

COUNCIL BILL NO. 10-13

ORDINANCE NO. 10-13

AN ORDINANCE ADOPTING REGULATIONS FOR THE CONTROL AND MANAGEMENT OF STORM WATER TO BE CODIFIED AS CHAPTER 32 OF TITLE 13 OF THE BUTTE-SILVER BOW MUNICIPAL CODE ENTITLED "STORM WATER MANAGEMENT"; REGULATING THE DESIGN, CONSTRUCTION, USE AND MAINTENANCE OF ANY DEVELOPMENT OR OTHER ACTIVITY WHICH MAY RESULT IN IMPACTS TO WATER BODIES, PROVIDING FOR ADOPTION OF MUNICIPAL STORM WATER ENGINEERING STANDARDS; PROVIDING FOR OWNERSHIP OF STORM WATER MANAGEMENT FACILITIES AND BUTTE-SILVER BOW PARTICIPATION; SETTING FORTH REGULATIONS FOR MANAGEMENT, CONSTRUCTION AND INSPECTION OF FACILITIES; DEFINING AND PROHIBITING ILLICIT DISCHARGES TO THE BUTTE-SILVER BOW STORM WATER SYSTEM; PROVIDING FOR APPEALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR PERMITS AND FEES; PROVIDING FOR PENALTY FOR VIOLATION AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF COMMISSIONERS OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA:

ARTICLE I. GENERAL PROVISIONS

SECTION 1: 13.32.010 Purpose. The purpose of this Chapter is to establish storm water management requirements and controls to protect and

safeguard the general health, safety, and welfare of the public, by adopting regulations for storm water discharges from new site development, non-storm water discharges to the storm drainage system, and by the creation of a storm water utility.

13.32.020 Object. It is the object of this chapter to minimize impacts from storm water to the maximum extent practicable as required by federal and state law, as follows:

A. Minimize increases in storm water runoff from any development to prevent or reduce flooding, siltation, increases in stream temperature, and streambank erosion, to protect private property, to protect water quality, and to maintain the integrity of stream channels and runoff characteristics of the area.

B. Minimize increases in nonpoint source pollution caused by storm water runoff from development which would otherwise degrade water quality.

C. Reduce storm water runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through storm water management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

D. Control the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Montana Pollutant Discharge Elimination System (MPDES).

E. To prohibit illicit connections and discharges to the MS4.

F. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter.

G. Comply with requirements of the Phase II Storm Water Program of the Environmental Protection Agency (EPA) as administered by the Montana Department of Environmental Quality

(MDEQ).

13.32.030 Definitions.

For the purpose of this chapter, the following terms phrases and words, and their derivatives shall have the meaning given herein, except where the context clearly indicates a different meaning:

Accelerated erosion means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind, or chemical action.

Applicant means a property owner or applicant of a property owner who has filed an application for a storm water management permit.

As-built plan means a set of engineering or site drawings that delineate the specific permitted storm water management features as actually constructed.

Authorized enforcement agency means the Director, employees or designees of the Butte-

Silver Bow Public Works Department are designated to enforce this chapter.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Butte-Silver Bow means the local government of the City and County of Butte-Silver Bow, Montana, including all officers, employees, agents, boards, departments, commissions and authorities and includes all of that area within its jurisdiction with authority to inspect or

enforce storm water compliance.

Channel means a natural or artificial watercourse with a definite bed and banks that conveys flowing water continuously or periodically.

Construction activity means activities subject to the requirements of this chapter. These include construction projects resulting in land disturbance of 1-acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Dedication means the deliberate appropriation of property by its owner to general public use.

Drainage easement means a legal right granted by a landowner to a grantee allowing the use of private land for storm water management purposes.

Hazardous materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious

characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal discharge means any direct or indirect non-storm water discharge to the storm water system, except as exempted in Article III of this chapter.

Illicit connections means an illicit connection is defined as either of the following:

a. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm water system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm water system and any connections to the storm water system from indoor drains and sinks, regardless of

whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency.

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

Impervious cover means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways. etc).

Industrial activity means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Land disturbing activity means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction,

substantial, removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or artificial watercourse.

Landowner means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Maintenance agreement means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.

MS4 means Municipal Separate Storm Sewer as defined by the Environmental Protection Agency (EPA).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC ' 1342(b)) that authorizes the discharge of pollutants to waters of the United States,

whether the permit is applicable on an individual, group, or general area-wide basis. The Montana Department of Environmental Quality administers this program in Montana.

Non-point source pollution means pollution from non-discernable, unconfined, diffuse sources and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal, and urban runoff sources.

Non-storm water discharge means any discharge to the storm drain system that is not composed entirely of storm water.

Off-site facility means a storm water management measure located outside the subject property boundary described in the permit application for land development activity.

Outfall means the place where a sewer, drain, or channel discharges.

Person means any individual, association, organization, partnership, firm, corporation or

other entity recognized by law, and acting as either the owner or as the owner's agent. Butte-Silver Bow is considered a person for purposes of this ordinance when acting as either the owner or as the owner's agent.

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

Responsible party means a business entity, franchised utility company, developer, landowner, contractor or holder of a building permit who is required to comply with the terms of this chapter.

Stop work order means an order issued which requires that all land disturbance activity on a site be stopped.

Storm water means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm water system means publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm water management means the use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, and/or peak flow rates.

Storm water management facilities means those structures and facilities that are designed for the collection, conveyance, storage, treatment, and disposal of storm water runoff.

Storm water engineering report means a written document that details the Best Management Practices, use of structural or non-structural practices to be implemented by a person or business designed to reduce storm water runoff, pollutant loads, discharge volumes, and/or peak flow rates to the maximum extent practicable.

Temporary erosion control devices means devices installed or practices implemented and maintained during land disturbance activities to prevent, minimize, or control the erosion and deposit of soil materials.

Wastewater means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Watercourse: A natural or artificial channel through which water flows.

Water quality means those characteristics of storm water runoff from a land disturbing activity that relates to the physical, chemical, biological, or radiological integrity of water.

Water quantity means those characteristics of storm water runoff that relate to the rate and volume of the storm water runoff to downstream areas resulting from a land disturbance activity.

13.32.040 Compatibility with other Regulations.

This Chapter is not intended to interfere with, abrogate, or annul any other local law, rule or regulation, statute, or other provision of law. The requirements of this Chapter should be considered minimum requirements, and where any provision of this Chapter imposes restrictions

different from those imposed by any other Chapter, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

13.32.050 Severability. If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Chapter shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Chapter.

13.32.060 Amendments. This Chapter may be amended in the manner as prescribed by law for its original adoption. Before the Butte-Silver Bow Governing Body amends this Chapter, it shall refer the proposed amendment to its Public Works Committee and seek the advice of the Public Works Director who will make a recommendation

for each amendment within thirty (30) days of the request.

13.32.070 Liability. Neither the approval of a plan under the provisions of this Chapter nor the compliance with the provisions of this Chapter shall relieve any person from the responsibility for damage to any person or property otherwise imposed by law, nor shall it impose any liability upon Butte-Silver Bow for damage to any person or property.

13.32.080 Violations, Enforcement, Penalties.

A. Violations. It shall be unlawful for any person to violate any of the provisions of this chapter by doing any act forbidden or by failing to perform any duty imposed herein and any such act or omission shall be deemed a misdemeanor and jurisdiction for prosecution thereof shall be vested in the City Court of Butte-Silver Bow.

In the event the violation constitutes an immediate danger to public health or public

safety, Butte-Silver Bow is authorized to enter upon the subject property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. Butte-Silver Bow is authorized to seek costs of the abatement as outlined in 13.32.120.

B. Notice of Violation. When the Butte-Silver Bow Public Works Department determines that an activity is not being carried out in accordance with the requirements of this Chapter, it shall issue a written notice of violation to the landowner or responsible party. The notice of violation shall contain:

1. The name and address of the owner or applicant;

2. The physical address or a description of the building, structure or land upon which the violation is occurring;

3. A statement specifying the nature of the violation;

4. A description of the remedial measures necessary to bring the activity into compliance with this Chapter and a time schedule for the completion of such remedial action;

5. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

6. A statement that the determination of violation may be appealed as defined in subchapter 13.32.100 by filing a written notice of appeal within thirty (30) days of service of notice of violation; and

7. A statement specifying that should the violator fail to restore compliance within the established time schedule, the work will be done by the Public Works Department or a designated contractor and that two times the expense thereof shall be charged to the violator.

Such notice may require without limitation:

a. The performance of monitoring, analyses, and reporting;

b. The elimination of illicit connections or discharges;

c. The implementation of changes or corrective measures to eliminate the violating discharges, practices, or operations;

d. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

e. The payment of costs to cover administrative and remediation actions; and

f. The implementation of source control or treatment BMPs.

C. Suspension Due to Illicit Discharges in Emergency Situations. The Butte-Silver Bow Public Works Department may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to

the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the person fails to comply with a suspension order issued in an emergency, the Butte-Silver Bow Public Works Department may take such steps as deemed necessary to prevent or minimize damage to the storm water system or waters of the United States, or to minimize danger to public health and safety.

D. Suspension Due to the Detection of Illicit Discharge. Any person discharging to the storm water system in violation of this Chapter may have their access terminated if such termination would abate or reduce an illicit discharge. The Butte-Silver Bow Public Works Department will notify the person of the proposed termination of its storm water system access. The person may submit a written request to the Butte-Silver Bow Public Works Department for reconsideration within thirty (30) days. A person commits an offense if the person

reinstates storm water system access to premises terminated pursuant to this Section, without the prior approval of the Butte-Silver Bow Public Works Department.

E. Stop Work Orders. If issues identified in a notice of violation are not addressed within the required time schedule, Butte-Silver Bow Public Works Department will issue a stop work order to the landowner or responsible party. Persons receiving a stop work order will be required to halt all construction activities. This stop work order will be in effect until the Butte-Silver Bow Public Works Department confirms that the development activity is in compliance and the violation has been satisfactorily resolved. Failure to address a notice of violation in a timely manner can result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in Section 13.32.110.

F. Civil and Criminal Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Chapter shall be punished by a fine not to exceed \$500.00 or by imprisonment for a period not to exceed 6 months, or both. Such person shall be guilty of a separate offense for each day during which the violation occurs or continues.

G. Restoration of Lands. A violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Butte-Silver Bow Public Works Department may take necessary corrective action, two times the cost of which shall become a lien upon the property until paid.

H. Compensatory Action. In lieu of enforcement proceedings, penalties, and remedies authorized by this Chapter, the Butte-Silver Bow Public Works Department may impose alternative

compensatory actions upon the person, such as storm drain stenciling or marking, attendance at compliance workshops, creek cleanups, or other reasonable measure.

I. Violations Deemed a Public Nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter that is deemed a threat to public health, safety, and welfare, shall be declared a nuisance, and may be summarily abated or restored by the Butte-Silver Bow Public Works Department or a designated contractors at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

J. Remedies Not Exclusive. The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the

discretion of the authorized enforcement agency to seek cumulative remedies.

13.32.090 Appeals. Any person aggrieved by a decision of the Butte-Silver Bow Public Works Department (including any decision with reference to a Notice of Violation, waiver, or variance from the terms of this Chapter) may appeal the same by filing a written notice of appeal with the Butte-Silver Bow Public Works Department within thirty (30) calendar days of the issuance of said decision. The Butte-Silver Bow Public Works Department can then uphold or reverse the decision. Any appeal of said decision may be appealed to the Second Judicial District Court.

13.32.100 Enforcement Measures after Appeal. If a violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten (10) days of the decision of the District Court upholding the decision of the Butte-Silver

Bow Public Works Department, then representatives of the Butte-Silver Bow Public Works Department may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Butte-Silver Bow Public Works Department or designated contractor to enter upon the premises for the purposes set forth above. Any violation will also be reported to the Enforcement Division of the Montana Department of Environment Quality.

13.32.110 Cost of Abatement of the Violation.

Within twenty (20) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest to the Council of Commissioners objecting to the amount of the

assessment within ten (10) days. If the amount due is not paid in a timely manner as determined by the decision of the Council of Commissioners, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the City-County by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of ten (10) percent per annum shall be assessed on the unpaid balance beginning on the 31st day following discovery of the violation.

ARTICLE II. CONSTRUCTION/POST CONSTRUCTION STORM WATER

REQUIREMENTS

SECTION 2: 13.32.200 Applicability and Scope. No landowner or responsible party shall engage in any land disturbance activity without having provided for appropriate storm water management measures in

compliance with this Chapter, unless exempted in this section.

13.32.210 Exemptions. The following development and other activities are exempt from the provisions of this Article:

A. Land disturbance activities on agricultural land for production of plants and animals useful to man (crops, dairy, poultry, livestock, etc), except if the land disturbance includes the construction of a building or structure greater than 5,000 square feet.

B. Land disturbing activities undertaken on forest land for the production and harvesting of timber and timber products.

C. Land disturbance activities that are less than 1-acre of disturbance and are not part of a subdivision or part of a commercial or industrial development.

D. Emergency land management practices posing an immediate danger to life or property, or substantial flood or fire hazards.

E. Any activity for which a permit or other approval is required from the state or federal government, or is the subject of an administrative order, a consent decree, or an enforcement action pursuant to Title 75, chapter 5, part 4; Title 75, chapter 6; Title 75, chapter 10, Mont. Code Ann.; the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980; 42 U.S.C. 9601 through 9675, as amended; or federal environmental, safety or health statutes and regulations.

13.32.220 Permit Requirements. Landowners or responsible parties shall not receive any of the building, grading or other land development permits required for a land disturbance activity without first meeting the requirements of this Chapter.

A. Application Requirements. Any landowner or responsible party desiring a permit for a land disturbance activity shall submit to

the Butte-Silver Bow Public Works Department a Storm Water Management Permit Application on a form provided for that purpose. The permit application shall be accompanied by the following in order to be considered:

1. Storm Water Engineering Report; and
2. Maintenance Agreement.

The storm water engineering report and maintenance agreement shall be prepared to meet the requirements listed in the Attached Municipal Storm Water Engineering Standards document, which is included as Exhibit A and incorporated herein. These engineering standards will be updated periodically as determined necessary by the Butte Silver Bow Public Works Department. Land disturbance activities greater than 1-acre shall also comply with requirements of the MPDES general permit for storm water discharge associated with construction activity, permit number MTR1000000.

B. Application Procedure.

1. Three copies of the Storm Water Management permit applications shall be filed with the Butte-Silver Bow Public Works Department on any regular business day.

2. A copy of this permit application shall be forwarded by the Butte-Silver Public Works Departments to all appropriate departments for review.

3. Within five (5) business days the Butte-Silver Bow Public Works Department shall inform the applicant whether the permit application is complete or additional information is needed.

4. Within twenty (20) business days of the receipt of a complete permit application, the Butte-Silver Bow Public Works Department shall inform the applicant whether the application is approved.

5. If the permit is approved by the Butte-Silver Bow Public Works Department, the

applicant can secure all appropriate development permits and proceed with the proposed project.

6. If the permit application is disapproved, the applicant may revise the submittal. If additional information is submitted, the Butte-Silver Bow Public Works Department shall have ten (10) business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

7. The determination to disapprove of a permit application may be appealed as defined in subchapter 13.32.080 by filing a written notice of appeal within thirty (30) days of the decision by the Butte-Silver Bow Public Works Department.

C. Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date the Butte-Silver Bow Public Works Department notifies the permit

holder that all storm water management practices have passed the final inspection required under permit conditions as defined in the Municipal Storm Water Engineering Standards.

13.32.230 Ownership of Storm Water Management Facilities.

A. All storm water management facilities shall be privately owned and maintained unless Butte-Silver Bow Public Works Department accepts the facility for Butte-Silver Bow ownership and maintenance. The owner of all private facilities shall grant to Butte-Silver Bow, a maintenance easement and maintenance agreement which allows for public inspection, maintenance, and emergency repair as defined in the Municipal Storm Water Engineering Standards.

B. All storm water management measures relying on designated vegetated areas or special site features shall be privately owned and maintained as defined in the Municipal Storm Water Engineering Standards.

C. Most regional storm water management facilities located on public property will be publicly owned and/or maintained.

ARTICLE III. ILLICIT DISCHARGE REQUIREMENTS

SECTION 3: 13.32.300 Applicability. Requirements shall apply to all water entering the storm water system generated on any developed and undeveloped lands unless explicitly exempted by the Butte-Silver Bow Public Works Department.

13.32.310 Discharge Prohibitions.

A. Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal storm water system or watercourse any materials, including but not limited to pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this Chapter: landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, foundation or footing drains (not including active groundwater dewatering systems), sump pumps, air conditioning condensation, springs, non-commercial or charity car washes, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one part per million chlorine), fire fighting activities, and any other water source not containing pollutants.

(2) The following discharges are exempt from discharge prohibitions established by this Chapter with written permission from the Butte-Silver Bow Public Works Department: a discharge or flow from waterline flushing or disinfection that contains no harmful quality of total residual chlorine or any other chemical used in

line disinfection, a discharge or flow of uncontaminated storm water or ground water pumped from an excavation, a discharge or flow from uncontaminated ground water, and discharges associated with dye testing.

(3) The prohibition shall not apply to any non-storm water discharge permitted under an MPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Montana Department of Environmental Quality (MDEQ), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has also been granted for any discharge to the storm water system by the Butte-Silver Bow Public Works Department.

B. Prohibition of Illicit Connections.

The construction, use, maintenance or continued existence of illicit connections to the storm

water system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this Chapter if the person connects a line conveying an illegal discharge to the storm water system, or allows such a connection to continue.

13.32.320 Industrial or Construction Activity.

Any person subject to an industrial or construction activity MPDES storm water discharge permit shall comply with all provisions of such permit. A copy of the MPDES Permit and associated submittals shall be submitted to the Butte-Silver Bow Public Works Department prior to the allowing of discharges to the storm water system.

13.32.330 Monitoring of Discharges.

A. Access to Facilities. The Butte-

Silver Bow Public Works Department shall be permitted to enter and inspect facilities subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter.

(1) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Public Works Department.

(2) Facility operators shall allow the Public Works Department ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an MPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The Public Works Department shall have the right to set up on any permitted facility

such devices as are necessary in its opinion to conduct monitoring and/or sampling of the facility's storm water discharge.

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

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

(6) Unreasonable delays in allowing the Public Works Department access to a permitted

facility is a violation of a storm water discharge permit and of this Chapter. The operator of a facility with a MPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Public Works Department reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Chapter.

(7) If the Public Works Department has been refused access to any part of the premises from which storm water is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this Chapter, the Department may seek issuance of a search warrant from any court of competent jurisdiction. Probable cause may include but is not limited to any evidence suggesting that a violation is occurring on the premises, the need to inspect and/or sample as part of a routine inspection and sampling program designed to

verify compliance with this Chapter, or to protect the overall public health, safety, and welfare of the community.

13.30.340 Requirement to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices.

The Butte-Silver Bow Public Works Department may require Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm water system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm water system or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a property or premises, which is or may be the location of a source of an illicit discharge,

may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the storm water system. Compliance with all terms and conditions of a valid MPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the MPDES permit.

13.32.350 Requirement to Eliminate Illegal Discharges. The Butte-Silver Bow Public Works Director may require by written notice that a person responsible for an illegal connection in violation of this Chapter shall immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the

occurrence of future illegal discharges. The Butte-Silver Bow Public Works Department may require that the illicit connection be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system, upon approval.

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

13.32.370 Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm water system, or water of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Butte-Silver Bow Public Works Department in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by

written notice addressed and mailed to the Butte-Silver Bow Public Works Department within seven (7) business days of the phone notice. If the discharge of prohibited materials originates 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 three years. Failure to provide notification of a release as provided herein is a violation of this Chapter.

ARTICLE IV. STORM WATER FEES

SECTION 4: 13.32.400 Findings.

A. Butte-Silver Bow maintains a system of storm and surface water management facilities including, but not limited to, inlets, conduits, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, and other components as well as natural waterways.

B. The storm water system needs regular maintenance and improvements.

C. Water quality is degrading due to erosion and the discharge of sediment, nutrients, metals, oil, grease, toxic materials, and other substances into and through the storm water system.

D. The public health, safety, and welfare is adversely affected by poor ambient water quality and flooding that results from inadequate management of both the quality and quantity of storm water.

E. All real property in Butte-Silver Bow either uses or benefits from the maintenance of the storm water system.

F. The extent of use of the storm water system by each property is dependent on factors that influence runoff, including land use and the amount of impervious surface on the property.

G. The costs of improving, maintaining,

operating, and monitoring the storm water system should be allocated, to the extent practicable, to all property owners based on the impact of runoff to the storm water management system from the size and type of property.

H. Management of the storm water system to protect the public health, safety, and welfare requires adequate revenues and it is in the interest of the public to finance storm water management adequately with a user charge system that is reasonable and equitable.

13.32.410 Establishment of Storm Water Utility Fund.

A. Storm Water Utility Division. There is hereby established a Storm Water Utility Division within the Butte-Silver Bow Public Works Department, and the public works department is given all the authority to necessary to operate such Storm Water Utility Division. The Storm Water Utility Division is assigned all responsibilities for operating the

storm water system in the City-County of Butte-Silver Bow, which shall consist of managing all assets and equipment of the storm water system, operation and maintenance, and improvement of infrastructure, all in accordance with the provisions of Section 7.02(c) of the Butte-Silver Bow charter. (Ord. 420 § 1, 1992).

B. Storm Water Utility Fund. There shall be established a Storm Water Utility Fund. All revenues collected from the Storm Water Management fees, grants, fines, and other charges shall be deposited into this fund for the purposes listed in this section.

13.32.420 Purposes of the Fund. The Storm Water Utility Fund shall be used for the following purposes:

A. All costs of administration and implementation of the Storm Water Utility Division, including the establishment of reasonable operating and capital reserves to

meet unanticipated or emergency storm water management requirements.

B. The acquisition by gift, purchase or condemnation of real and personal property, and interests therein, necessary to construct, operate, and maintain storm water control facilities.

C. Engineering and design, debt service and related financing expenses, construction costs for new facilities, and enlargement or improvement or existing facilities.

D. Operation and maintenance of the storm water system.

E. Monitoring, surveillance, and inspection of storm water control facilities.

F. Water quality monitoring and water quality programs.

G. Retrofitting developed areas for pollution control.

H. Assessment, inspection and enforcement activities.

- I. Billing and administrative costs.
- J. Public education.
- K. Other activities which are reasonably required.

13.32.430 Applicability of Storm Water Utility Fee. Fees for collection and conveyance of storm water shall be imposed on the owners of all real property within the City and County of Butte-Silver Bow, which is hereby established as the Storm Water Utility District Boundary. Vacant and agricultural property shall be exempt from this fee.

13.32.440 Rates of Charge. The total annual rate of charge for storm water user fees shall be set by the Butte-Silver Bow Council of Commissioners by resolution duly adopted and approved and filed with the Clerk and Recorder's office (Ord. 420 § 1, 1992). The Council of Commissioners is authorized to change the rates, charges or classifications imposed on the customers of the storm water utility in the

manner of and pursuant to the procedures imposed upon and allowed to municipal utility services by the laws of the state.

13.32.450 Calculation of Fee. The storm water utility fee will be calculated according to Butte-Silver Bow land use assessment codes. All legal developed parcels will be assessed a flat storm water fee. Multi-family residential, commercial and industrial parcels will be assessed an additional charge per square foot to offset greater impacts to the storm water system.

13.32.460 Billing and Notification of Storm Water Services Charges and Fees and Termination of Services.

A. Collection of Fees. Property owners within the district shall be billed by the City-County annually based on the rate of charge designated in the storm water utility rate resolution passed annually by the Council of Commissioners. The storm water utility fee will

be placed on the annual real property tax statement of all property owners within the district and shall be payable in two semi-annual payments, which shall be collected by the Butte-Silver Bow Treasurer in conjunction with the collection of real property taxes. All funds received by the Butte-Silver Bow Treasurer from the storm water fee shall be deposited in the storm water utility fund.

B. Delinquent Fees. On or before June 15th in each year, the Council of Commissioners shall certify to the Butte-Silver Bow Treasurer all unpaid outstanding storm water fees and a description of the lands against which the fees arose. It shall be the duty of the Treasurer, upon order of the Council of Commissioners, to place the delinquent fees with interest at the rate of ten percent computed semi-monthly plus two percent penalty on the initial delinquency principal, upon the tax rolls of the city-county for the taxes of the year in which delinquent

fees are filed. The unpaid fees with interest shall be carried into the tax statement becoming due and payable on December 1st and June 1st of each year, and shall be enforced and collected in the manner provided for the enforcement and collection of real property taxes, in accordance with the provisions of the laws of the state.

C. Termination of Service. All storm water fees shall be considered delinquent if not paid by December 1st and June 1st of the fiscal year in which billed. If delinquent storm water fees are not paid within thirty days of the due date, the Public Works Director may direct the cessation of sewer service or water services provided by the City-County. (Ord. 527 § 2, 1995: Ord. 93 § 6, 1980.) Delinquent accounts are subject to stoppage of sewer and water service without notice.

13.32.470 Review of Storm Water Utility Fees.

The Council of Commissioners, with technical support provided by the Public Works Department,

will review the service charge rates at least every two years and will revise the system of charges as necessary, within limits permitted by applicable state statutes, to assure that sufficient funds will be collected from the system to allow the recovery of the annual operation and maintenance costs, including replacements, of the utility's storm water system.

SECTION 9 Effective Date. This Chapter shall be in full force and effect from and after thirty (30) days after its passage and approval.

PASSED this ____ day of _____, 20____.

DAVID PALMER
CHAIRMAN OF THE COUNCIL OF COMMISSIONERS

APPROVED this ____ day of _____, 20____.

PAUL DAVID BABB
CHIEF EXECUTIVE

ATTEST:

SALLY J. HOLLIS
CLERK AND RECORDER

BY _____
TITLE _____

APPROVED AS TO FORM:

EILEEN JOYCE
COUNTY ATTORNEY

JOHN MORGAN
CHAIRMAN, JUDICIARY COMMITTEE