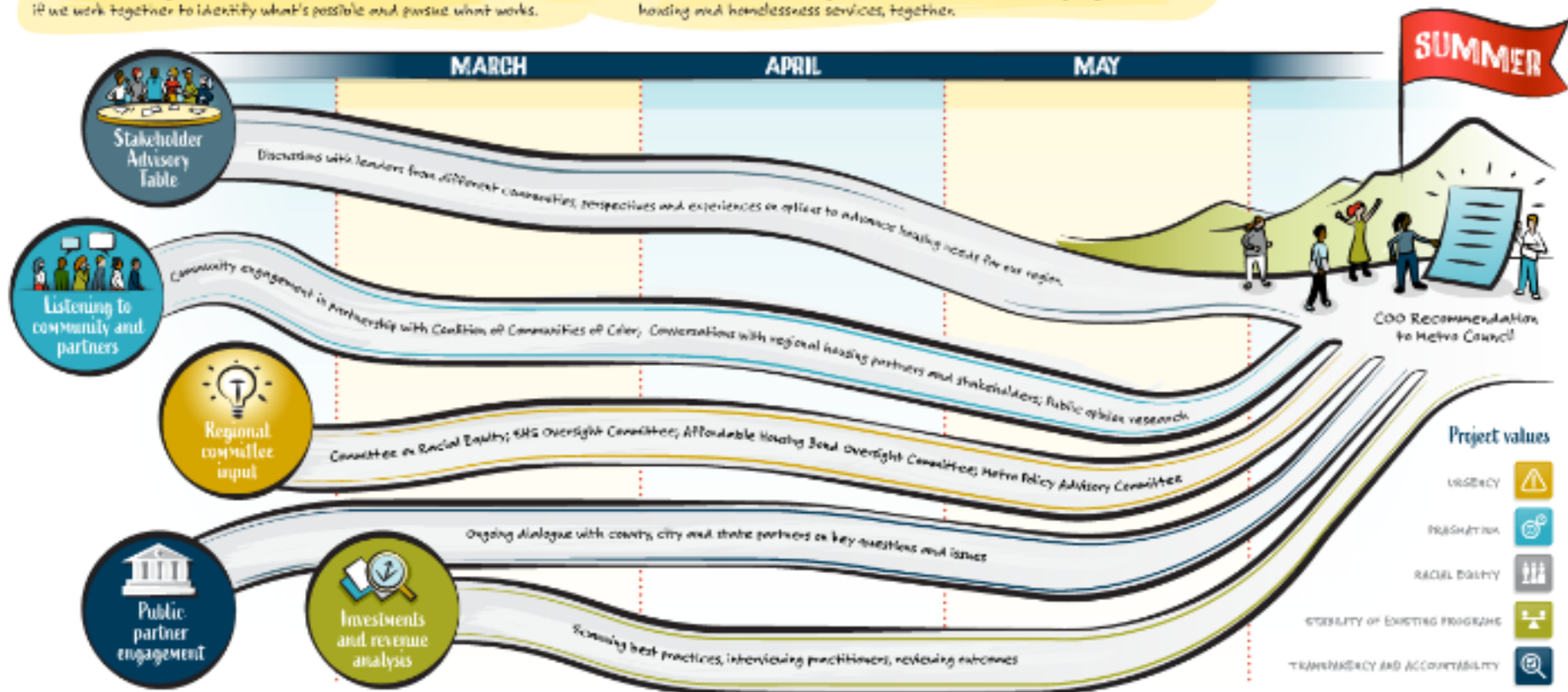
# Future Housing Funding Project



# Path to a regional housing recommendation

The Portland region is facing a persistent housing and homelessness crisis. We have made progress, but there is more to do. We know there are solutions if we work together to identify what's possible and pursue what works.

In spring 2024, Metro convened a conversation with stakeholders, partners and communities across the region, to explore how to keep making progress on housing and homelessness services, together.





# **Overall Metro Council direction**

Continue regional affordable housing and homelessness funding for the long-term

Evolve a regional program to better meet regional needs and opportunities

Learn from our shared successes, address systemic challenges

# Proposed policy changes

## What we heard

### Revenue Use

Both housing and ongoing services/rent assistance are needed to help people escape homelessness

## Current

Successful Metro housing bond winding down; SHS can only fund services

Cities have unique needs and opportunities but do not currently receive SHS funds

## Proposed Actions



Expand SHS investments to include affordable housing



Create a program to fund city investments to address homelessness

# Proposed policy changes

## What we heard

### Tax Policy

People and communities depend on funding to stay housed. Funding will be needed for the long-term, but the region needs to be strategic in finding and using funding.

## Current

SHS income taxes are expected to be highly volatile

SHS tax expires in 2031, but the need for housing and services will continue

A broad coalition built SHS and the bond; continued support is critical

## Proposed Actions



**Prioritize ongoing services and rent assistance for the most stable funding**



**Extend SHS high-earner and business income taxes for 20 years**



**Adjust personal tax rate for longevity; index threshold to keep focus on higher-earners**

# Proposed policy changes

## What we heard

### Equity

Housing and homelessness affect us all, but especially communities of color, older adults and low-income communities

## Current

SHS and Metro housing bond were built with equity as a key value

There are limited ways for community to inform SHS spending decisions today

## Proposed Actions



Carry forward equity values; create inclusive oversight structure with a diversity of voices



Improve opportunities for community members and people with lived experience to provide input

# Proposed policy changes

## What we heard

### Transparency & Accountability

We've learned a lot in the implementation of SHS and bond that can be applied moving forward

## Current

Current oversight structures have unclear roles and overlapping authorities

There is a need for stronger accountability mechanisms and evidence of impact

## Proposed Actions



Create a single oversight and planning committee to strategically guide investments



Develop a regional action plan with key performance indicators and priorities that partners are required to advance in local plans

# Next steps

## Analysis

- Considerations of programmatic, fiscal, community impacts
- Public opinion research

## Policy refinement

- Engaging county and coalition partners
- Metro Council work session discussions

## Council decisions

- Possible May 2025 ballot measure
- Other potential actions

# Questions and discussion

What should Metro Council consider in these potential policy changes to achieve an effective approach to addressing homelessness?

## COUNCIL STAFF REPORT

**To:** Mayor and City Council  
Emma Sagor, City Manager

**Date Written:** Nov. 7, 2024

**Reviewed:** Peter Passarelli, Public Works Director, and  
Gabriela Santoyo Gutierrez, Equity & Inclusion Coordinator

**From:** Katie Gavares, Climate & Natural Resources Manager

**Subject:** **Stormwater Code and Erosion Control Code Amendments**

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### ACTION REQUESTED

Council is asked to review the proposed ordinance for stormwater and erosion control code amendments, review associated code modifications, and adopt the ordinance.

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[November 15, 2022](#): Staff presented revisions to the stormwater code during Council's deliberations on the climate fee.

[December 6, 2022](#): Council adopted revisions to the stormwater code related to nature-based stormwater facilities and the use of stormwater funds on private property.

[October 15, 2024](#): Staff presented proposed amendments on escalating enforcement to the stormwater and erosion control code.

### ANALYSIS

Under the federal Clean Water Act (CWA) and Oregon Revised Statute (ORS) 468B.050, the Oregon Department of Environmental Quality (DEQ) issued the city a renewed National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase I Discharge Permit, effective October 1, 2021. DEQ regulates stormwater runoff from the city through the city's MS4 NPDES Permit No. 101348, issued to Clackamas County and its co-permittees, which include Milwaukie. As a condition of the MS4 Permit, the city needs to revise the code, specifically Milwaukie Municipal Code (MMC) Chapter 13.14 Stormwater Management and Chapter 16.28 Erosion Control, to include a written escalating enforcement and response procedure for all qualifying construction sites for construction site runoff control.

Staff have engaged with consultants at Water System Consulting Inc. (WSC) and Parametrix to provide recommended revisions that were consistent with the Milwaukie Municipal Code (MMC) and would meet the permit requirements. These amendments included adding the required escalating enforcement language to both Chapters 13.14 and 16.28, adding additional language concerning violations, adding definitions to better align definitions in the code with permit language, and consolidating the location of violations and penalties within the appropriate section of each chapter.

Additionally, staff incorporated Council feedback from the October 15 work session into the revised code that is recommended for adoption. In stormwater management, definitions for



“Point Source” and “Waters of the State” were added to clarify existing definitions. Additionally, the definition for “Manager” was added to 16.28 erosion control. In both stormwater management and erosion control, the duplicative language on enforcing daily fines was removed from the Violations and Penalty sections, 13.14.120 (E) and 16.28.120 (C).

In the erosion control chapter, staff retained section 16.28.120(B) Violations Deemed a Nuisance, as it provides the option of using the city’s existing nuisance code to address these violations, including abatement. Rather than repeating the city’s existing requirements for abatement in this section, the code instead refers to Chapter 8.04.070. Finally, staff retained the language in 16.28.030(D) about ensuring an Erosion Control Plan is kept on site and available upon request. The statement mirrors standard permit language and outlines the city’s authority and the permittee’s responsibility as a permit holder.

**BUDGET IMPACT**

Not applicable.

**CLIMATE IMPACT**

The proposed amendments align with the city’s Climate Action Plan (CAP) and are consistent in ensuring protection of surface water quality in an urban environment. This, in turn, will protect Milwaukie’s groundwater from contamination, maintaining Milwaukie’s high quality drinking water.

**EQUITY IMPACT**

The proposed amendments are primarily technical changes designed to ensure compliance with state and federal regulatory requirements. There are no direct impacts anticipated on underrepresented or marginalized communities as part of this specific action.

**WORKLOAD IMPACT**

Not applicable.

**COORDINATION, CONCURRENCE, OR DISSENT**

The proposed amendments have been coordinated with public works staff and code enforcement staff.

**STAFF RECOMMENDATION**

Staff recommends that Council adopt the attached ordinance.

**ALTERNATIVES**

Not applicable.

**ATTACHMENTS**

1. Ordinance

Exhibit A: Strikeout version of stormwater management and erosion control chapters

Exhibit B: Clean version of stormwater management and erosion control chapters

**COUNCIL ORDINANCE No.**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE (MMC) CHAPTERS 13.14 STORMWATER MANAGEMENT AND 16.28 EROSION CONTROL BY ADDING REQUIREMENTS RELATED TO ESCALATING ENFORCEMENT.**

WHEREAS the city is required by federal law to have an approved National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Phase 1 Discharge Permit for its municipal storm sewer system; and

WHEREAS the city is required by the 2021 NPDES Permit to adopt, update, and maintain adequate legal authority to control pollutant discharges into and discharges from its MS4 and to implement and enforce the conditions of this permit, to the extent allowable pursuant to the respective authority granted under state law; and

WHEREAS compliance with the NPDES Permit requires the city to establish a written escalating enforcement and response procedure for all qualifying construction sites for construction site runoff control.

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. Amendments. The Milwaukie Municipal Code (MMC) Chapter 13.14 Stormwater Management and Chapter 16.28 Erosion Control are amended as described in Exhibit A (underline/strikeout version) and Exhibit B (clean version).

Section 2. Effective Date. This ordinance will become effective on December 19, 2024.

Read the first time on \_\_\_\_\_ and moved to second reading by \_\_\_\_\_ vote of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Lisa M. Batey, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott S. Stauffer, City Recorder

\_\_\_\_\_  
Justin D. Gericke, City Attorney

## **Exhibit A**

### **CHAPTER 13.14 STORMWATER MANAGEMENT**

#### **§ 13.14.010. PURPOSE.**

The City finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the City constitute a potential hazard to the health, safety, and general welfare of the City. The City Council further finds that nature-based and manmade stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the City, of a stormwater utility.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

#### **§ 13.14.020. DEFINITIONS.**

“Best Management Practices (BMPs)” means schedules of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs are also treatment requirements, operating procedures, and practices to control runoff, spillage, or leaks, sludge, or waste disposal, or drainage from raw material storages.

“Chronic Illicit Discharges” means continuous or repeated illicit discharges to an Municipal Separate Storm Sewer System (MS4), potentially resulting from sanitary/wastewater connections to an MS4, sanitary/wastewater inflows into an MS4, unpermitted industrial wastewater discharges to the MS4, or other types of illegal dumping or poor housekeeping practices upstream from an outfall where irregular flows, color, smell, or other monitoring parameters indicate an issue that may need repeat investigations over time to ensure cross connections or illegal dumping are remedied. Chronic illicit discharges may not be long-term and ongoing as in the case of illicit connections that can be stopped easily. Chronic illicit discharges may be defined by inconclusive findings of outfall investigations indicating pollutant discharge or repeated reports by members of the public that have not been traced back to a definite source.

"City" means the City of Milwaukie, a municipality, and its authorized employees.

"City council" means the City Council of Milwaukie.

"Customer" means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer, or water service or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in their name.

"Developed" means an area ~~that~~<sup>which</sup> has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

“Discharge” means any addition of any pollutant or combination of pollutants to waters of the state from any point source, or any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the state from surface runoff, which is collected or channeled by humans; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a treatment works; and discharges through

pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Equivalent service unit (ESU)" means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City's stormwater system ~~which~~ that is approximately equal to that created by the average developed single-family residence within Milwaukie. One ESU is equal to 2,706 square feet of impervious surface area.

"Illicit Discharge" means any discharge to the City's storm sewer system that is not composed entirely of stormwater, except discharges permitted by a National Pollutant Discharge Elimination System (NPDES) permit or other state or federal permit, or otherwise authorized.

"Impervious surface" means any surface resulting from activities that prevents the infiltration of water or results in more runoff than in undeveloped conditions. Common ~~that hard surface area~~ which either prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions. Impervious ~~impervious~~ surfaces may include, but are not limited to, building rooftops, roofs, traditional concrete, or asphalt paving on, walkways, patios, driveways, parking lots, gravel lots and roads, and packed earthen material, or storage areas, trafficked gravel, and oiled, macadam, or other surfaces which similarly impede the natural infiltration or runoff of stormwater.

"Improved premises" means any area ~~which~~ that the ~~Public Works Director~~ Manager determines has been altered such that the runoff from the site is greater than that which could historically have been expected. Improved premises do not include public roads under the jurisdiction of the City, County, State or federal government.

"Manager" means the City Manager or designee ~~of the City stormwater management system.~~

Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyance, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that are (i) owned or operated by a State, city, town, county, , or other public body having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, that is (ii) designed or used for collecting or conveying stormwater (iii) ~~which~~ that is not a combined sewer; and (iv) ~~which~~ that is not part of a Publicly Owned Treatment Works as defined at 40 CFR §122.2.

"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, 402, 318, and 405 of Clean Water Act [40 CFR §122.2].

"One- or two-family residential" means an area ~~which~~ that is improved with one or two attached single-family dwelling units for occupancy each by a single family or a similar group of people, provided each dwelling has a separate billing within the City's utility billing system.

"On-site mitigation control system" means a stormwater drainage facility that ~~which~~ ~~the Public Works Director has determined~~ prevents the discharge, or substantially reduces the discharge, of stormwater or nonpoint source pollution into a receiving water or public stormwater system facility.

"Person responsible" means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

"Point Source" means a discernible, confined, and discrete conveyance including, but not limited to, a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,

concentrated animal feeding operation, vessel or other floating craft, or leachate collection system from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

“Pollutant” means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewerage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into water.

"Public works standards" mean the City of Milwaukie Public Works Standards ~~and the referenced City of Portland Stormwater Management Manual~~ that the City requires be complied with for the design and construction of on-site mitigation facilities including stormwater detention, retention, and water quality treatment facilities.

"Stormwater" means ~~water from that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed stormwater control infiltration facility, surface or subterranean water from any source, drainage, and nonseptic wastewater.~~

"Stormwater service" means the operations of the City's stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the City's service area.

"Stormwater system" means any manmade or nature-based structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including, but not limited to, pipes, sewers, curbs, gutters, manholes, catch basins, ponds, creeks, underground injection control (UIC) facilities, open drainageways, rain gardens, vegetated swales, permeable pavement, green roofs, urban forest canopy, tree trenches, rainwater harvesting, green streets and their appurtenances. Stormwater system does not include the Willamette River.

"Street wash water" means water that originates from publicly financed street cleaning activities consistent with the City's National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit.

"Toxic substances" mean any chemical listed as toxic under Section 307(a)(1) of the Federal Clean Water Act (CWA) or Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA).

"Undeveloped" means any area ~~which that~~ has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location.

"Waters of the state" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

### **§ 13.14.025. REGULATIONS AND REQUIREMENTS.**

#### **A. Compliance with ~~Industrial~~-NPDES Stormwater Permits**

Any ~~industrial person or entity responsible for any discharged discharger, discharger associated with construction activity, or other discharger~~ subject to any NPDES permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, shall

must comply with all provisions of such permits, including notification to and cooperation with local entities as required by federal regulations. Proof of compliance with said permits may be required in a form acceptable to the Manager ~~of the City stormwater management system~~ prior to issuance of any grading, building, or occupancy permits or business license.

B. Compliance with State, Local, and Federal Regulations

All users of the public stormwater system, and any person or entity whose actions may affect the system, ~~shall~~ must comply with all applicable federal, State, and local laws, including Section

19.402 Natural Resources. Compliance with the requirements of this chapter ~~shall~~ in no way substitutes for, or eliminates the necessity for compliance with, applicable federal, State, and local laws.

C. Stormwater Management Document

The Manager ~~must~~ will administer this Chapter 13.14 and may furnish additional policy, criteria, and information, including specifications and procedures for implementing the requirements of this chapter. In the event of a discrepancy between the requirements of any stormwater management document and the code, the requirement that is most protective of water quality overrides all other requirements.

D. Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitations of this chapter, and any rules adopted pursuant hereto, are superseded and supplemented by any applicable federal, State, or local requirements existing or adopted subsequent hereto ~~which that~~ are more stringent than the provisions and limitations contained herein. Any provision of this chapter and rules adopted pursuant hereto ~~which that~~ are more stringent than any such applicable federal, State, or local requirement ~~shall~~ will prevail and ~~shall~~ be the standard for compliance by the connectors to and the discharges to the public stormwater system.

E. Accidental Spill Prevention and Control

Dischargers who are not required to obtain an NPDES permit; but who handle, store, or use hazardous or toxic substances or discharges prohibited under Section 13.14.105.E General Discharge Prohibitions, on their sites; ~~shall~~ must prepare and submit to the Manager, at the Manager's request, an Accidental Spill Prevention Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this section.

F. Notification of Spills

As soon as any person in charge of a facility, or responsible for emergency response for a facility, becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons ~~shall~~ must:

1. Begin containment procedures;
2. Notify proper emergency personnel in case of an emergency;
3. Notify appropriate City and/or State officials regarding the nature of spill;

4. Follow up with the City regarding compliance and modified practices to minimize future spills, as appropriate.

The notification requirements of this section are in addition to any other notification requirements set forth in federal, State, or local regulations and laws. The notification requirements do not relieve the person of necessary remediation or enforcement action set forth in Section 13.14.115.

F. ~~Requirement to Eliminate Illicit Connections~~

1. ~~The Manager may require by written notice that a person responsible for an illicit connection to the public stormwater system comply with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.~~
2. ~~If, subsequent to eliminating a connection found to be in violation of the chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.~~

G. ~~Requirement to Remediate~~

~~Whenever the Manager finds that a discharge of pollutants is taking place, or has taken place, which will result in, or has resulted in, pollution of stormwater or the public stormwater system, the Manager may require by written notice to the responsible person that the pollution be remediated and the affected property restored, to the standards established by the Manager, within a specified time.~~

H. ~~Requirement to Monitor and Analyze~~

~~Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution or illicit discharges to the public stormwater system, the Manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; shall bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.~~

G. Stormwater Treatment

The quality of stormwater leaving the site after development ~~shall~~must be equal to or better than the quality of stormwater leaving the site before development, based on the following criteria:

1. On-site mitigation facilities for water quality required for development ~~shall~~must be designed, installed, and maintained in accordance with the Public Works Standards.
2. Land use activities of particular concern as pollution sources ~~shall~~must implement



additional best management practices for pollution control including, but not limited to, those best management practices specified in the Public Works Standards.

3. Development in a watershed that drains to streams with established total maximum daily load (TMDL) limitations; as provided under the Clean Water Act, Oregon Law, Administrative Rules, and other legal mechanisms; ~~shall~~ must assure that on-site mitigation facilities for water quality control meet the requirements for pollutants of concern.

H. Design and Performance Criteria for Stormwater Detention and Water Quality Treatment Facilities Constructed on Private Property

1. All on-site mitigation facilities; including stormwater detention, retention, and water quality treatment facilities required by the City; ~~shall~~ must be designed and constructed to meet the Public Works Standards.
2. Except as permitted by the ~~Engineering Director~~ Manager, as provided by the Public Works Standards, on-site mitigation facilities ~~shall~~ must be located on private property and ~~shall~~ may not be located on property that will become a public right-of-way, public stormwater easement, or future street plan.
3. Except as permitted by the Manager, as provided by the Public Works Standards, once constructed, the on-site mitigation facilities ~~shall~~ must be privately owned, operated, and maintained. Maintenance responsibility ~~shall~~ must include all elements of the stormwater detention and water quality treatment system up to the point of connection with a drainage structure or waterway of the public stormwater system. Such connection ~~shall be~~ is subject to City approval.
4. Maintenance as required by the Public Works Standards ~~shall~~ must be specified in an operation and maintenance plan submitted to and approved by the Manager prior to issuance of a notice to proceed with public improvements. Prior to the time of project acceptance, the developer or applicant ~~shall~~ must enter into an agreement with the City to ensure the implementation of the operation and maintenance plan, and a memorandum of agreement ~~shall~~ must be recorded with Clackamas County. Private stormwater detention and water quality treatment facilities are subject to periodic inspection by the City to ensure proper maintenance and performance.
5. Failure to properly operate or maintain on-site mitigation facilities for stormwater detention, retention, and water quality treatment according to the operation and maintenance plan of the adopted City of Portland Stormwater Management Manual in effect on the date of the ordinance codified in this chapter is a violation.

(Ord. 2013 § 1, 2010; Ord. 2025 § 3, 2011; Ord. 2036 § 3, 2011; Ord. 2223 § 1, 2022)

**§ 13.14.030. REQUEST FOR SERVICE, INITIATION OF BILLING.**

A request for water service constitutes a request for stormwater service and will initiate appropriate billing for stormwater services as established in this chapter. If development of a parcel does not require initiating water service, the creation of an improved premises from which stormwater may be discharged into the public stormwater system ~~shall~~will constitute a request for service and initiate the obligation to pay the fees and charges authorized in this chapter.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.040. CHARGES FOR STORMWATER SERVICE.**

A. Except as the charges may be reduced under subsection C of this section, the obligation to pay stormwater service charges arises whenever there is a request for stormwater service for an improved premises. Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the City, the person receiving the City's water utility charge bill ~~shall~~must pay the stormwater charges as set by City Council resolution. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges ~~shall~~must be paid by the person responsible for the property.

The person required to pay the charge is hereafter referred to as the customer.

B. The City Council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.

C. Upon completion of the on-site mitigation credit application package available from the City's Public Works Department, a customer of the utility may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that on-site stormwater facilities meet or exceed the City's standards for stormwater quantity and quality control at that site.

Any reduction given ~~shall~~will continue until the condition of the property is changed or until the ~~Public Works Director~~Manager determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.

D. Service charge avoidance may be requested through the application package available from the Public Works Department. The criteria for waiver of the service charge as it applies to a specific customer includes total retention of stormwater with no effective discharge to the City's stormwater system; the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the City's stormwater system; and proof that stormwater facilities are constructed and maintained to City standards.

E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the City's groundwater resources.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.050. STORMWATER CHARGES—BILLING.**

- A. Charges for stormwater service supplied by the City to any customer ~~shall~~will be charged for and billed to each such customer in accordance with rates established by the City Council. Prior to the establishment of stormwater service fees and charges by the City Council, the Milwaukie Citizens Utility Advisory Board ~~shall~~must~~will~~ prepare and deliver a report and recommendation on rates to the City Council. The Committee ~~shall~~must prepare and deliver its recommendation to City Council on an annual basis, according to the rules established by City Council. Stormwater service fees and charges as established by the City Council ~~shall~~must~~will~~ be added to and made a part of the billings for water and sewer service.
- B. The customer ~~shall~~be responsible for all stormwater service fees and charges, except as allowed by Section 13.14.040. The City may require deposits prior to providing stormwater service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the customer or not, that they will be ultimately liable for the charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement.
- C. Billings may be prorated. The proration ~~shall~~will be a daily rate determined by dividing the annual minimum billing by 365 days times the number of days of occupancy from last meter reading and/or billing date.
- D. A reduced stormwater service charge may be charged for customers who qualify as low income utility customers under the provisions of Chapter 13.20 of this code.
- E. All money collected through stormwater fees and charges ~~shall~~must~~will~~ be deposited in the stormwater utility account as established and maintained by the City's Finance Director.
- F. Funds collected under this chapter will be used for the purpose of designing, acquiring, developing, constructing, maintaining, improving, and operating both manmade and nature-based stormwater systems.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.055. PUBLIC INVESTMENT OF STORMWATER FUNDS.**

Funds collected under this chapter will not be used for maintaining, operating, or improving a stormwater system on private property, or to provide direct financial assistance for private tree removal except when:

- A. Providing non-federal grant match funding to projects that reduce or eliminate the risk of repetitive flood damage to buildings on private property insured by the National Flood Insurance Program; or
- B. The stormwater system is (or component thereof) demonstrated to the satisfaction of the ~~City Engineer~~Manager to provide a stormwater benefit that extends beyond the boundaries of the private property; or
- C. It can be demonstrated to the satisfaction of the ~~City Engineer~~Manager in consultation with the Urban Forester that a private tree provides a stormwater benefit that extends beyond the boundaries of the private property; or
- D. The stormwater system has been dedicated to the City and is within a public easement.  
(Ord. 2223 § 1, 2022)

**§ 13.14.060. STORMWATER CHARGES—WHEN DELINQUENT.**

- A. The City ~~shall~~must~~will~~ prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the 15th of the month following the billing date. Accounts are delinquent if the City does not receive full payment by 5:00 p.m. on the last business day of the month immediately following the billing date.
- B. A delinquent fee, in an amount established by resolution of the City Council, ~~shall~~will be added to all delinquent accounts.
- C. The Finance Director or designee is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and D of this section in de minimis or extenuating circumstances.
- D. In addition to other lawful remedies, the Finance Director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for nonpayment of water bills as provided in

Chapter 13.04. However, the Finance Director ~~shall~~may not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

(Ord. 1755 § 6, 1994; Ord. 1895 § 4, 2001; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

#### **§ 13.14.070. DELINQUENT CHARGES—LIEN.**

If the property owner elects pursuant to Section 13.14.050.B to authorize the use of a lien on real property to secure stormwater charge payment in lieu of a security deposit, all stormwater charges ~~shall~~will be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the City pertaining to its municipal stormwater system, and such ledger record or other record ~~shall~~must be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for stormwater service remains unpaid 60 days after it has been rendered, the lien thereby created may be foreclosed in the manner provided for by ORS 223.610 or in any other manner provided by law or City ordinance.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

#### **§ 13.14.080. APPEAL.**

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the Manager by filing with the City a written request for review no later than 10 days after receiving the decision. The Manager's decision ~~shall~~will~~must~~ be subject to review by the City Council upon filing of an appeal within 15 days of the notice of decision.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

#### **§ 13.14.090. RIGHT OF ACCESS.**

Employees of the City ~~shall~~must be provided access during regular business hours to all parts of the premises ~~which~~that include portions of the City's stormwater drainage system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

#### **§ 13.14.100. TAMPERING WITH SYSTEM.**

- A. No unauthorized person ~~shall~~may damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment ~~which~~that is a part of the stormwater system.
- B. The Manager may adopt such rules and regulations as are necessary to protect the stormwater system and the public health, safety, and welfare. Violation of said rules or regulations is deemed a violation of this chapter and ~~shall~~will be punished accordingly.
- C. Portions of Johnson Creek, Kellogg Creek, and their natural tributaries are within the boundaries of the city and are considered waters of the United States pursuant to the CWA.

In order to protect the waters the City has a comprehensive enforcement program to comply with:

1. The 1987 Amendments to the CWA, as implemented by the Environmental Protection Agency (EPA) NPDES regulations adopted November 16, 1990, make necessary the adoption of plans and programs for stormwater management meeting specified criteria.
2. Section 402(p) of the CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that municipalities must:
  - a. Prohibit nonstormwater discharge into the public stormwater system; and
  - b. Require controls to reduce the discharge of pollutants from stormwater to the maximum extent practicable.
3. Section 303(d) of the CWA requiring states and the EPA to identify certain substandard waters and to set total maximum daily loads (TMDLs). The Oregon Department of Environmental Quality has and will continue to establish TMDLs for some water bodies within the city. The City seeks to comply with all TMDL requirements.
4. The Endangered Species Act (ESA) and associated 4(d) rules covering protection of West Coast salmon and steelhead.
5. All provisions of the federal law by implementing a stormwater management plan, in conjunction with other co-permittees.
6. The Safe Drinking Water Act and Divisions 40 and 44 of Chapter 340 of the Oregon Administrative Rules pertaining to UIC facilities.  
(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.105. DISCHARGE REGULATIONS.**

**A. Discharge of Pollutants**

The commencement, conduct, or continuance of any nonstormwater discharge to the public stormwater system is prohibited and is a violation of this chapter, except as described below.

1. The prohibition ~~shall~~ does not apply to any nonstormwater discharge permitted or approved under an Industrial or Municipal NPDES permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).
2. Except as provided in subsection A.3, the prohibition ~~shall~~ does not apply to the following non-stormwater discharges to the public stormwater system: ~~municipal uncontaminated water line flushing;~~ landscape irrigation; ~~diverted stream flows;~~ rising groundwater, ~~uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to the municipal separate storm sewer system (MS4);~~ separate storm sewers; ~~rising groundwaters;~~ uncontaminated pumped groundwater; ~~discharges from potable water sources (including potable groundwater monitoring wells and drainage and flushing of municipal potable water storage reservoirs), startup flushing of groundwater wells, foundation, footing and crawlspace drains (where flows are not contaminated);~~ drains, uncontaminated air conditioning or compressor condensation condensate; ~~irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, charity car washing (provided that steam and heat are not used,~~

washing is restricted to the outside of the vehicle with no rinsing or washing of engines, transmissions, or undercarriages, and only phosphate-free soaps/detergents are used); flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, including hot tubs (heated water must cool for at least 12 hours prior to discharge and swimming pool and hot tub discharges with other pollutants such as bromine and copper may not be discharged to the MS4);—street and pavement wash-waters, including for bridges or pedestrian bridges (provided that chemicals, soaps, detergents, steam, or heated water are not used); routine external building wash-down (provided that chemicals, soaps, detergents, steam, or heated water are not used); and water associated with dye testing activity;—and flows from fire fighting activities.

3. The Manager may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in subsection A.2, if at any time the Manager determines that the discharge is, was, or will be a significant source of pollution.

#### B. Discharge in Violation of Permit

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge ~~shall be~~ is the responsibility of the person(s) causing or responsible for the discharge, and such persons ~~shall~~ must defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

#### C. Illicit Connections, ~~and Illicit Discharges,~~ and Chronic Illicit Discharge

It is prohibited to establish, use, maintain, or continue illicit connections to the public stormwater system, or to commence or continue any illicit discharges to the public stormwater system.

#### D. Waste Disposal Prohibitions

1. No person may throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, inlet, or other component of the public stormwater system, materials that may cause or contribute to pollution, including, but not limited to, any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations.
2. Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, ~~shall~~ may not discharge directly to a private or public stormwater system; this includes, but is not limited to, outdoor commercial, industrial, or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

#### E. General Discharge Prohibitions

1. Discharge to Sanitary Sewer System

No person ~~shall~~may discharge or contribute to the discharge of any stormwater or other unpolluted water into the City's sanitary sewer system.

2. Discharge to Public Storm Sewer System

It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

- a. Any discharge having a visible sheen, or containing floating solids or discoloration (including, but not limited to, dyes and inks);
- b. Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic substances;
- c. Any discharge ~~which~~that causes or may cause damage, interference, nuisance, or hazard to the public stormwater system or the City personnel;
- d. Any discharge containing human sanitary waste or animal feces.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

### **§ 13.14.110. COMPLIANCE REQUIRED.**

The provisions of this chapter must be strictly complied with in every instance, and service must be paid for by all premises supplied, according to the rates established by the City Council. Exceptions to these provisions ~~shall~~may be made only upon the written authorization of the Manager. (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

### **§ 13.14.115. INSPECTION AND ENFORCEMENT.**

#### **A. Authority to Inspect**

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Manager has reasonable cause to believe that there exists in any building or upon any premises any condition ~~which~~that may constitute a violation of the provisions of this chapter, the Manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Manager by this chapter; provided that: (a) if such building or premises is occupied, he or she first ~~shall~~must present proper credentials and request entry; and (b) if such building or premises is unoccupied, he or she must first ~~shall~~ make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
2. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.
3. As used in this section, inspection includes, but is not limited to, the physical inspection of a facility, and the review and copying of records relating to compliance with Sections 13.14.025 to 13.14.130.



B. Authority to Sample, Establish Sampling Devices, and Test

With the consent of the owner or occupant, or with court consent, the Manager may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Manager may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities.

C. Enforcement Procedures

For any violation of MMC Chapter 13.14, the following enforcement procedures apply:

1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 13.14, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

- a. The name and address of the applicant or the responsible person;
- b. The address or other description of the site where the violation is occurring;
- c. A statement specifying the nature of the violation;
- d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 13.14;
- e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The amount and type of pollution discharged will inform the date by which compliance is required;
- f. A statement of the penalties that may be assessed; and
- g. A statement of other enforcement action that may occur.

2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 13.14 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Chronic Illicit Discharge

Notwithstanding other provisions in this Section 13.14.115, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 13.14 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

6. Additional Requirements

a. Requirement to Eliminate Illicit Connections

For an illicit connection to the public stormwater system, compliance requires eliminating the connection. Once the connection is eliminated, if the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect as provided in Section 13.14.030. The reconnection or reinstallation of the connection will be at the responsible person's expense.

b. Requirement to Monitor and Analyze

Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution, illicit discharge, or chronic illicit discharge to the public stormwater system, the Manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice must be served either in person or by certified or registered mail, return receipt requested, and must set forth the basis for such order and particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; must bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order must undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.

~~C. Continuing Violation~~

~~Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.~~

~~D. Concealment~~

~~Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation of the chapter.~~

E. ~~Acts Resulting in Violation of Federal Law~~

~~Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by DEQ, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the CWA, Safe Drinking Water Act, or the ESA and may be subject to the sanctions of these Acts including civil and criminal penalties.~~

F. ~~Violations Deemed a Nuisance~~

~~Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance. In addition to any other remedies, the Manager may enforce this chapter by compliance order, stop work order, abatement proceedings, or civil action as provided in MMC 8.04.070, or as otherwise authorized by law.~~

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.120. VIOLATIONS—and PENALTY.**

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Concealment

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter constitutes a violation of the chapter.

C. Acts Resulting in Violation of Federal Law

Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by Department of Environmental Quality, or who discharges waste or wastewater which that causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Clean Water Act, Safe Drinking Water Act, or the Endangered Species Act and may be subject to the sanctions of these Acts including civil and criminal penalties.

D. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.

E. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations. Each day on which a violation occurs or continues is a separate offense.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.130. DISCLAIMER OF LIABILITY.**

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and the chapter does not imply that compliance will insure that there will be no unauthorized discharge of pollutants into the public stormwater system. This chapter ~~shall~~will not create liability on the part of the City, or any agent or employee thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

CHAPTER 16.28  
EROSION CONTROL

**Note: Prior ordinance history; Ord. 1718**

**§ 16.28.010. GENERAL POLICY.**

- A. The policies of this chapter ~~shall~~ must will apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.
- B. Temporary and permanent measures for all construction projects ~~shall~~ will must be required to lessen the adverse effects of erosion and sedimentation. The owner or his or her/her agent, contractor, or employee, ~~shall~~ must properly install, operate, and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all lands within the City of Milwaukie.
- C. Nothing in this chapter ~~shall~~ will relieve any person from the obligation to comply with the regulations or permits of any federal, State, or local authority.
- D. Maintenance and repair of existing facilities ~~shall be~~ is the responsibility of the owner of record.
- E. Erosion, sedimentation, and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity ~~which~~ that accelerates erosion ~~shall~~ must be prevented.
- F. No visible or measurable erosion ~~shall~~ will leave the property during construction or during activity described in subsection E above. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, ~~shall be~~ is responsible for clean up, fines, and damages. Clean up responsibilities include clean up of creeks, drainage ways, or wetlands impacted by a project. For the purposes of this chapter "visible and measurable erosion" includes, but is not limited to:
  - 1. Deposits of mud, dirt, sediment, or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion;
  - 2. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site, and/or;
  - 3. Earth slides, mud flows, earth sloughing, or other earth movement ~~which~~ that results in material leaving the property.
- G. Dust and other particulate matters containing pollutants can settle on property and be carried to waters of the state though rainfall or other means. Dust ~~shall~~ must be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

1. Sprinkling haul and access roads and other exposed dust-producing areas with water;
  2. Establishing temporary vegetative cover;
  3. Placing wood chips or other effective mulches on vehicle and pedestrian use areas;
  4. Use of covered haul equipment; and/or
  5. Prewetting cut and borrow area surfaces.
- (Ord. 1899 § 1, 2002)

**§ 16.28.020. EROSION CONTROL PERMIT AND EROSION CONTROL PLANS—APPLICABILITY—CONFORMANCE.**

A. Definitions.

"Erosion control permit" means the official approval issued by the City that demonstrates compliance with this chapter for activities described in the application form, erosion control plan, and related materials submitted pursuant to this chapter.

"Erosion control plan" means all documents, maps, plans and other information specified in Section 16.28.030 and submitted in association with an application for an erosion control permit.

"Manager" means the City Manager or designee.

B. An erosion control plan that meets the requirements of Section 16.28.030 is required prior to any approval of an erosion control permit.

C. An erosion control permit is required as follows:

1. Prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which results in the disturbance or exposure of soils exceeding 500 square feet.
2. For disturbed areas or exposed soils less than 500 square feet, where the City has determined that site conditions may result in visible and measurable erosion and where the City has provided written notice of the requirement to obtain an erosion control permit to the property owner. Upon notice by the City, all work ~~shall~~must cease pending approval of an erosion control permit and installation of approved erosion control measures.
3. For any lot that includes natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resources, an erosion control permit ~~shall~~will~~must~~ be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which has the potential for, or results in visible and measurable erosion, regardless of the area of disturbance.

D. An erosion control permit ~~shall~~will not be issued for activities on lots that include natural resources regulated by Section 19.402, where the site activity has not been authorized, or is not exempt under the provisions of Milwaukie Zoning Ordinance Section 19.402 Natural

Resources as determined by the Planning Director. This provision does not apply where the erosion control permit is associated with correction of a violation of the City Code or as necessary for public safety, or the protection of property or water quality.

E. Timing

Approval of the erosion control permit is required prior to the following, whichever comes first:

1. Issuance of grading permits, building permits, and approval of construction plans for subdivision; or
2. Placement of fill, site clearing, land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which disturbs or exposes soil.

F. Erosion control measures set forth in any approved erosion control plan ~~shall~~must be implemented and maintained on the site until the date set forth in the plan, or the amended date as necessary for the establishment of final landscaping. The City may allow for the removal of erosion control measures at an earlier date if erosion control is assured by established landscaping.

(Ord. 1899 § 1, 2002; Ord. 2036 § 3, 2011)

**§ 16.28.030. CONTENTS OF EROSION CONTROL PLAN AND GENERAL REQUIREMENTS.**

A. Erosion control plans ~~shall~~ must include a description of erosion control methods that are adequate to ensure that runoff siltation and pollutants from the grading, site clearing, or construction are contained onsite during the period of activity on the site until the final landscaping is sufficiently established to control erosion. Each plan ~~shall~~ must contain a date ~~which~~that is the estimated ending date for maintaining erosion control measures. That date may be extended if final landscaping has not been sufficiently established to control erosion. Plan submittal requirements, and recommended erosion control measures, are included in the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/Sedimentation Control Plans (August 1991) (Guidance Handbook), which is hereby adopted in total as part of this chapter. Copies of the Guidance Handbook are available for a fee at the City Public Works Department.

B. At a minimum the Erosion Control Plan ~~shall~~must include:

1. Identification of potential sources of stormwater pollution at the construction site
2. The stormwater controls methods and/or facilities to be used to prevent erosion and pollution created from the development both during and after construction (site-specific considerations ~~shall~~must be incorporated);
3. Limits of clearing by flagging boundaries in the field before starting site grading or construction (staging areas ~~shall~~ must be included);
4. An analysis of source controls such as detention and storage techniques during construction showing existing contours as an alternative method to control erosion from stormwater runoff;

5. A drainage plan during construction;
  6. Existing contours as well as all sensitive areas, creeks, streams, wetlands, open areas, and areas of natural riparian vegetation pursuant to Chapter 322; and
  7. A description of historic localized flooding problems resulting from surface water runoff, FEMA, or flooding problems known to the community or the local jurisdiction.
- C. A site plan prepared by an Oregon registered engineer ~~shall be~~ required for sites with disturbed area of 5 acres or greater.
  - D. The Erosion Control Plan must be kept on site and made available during site inspections or upon request.
  - E. Erosion Control Plans must be maintained and updated as site conditions change or as directed by the City.
  - F. Additional measures required by subsection C above may include 1 or more of the following:
    1. Limited area cleared at any one time;
    2. Additional drainage requirements during construction;
    3. Filtering or treatment of runoff;
    4. Additional water quality measures;
    5. Additional erosion control to cover portions of the site;
    6. Maintaining some existing vegetation adjacent to water features, such as creeks, streams, and wetlands or areas of natural riparian vegetation pursuant to Chapter 322;
    7. Additional facilities to reduce volume and velocity of water runoff;
    8. If there are no workable alternatives, limit clearing, and grading in some areas between November 1st and April 30th; and
    9. Additional measures required by the Guidance Handbook.
  - G. All construction activities disturbing 5 or more acres ~~shall~~ must obtain an NPDES erosion control permit for construction activities issued by the City of Milwaukie.  
(Ord. 1899 § 1, 2002)

**§ 16.28.040. APPROVAL PROCESS—FEES.**

Fees to cover the cost of erosion control plan review, site inspections, and the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/Sedimentation Control Plans (August 1991) will be set by City Council resolution.  
(Ord. 1899 § 1, 2002)

**§ 16.28.050. MAINTENANCE AND AMENDMENT OF INADEQUATE MEASURES.**

The applicant ~~shall~~ must maintain all facilities required by an approved erosion control plan so as to assure their continued effectiveness during construction or other permitted activity. If the facilities and techniques approved in an erosion control plan are not effective or sufficient as determined by



the City's Site Inspector, the permittee ~~shall~~must submit a revised plan within 3 working days of written notification by the City. In cases where erosion is occurring, the City may require the applicant to implement interim control measures prior to submittal of a revised erosion control plan and without limiting the City's right to undertake enforcement measures. Upon approval of the revised plan by the City, the permittee ~~shall~~must immediately implement the revised plan.

(Ord. 1899 § 1, 2002)

#### **§ 16.28.060. WORK IN PROGRESS.**

Permittees or property owners for any site activities ~~which~~that were underway on the effective date of the ordinance codified in this chapter, may be required to prepare an erosion control plan for approval pursuant to this chapter. If the City determines that an erosion control problem exists, and requests an erosion control plan, ground work on the site ~~shall~~must cease pending approval of the plan and installation of approved erosion control measures. The provisions of this section ~~shall~~ apply only until final landscaping on the site is sufficiently established to control erosion.

(Ord. 1899 § 1, 2002)

#### **§ 16.28.070. PERFORMANCE.**

The City may require the applicant to submit a bond, cashier's check, or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this chapter. Upon default, the City may perform work or remedy violations and draw upon the bond or fund. If the City does not require a bond and the developer does not perform the erosion control plan in whole or in part, the City may, but ~~shall~~is not be obligated to, perform or cause to be performed corrective work and charge the developer. Such amount ~~shall~~will ~~must~~ bear interest at 9% per annum and ~~shall~~ be a lien upon the property foreclosable in accordance with ORS Chapter 88.

(Ord. 1899 § 1, 2002)

#### **§ 16.28.080. EROSION CONTROL CERTIFICATION.**

A. Developers/contractors of building activities requiring erosion control permits who have a certified individual on staff with authority over erosion control and who is responsible for erosion control of the site, are eligible for a discount of their erosion control fees in accordance with the City fee schedule. On large or complex sites, the City may require an individual certified in erosion control to be on site at all times. Violations of this title that result in enforcement procedures described in Section 16.28.110, will result in revocation of the certification and require payment of the full erosion control fee. Recertification is required following erosion control violations resulting in enforcement actions. If certification is revoked, there may be additional inspection fees.

B. Certification ~~shall~~must involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction ~~shall~~be required every 2 years.

(Ord. 1899 § 1, 2002)

#### **§ 16.28.090. INSPECTION.**

The erosion control measures ~~shall~~must be installed by the owner or his or her representative and ~~shall~~must be inspected by the City prior to the start of any excavation work.

(Ord. 1899 § 1, 2002)

### § 16.28.100. DEPOSIT OF SEDIMENT.

No person ~~shall~~will drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock, or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system ~~which~~that drains or connects to the public storm and surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material ~~shall~~must be immediately removed using hand labor or mechanical means. No material ~~shall~~will be washed or flushed into the road/street or any part of the storm or surface water system without erosion control measures installed to the satisfaction of the City, and any such action ~~shall~~will be an additional violation.

(Ord. 1899 § 1, 2002)

### § 16.28.110. ENFORCEMENT—VIOLATION—PENALTY.

#### A. Enforcement Procedures

For any violation of MMC Chapter 16.28, the following enforcement procedures apply:

##### 1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 16.28, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

a. The name and address of the applicant or the responsible person;

b. The address or other description of the site where the violation is occurring;

c. A statement specifying the nature of the violation;

d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 16.28;

e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The type and severity of pollution discharged will inform the date by which compliance is required;

f. A statement of the penalties that may be assessed; and

g. A statement of other enforcement action that may occur.

##### 2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 16.28 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Repeat or Ongoing Violations

Notwithstanding other provisions in this Section 16.28.110, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 16.28 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

~~A. The Engineering Director or designee shall enforce the provisions of this chapter.~~

~~B. Beginning or continuing site clearing, grading or construction activities without an approved erosion control plan required by this chapter constitutes a violation of this chapter. Failure to implement the erosion control measures set forth in the approved erosion control plan constitutes a violation of this chapter. No building shall be certified for occupancy if the property is deemed to be in violation of this chapter. Any person convicted of violating this chapter shall be punished by a fine of not more than \$300.00. Each day that such violation exists shall be deemed a separate violation of this chapter.~~

(Ord. 1899 § 1, 2002)

16.28.120 Violations and Penalty

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.070.

C. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations. Each day on which a violation occurs or continues is a separate offense.

## **Exhibit B**

### **CHAPTER 13.14 STORMWATER MANAGEMENT**

#### **§ 13.14.010. PURPOSE.**

The City finds and declares that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the City constitute a potential hazard to the health, safety, and general welfare of the City. The City Council further finds that nature-based and manmade stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the City, of a stormwater utility.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

#### **§ 13.14.020. DEFINITIONS.**

“Best Management Practices (BMPs)” means schedules of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs are also treatment requirements, operating procedures, and practices to control runoff, spillage, or leaks, sludge, or waste disposal, or drainage from raw material storages.

“Chronic Illicit Discharges” means continuous or repeated illicit discharges to a Municipal Separate Storm Sewer System (MS4), potentially resulting from sanitary/wastewater connections to an MS4, sanitary/wastewater inflows into an

MS4, unpermitted industrial wastewater discharges to the MS4, or other types of illegal dumping or poor housekeeping practices upstream from an outfall where irregular flows, color, smell, or other monitoring parameters indicate an issue that may need repeat investigations over time to ensure cross connections or illegal dumping are remedied. Chronic illicit discharges may not be long-term and ongoing as in the case of illicit connections that can be stopped easily. Chronic illicit discharges may be defined by inconclusive findings of outfall investigations indicating pollutant discharge or repeated reports by members of the public that have not been traced back to a definite source.

"City" means the City of Milwaukie, a municipality, and its authorized employees.

"City council" means the City Council of Milwaukie.

"Customer" means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer, or water service or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in their name.

"Developed" means an area that has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

“Discharge” means any addition of any pollutant or combination of pollutants to waters of the state from any point source, or any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft that is being used as a means of transportation. This definition includes additions of pollutants into waters of the state from surface runoff, which is collected or channeled by humans; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.

"Equivalent service unit (ESU)" means a configuration of development or impervious surface estimated to contribute an amount of runoff to the City's stormwater system that is approximately equal to that created by the average developed single-family residence within Milwaukie. One ESU is equal to 2,706 square feet of impervious surface area.

"Illicit Discharge" means any discharge to the City's storm sewer system that is not composed entirely of stormwater, except discharges permitted by a National Pollutant Discharge Elimination System (NPDES) permit or other state or federal permit, or otherwise authorized.

"Impervious surface" means any surface resulting from activities that prevents the infiltration of water or results in more runoff than in undeveloped conditions. Common impervious surfaces may include, but are not limited to, building roofs, traditional concrete or asphalt paving on walkways, patios, driveways, parking lots, gravel lots and roads, and packed earthen material..

"Improved premises" means any area that the Manager determines has been altered such that the runoff from the site is greater than that which could historically have been expected. Improved premises do not include public roads under the jurisdiction of the City, County, State or federal government.

"Manager" means the City Manager or designee.

Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyance, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains that are (i) owned or operated by a State, city, town, county, , or other public body having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, that is (ii) designed or used for collecting or conveying stormwater (iii) that is not a combined sewer; and (iv) that is not part of a Publicly Owned Treatment Works as defined at 40 CFR §122.2.

"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, 402, 318, and 405 of Clean Water Act [40 CFR §122.2].

"One- or two-family residential" means an area that is improved with one or two attached single-family dwelling units for occupancy each by a single family or a similar group of people, provided each dwelling has a separate billing within the City's utility billing system.

"On-site mitigation control system" means a stormwater drainage facility that prevents the discharge, or substantially reduces the discharge, of stormwater or nonpoint source pollution into a receiving water or public stormwater system facility.

"Person responsible" means the occupant, lessee, tenant, contract purchaser, owner, agent, or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

"Point Source" means a discernible, confined, and discrete conveyance including, but not limited to, a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or leachate collection system from which pollutants are or may be discharged. Point source does not include agricultural storm water discharges and return flows from irrigated agriculture.

"Pollutant" means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewerage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste

discharged into water.

"Public works standards" mean the City of Milwaukie Public Works Standards that the City requires be complied with for the design and construction of on-site mitigation facilities including stormwater detention, retention, and water quality treatment facilities.

"Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed stormwater control infiltration facility.

"Stormwater service" means the operations of the City's stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the City's service area.

"Stormwater system" means any manmade or nature-based structure or configuration of ground that is used or by its location becomes a place where stormwater flows or is accumulated, including, but not limited to, pipes, sewers, curbs, gutters, manholes, catch basins, ponds, creeks, underground injection control (UIC) facilities, open drainageways, rain gardens, vegetated swales, permeable pavement, green roofs, urban forest canopy, tree trenches, rainwater harvesting, green streets and their appurtenances. Stormwater system does not include the Willamette River.

"Street wash water" means water that originates from publicly financed street cleaning activities consistent with the City's National Pollutant Discharge Elimination System (NPDES) municipal stormwater permit.

"Toxic substances" mean any chemical listed as toxic under Section 307(a)(1) of the Federal Clean Water Act (CWA) or Section 313 of Title III of Superfund Amendments and Reauthorization Act (SARA).

"Undeveloped" means any area that has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious surface area, which affects the hydraulic properties of the location.

"Waters of the state" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

### **§ 13.14.025. REGULATIONS AND REQUIREMENTS.**

#### **A. Compliance with NPDES Stormwater Permits**

Any person or entity responsible for any discharge subject to any NPDES permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, must comply with all provisions of such permits, including notification to and cooperation with local entities as required by federal regulations. Proof of compliance with said permits may be required in a form acceptable to the Manager prior to issuance of any grading, building, or occupancy permits or business license.

B. Compliance with State, Local, and Federal Regulations

All users of the public stormwater system, and any person or entity whose actions may affect the system, must comply with all applicable federal, State, and local laws, including Section 19.402 Natural Resources. Compliance with the requirements of this chapter in no way substitutes for, or eliminates the necessity for compliance with, applicable federal, State, and local laws.

C. Stormwater Management Document

The Manager will administer this Chapter 13.14 and may furnish additional policy, criteria, and information, including specifications and procedures for implementing the requirements of this chapter. In the event of a discrepancy between the requirements of any stormwater management document and the code, the requirement that is most protective of water quality overrides all other requirements.

D. Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitations of this chapter, and any rules adopted pursuant hereto, are superseded and supplemented by any applicable federal, State, or local requirements existing or adopted subsequent hereto that are more stringent than the provisions and limitations contained herein. Any provision of this chapter and rules adopted pursuant hereto that are more stringent than any such applicable federal, State, or local requirement will prevail and be the standard for compliance by the connectors to and the discharges to the public stormwater system.

E. Accidental Spill Prevention and Control

Dischargers who are not required to obtain an NPDES permit; but who handle, store, or use hazardous or toxic substances or discharges prohibited under Section 13.14.105.E General Discharge Prohibitions, on their sites; must prepare and submit to the Manager, at the Manager's request, an Accidental Spill Prevention Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this section.

F. Notification of Spills

As soon as any person in charge of a facility, or responsible for emergency response for a facility, becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons must:

1. Begin containment procedures;
2. Notify proper emergency personnel in case of an emergency;
3. Notify appropriate City and/or State officials regarding the nature of spill;
4. Follow up with the City regarding compliance and modified practices to minimize future spills, as appropriate.

The notification requirements of this section are in addition to any other notification requirements set forth in federal, State, or local regulations and laws. The notification

requirements do not relieve the person of necessary remediation or enforcement action set forth in Section 13.14.115.

#### G. Stormwater Treatment

The quality of stormwater leaving the site after development must be equal to or better than the quality of stormwater leaving the site before development, based on the following criteria:

1. On-site mitigation facilities for water quality required for development must be designed, installed, and maintained in accordance with the Public Works Standards.
2. Land use activities of particular concern as pollution sources must implement additional best management practices for pollution control including, but not limited to, those best management practices specified in the Public Works Standards.
3. Development in a watershed that drains to streams with established total maximum daily load (TMDL) limitations; as provided under the Clean Water Act, Oregon Law, Administrative Rules, and other legal mechanisms; must assure that on-site mitigation facilities for water quality control meet the requirements for pollutants of concern.

#### H. Design and Performance Criteria for Stormwater Detention and Water Quality Treatment Facilities Constructed on Private Property

1. All on-site mitigation facilities; including stormwater detention, retention, and water quality treatment facilities required by the City; must be designed and constructed to meet the Public Works Standards.
2. Except as permitted by the Manager, as provided by the Public Works Standards, on-site mitigation facilities must be located on private property and may not be located on property that will become a public right-of-way, public stormwater easement, or future street plan.
3. Except as permitted by the Manager, as provided by the Public Works Standards, once constructed, the on-site mitigation facilities must be privately owned, operated, and maintained. Maintenance responsibility must include all elements of the stormwater detention and water quality treatment system up to the point of connection with a drainage structure or waterway of the public stormwater system. Such connection is subject to City approval.
4. Maintenance as required by the Public Works Standards must be specified in an



operation and maintenance plan submitted to and approved by the Manager prior to issuance of a notice to proceed with public improvements. Prior to the time of project acceptance, the developer or applicant must enter into an agreement with the City to ensure the implementation of the operation and maintenance plan, and a memorandum of agreement must be recorded with Clackamas County. Private stormwater detention and water quality treatment facilities are subject to periodic inspection by the City to ensure proper maintenance and performance.

5. Failure to properly operate or maintain on-site mitigation facilities for stormwater detention, retention, and water quality treatment according to the operation and maintenance plan of the adopted City of Portland Stormwater Management Manual in effect on the date of the ordinance codified in this chapter is a violation.

(Ord. 2013 § 1, 2010; Ord. 2025 § 3, 2011; Ord. 2036 § 3, 2011; Ord. 2223 § 1, 2022)

**§ 13.14.030. REQUEST FOR SERVICE, INITIATION OF BILLING.**

A request for water service constitutes a request for stormwater service and will initiate appropriate billing for stormwater services as established in this chapter. If development of a parcel does not require initiating water service, the creation of an improved premises from which stormwater may be discharged into the public stormwater system will constitute a request for service and initiate the obligation to pay the fees and charges authorized in this chapter.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.040. CHARGES FOR STORMWATER SERVICE.**

A. Except as the charges may be reduced under subsection C of this section, the obligation to pay stormwater service charges arises whenever there is a request for stormwater service for an improved premises. Unless another person responsible has agreed in writing to pay and a copy of that writing is filed with the City, the person receiving the City's water utility charge bill must pay the stormwater charges as set by City Council resolution. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges must be paid by the person responsible for the property.

The person required to pay the charge is hereafter referred to as the customer.

B. The City Council may by resolution establish fees and charges necessary to provide and operate a stormwater system and service.

C. Upon completion of the on-site mitigation credit application package available from the City's Public Works Department, a customer of the utility may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that on-site stormwater facilities meet or exceed the City's standards for stormwater quantity and quality control at that site.

Any reduction given will continue until the condition of the property is changed or until the Manager determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a person responsible.

D. Service charge avoidance may be requested through the application package available from the Public Works Department. The criteria for waiver of the service charge as it applies to a specific customer includes total retention of stormwater with no effective discharge to the City's stormwater system; the petitioner's ability to demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the City's stormwater system; and proof that stormwater facilities are constructed and maintained to City standards.

E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the City's groundwater resources.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.050. STORMWATER CHARGES—BILLING.**

- A. Charges for stormwater service supplied by the City to any customer will be charged for and billed to each such customer in accordance with rates established by the City Council. Prior to the establishment of stormwater service fees and charges by the City Council, the Milwaukie Citizens Utility Advisory Board will prepare and deliver a report and recommendation on rates to the City Council. The Committee must prepare and deliver its recommendation to City Council on an annual basis, according to the rules established by City Council. Stormwater service fees and charges as established by the City Council will be added to and made a part of the billings for water and sewer service.
- B. The customer is responsible for all stormwater service fees and charges, except as allowed by Section 13.14.040. The City may require deposits prior to providing stormwater service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the customer or not, that they will be ultimately liable for the charges and that the City may use a lien as one method to secure payment if the charges are not paid. However, the City may not require a property owner to sign such an agreement.
- C. Billings may be prorated. The proration will be a daily rate determined by dividing the annual minimum billing by 365 days times the number of days of occupancy from last meter reading and/or billing date.
- D. A reduced stormwater service charge may be charged for customers who qualify as low income utility customers under the provisions of Chapter 13.20 of this code.
- E. All money collected through stormwater fees and charges will be deposited in the stormwater utility account as established and maintained by the City's Finance Director.
- F. Funds collected under this chapter will be used for the purpose of designing, acquiring, developing, constructing, maintaining, improving, and operating both manmade and nature-based stormwater systems.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.055. PUBLIC INVESTMENT OF STORMWATER FUNDS.**

Funds collected under this chapter will not be used for maintaining, operating, or improving a stormwater system on private property, or to provide direct financial assistance for private tree removal except when:

- A. Providing non-federal grant match funding to projects that reduce or eliminate the risk of repetitive flood damage to buildings on private property insured by the National Flood Insurance Program; or
- B. The stormwater system is (or component thereof) demonstrated to the satisfaction of the Manager to provide a stormwater benefit that extends beyond the boundaries of the private property; or
- C. It can be demonstrated to the satisfaction of the Manager in consultation with the Urban Forester that a private tree provides a stormwater benefit that extends beyond the boundaries of the private property; or
- D. The stormwater system has been dedicated to the City and is within a public easement.  
(Ord. 2223 § 1, 2022)

**§ 13.14.060. STORMWATER CHARGES—WHEN DELINQUENT.**

- A. The City will prepare and mail billings for stormwater fees and charges on the last business day of each month. Payment is due on the 15th of the month following the billing date. Accounts are delinquent if the City does not receive full payment by 5:00 p.m. on the last business day of the month immediately following the billing date.
- B. A delinquent fee, in an amount established by resolution of the City Council, will be added to all delinquent accounts.
- C. The Finance Director or designee is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B and D of this section in de minimis or extenuating circumstances.
- D. In addition to other lawful remedies, the Finance Director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for nonpayment of water bills as provided in

Chapter 13.04. However, the Finance Director may not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

(Ord. 1755 § 6, 1994; Ord. 1895 § 4, 2001; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.070. DELINQUENT CHARGES—LIEN.**

If the property owner elects pursuant to Section 13.14.050.B to authorize the use of a lien on real property to secure stormwater charge payment in lieu of a security deposit, all stormwater charges will be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the City pertaining to its municipal stormwater system, and such ledger record or other record must be made accessible for inspection by anyone interested in ascertaining the amount of such charges against the property. Whenever a bill for stormwater service remains unpaid 60 days after it has been rendered, the lien thereby created may be foreclosed in the manner provided for by ORS 223.610 or in any other manner provided by law or City ordinance.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.080. APPEAL.**

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the Manager by filing with the City a written request for review no later than 10 days after receiving the decision. The Manager's decision will be subject to review by the City Council upon filing of an appeal within 15 days of the notice of decision.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.090. RIGHT OF ACCESS.**

Employees of the City must be provided access during regular business hours to all parts of the premises that include portions of the City's stormwater drainage system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.100. TAMPERING WITH SYSTEM.**

- A. No unauthorized person may damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment that is a part of the stormwater system.
- B. The Manager may adopt such rules and regulations as are necessary to protect the stormwater system and the public health, safety, and welfare. Violation of said rules or regulations is deemed a violation of this chapter and will be punished accordingly.
- C. Portions of Johnson Creek, Kellogg Creek, and their natural tributaries are within the boundaries of the city and are considered waters of the United States pursuant to the CWA.

In order to protect the waters the City has a comprehensive enforcement program to comply with:

1. The 1987 Amendments to the CWA, as implemented by the Environmental Protection Agency (EPA) NPDES regulations adopted November 16, 1990, make necessary the adoption of plans and programs for stormwater management meeting specified criteria.
  2. Section 402(p) of the CWA (33 U.S.C. 1251 et seq.), as amended by the Water Quality Act of 1987, requires that municipalities must:
    - a. Prohibit nonstormwater discharge into the public stormwater system; and
    - b. Require controls to reduce the discharge of pollutants from stormwater to the maximum extent practicable.
  3. Section 303(d) of the CWA requiring states and the EPA to identify certain substandard waters and to set total maximum daily loads (TMDLs). The Oregon Department of Environmental Quality has and will continue to establish TMDLs for some water bodies within the city. The City seeks to comply with all TMDL requirements.
  4. The Endangered Species Act (ESA) and associated 4(d) rules covering protection of West Coast salmon and steelhead.
  5. All provisions of the federal law by implementing a stormwater management plan, in conjunction with other co-permittees.
  6. The Safe Drinking Water Act and Divisions 40 and 44 of Chapter 340 of the Oregon Administrative Rules pertaining to UIC facilities.
- (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

### **§ 13.14.105. DISCHARGE REGULATIONS.**

#### **A. Discharge of Pollutants**

The commencement, conduct, or continuance of any nonstormwater discharge to the public stormwater system is prohibited and is a violation of this chapter, except as described below.

1. The prohibition does not apply to any nonstormwater discharge permitted or approved under an Industrial or Municipal NPDES permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).
2. Except as provided in subsection A.3, the prohibition does not apply to the following non-stormwater discharges to the public stormwater system: uncontaminated water line flushing; landscape irrigation; diverted stream flows; uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to separate storm sewers; rising groundwaters; uncontaminated pumped groundwater; discharges from potable water sources (including potable groundwater monitoring wells and drainage and flushing of municipal potable water storage reservoirs), startup flushing of groundwater wells, foundation, footing and crawlspace drains (where flows are not contaminated), uncontaminated air conditioning or compressor condensate; irrigation water, springs, lawn watering, individual residential car washing, charity car washing (provided that steam and heat are not used, washing is restricted to the outside of the vehicle with no rinsing or washing of engines, transmissions, or undercarriages, and only phosphate-free

soaps/detergents are used); flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, including hot tubs (heated water must cool for at least 12 hours prior to discharge and swimming pool and hot tub discharges with other pollutants such as bromine and copper may not be discharged to the MS4); street and pavement washwaters, including for bridges or pedestrian bridges (provided that chemicals, soaps, detergents, steam, or heated water are not used); routine external building wash-down (provided that chemicals, soaps, detergents, steam, or heated water are not used); and water associated with dye testing activity; .

3. The Manager may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in subsection A.2, if at any time the Manager determines that the discharge is, was, or will be a significant source of pollution.

**B. Discharge in Violation of Permit**

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge is the responsibility of the person(s) causing or responsible for the discharge, and such persons must defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

**C. Illicit Connections, Discharges, and Chronic Illicit Discharge**

It is prohibited to establish, use, maintain, or continue illicit connections to the public stormwater system, or to commence or continue any illicit discharges to the public stormwater system.

**D. Waste Disposal Prohibitions**

1. No person may throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, catch basin, inlet, or other component of the public stormwater system, materials that may cause or contribute to pollution, including, but not limited to, any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations.
2. Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, may not discharge directly to a private or public stormwater system; this includes, but is not limited to, outdoor commercial, industrial, or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

**E. General Discharge Prohibitions**

1. Discharge to Sanitary Sewer System

No person may discharge or contribute to the discharge of any stormwater or other unpolluted water into the City's sanitary sewer system.

## 2. Discharge to Public Storm Sewer System

It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

- a. Any discharge having a visible sheen, or containing floating solids or discoloration (including, but not limited to, dyes and inks);
- b. Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic substances;
- c. Any discharge that causes or may cause damage, interference, nuisance, or hazard to the public stormwater system or the City personnel;
- d. Any discharge containing human sanitary waste or animal feces.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

### **§ 13.14.110. COMPLIANCE REQUIRED.**

The provisions of this chapter must be strictly complied with in every instance, and service must be paid for by all premises supplied, according to the rates established by the City Council. Exceptions to these provisions may be made only upon the written authorization of the Manager. (Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

### **§ 13.14.115. INSPECTION AND ENFORCEMENT.**

#### A. Authority to Inspect

1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Manager has reasonable cause to believe that there exists in any building or upon any premises any condition that may constitute a violation of the provisions of this chapter, the Manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the Manager by this chapter; provided that: (a) if such building or premises is occupied, he or she first must present proper credentials and request entry; and (b) if such building or premises is unoccupied, he or she must first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.
2. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.
3. As used in this section, inspection includes, but is not limited to, the physical inspection of a facility, and the review and copying of records relating to compliance with Sections 13.14.025 to 13.14.130.



B. Authority to Sample, Establish Sampling Devices, and Test

With the consent of the owner or occupant, or with court consent, the Manager may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Manager may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities.

C. Enforcement Procedures

For any violation of MMC Chapter 13.14, the following enforcement procedures apply:

1. Notice of Violation

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 13.14, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

- a. The name and address of the applicant or the responsible person;
- b. The address or other description of the site where the violation is occurring;
- c. A statement specifying the nature of the violation;
- d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 13.14;
- e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The amount and type of pollution discharged will inform the date by which compliance is required;
- f. A statement of the penalties that may be assessed; and
- g. A statement of other enforcement action that may occur.

2. Stop Work Order

The Manager may order work to be stopped for any violation of Chapter 13.14 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Chronic Illicit Discharge

Notwithstanding other provisions in this Section 13.14.115, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 13.14 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

6. Additional Requirements

a. Requirement to Eliminate Illicit Connections

For an illicit connection to the public stormwater system, compliance requires eliminating the connection. Once the connection is eliminated, if the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect as provided in Section 13.14.030. The reconnection or reinstallation of the connection will be at the responsible person's expense.

b. Requirement to Monitor and Analyze

Whenever the Manager determines that any person is engaged in any activity, and/or owns or operates any facility, which may cause or contribute to stormwater pollution, illicit discharge, or chronic illicit discharge to the public stormwater system, the Manager may, by written notice, order that such person undertake such monitoring activities and/or analyses, and furnish such reports, as the Manager may deem necessary to demonstrate compliance with this chapter. The written notice must be served either in person or by certified or registered mail, return receipt requested, and must set forth the basis for such order and particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator; including costs of these activities, analyses, and reports; must bear a reasonable relationship to the need for the monitoring, analyses, and/or reports and the benefits to be obtained. The recipient of such order must undertake and provide the monitoring, analyses, and/or reports within the time frames set forth in the order.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.120. VIOLATIONS and PENALTY.**

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Concealment

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter constitutes a violation of the chapter.

C. Acts Resulting in Violation of Federal Law

Any person who violates any provision of this chapter, or any provision of any stormwater-related permit issued by Department of Environmental Quality, or who discharges waste or wastewater that causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the Clean Water Act, Safe Drinking Water Act, or the Endangered Species Act and may be subject to the sanctions of these Acts including civil and criminal penalties.

D. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.

E. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations.

(Ord. 1755 § 6, 1994; Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

**§ 13.14.130. DISCLAIMER OF LIABILITY.**

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and the chapter does not imply that compliance will insure that there will be no unauthorized discharge of pollutants into the public stormwater system. This chapter will not create liability on the part of the City, or any agent or employee thereof, for any damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 2013 § 1, 2010; Ord. 2223 § 1, 2022)

CHAPTER 16.28  
EROSION CONTROL

**Note: Prior ordinance history; Ord. 1718**

**§ 16.28.010. GENERAL POLICY.**

- A. The policies of this chapter will apply during construction and until permanent measures are in place following construction as described herein, unless otherwise noted.
- B. Temporary and permanent measures for all construction projects will be required to lessen the adverse effects of erosion and sedimentation. The owner or his or her/her agent, contractor, or employee, must properly install, operate, and maintain both temporary and permanent works as provided in this section or in an approved plan, to protect the environment during the useful life of the project. These erosion control rules apply to all lands within the City of Milwaukie.
- C. Nothing in this chapter will relieve any person from the obligation to comply with the regulations or permits of any federal, State, or local authority.
- D. Maintenance and repair of existing facilities is the responsibility of the owner of record.
- E. Erosion, sedimentation, and other pollutants reaching the public storm and/or surface water system resulting from development, construction, grading, filling, excavating, clearing, and any other activity that accelerates erosion must be prevented.
- F. No visible or measurable erosion will leave the property during construction or during activity described in subsection E above. The owner of the property, together with any person who causes such action from which the visible or measurable erosion occurs, is responsible for clean up, fines, and damages. Clean up responsibilities include clean up of creeks, drainage ways, or wetlands impacted by a project. For the purposes of this chapter "visible and measurable erosion" includes, but is not limited to:
  - 1. Deposits of mud, dirt, sediment, or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or into the storm and surface water system, either by direct deposit, dropping, discharge, or as a result of the action of erosion;
  - 2. Evidence of concentrated flows of water over bare soils; turbid or sediment-laden flows; or evidence of on-site erosion such as rivulets or bare soil slopes, where the flow of water is not filtered or captured on the site, and/or;
  - 3. Earth slides, mud flows, earth sloughing, or other earth movement that results in material leaving the property.
- G. Dust and other particulate matters containing pollutants can settle on property and be carried to waters of the state though rainfall or other means. Dust must be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:

1. Sprinkling haul and access roads and other exposed dust-producing areas with water;
  2. Establishing temporary vegetative cover;
  3. Placing wood chips or other effective mulches on vehicle and pedestrian use areas;
  4. Use of covered haul equipment; and/or
  5. Prewetting cut and borrow area surfaces.
- (Ord. 1899 § 1, 2002)

**§ 16.28.020. EROSION CONTROL PERMIT AND EROSION CONTROL PLANS—APPLICABILITY—CONFORMANCE.**

A. Definitions.

"Erosion control permit" means the official approval issued by the City that demonstrates compliance with this chapter for activities described in the application form, erosion control plan, and related materials submitted pursuant to this chapter.

"Erosion control plan" means all documents, maps, plans and other information specified in Section 16.28.030 and submitted in association with an application for an erosion control permit.

"Manager" means the City Manager or designee.

- B. An erosion control plan that meets the requirements of Section 16.28.030 is required prior to any approval of an erosion control permit.
- C. An erosion control permit is required as follows:
1. Prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which results in the disturbance or exposure of soils exceeding 500 square feet.
  2. For disturbed areas or exposed soils less than 500 square feet, where the City has determined that site conditions may result in visible and measurable erosion and where the City has provided written notice of the requirement to obtain an erosion control permit to the property owner. Upon notice by the City, all work must cease pending approval of an erosion control permit and installation of approved erosion control measures.
  3. For any lot that includes natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resources, an erosion control permit will be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which has the potential for, or results in visible and measurable erosion, regardless of the area of disturbance.
- D. An erosion control permit will not be issued for activities on lots that include natural resources regulated by Section 19.402, where the site activity has not been authorized, or is not exempt under the provisions of Milwaukie Zoning Ordinance Section 19.402 Natural

Resources as determined by the Planning Director. This provision does not apply where the erosion control permit is associated with correction of a violation of the City Code or as necessary for public safety, or the protection of property or water quality.

E. Timing

Approval of the erosion control permit is required prior to the following, whichever comes first:

1. Issuance of grading permits, building permits, and approval of construction plans for subdivision; or
2. Placement of fill, site clearing, land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which disturbs or exposes soil.

F. Erosion control measures set forth in any approved erosion control plan must be implemented and maintained on the site until the date set forth in the plan, or the amended date as necessary for the establishment of final landscaping. The City may allow for the removal of erosion control measures at an earlier date if erosion control is assured by established landscaping.

(Ord. 1899 § 1, 2002; Ord. 2036 § 3, 2011)

**§ 16.28.030. CONTENTS OF EROSION CONTROL PLAN AND GENERAL REQUIREMENTS.**

A. Erosion control plans must include a description of erosion control methods that are adequate to ensure that runoff siltation and pollutants from the grading, site clearing, or construction are contained onsite during the period of activity on the site until the final landscaping is sufficiently established to control erosion. Each plan must contain a date that is the estimated ending date for maintaining erosion control measures. That date may be extended if final landscaping has not been sufficiently established to control erosion. Plan submittal requirements, and recommended erosion control measures, are included in the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/ Sedimentation Control Plans (August 1991) (Guidance Handbook), which is hereby adopted in total as part of this chapter. Copies of the Guidance Handbook are available for a fee at the City Public Works Department.

B. At a minimum the Erosion Control Plan must include:

1. Identification of potential sources of stormwater pollution at the construction site
2. The stormwater controls to prevent erosion and pollution created from the development both during and after construction (site-specific considerations must be incorporated);
3. Limits of clearing by flagging boundaries in the field before starting site grading or construction (staging areas must be included);
4. An analysis of source controls such as detention and storage techniques during construction showing existing contours as an alternative method to control erosion from stormwater runoff;

5. A drainage plan during construction;
  6. Existing contours as well as all sensitive areas, creeks, streams, wetlands, open areas, and areas of natural riparian vegetation pursuant to Chapter 322; and
  7. A description of historic localized flooding problems resulting from surface water runoff, FEMA, or flooding problems known to the community or the local jurisdiction.
- C. A site plan prepared by an Oregon registered engineer is required for sites with disturbed area of 5 acres or greater.
- D. The Erosion Control Plan must be kept on site and made available during site inspections or upon request.
- E. Erosion Control Plans must be maintained and updated as site conditions change or as directed by the City.
- F. Additional measures required by subsection C above may include 1 or more of the following:
1. Limited area cleared at any one time;
  2. Additional drainage requirements during construction;
  3. Filtering or treatment of runoff;
  4. Additional water quality measures;
  5. Additional erosion control to cover portions of the site;
  6. Maintaining some existing vegetation adjacent to water features, such as creeks, streams, and wetlands or areas of natural riparian vegetation pursuant to Chapter 322;
  7. Additional facilities to reduce volume and velocity of water runoff;
  8. If there are no workable alternatives, limit clearing, and grading in some areas between November 1st and April 30th; and
  9. Additional measures required by the Guidance Handbook.
- G. All construction activities disturbing 5 or more acres must obtain an NPDES erosion control permit for construction activities issued by the City of Milwaukie.  
(Ord. 1899 § 1, 2002)

**§ 16.28.040. APPROVAL PROCESS—FEES.**

Fees to cover the cost of erosion control plan review, site inspections, and the Clackamas County/City of Milwaukie Technical Guidance Handbook for Erosion/Sedimentation Control Plans (August 1991) will be set by City Council resolution.  
(Ord. 1899 § 1, 2002)

**§ 16.28.050. MAINTENANCE AND AMENDMENT OF INADEQUATE MEASURES.**

The applicant must maintain all facilities required by an approved erosion control plan so as to assure their continued effectiveness during construction or other permitted activity. If the facilities and techniques approved in an erosion control plan are not effective or sufficient as determined by

the City's Site Inspector, the permittee must submit a revised plan within 3 working days of written notification by the City. In cases where erosion is occurring, the City may require the applicant to implement interim control measures prior to submittal of a revised erosion control plan and without limiting the City's right to undertake enforcement measures. Upon approval of the revised plan by the City, the permittee must immediately implement the revised plan.

(Ord. 1899 § 1, 2002)

#### **§ 16.28.060. WORK IN PROGRESS.**

Permittees or property owners for any site activities that were underway on the effective date of the ordinance codified in this chapter, may be required to prepare an erosion control plan for approval pursuant to this chapter. If the City determines that an erosion control problem exists, and requests an erosion control plan, ground work on the site must cease pending approval of the plan and installation of approved erosion control measures. The provisions of this section apply only until final landscaping on the site is sufficiently established to control erosion.

(Ord. 1899 § 1, 2002)

#### **§ 16.28.070. PERFORMANCE.**

The City may require the applicant to submit a bond, cashier's check, or irrevocable letter of credit from an acceptable financial institution to secure performance of the requirements of this chapter. Upon default, the City may perform work or remedy violations and draw upon the bond or fund. If the City does not require a bond and the developer does not perform the erosion control plan in whole or in part, the City may, but is not obligated to, perform or cause to be performed corrective work and charge the developer. Such amount will bear interest at 9% per annum and be a lien upon the property foreclosable in accordance with ORS Chapter 88.

(Ord. 1899 § 1, 2002)

#### **§ 16.28.080. EROSION CONTROL CERTIFICATION.**

A. Developers/contractors of building activities requiring erosion control permits who have a certified individual on staff with authority over erosion control and who is responsible for erosion control of the site, are eligible for a discount of their erosion control fees in accordance with the City fee schedule. On large or complex sites, the City may require an individual certified in erosion control to be on site at all times. Violations of this title that result in enforcement procedures described in Section 16.28.110, will result in revocation of the certification and require payment of the full erosion control fee. Recertification is required following erosion control violations resulting in enforcement actions. If certification is revoked, there may be additional inspection fees.

B. Certification must involve training in erosion control techniques, issues, and implementation strategies. A minimum of 4 hours of classroom instruction is required every 2 years.

(Ord. 1899 § 1, 2002)

#### **§ 16.28.090. INSPECTION.**

The erosion control measures must be installed by the owner or his or her representative and must be inspected by the City prior to the start of any excavation work.

(Ord. 1899 § 1, 2002)



### **§ 16.28.100. DEPOSIT OF SEDIMENT.**

No person will drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock, or other such debris upon a public street or into any part of the public storm and surface water system, including natural drainage systems, or any part of a private storm and surface water system that drains or connects to the public storm and surface water system, with the exception of sanding for ice and snow and maintenance such as crack or chip sealing. Any such deposit of material must be immediately removed using hand labor or mechanical means. No material will be washed or flushed into the road/street or any part of the storm or surface water system without erosion control measures installed to the satisfaction of the City, and any such action will be an additional violation.

(Ord. 1899 § 1, 2002)

### **§ 16.28.110. ENFORCEMENT—VIOLATION—PENALTY.**

#### **A. Enforcement Procedures**

For any violation of MMC Chapter 16.28, the following enforcement procedures apply:

##### **1. Notice of Violation**

If the Manager determines that an applicant, other responsible party, or other person has failed to comply with MMC Chapter 16.28, the Manager must issue a written notice of violation to such person. The notice of violation must be served in person or by certified or registered mail, return receipt requested. The notice of violation must include:

- a. The name and address of the applicant or the responsible person;
- b. The address or other description of the site where the violation is occurring;
- c. A statement specifying the nature of the violation;
- d. A summary of potential remedial measures that may be necessary to bring the act or failure to act into compliance with Chapter 16.28;
- e. The date by which compliance is required, which must be within 10 days of issuance; or, if compliance is anticipated to take longer than 10 days due to technical, logistical, or other reasonable issues, require the applicant or other responsible party, within 10 days, to provide a written action plan for how compliance will be achieved and a timeline for compliance, which may not exceed 6 months without approval by the Department of Environmental Quality. The type and severity of pollution discharged will inform the date by which compliance is required;
- f. A statement of the penalties that may be assessed; and
- g. A statement of other enforcement action that may occur.

##### **2. Stop Work Order**

The Manager may order work to be stopped for any violation of Chapter 16.28 that arises from the work authorized under a permit. The stop work order must be posted on the property where the violation has occurred and will remain in effect until the remedial measures set forth in the Notice of Violation have been completed, or the violations have been otherwise cured. The stop work order may be withdrawn or modified by the Manager to enable the necessary remedial measures.

3. Repeat or Ongoing Violations

Notwithstanding other provisions in this Section 16.28.110, the Manager may impose a civil penalty and pursue enforcement without having issued a notice of violation or making attempts to secure voluntary correction where the Manager determines that the violation was knowing, intentional, or a repeat of a similar violation.

4. Failure to Comply

In the event the applicant, responsible party, or other person fails to take the remedial measures set forth in the notice of violation, the Manager may issue a citation for each day the violation remains unremedied after the date set forth in the notice of violation, consistent with the procedures set forth in Chapter 1.08, Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures.

5. Rights, remedies, and penalties set forth in this Chapter 16.28 are cumulative, not mutually exclusive, and in addition to any other rights, remedies, and penalties available to the City under any other provision of law.

(Ord. 1899 § 1, 2002)

16.28.120 Violations and Penalty

A. Continuing Violation

Unless otherwise provided, a person must be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued, or permitted by the person.

B. Violations Deemed a Nuisance

Any condition caused or permitted to exist in violation of any provision of this chapter is a threat to public health and safety. Any such condition is unlawful and constitutes a nuisance, subject to the enforcement provisions in MMC 8.04.070.

C. Penalty

Violation of any provision of this chapter by any person, firm, or corporation is punishable by a fine of not more than \$1,000. Factors for determining the penalty amount may include, but are not limited to, the type, scale, and duration of the violation and whether the responsible party has been issued a notice of violation, citation, or otherwise held responsible for prior violations.



# CITY OF MILWAUKIE

## Erosion Control and Stormwater Code Amendments

City Council Regular Session  
November 19, 2024

RS 7. B.  
11/19/24  
Presentation





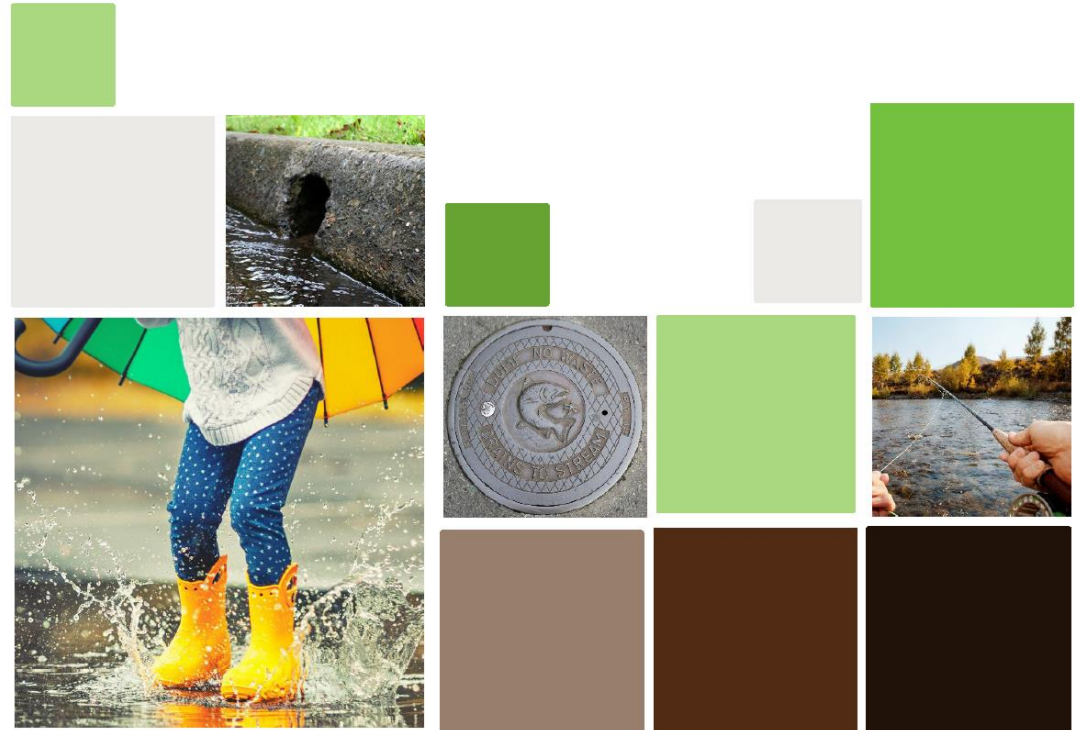
# Code Amendments

Required by NPDES Permit, the co-permittees must continue to implement and maintain a **written escalating enforcement and response procedure** for all qualifying construction sites.



CITY OF MILWAUKIE

National Pollutant Discharge Elimination System  
Phase I Stormwater Management Program Document  
December 1, 2022



# 13.14 Stormwater Management Amendments

- Definitions
  - Added “Point Source”
  - Added “Waters of the State”
  - “Impervious Surface” specifies traditional concrete
- Removed duplicative language
  - 13.14.120 (E) Violations and Penalty





# 16.28 Erosion Control Amendments

- Definitions
  - Added “Manager”
- Removed duplicative language
  - 13.14.120 (E) Violations and Penalty
- Removed “shall”
- Retained 16.28.120 (B) Violations Deemed a Nuisance
- Retained 16.28.030 (D) Erosion Control Plans remain onsite and upon request





# Thank you!

**Katie Gavares**

Climate and Natural Resources Manager

GavaresK@milwaukieoregon.gov

503 786 7668

**Peter Passarelli**

Public Works Director

PassarelliP@milwaukieoregon.gov

**Riley Gill**

Environmental Services Coordinator

GillR@milwaukieoregon.gov





## COUNCIL STAFF REPORT

**To:** Mayor and City Council  
Emma Sagor, City Manager

**Date Written:** Nov. 7, 2024

**Reviewed:** Joseph Briglio, Community Development Director

**From:** Laura Weigel, Planning Manager, and  
Brett Kelper, Senior Planner

**Subject:** **FEMA Flood Requirements**

### ACTION REQUESTED

Council is asked to decide which interim measure to pursue to ensure that the city’s flood hazard protections are compliant with new requirements related to integration of the Endangered Species Act (ESA) with the National Flood Insurance Program (NFIP).

### HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

**May 1980:** Council adopted [Ordinance 1461](#) to establish flood hazard regulations, which were installed in the Milwaukee Municipal Code (MMC) as Title 18.

**April 2002:** Council adopted [Ordinance 1899](#) to update Title 18, including a new reference to the 1990 version of the Flood Insurance Rate Maps.

**June 3, 2008:** Council adopted [Ordinance 1983](#) to approve amendments to MMC Title 18 Flood Hazard Regulations.

**February 4, 2020:** Council received a work session update regarding the draft Comprehensive Plan floodplain policies and upcoming amendments to MMC Title 18.

**February 2, 2021:** Council received a work session update on the proposed amendments in advance of the March 2 adoption hearing.

**March 2, 2021:** Council adopted [Ordinance 2199](#) to amend MMC Title 18.

**April 20, 2021:** Council adopted [Ordinance 2201](#) for a small adjustment of the recent amendments to MMC Title 18.

### ANALYSIS

#### Background

The Federal Emergency Management Agency (FEMA) oversees the NFIP, established by Congress in 1968 to enable property owners to purchase insurance as protection against flood losses. In exchange, participating communities are required to maintain state and local floodplain management regulations that reduce future flood damage. The regulations provide construction methods and details that must be followed when constructing within the flood management areas, and they control the alteration of the floodplain so as not to increase flood damage. Because the city participates in the NFIP, property owners within the city are eligible to purchase federally subsidized flood insurance policies instead of being forced to work exclusively with the private sector, where flood insurance is prohibitively expensive if available at all.



As a federal agency, FEMA must consider whether NFIP activities affect threatened or endangered species protected by the ESA. In 2009, a lawsuit was brought against FEMA for its failure to consult with the US Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) on the impacts of implementing the NFIP in Oregon. Following the resulting settlement in 2010, FEMA began a consultation with NMFS to conduct a biological assessment of the NFIP’s impacts on ESA-listed species in Oregon.

In 2016, NMFS issued a Biological Opinion (BiOp) concluding that the current implementation of the NFIP in Oregon was likely to jeopardize the continued existence of 16 threatened or endangered anadromous fish species<sup>1</sup> and the Southern Resident Killer Whale. Unless adjusted, the NFIP was likely to result in the destruction or “adverse modification” of critical habitat for the listed fish species. The BiOp proposed alternative approaches to NFIP performance standards to avoid continued jeopardy and adverse modification.

FEMA coordinated with the Oregon Department of Land Conservation and Development (DLCD) and other partners to create a [draft implementation plan](#) for Oregon to integrate the NFIP and ESA (released in October 2021). The implementation plan includes a variety of proposed changes that FEMA must make, including information provided to communities, mapping products, and reporting requirements for NFIP communities. FEMA must also ensure that NFIP communities adopt measures to collectively meet a standard of “no net loss” for habitat functions essential to the survival of ESA-listed species in the BiOp.

To evaluate the various changes proposed in the draft implementation plan, FEMA is preparing an Environmental Impact Statement (EIS) as required by federal law. Once the EIS is complete, the implementation plan for NFIP-ESA integration will be finalized and local communities will be required to take steps to come into full compliance (anticipated by 2027). At the moment, the expectation is that measures for full compliance will be similar to what communities are required to do now.

### **Pre-implementation compliance measures (PICMs)**

In the interim, however, the ESA is still the law of the land. The BiOp directed FEMA to require immediate implementation of measures to reduce the loss of key floodplain habitat features and functions—flood storage, water quality, and riparian vegetation. The no net loss principle is demonstrated where a development action that might result in negative impacts to one or more of the floodplain features or functions instead mitigates or avoids those impacts in a way that completely offsets them. The municipal code already includes several provisions that limit impacts to the floodplain, but those restrictions are not as far reaching as required by the ESA and BiOp.

While the EIS works its way through the lengthy review process and before the implementation plan is final, FEMA has provided three pre-implementation compliance measures (PICMs) as options for immediate action. NFIP communities must notify FEMA by December 1, 2024, about which PICM they are pursuing.

- 1. Prohibition** – Prohibit all new development within the regulatory floodplain.

Although the simplest way to achieve no net loss may be to disallow any new disturbance in the floodplain, it is an approach that would likely generate legal challenges and could constitute a taking of private property. Prohibition also fails to acknowledge that there are ways that development can avoid, minimize, and mitigate impacts to floodplain functions

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<sup>1</sup> Fish species that migrate up rivers from the sea to spawn, like the salmon.

to achieve no net loss. MMC Title 18 already provides a regulated path for floodplain development and MMC Section 19.402 establishes standards related to water quality and riparian habitat in designated natural resource areas, so there is some precedent for the city choosing regulation over prohibition in this context.

Staff does not recommend pursuing this PICM.

- 2. Model Ordinance** – Adopt a model ordinance developed to incorporate the “no net loss” principle into existing flood hazard regulations.

FEMA has developed a [model ordinance](#) based on the one used for the 2020 updates, with new language that addresses the no net loss requirement. MMC Title 18 reflects the general form and content of the model ordinance, with a few specific modifications or omissions based on our local situation and needs. The **yellow highlighting** in the model ordinance signifies newly added language, so it is easy to see where certain adjustments to Title 18 could be made.

While the effort to implement this PICM would not be as simple as adding the suggested language, the path is straightforward. Staff would work to ensure that the new language is comprehensible and is sufficiently clear and objective where nondiscretionary review is needed. It will also be important to coordinate with the current effort to update the natural resource regulations in MMC Section 19.402, since there is some overlap between the two codes.

Staff recommends selecting this PICM, as it builds on the existing flood hazard regulations in Title 18 and would provide a clear and manageable path for applicants. It also is the best use of staff resources given current workloads and planning priorities.

- 3. Permit-by-Permit Assessment** – Require applicants for development in the floodplain to conduct a habitat assessment documenting that the project will achieve no net loss.

The BiOp emphasizes the need to ensure no net loss to the identified floodplain functions; therefore, if development continues to be allowed in the floodplain, then each project must be evaluated to assess its impacts. In lieu of adopting the model ordinance or modifying an existing ordinance, FEMA has provided a [guidance document](#) for habitat assessment and mitigation for individual development projects. This is a more complex and discretionary method than what is outlined in the model ordinance, and it would likely require an applicant to hire a natural resource professional to prepare the assessment.

FEMA appears to have assumed that some local jurisdictions may have the ability to impose an evaluation requirement for individual floodplain development projects without having to adopt or amend a local ordinance. That is not the case in Milwaukee, where implementation of the permit-by-permit assessment option would require amendments to Title 18. The guidance document does not include clear criteria for approval, and it would be necessary to establish a formal process for review (including provisions for public comment) and decision. However, it may be worth considering the incorporation of the permit-by-permit assessment methodology as a discretionary review option alongside the model ordinance revisions.

Staff does not recommend choosing this PICM as the sole approach but suggests further analysis to see if aspects of this approach could be incorporated into Title 18 as a discretionary review option.

## **Timelines**

In addition to selecting a PICM option by December 1, 2024, FEMA has clarified that local jurisdictions must also begin to implement a PICM by December 1. This compressed timeline generated considerable backlash from many communities across the state due to staffing capacity issues and legal requirements for public notice. Several members of the Oregon congressional delegation and Oregon Governor Tina Kotek have sent letters to FEMA asking the agency to give communities more time to do the needed work (see Attachment 1). FEMA has not formally responded to date, so staff are working with the understanding that December 1 remains the first working deadline.

Staff believe it is reasonable to inform FEMA of a chosen PICM by December 1. However, implementation of any of the three PICMs would require the adoption of a local ordinance with the requisite public notice, which is not possible in time to meet the first deadline. In various workshops focused on PICM implementation, FEMA staff have acknowledged this reality and have indicated that their priority after December 1 will be to contact local jurisdictions that have not been in touch with them or selected a PICM. They have encouraged local jurisdictions to build a record of communication and participation, in addition to selecting a PICM by December 1 deadline and outlining a timeline for implementing that PICM. FEMA staff have given the impression that communities that have selected a PICM, established a reasonable timeline, and remain in touch with FEMA are not in jeopardy of being disqualified from participation in the NFIP.

City staff have been very engaged with FEMA and DLCD staff regarding this issue and have participated actively in several workshops on PICM implementation. Staff are working to outline what changes to Title 18 are necessary to achieve ESA compliance and remain consistent with relevant state requirements and believe that adoption of an updated ordinance is possible by February 28, 2025. The corresponding three months of technical noncompliance with FEMA's December 1 deadline appear to be minimal in terms of legal exposure, since staff will continue to be in communication with FEMA about the timeline and progress. Full implementation of a PICM (i.e., adoption of an effective ordinance) is required by July 31, 2025.

## **BUDGET IMPACT**

The requirement to comply with the conclusions of the BiOp will not have a direct impact on the city budget. Failure to comply will jeopardize the city's participation in the NFIP, which could in turn disqualify the owners of floodplain properties from federally subsidized flood insurance policies.

## **WORKLOAD IMPACT**

Staff has been anticipating the release of the BiOp for several years, with the understanding that staff time and resources would be required at some point to update the municipal code. Although the timing of this project has been uncertain, the need has been accounted for in the department work program.

## **CLIMATE IMPACT**

The city's flood hazard regulations are part of a larger response to climate change and represent a proactive effort to prevent or limit future flood damage to property and improvements. Compliance with the BiOp contributes to the preservation and enhancement of critical habitat for key species that face increasing pressure from climate change, development, and other forces.

## **EQUITY IMPACT**

The flood hazard regulations of MMC Title 18 apply only to properties that include a portion of the mapped floodplain. Issues of race, ethnicity, gender identity, socioeconomic status, able-bodied-ness, and other like considerations do not factor directly into the establishment or implementation of the flood hazard regulations.

However, the risks and challenges of floodplain areas have sometimes made them the most affordable option for some lower income populations, which means that historically marginalized communities have often been severely impacted by major flood events. For example, as a result of the [1948 Vanport Flood](#) that devastated a World War II federal housing project built near the Columbia River between Portland, Oregon, and Vancouver, Washington, a majority of Black and African American families and residents died or were displaced, leading to a refugee and housing crisis.

If new floodplain development rules require costly analyses and expert consultants with no alternative, there could be a disproportionate impact on some already disadvantaged demographics.

## **COORDINATION, CONCURRENCE, OR DISSENT**

The project to amend Title 18 will be led primarily by planning staff, with support from the engineering department and consultation with the city attorney.

## **STAFF RECOMMENDATION**

Council should direct staff to inform FEMA by December 1 that the city is selecting PICM #2 (model ordinance) and will aim to have new rules adopted by February 28, 2025. In staff's opinion, this is the most effective and efficient way to comply with the new requirement given current staffing levels and planning priorities.

## **ALTERNATIVES**

1. Direct staff to develop an ordinance establishing a temporary moratorium on development in the floodplain as quickly as possible, as an interim measure while staff prepare code amendments that will achieve the necessary compliance with the ESA.
2. Choose one of the other PICM options and develop code amendments as needed to implement that option as quickly as possible and no later than July 31, 2025.
3. Take no action for compliance and anticipate the City's likely exclusion from the NFIP.

## **ATTACHMENTS**

1. Letters to FEMA from Oregon's congressional delegation and Oregon Governor Kotek (dated August, September, and October 2024)



**Congress of the United States**  
**Washington, DC 20515**

August 22, 2024

The Honorable Deanne Criswell  
Administrator  
Federal Emergency Management Agency  
500 C St. SW  
Washington, D.C. 20024

Dear Administrator Criswell,

We are writing to reiterate concerns about the Federal Emergency Management Agency's (FEMA) proposed strategy to implement changes to the National Flood Insurance Program (NFIP) in Oregon, specifically regarding a new compliance requirement that communities need to select Pre-Implementation Compliance Measures (PICMs) well before FEMA makes final recommendations. NFIP is a life-saving federal program, and its administration and changes must be undertaken with the utmost care and evenhanded judgment.

All of our offices have heard serious concerns from small business leaders, local elected officials, affordable housing advocates, and economic development groups. We want to emphasize that the implementation of permitting programs is carried out primarily at the local level, and the leaders in the affected communities have valuable insights. FEMA must lead by listening to and working collaboratively with local and state officials to craft policies that can be implemented effectively and sustainably.

Our offices have heard significant concerns from these communities about the decision to abruptly cease processing Letters of Map Revision – Based on Fill (LOMR-F) and Conditional Letters of Map Revision – Based on Fill (CLOMR-F) on August 1<sup>st</sup>, 2024, with little to no notice. The timing of this action leaves communities scrambling to comply with FEMA's plan to reach compliance with the National Marine Fisheries Service's (NMFS) 2016 Biological Opinion ("BiOp") and its Reasonable and Prudent Alternatives (RPAs).

We do not doubt the necessity of enhanced conservation efforts, including protection of Oregon's declining salmon population. The worsening wildfire intensity and smoke pollution is also an urgent reminder of the scale of the climate crisis. Communities across the state share these concerns and the fundamental drive to protect the unique environment in which we live.

We respectfully request that you make several key changes to FEMA's revised timeline. We ask that FEMA provide an additional 90 days for Oregon jurisdictions to consider the three proposed "Pre-Implementation Compliance Measures," changing the December 1<sup>st</sup>, 2024 selection date to

March 1<sup>st</sup>, 2025. Accordingly, the automatic adoption of the permit-by-permit PICM should also be delayed until at least March 1<sup>st</sup>, 2025 and accompanied by collaborative action with the state to demonstrate compatibility with state land use law.


Additionally, FEMA should develop a pathway for continued review of LOMR and CLOMR cases during this period as it finalizes its Environmental Impact Statement. The pause to these processes initiated on August 1<sup>st</sup> was not sufficiently noticed to communities and future timeline changes should be announced with significantly greater notice. If applicants need additional consultation and technical assistance, FEMA should make staff available to assist.

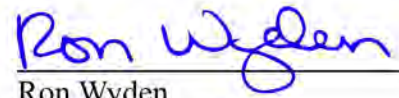
We also request that you fully consider the State of Oregon's request that FEMA add a pathway for the state to develop and adopt a statewide regulatory package that achieves compliance with the "no net loss" standard. Allowing state agencies with the staff and expertise to develop a policy that is consistent statewide would reduce capacity and cost burdens for local governments and simplify integration of any new requirements with existing state land use law.

Finally, we request a written explanation of the decision-making process that led to the PICM taking effect well before the completion of the Environmental Impact Statement. Providing community members with a clear understanding of this process is key to maintaining transparency and demonstrating consistency with the NEPA process.

We remain committed to a collaborative path forward that responds to the dual imperatives of economic stability and environmental preservation. We appreciate FEMA's shared commitment to these goals and thank you for your full and fair consideration of our concerns. For any questions, please contact Espen Swanson in Congresswoman Bonamici's office at [Espen.Swanson@mail.house.gov](mailto:Espen.Swanson@mail.house.gov); Ree Armitage in Senator Ron Wyden's office at [Ree\\_Armitage@wyden.senate.gov](mailto:Ree_Armitage@wyden.senate.gov); Gustavo Guerrero in Senator Jeff Merkley's office at [Gustavo\\_Guerrero@merkley.senate.gov](mailto:Gustavo_Guerrero@merkley.senate.gov); Olivia Wilhite in Congresswoman Val Hoyle's office at [Olivia.Wilhite@mail.house.gov](mailto:Olivia.Wilhite@mail.house.gov) or Alexander O'Keefe in Congresswoman Andrea Salinas' office at [Alexander.OKeefe@mail.house.gov](mailto:Alexander.OKeefe@mail.house.gov).

Sincerely,

  
Suzanne Bonamici  
Member of Congress

  
Ron Wyden  
United States Senator

*Jeffrey A. Merkley*

Jeffrey A. Merkley  
United States Senator

*Val Hoyle*

Val Hoyle  
Member of Congress

*Andrea Salinas*

Andrea Salinas  
Member of Congress

*Earl Blumenauer*

Earl Blumenauer  
Member of Congress





TINA KOTEK  
GOVERNOR

September 26, 2024

The Honorable Deanne Criswell, Administrator  
Federal Emergency Management Agency  
500 C Street SW  
Washington, D.C. 20024

Dear Administrator Criswell:

I am writing to convey the State of Oregon's concerns related to FEMA's National Flood Insurance Program (NFIP) and Biological Opinion (BiOp) efforts in the State of Oregon. The BiOp has a long and storied history in our state, and we share FEMA's perspective on the importance of protecting public safety and threatened species. However, FEMA's lack of public process in the development and implementation of the current set of interim measures will cause more harm than benefit to our communities, in particular many coastal and rural communities. I have asked my natural resources agencies to identify possible pathways forward, and the State offers three recommendations:

First, FEMA's imposed deadline of December 1, 2024, for local decision-making is impractical because Oregon cities and counties engage their elected officials and constituents in transparent and fact-based decision-making processes. Those processes are impossible to align with a deadline of just a few months. **I respectfully request that FEMA pause its work on pre-implementation compliance measures (PICM) that it abruptly announced on July 15, 2024, and return to the work of crafting long-term measures to modernize the National Flood Insurance Program.**

Second, the State stands ready to assist our local partners in their compliance work and reiterates its May 5, 2023, offer to deploy already-existing state programs such as land use planning, stormwater permits, habitat restoration, wetlands mitigation programs, and technical assistance grants for these purposes. I recognize that federal partners, including FEMA, the National Marine Fisheries Service (NMFS), and the National Oceanic and Atmospheric Administration (NOAA) may view these State programs as helpful but not yet complete in their depth or coverage for purposes of the BiOp. **I invite FEMA to join our agencies for a discussion on how best to continue efforts that started in the implementation planning process to identify gaps in existing State programs and pathways for moving forward to address how the State of Oregon can effectively address those within a collaborative framework.**

254 STATE CAPITOL, SALEM OR 97301-4047 (503) 378-3111 FAX (503) 378-8970

[WWW.GOVERNOR.OREGON.GOV](http://WWW.GOVERNOR.OREGON.GOV)

RS81



Administrator Criswell  
September 26, 2024  
Page 2

In Oregon, we place a premium on community engagement and collaborative design that is too often overlooked as an effective vehicle to support and assist with the implementation of federal program objectives if given the opportunity and time to contribute. **I respectfully ask that FEMA engage more fully in deliberative dialogue with my agencies in order to craft the best solutions possible for public safety and species protection. With your agreement, I will support the convening of such a process with the appropriate representatives of different interests so that together we can chart a durable and implementable path forward.**

Given the current timing of proposed implementation, my staff will be reaching out to discuss this approach with you next week. Thank you for your consideration of these recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Kotek". The signature is fluid and cursive, with the first name "Tina" being more prominent than the last name "Kotek".

Governor Tina Kotek

cc: The Honorable Rick Spinrad, Administrator, NOAA  
Members of the Oregon Congressional Delegation

CLIFF BENTZ

SECOND DISTRICT, OREGON

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CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C. 20515

HOUSE NATURAL RESOURCES COMMITTEE

CHAIRMAN  
SUBCOMMITTEE ON WATER, WILDLIFE,  
AND FISHERIES

SUBCOMMITTEE ON FEDERAL LANDS

HOUSE JUDICIARY COMMITTEE

SUBCOMMITTEE ON THE ADMINISTRATIVE STATE,  
REGULATORY REFORM, AND ANTITRUST

SUBCOMMITTEE ON COURTS,  
INTELLECTUAL PROPERTY,  
AND THE INTERNET

October 30, 2024

The Honorable Deanne Criswell  
Administrator  
Federal Emergency Management Agency  
500 C St. SW  
Washington, D.C. 20024

Dear Administrator Criswell,

We are deeply concerned about the Federal Emergency Management Agency's (FEMA) plan to substantially change the National Flood Insurance Program (NFIP) and are equally concerned about the inappropriate and harmful means your agency is using to implement that change.

As you know, the current deadline for local communities to select and commit to Pre-Implementation Compliance Measures (PICMs) is December 1, 2024. To allow communities the time necessary to review and understand the changes being made to the program, FEMA committed to complete the draft environmental impact statement (EIS) prior to the end of summer of 2024, well before the December 1 deadline. However, FEMA failed to complete the EIS during the summer, and now declares that its draft EIS will be complete in "early 2025". Obviously, when FEMA granted itself an extension to complete its EIS, it should have also extended the deadline for selection of PICMS. Unfortunately, the December 1 PICM deadline remains in effect.

Thirty of Oregon's thirty-six counties will be subject to the NFIP biological opinion and at least 250 Oregon communities will be impacted by its implementation. FEMA, by failing to complete its EIS, and then by failing to extend the time allowed communities to select and file a PICM, is forcing hundreds of Oregon communities to act without the information they need from the completed EIS. It is difficult to understand why FEMA would want to force these communities into a default selection of a PICM.

Additionally, notwithstanding the lack of a completed EIS, many of these communities believe that the December 1 deadline provides too little time for local governments to balance and carefully consider the consequences of a PICM selection. Given that NFIPs, an insurance program, has been abruptly and without congressional action refashioned through judicial fiat into a land use planning tool, there is every reason to implement its new requirements with caution so that communities are protected as much as possible.

RS83

Oregon communities should not be forced to scramble to choose between PICM options while FEMA has yet to do its work. Accordingly, we respectfully request that FEMA delay the deadline to select PICMs until March 1, 2025. This delay will provide Oregon communities with the time they need to work through this new, consequential, and complicated process.

Sincerely,



Cliff Bentz  
Member of Congress  
Chairman, Subcommittee on Water, Wildlife  
and Fisheries



Lori Chavez-DeRemer  
Member of Congress

CC:

Commissioner Xanthippe Augerot  
Commissioner Nancy Wyse  
Commissioner Pat Malone  
Commissioner Tootie Smith  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Mark Shull  
Commissioner Ben West  
Commissioner Mark Kujala  
Commissioner John Toyooka  
Commissioner Pamela Wev  
Commissioner Courtney Bangs  
Commissioner Lianne Thompson  
Commissioner Casey Garrett  
Commissioner Kellie Jo Smith  
Commissioner Margaret Magruder  
Commissioner Robert Main  
Commissioner John Sweet  
Commissioner Rod Taylor  
Commissioner Seth Crawford  
Commissioner Susan Hermreck  
Commissioner Brian Barney  
Commissioner Brad Alcorn

Commissioner Jay Trost  
Commissioner John Herzog  
Commissioner Patti Adair  
Commissioner Phil Chang  
Commissioner Anthony DeBone  
Commissioner Chris Boice  
Commissioner Tim Freeman  
Commissioner Tom Kress  
Commissioner Leah Watkins  
Commissioner Grant Wilkins  
Commissioner Jim Hamsher  
Commissioner John Rowell  
Commissioner Jennifer Euwer  
Commissioner Leticia Moretti  
Commissioner Arthur Babitz  
Commissioner Ed Weathers  
Commissioner Chad Muenzer  
Commissioner Rick Dyer  
Commissioner Dave Dotterrer  
Commissioner Colleen Roberts  
Commissioner Mark Wunsch  
Commissioner Wayne Fording  
Commissioner Kelly Simmelink  
Commissioner Herman Baertschiger Jr.

Commissioner John West  
Commissioner Andreas Blech  
Commissioner Ryan Ceniga  
Commissioner David Loveall  
Commissioner Laurie Trieger  
Commissioner Pat Farr  
Commissioner Heather Buch  
Commissioner Claire Hall  
Commissioner Kaety Jacobson  
Commissioner Casey Miller  
Commissioner Roger Nyquist  
Commissioner William Tucker  
Commissioner Sherrie Sprenger  
Commissioner Kevin Cameron  
Commissioner Danielle Bethell  
Commissioner Colm Willis  
Commissioner David Sykes  
Commissioner Jeff Wenzholz  
Commissioner Roy Drago Jr.  
Commissioner Jessica Vega Pederson  
Commissioner Sharon Meieran  
Commissioner Jesse Beason  
Commissioner Julia Brim-Edwards  
Commissioner Lori Stegmann  
Commissioner Craig Pope  
Commissioner Lyle Mordhorst  
Commissioner Jeremy Gordon  
Commissioner Joan Bird  
Commissioner Justin Miller  
Commissioner Joe Dabulskis  
Commissioner Mary Faith Bell  
Commissioner Doug Olson  
Commissioner Erin Skaar  
Commissioner Dan Dorran  
Commissioner John Shafer  
Commissioner Cindy Timmons  
Commissioner Paul Anderes  
Commissioner Donna Beverage  
Commissioner Matt Scarfo  
Commissioner Susan Roberts  
Commissioner Todd Nash  
Commissioner John Hillock  
Commissioner Steve Kramer

Commissioner Scott Hege  
Commissioner Phil Brady  
Commissioner Kathryn Harrington  
Commissioner Nafisa Fai  
Commissioner Pam Treece  
Commissioner Roy Rogers  
Commissioner Jerry Willey  
Commissioner Ben Logan  
Commissioner Clinton Dyer  
Commissioner Lindsay Berschauer  
Commissioner Kit Johnston  
Commissioner Mary Starrett

RS 7. C. 11/19/24  
Presentation

# FEMA FLOOD CODE UPDATE

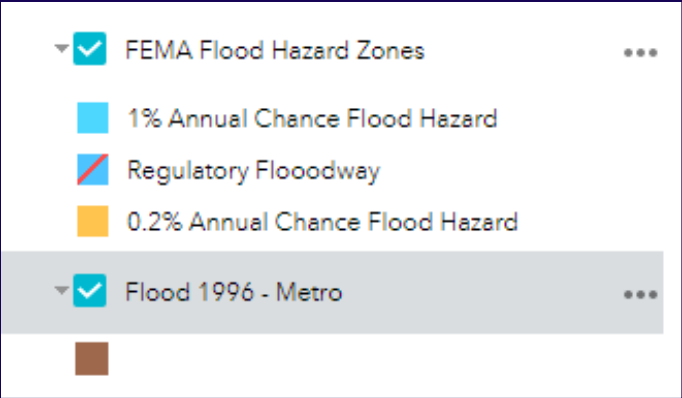
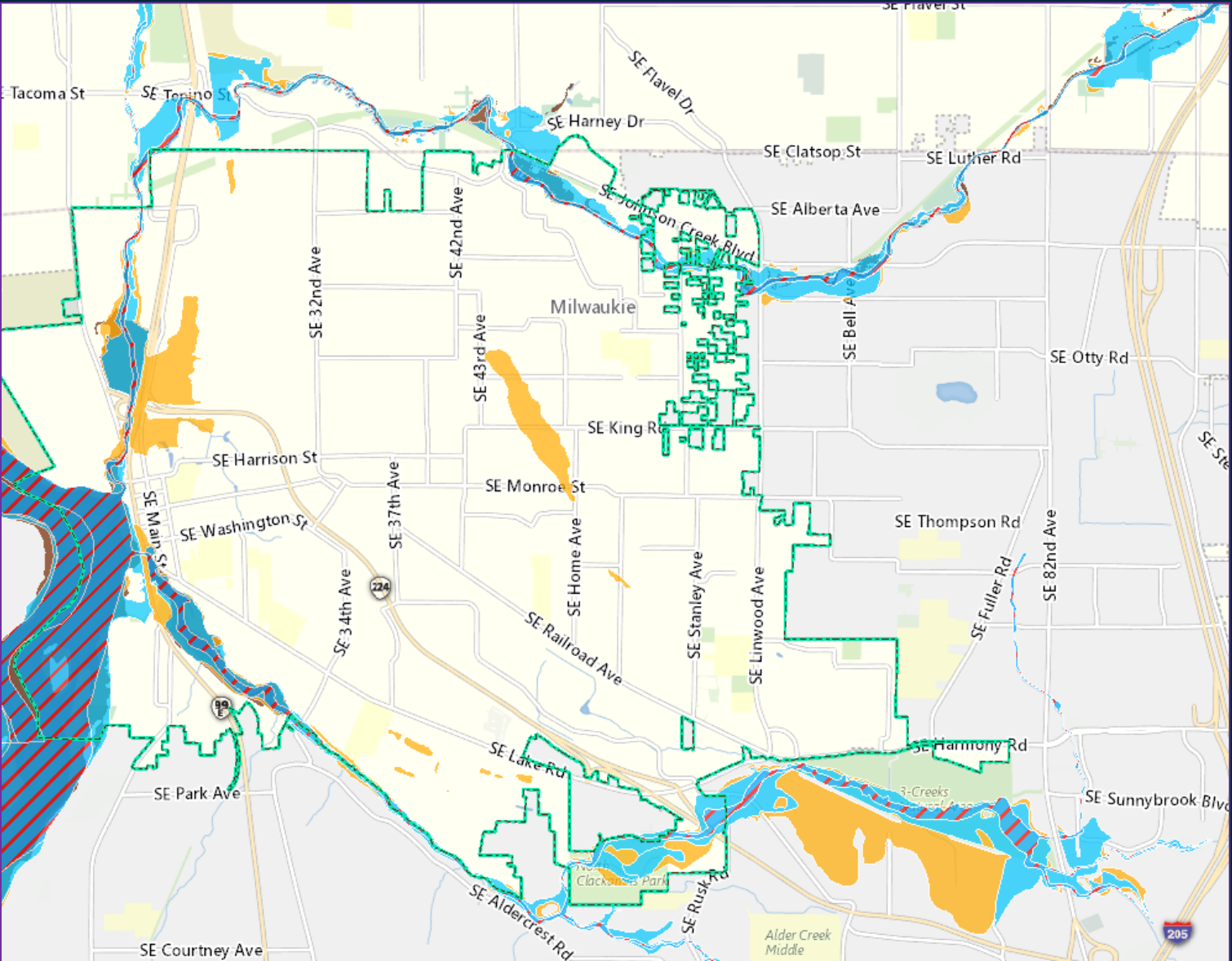
City Council Regular Session  
November 19, 2024

Brett Kelper, Senior Planner





# FLOOD HAZARD AREAS IN MILWAUKIE



# TITLE 18 (FLOOD HAZARD REGULATIONS)

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- Chapter 18.04 **PURPOSE AND METHODS** (§ 18.04.010 – § 18.04.020)
- Chapter 18.08 **DEFINITIONS** (§ 18.08.010)
- Chapter 18.12 **GENERAL PROVISIONS** (§ 18.12.010 – § 18.12.070)
- Chapter 18.16 **ADMINISTRATION** (§ 18.16.010 – § 18.16.040)
- Chapter 18.20 **PROVISIONS FOR FLOOD HAZARD REDUCTION** (§ 18.20.005 – § 18.20.150)

Purpose:

- ❖ Preserve flood storage capacity.
- ❖ Minimize flood damage to development.
- ❖ Limit impacts to other properties.

This establishes eligibility for National Flood Insurance Program (NFIP).

## NFIP-ESA INTEGRATION

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- Triggered by lawsuit involving Endangered Species Act (ESA).
- Must ensure “no net loss” of key floodplain functions—flood storage, water quality, riparian vegetation.
- The City is required to choose a preliminary implementation option by Dec 1.



# PRE-IMPLEMENTATION COMPLIANCE MEASURES (PICMs)

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Three options for PICMs:

1. Prohibition

Prohibit all new development within the regulatory floodplain.

2. Model ordinance

Adopt a model ordinance developed to incorporate the “no net loss” principle into existing flood hazard regulations.

3. Permit-by-permit assessment

Require applicants for development in the floodplain to conduct a habitat assessment documenting that the project will achieve no net loss.

# PROHIBITION AND PERMIT-BY-PERMIT ASSESSMENT OPTIONS

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1. Prohibition

Simple, but legally challenging.

3. Permit-by-Permit Assessment

More complex and discretionary method than what is outlined in the model ordinance, and it would likely require an applicant to hire a natural resource professional to prepare the assessment.

Staff does not recommend choosing either of these options.

## MODEL ORDINANCE OPTION

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- MMC Title 18 is already based on the model ordinance (minus new changes).
- “No net loss” is achieved with the principles of avoidance, minimization, and compensation or offset of impacts.
- Tree planting requirements—increased in 170-ft riparian buffer zone.
- Consider fish accessible and fish egress-able space.
- May incorporate the permit-by-permit assessment option as guidance or a process for discretionary review.

**Staff recommends choosing this option.**

## STAFF RECOMMENDATIONS

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- Notify FEMA by Dec 1 that we select the Model Ordinance option.
- Work to adopt changes by Feb 4, 2025.

Questions?



Table 1 No Net Loss Standards

<u>Basic Mitigate Ratios</u>	<u>Undeveloped Space (ft<sup>3</sup>)</u>	<u>Impervious Surface (ft<sup>2</sup>)</u>	<u>Trees (6”&lt;dbh≤20”)</u>	<u>Trees (20”&lt;dbh≤39”)</u>	<u>Trees (39”&lt;dbh)</u>
<b>RBZ and Floodway</b>	2:1*	1:1	3:1*	5:1	6:1
<b>RBZ-Fringe</b>	1.5:1*	1:1	2:1*	4:1	5:1

National Flood Insurance Program  
 NFIP-ESA Integration in Oregon  
 Draft Model Ordinance

# No Net Loss Mitigation Table

## Model Ordinance Language

<u>Mitigation multipliers</u>					
<b>Mitigation onsite to Mitigation offsite, same reach</b>	100%	100%	100%	100%	100%
<b>Mitigation onsite to Mitigation offsite, different reach, same watershed (5<sup>th</sup> field)</b>	200%*	200%*	200%*	200%	200%

**Notes:**

1. Ratios with asterisks are indicated in the BiOp
2. Mitigation multipliers of 100% result in the required mitigation occurring at the same value described by the ratios above, while multipliers of 200% result in the required mitigation being doubled.
  - a. For example, if only 500 ft<sup>2</sup> of the total 1000 ft<sup>2</sup> of required pervious surface mitigation can be conducted onsite and in the same reach, the remaining 500 ft<sup>2</sup> of required pervious surface mitigation occurring offsite at a different reach would double because of the 200% multiplier.
3. RBZ impacts must be offset in the RBZ, on-site or off-site.
4. Additional standards may apply in the RBZ (See 6.4 Riparian Buffer Zone)



# Milwaukie Police Department

Fostering a culture of service and community





# Why We're Here

## 1 New Leadership

With new faces at the helm comes a recommitment to our core values.

## 2 Building Trust

We recognize that strong relationships and trust are the foundation of effective community policing.

## 3 Open Dialogue

We believe in the power of conversation to improve our services and community relations. This is a conversation starter—we will keep the dialogue going and add new opportunities for ongoing connection.







# Presentation Overview

1

What do we stand for?  
The core values that drive MiPD

2

Embedding Values  
How we integrate these values into our daily operations  
and work culture

3

Future Expectations  
Our commitments and what you can expect from us  
going forward.



# Our Core Values

## Team Milwaukie Values

- Accountability
- Accessibility
- Efficiency
- Collaboration
- Equity

## Milwaukie Police Department Values

- Integrity
- Impartiality
- Reliability
- Compassion





# Living Our Values: Recruitment and Hiring

1

## Current Practices

We maintain rolling recruitments and stringent standards for interviews and background checks.

2

## Lateral Hires

We value experienced officers and encourage referrals to strengthen our team.

3

## Future Plans

We're planning new recruitment events and considering a citizen police academy program.





# Living Our Values: Training

## Current practice:

- Basic Police academy: 16 weeks long and 640 hours of training
- Field Training (FTEP): On average 16 weeks long
- Mandatory trainings on ethics, bias, de-escalation, use of force, crisis intervention communications, and tactical skills

## Next steps:

- Further investments in de-escalation, crisis intervention
- “Train the trainer” strategy for building in-house knowledge
- Capitalize on our partnerships



# Living Our Values: Outreach and Partnership

## Neighborhood Outreach

We actively engage with local businesses and neighborhood groups to address concerns and build relationships.

## School Partnerships

Our officers work closely with schools to ensure safety and mentor students.

## Community Support

We participate in city events, partner with local nonprofits like LoveOne, and support initiatives like the Corporal Diffie Fund.

## Transparency

We're committed to open communication through social media, our website, and community meetings.

# Accountability: Our Commitment to You



## Community Conversations

Join us for monthly discussions before Public Safety Advisory Committee meetings and coffee chats with the Chief.



## Policy Accountability

We'll adhere to the ethics, standards, and policies of the MiPD policy manual and all applicable laws.



## Transparent Data

We'll share both quantitative and qualitative data to measure our performance.



# Example Metric Types

## 1 Response Times

We track average response times for different types of calls to ensure efficiency.

## 2 Use of Force Incidents

We monitor and analyze all use of force events to ensure proper procedures.

## 5 Demographic Data

We analyze any disparities in stops or enforcement and address inequities.

## 4 Training Hours

We track ongoing education to ensure our officers are up-to-date on best practices. All training is submitted to the State of Oregon and recorded.

## 5 Community Satisfaction

We conduct bi-annual community surveys help us gauge public perception and trust.



# Data snapshot

**Use of force** includes physical control holds, displaying and/or using taser or firearm

**Minor injury** includes complaint of pain that leads to seeking follow-up treatment

**Significant injury** includes a life-threatening or serious medical condition

	Total calls for service	Total Arrests	Total Force Used	Minor Injury	Significant Injury	Death
2024 (current)	16,174	657	42	7	1	0
2023	20,436	786	47	8	0	0
2022	17,939	771	38	8	0	0
2021	17,269	665	48	12	0	0
2020	17,760	541	58	7	2*	0

\* First significant injury occurred when a suspect driving a stolen vehicle with felony arrest warrants crashed his car during a pursuit. Second significant injury occurred when an officer arriving on a domestic disturbance call and was attacked by a man with a knife. The suspect was shot, resulting in non-fatal injuries.

# Data snapshot

## 2024 STOPS data: Statistical Transparency of Policing

- Created by Oregon Legislature in 2017 under HB 2355
- Requires law enforcement to report on all discretionary traffic and pedestrian stops
- Three areas of analysis:
  - Decision to Stop
  - Outcome/Predicted Disposition
  - Search Finding

	Total stops	% by race	US Census Data / Portland Metro
White	7,568	76%	72.1%
Black	725	7.3%	5.9%
Asian	316	3.2%	8.4%
Hispanic	1,084	10.9%	10.3%
Middle Eastern	167	1.7%	1.7%
Native American	34	.3%	1%
Pacific Islander	61	.6%	.6%

*Full STOPS data presentation to be put on Council agenda in early 2025*

# Thank you

- What additional information do you want to see made available by MiPD leadership?
- Do you have other ideas for ways we can continue the conversation?



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Emma Sagor, City Manager  
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503.786.7573



**RS Agenda Item**

**9**

## **Council Reports**

**From:** [Lisa Batey](#)  
**To:** [City Council](#); [Peter Passarelli](#)  
**Subject:** BCC activity: purchase of recovery center contingent on successful rezoning; County EV charger installations/fees; courthouse update  
**Date:** Wednesday, November 13, 2024 1:35:25 PM

---

Scott – please add this to the packet for the Nov 19 meeting:

All: [please do not reply all]

The BCC is back in action this week.

This afternoon, they are having the discussion about authorizing a \$200K “industrial site and workforce readiness” assessment, apparently funded out of Lottery funds. Unclear if this includes sites in cities. [7f35440e-75be-47a8-b296-ae4924f037a1](#)

At tomorrow’s Business Meeting they will consider, among many other things, and amendment to the IGA for the sale of the Clackamas School from NCPRD to themselves for the recovery center. This item is adding a contingency clause to state that the property will revert to NCPRD if they are unsuccessful in rezoning it. [8990d569-2cb1-4957-8bfd-ca15e0c0d548](#)

Interestingly, that item was not on the agenda for their Issues & Updates meeting yesterday, which is generally used as their version of a work session ahead of adoption. There were a couple of routine NCPRD items on that agenda, but I thought a couple of other things there were interesting. Here’s the full agenda with links: [Issues & Updates - Nov. 12, 2024 | Clackamas County](#)

Update on the courthouse construction project:

[248390c2-4d57-4721-97af-0bd457740b33](#)

Info on the costs to be charged for the 29 EV charging stations at County facilities:

[5d845933-fb21-4668-b01c-6928a0c42686](#)

There’s a long list of items under Health Housing and Human Services, including a \$20,000 grant to the Little Blue Store for pivoting away from tobacco sales, an agreement with the OHCS for more rental assistance funding, various addiction and behavioral health funding agreements. There’s also an agreement for \$7.2mil in RFFA funding for the multiuse path along Jennifer Street in the Clackamas industrial area, providing safer connectivity for the Veterans Village and another transitional housing facility going in that area. At the top, under BCC member items, there are a few things that might be interesting to watch, but no materials for them (e.g., an update on their Diversion program)

**Lisa M. Batey, Mayor (she/her)**  
City of Milwaukie  
E-mail: [bateyl@milwaukieoregon.gov](mailto:bateyl@milwaukieoregon.gov)

Message line: 503-786-7512



**From:** [Lisa Batey](#)  
**To:** [Scott Stauffer](#)  
**Cc:** [Emma Sagor](#)  
**Subject:** notes from Wednesday's DAC meeting  
**Date:** Friday, November 15, 2024 9:59:57 AM

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Scott: Please include in Tuesday's packet:

All:

This Wednesday, November 13, was the last DAC meeting of the year – the December meeting is being cancelled. I also note that the NCPRD Board usually meets in December, but their schedule shows their next meeting as the Board set for January 15.

The DAC packet is here: [DAC-Agenda-Packet-11-13-2024-FINAL-v2.pdf](#)

The first 45 or so minutes were a discussion of the naming policy, which clearly went on longer than intended on the agenda. Director Kia Selley ultimately made a number of changes and got approval from the group (with one dissenting vote) to forward with our recommendation that the Board adopt the policy. I will share the edited version with Council when received, and it should maybe be shared with PARB and the ESC. It does make clear that it doesn't apply to Milwaukie parks. They are trying to get this policy moving forward so they can launch the naming process for the Concord site early in the new year to have a decision by summer to allow for signage to be in place when the facility opens in the fall.

Kia then turned to the budget. This was a sort of "Budget 101" presentation that she is also giving next week to the Budget Committee. The Budget Committee is meeting next week, and again in February, not something they have done in years past, when they only met for the annual budget process. Kia apologized for not having grasp of all the nuances, noting that Kelly (Kevner?), her budget person, was out sick. I'm going to refer to her slides in the packet by the page number of the total PDF file (which show up at the top of my screen).

Noteworthy idiosyncracies of the NCPRD budget: (1) that employee salaries are within materials and services; (2) that they use the term "transfers" for transfers between funds (e.g., SDC and CIP funds) as well as for the amount they pay the County for various services the County provides. See, e.g., page 24. I asked Kia to clarify what percentage was funds paid to the County, and she said she'd have to get back to me on that.

There are a lot of things in the pie charts on the slides that didn't make total sense to me. For example, the slide at page 33 shows a huge beginning fund balance being carried forward this year – nearly twice what the income is from property taxes.

But I wanted to highlight the slides at the end where she posed questions to the DAC. This starts on page 34, where she sought views on whether those were the projects that the DAC supported prioritizing. There was general support, although a few comments about possibly pushing the trails study back to make it more possible to start planning for the Justice property (which is on SE 122<sup>nd</sup> not too far from Clackamas HS) earlier. I said that I would of course like to see MBP not be “on hold” when the new FY rolls around in July.

The slide at page 35 shows what portion of their general fund revenues beyond fees and grants goes to various types of programming, and Kia asked the DAC for their views on this distribution. As you can see there, 16% goes to the aquatic center, then 28% each to sports leagues, recreational programming, and older adult services. This led to a fairly lengthy conversation about how unusual it is for a parks district to fund senior services, which are most often administered through cities. E.g., Oregon City, Gladstone, etc. But since most of the population of the district is not in a city, this has fallen to NCPRD. Savas said he believed NCPRD was the only park district in the state operating a meals-on-wheels program. I questioned why it wasn’t County Social Services, and Savas basically said it wasn’t a county function. The group consensus seemed to be that it was important to keep providing those services, but there was definitely interest in getting more info on this and on whether NCPRD is maximizing the fed/state funding available for those services.

There were also some comments about to what extent Concord and the Milwaukie Community Center would have duplicative or complementary programming – it was clear the DAC wants to hear more about that.

It was also noted that NCPRD has an online budget proposal form at this page -- [Financial Information - North Clackamas Parks & Recreation District](#) and that proposals submitted by December 15 are considered in preparation of the next budget. Page 28 indicates they have two proposals so far – one having to do with North Clackamas Park and one with a park outside Milwaukie.

Turning to other business, the group approved a letter in support of various grant funding applications for the park at Jennings Lodge Elementary. The designs for that park are pending review with County Planning and the estimated cost is \$2.5mil. They hope to begin construction in early 2026 and are applying for various grants.

Kevin Cayson is retiring as of Monday, but returning in a part-time capacity for a transition over the next several months. A retirement party will happen in the spring. Apparently Dominic Cortinas, who has been the Deputy Director, is stepping into the facility management role.

**Lisa M. Batey, Mayor (she/her)**  
City of Milwaukie  
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Message line: 503-786-7512

# Council Reports – November 19, 2024

RS 9.





# Council Reports – November 19, 2024

