

**Ordinance 2016-04**  
**An Ordinance Amending Ordinance 15.50.010**  
**Storm Water Ordinance**

**15.50 Storm water Ordinance**

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**15.50.010 General**

- A. Purpose. It is the purpose of this ordinance to:
1. Protect, maintain, and enhance the environment of Hyde Park City.
  2. Establish responsibilities for controlling and managing storm water runoff.
  3. Protect the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the city's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the city and state.
  4. Enable the City to comply with the Utah Pollution Discharge Elimination System permit (UPDES) and applicable regulations, 40 CFR §122.26 for storm water discharges.
  5. Allow the City to exercise the powers granted by Utah Code, which provides that, among other powers municipalities have with respect to storm water facilities, is the power by ordinance or resolution to:
    - a. Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the municipality, whether or not owned and operated by the municipality;
    - b. Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;

- c. Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;
  - d. Review and approve plans and plats for storm water management in proposed subdivisions or commercial developments, and other projects whether public or private;
  - e. Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
  - f. Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
  - g. Expend funds to remediate or mitigate the detrimental effects of negatively affected land or other sources of storm water contamination, whether public or private.
- B. City shall administer the provisions of this ordinance. Nothing in this ordinance shall relieve any person from responsibility for damage to other persons or property, nor impose upon Hyde Park City its officers, agents or employees, any liability for damage to other persons or property.

### **15.50.020 Definitions**

For the purpose of this chapter, the following definitions shall apply: Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its' most reasonable application.

Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- A. "Best management practices" or "BMPs" are physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by Hyde Park City and that have been incorporated by reference into this ordinance as if fully set out therein. For purposes of this Title, the relevant BMP's are more particularly defined in Hyde Park City Guidance Document for Storm Water Management.).
- B. "City" means the City of Hyde Park, or authorized designee.
- C. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
- D. "Construction activities" means activities as defined in the Storm water Construction Permit.
- E. "Discharge" means dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any solid or liquid matter into the municipal separate storm sewer system.

- F. "Easement" means an acquired privilege or right of use or enjoyment that a person, party, firm, corporation, municipality or other legal entity has in the land of another.
- G. "Erosion" means the removal of soil particles by the action of water, wind, ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by man-made activities or effects.
- H. "Illicit connections" means illegal and/or unauthorized connections to the municipal separate storm water system whether or not such connections result in discharges into that system.
- I. "Illicit discharge" means any discharge to the municipal separate storm sewer system that is not composed entirely of storm water and not specifically exempted under §3(4).
- J. "Low Impact Development" (LID) is an approach to land development (or redevelopment) that works with nature to more closely mimic pre-development hydrologic functions. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat storm water as a resource rather than a waste product. There are many practices that have been used to adhere to these principals such as bio retention facilities, rain gardens vegetated roof tops, rain barrels and permeable pavements.
- K. "MS4 Permit" means the General Permit for Discharges for Small Municipal Separate Storm Sewer Systems (MS4), Permit latest version.
- L. "Maintenance" means any activity that is necessary to keep a storm water facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a storm water facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the storm water facility.
- M. "Maintenance agreement" means a document recorded in the land records that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.
- N. "Municipal separate storm sewer system (MS4)" ("Municipal separate storm water system") means the conveyances owned or operated by the municipality for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.
- O. "National Pollutant Discharge Elimination System permit" or "NPDES permit" means a permit issued pursuant to 33 U.S.C. 1342.
- P. "Notice of Violation" (N.O.V.) means whenever the City finds that a person is in non-compliance with this ordinance, the City will order compliance by written notice of violation to the responsible person. Requirements in this Notice are at the discretion of the City, and may include monitoring, payment to cover costs relating to the non-compliance, and the implementation of Best Management Practices.
- Q. "Person" means any and all entities, natural or artificial, including any individual, firm or association and any municipal or private corporation organized or existing under the laws of this or any other state or country.
- R. "Pre-development" means the status of an item prior to any modification. (i.e. native condition)
- S. "Property Owner" means landowner of property within the boundary of Hyde Park City.

- T. "Qualified Person" is a person knowledgeable in the principles and practice of erosion and sediment controls and pollution prevention, who possesses the skills to assess conditions at the construction site that could impact storm water quality and the skills to assess the effectiveness of any storm water control selected and installed to meet the requirements of the Utah Construction General Permit.
- U. "Runoff" means that portion of water or precipitation on a drainage area that is discharged from the area into the municipal separate storm water system.
- V. "Sediment" means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface.
- W. "Sedimentation" means soil particles suspended in storm water that can settle in stream beds and disrupt the natural flow of the stream.
- X. "Storm Water" means storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.
- Y. "Storm water Construction Permit" means Storm Water General Permit for Construction Activities Permit latest version as required by the Utah Department of Environmental Quality, Division of water Quality.
- Z. "Storm water Management" means the programs to maintain quality and quantity of storm water runoff to pre-development levels.
- AA. "Storm water Pollution Prevention Plan (SWPPP)" means the set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels during and after construction.
- BB. "Storm water runoff" means that portion of storm water on a drainage area that is discharged from the area into the municipal separate storm water system.
- CC. "Storm water utility" means the storm water utility created by ordinance of the city to administer the storm water management ordinance, and other storm water rules and regulations adopted by the municipality.
- DD. "Structural BMPs" means devices that are constructed to provide control of storm water runoff.
- EE. "Surface water" includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes and reservoirs.
- FF. "UPDES" means Utah Pollution Discharge Elimination System.

### **15.50.030 Storm water System Design**

- A. Storm water system design and construction documents shall conform to the standards adopted by the city.
- B. Storm water outfall design and water quality shall meet federal, state and local discharge requirements.
- C. Unless granted a waiver or judged by the City Engineer to be exempt, the following post construction performance criteria shall be addressed for storm water management at all sites.
  - 1. Design of storm drain systems within City Boundaries and that discharge into a Hyde Park City storm drain system requires direct supervision of a Utah

registered professional engineer, and shall carry the seal of the same supervising professional engineer. Site designs shall control the peak flow rates of storm water discharge.

2. Calculations for determining allowable peak flows and runoff volumes as found in the LID Handbook shall be used for sizing all storm water facilities.
- D. Minimum Control requirements.
1. Storm water discharge during all construction activities shall comply with the terms of the UPDES Storm Water General Permit for Construction Activities, Land Disturbance Permit, the Storm water Design Standards and Regulation, and/or requirements set forth by the City and the State of Utah UPDES requirements.

#### **15.50.040 Storm water System Construction**

- A. Erosion and sediment control practices on construction sites must meet the technical requirements as required in the Storm water Construction Permit.
- B. Erosion and sediment control practices must be applied to all construction activities required by the Storm water Construction Permit including new development and redevelopment.
- C. All construction activities listed under Storm water Construction Permit shall prepare a SWPPP in accordance with said Permit.
1. The SWPPP shall be submitted and reviewed by the City prior to application for said permit.
- D. Erosion and sediment BMP's used for construction activities, listed on the SWPPP and sediment and erosion control plans shall protect water quality, reduce the discharge of pollutants, and control waste such as, but not limited to soils, sediment, oils, discarded building materials, concrete truck washout, chemicals, litter and sanitary waste that may cause adverse impact to water quality
- E. Each application shall be accompanied by:
1. A Storm water pollution prevention plan (SWPP) providing for erosion and sediment control and storm water management during the land disturbing activity and after the activity has been completed meeting the requirements of Storm water General Permit for construction Activities permit.
- F. Post Construction Landscaping and stabilization requirements: Any area of land from which the natural vegetation cover has been either partially or wholly cleared by development activities shall be re-vegetated according to a schedule approved by the City Engineer. The following criteria shall apply to re-vegetation efforts:
1. Stabilization must occur as required in the Storm Water General Plan for Construction Activities Permit.

#### **15.50.050 Storm water System Operation And Maintenance**

- A. Operation and maintenance of storm water facilities within the city shall be in conformance with the requirements of the MS4 Permit.
- B. All storm water infrastructure located on private land or that is to be accessed through private land, must have access easements for the purpose of inspection and repair. These

easements must be binding on the current property owner and all subsequent owners, heirs and successors of the property and must be properly recorded in the land record.

C. Privately Owned Storm water Infrastructure

1. Where the city chooses to not inspect, operate or maintain storm water infrastructure, responsibility for the maintenance and repair of storm water facilities shall be assigned to the owner of the property upon which the facility is located and be recorded as such on the plat at the county recorders for the property by appropriate notation.
2. Where storm water infrastructure is not maintained or repaired within the prescribed schedule, the city shall perform the maintenance and repair at its expense, and bill the same to the property owner. In the event that payment is not made, the city's cost of performing the maintenance shall be a lien against the property.

D. Maintenance Easements: The applicant must ensure access to the site for the purpose of inspection and repair by securing all the maintenance easements needed. These easements must be binding on the current property owner and all subsequent owners, heirs and successors of the property and must be properly recorded in the land record.

E. Maintenance Agreement: The owner of property to be served by an on-site storm water management facility must execute an inspection and maintenance agreement that shall operate as a deed restriction binding on the current property owner and all subsequent property owners, heirs and successors. The maintenance agreement shall:

1. Assign responsibility for the maintenance and repair of the storm water facility to the owner of the property upon which the facility is located and be recorded as such on the plat for the property by appropriate notation.
2. Provide for annual inspection by the property owner for the purpose of documenting maintenance and repair needs and ensure compliance with the purpose and requirements of this ordinance. The property owner will arrange for this inspection to be conducted by a Registered Storm Water Inspector or registered professional engineer licensed to practice in the State of Utah who will submit a sealed report of the inspection to the city.
3. Provide that maintenance needs must be addressed in a timely manner, on a schedule to be approved by the city.
4. Provide that if the property is not maintained or repaired within the prescribed schedule, the city shall perform the maintenance and repair at its expense, and bill the same to the property owner. The maintenance agreement shall also provide that the city's cost of performing the maintenance shall be a lien against the property.

F. Dedication: The municipality shall have the discretion to accept the dedication of any existing or future storm water management facility, provided such facility meets the requirements of this ordinance, and includes adequate and perpetual access and sufficient areas, by easement or otherwise, for inspection and regular maintenance. Any storm water facility accepted by the municipality must also meet the municipality's construction standards and any other standards and specifications that apply to the particular storm water facility in question.

### **15.50.060 Illicit Discharges**

- A. Scope. This section shall apply to all water generated on developed or undeveloped land entering the municipality's separate storm sewer system. Prior situations or conditions are not exempt from the requirements of this ordinance.
- B. Prohibition of illicit discharges. No person shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of storm water. The commencement, conduct or continuance of any non-storm water discharge to the municipal separate storm sewer system is prohibited except as described in the MS4 Permit.
- C. Prohibition of illicit connections. The construction, use, maintenance or continued existence of illicit connections to the separate municipal storm sewer system is prohibited.
- D. Reduction of storm water pollutants by the use of Best Management Practices (BMP's). Any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at the person's expense, the BMP's necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity shall be deemed compliance with the provisions of this section.
- E. Stockpiling of materials in city rights-of-way. Stockpiling of materials in city rights-of-way shall be reviewed and approved by the city prior to placement. Approved BMP's associated with stockpiling of material must be implemented and shown on the SWPPP.
- F. Notification of spills. In the event of a release of hazardous materials the person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, the person shall notify the city in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the city within three (3) business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 5 years.
- G. Cleanup of spills. Within the requirements of the law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into storm water and / or the municipal separate storm sewer system, the person shall take all necessary steps to ensure the discovery

### **15.50.070 Enforcement**

- A. Enforcement authority. The City shall have the authority to issue notices of violation, stop work orders, and citations, and to impose the criminal and civil penalties provided in this ordinance.
- B. Notification of violation.

1. Written Notice. Whenever the City finds that any person discharging storm water has violated or is violating this ordinance or a permit or order issued hereunder, the City will serve upon the owner, occupant, or persons conducting operations on the property, written notice of the violation. Such notice will identify the date of the violation, the conditions violating this chapter and give notice that they must be corrected within the next forty-eight (48) hours to ten (10) calendar days, depending on the severity of the violation, as determined by the Registered Storm water Inspector. Within one (1) business day of receiving this notice, the person shall submit to the City an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.
  - a. Consent Orders. The City is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (ii) and (iii) below.
  - b. Compliance Order. When the City finds that any person has violated or continues to violate this ordinance or a permit or order issued thereunder, the City may issue an order to the violator directing that, following a specific time period, adequate structures, devices, etc., be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.
  - c. Cease and Desist Orders. When the City finds that any person has violated or continues to violate this ordinance or any permit or order issued hereunder, the City may issue an order to cease and desist all such violations and direct those persons in noncompliance to:
    1. Comply forthwith; or
    2. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

### **15.50.080 Penalties**

- A. Infractions: In minor violations, as determined by qualified storm water inspectors, a penalty for infractions may be implemented. Such penalty shall be consistent with the severity of the violation. Penalties for specific infractions are established by resolution through the City Council. See prevailing fee schedule.
- B. Criminal penalties, as determined by the registered storm water inspectors, first offense: any person violating the provisions of this ordinance for the first time may be assessed a



Class C Misdemeanor with a maximum fine as set by resolution. See prevailing fee schedule. Fines may be assessed per day for each violation.

- C. Criminal penalties second offense: any person violating the provisions of this ordinance for the second time may be assessed a Class B Misdemeanor with a maximum fine as set by resolution. See prevailing fee schedule. Fines may be assessed per day for each violation.
- D. Measuring civil penalties. In assessing a civil penalty, the City may consider:
  - 1. The harm done to the public health or the environment;
  - 2. Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
  - 3. The economic benefit gained by the violator;
  - 4. The amount of effort put forth by the violator to remedy this violation;
  - 5. Any unusual or extraordinary enforcement costs incurred by the municipality;
  - 6. The amount of penalty established by ordinance or resolution for specific categories of violations; and
  - 7. Any equities of the situation, which outweigh the benefit of imposing any penalty or damage assessment.
- E. Recovery of damages and costs. In addition to the civil penalty in subsection (2) above, the municipality may recover:
  - 1. All damages proximately caused by the violator to the municipality, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this ordinance, or any other actual damages caused by the violation.
  - 2. The costs of the municipality's maintenance of storm water facilities when the user of such facilities fails to maintain them as required by this ordinance.
  - 3. Recovery of costs imposed on the City, including attorney's fees, by state or federal entities.
- F. Other remedies. The municipality may bring legal action to prevent the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.
- G. Remedies are cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.

### **15.50.090 Appeals**

- A. Appeals to the Appeal Authority. Any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this ordinance may appeal said penalty or damage assessment to the municipality's appeal authority.
- B. Appeals to be in writing. The appeal shall be in writing and filed with the municipal recorder or clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.
- C. Public hearing. Upon receipt of an appeal, the municipality's appeal authority shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days' notice by registered mail shall also be provided to the aggrieved party,

such notice to be sent to the address provided by the aggrieved party at the time of appeal. .

- D. Appealing decisions of the municipality's appeal authority. Any alleged violator may appeal a decision of the appeal authority. Any appeal to the appeal authority must be made to the district court within thirty (30) days from when the written decision is made.

### **15.50.100 Inspections**

- A. Purpose. To be in accordance with the MS4 Permit, the City will conduct inspections to monitor all discharges to natural water bodies including lakes, rivers, stream and canals, storm water controls and BMPs.
- B. Scope. Inspections relating to the MS4 Permit include but are not limited to illicit discharges, construction activities and post construction operation and maintenance of storm water controls, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other BMPs either publicly or privately owned.
- C. Access.
  - 1. Visual Inspections. Visual inspections by the City of discharges to natural water bodies, spills and storm water related controls on private property within the City limits of Hyde Park are permitted by the City at any time.
  - 2. Other Inspections. When a visual inspection is not adequate to determine the extent of discharges to natural water bodies, spills or determine the status of storm water related controls on private property, real or suspect, the City will give 24 hours' notice of the inspection to take place and the extent of the inspection. Equipment and manpower necessary to perform the inspection will be allowed to access and work as necessary to determine the state of the situation.
  - 3. Emergency Inspections. During times of emergency including discharges to natural water bodies, spills or potential damage to life or property, real or suspect, the City may access the location of concern on private property as necessary and with the equipment required to determine the status of the situation. Reasonable attempts to contact the property owner prior to the inspection will be made prior to accessing private property.
- D. Fees for inspections. Fees for inspections shall be as adopted by resolution through the City Council. See prevailing fee schedule.

### **15.50.110 Storm water Inspection Fee**

For New Homes and Small Construction Projects (not subdivision development) that require storm water Notice of Intent (NOI) inspection fees shall be \$300.

**Effective Date:** This ordinance will become effective immediately upon its adoption by the City Council.

**ADOPTED AND APPROVED** by the HYDE PARK CITY COUNCIL this 10<sup>th</sup> day of October 2016.

HYDE PARK CITY, a municipal corporation

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Bryan L. Cox, Mayor

ATTEST:

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Donja J. Wright, Recorder