

CITY OF ORTING
WASHINGTON
ORDINANCE NO. 2022-1098

**AN ORDINANCE OF THE CITY OF ORTING,
WASHINGTON, RELATING TO STORMWATER
MAINTENANCE AND MANAGEMENT;
AMENDING ORTING MUNICIPAL CODE
CHAPTERS 9-5A AND 9-5B; PROVIDING FOR
SEVERABILITY; DECLARING AN EMERGENCY;
AND ESTABLISHING AN IMMEDIATE
EFFECTIVE DATE**

WHEREAS, the City has adopted certain provisions codified at Chapters 5A and 5A of Title 9 of the Orting Municipal Code (“OMC”) that provide for surface water maintenance and management within the City of Orting; and

WHEREAS, in January of 2007, the State Department of Ecology issued the first National Pollution Discharge Elimination System (“NPDES”) permit for Phase II communities in Western Washington which permit is intended to implement the Clean Water Act; and

WHEREAS, although the City already has certain regulations in place that comply with many of the requirements of the Phase II NPDES permit, certain amendments are necessary in order to ensure that the City is in compliance with provisions of the permit that must be implemented by the City by August 1, 2022; and

WHEREAS, the proposed amendments to Chapters 5A and 5B of Title 9 of the Orting Municipal Code are consistent in scope and subject matter with the surface water maintenance and management programs required under the terms of the NPDES permit; and

WHEREAS, this Ordinance is enacted as an exercise of the police power authority of the City of Orting to protect and preserve the public health and welfare; and

WHEREAS, on July 8, 2022, the City’s SEPA official issued a determination of non-significance for the proposed code amendments and there have been no appeals; and

WHEREAS, on July 27, 2022, the City Council held a public hearing on the proposed code amendments; and

WHEREAS, RCW 35A.13.190 provides that an ordinance may be made effective upon adoption if passed by a majority plus one of the whole membership of the council, and if designated as a public emergency ordinance necessary for the protection of the public health, public safety, public property or public peace; and

WHEREAS, pursuant to RCW 35A.13.190, the City Council finds that this ordinance is a public emergency ordinance necessary for the protection of public health, public safety, public property, or public peace for the reasons set forth herein;

NOW, THEREFORE, the City Council of the City of Orting, Washington, do ordain as follows:

Section 1. Findings. The City Council adopts the recitals set forth above, which are incorporated by reference, as findings in support of a declaration of this ordinance as a public emergency ordinance.

Section 2. OMC 9-5A-4, Amended. Orting Municipal Code 9-5A-4 is hereby amended to read as follows:

9-5A-4: DEFINITIONS:

SOURCE CONTROL BMPS: A structure or operation intended to prevent pollutants from coming into contact with stormwater through physical separation of areas or careful management of activities that are sources of pollutants. Operational source control BMPs are non-structural practices that prevent or reduce pollutants from entering stormwater. Operational source control BMPs generally include activities such as inspection, cleaning, and maintenance. Structural source control BMPs are physical, structural, or mechanical devices or facilities that are intended to prevent pollutants from entering stormwater or provide treatment of stormwater. Source control BMPs generally include physical measures such as coverings and constructed BMPs. Source control BMPs do not exclusively manage or control stormwater.

Section 3. OMC 9-5A-9, Amended. Orting Municipal Code 9-5A-9 is hereby amended to read as follows:

J. Stormwater Source Control:

1. The businesses or activities Listed in Table 1, when permitted by the City, shall implement stormwater source control Best Management Practices (BMPs) when such business or activities are performed outdoors subject to rainfall and runoff of pollutants.

Table 1. Businesses or Activities Subject to Stormwater Source Control:

<u>Business or Activity</u>	<u>Standard Industrial Code (SIC) Major Group</u>	<u>SIC Industry Group No.</u>	<u>North American Industry Classification System (NAICS) Major Group</u>
<u>Support Activities for Animal Production</u>		<u>074, 075</u>	<u>1152xx,</u>
<u>Construction of Buildings</u>	<u>15</u>		<u>236</u>
<u>Heavy and Civil Engineering Construction</u>	<u>16</u>		<u>237</u>
<u>Specialty Trade Contractors</u>	<u>17</u>		<u>238</u>
<u>Beverage, Food, and Tobacco Manufacturing</u>	<u>20</u>		<u>311, 312</u>
<u>Wood Product Manufacturing</u>	<u>24</u>		<u>321</u>
<u>Paper Manufacturing</u>	<u>26</u>		<u>3221xx, 3222xx</u>
<u>Printing and Related Support Activities</u>	<u>27</u>		<u>323</u>
<u>Chemical Manufacturing</u>	<u>28</u>		<u>325</u>
<u>Petroleum and Coal Products Manufacturing</u>	<u>29</u>		<u>3241xx</u>
<u>Plastics and Rubber Product Manufacturing</u>	<u>30</u>		<u>326</u>
<u>Leather and Allied Product Manufacturing</u>	<u>31</u>		<u>316</u>
<u>Nonmetallic Mineral Product Manufacturing</u>	<u>32</u>		<u>327</u>
<u>Primary Metal Manufacturing</u>	<u>33</u>		<u>331</u>
<u>Fabricated Metal Product Manufacturing</u>	<u>34</u>		<u>332</u>
<u>Machinery, Computer, and Electronic Product manufacturing</u>	<u>35</u>		<u>333, 334</u>
<u>Electrical Equipment, Appliance, and Component Manufacturing</u>	<u>36</u>		<u>335</u>
<u>Transportation Equipment Manufacturing</u>	<u>37</u>		<u>336</u>
<u>Rail Transportation</u>	<u>40</u>		<u>482</u>
<u>Transit and Ground Passenger Transportation</u>	<u>41</u>		<u>485</u>
<u>Truck Transportation and Warehousing</u>	<u>42</u>		<u>484, 493</u>
<u>Support Activities for Transportation</u>		<u>473, 474, 478</u>	<u>4881xx, 4882xx, 4884xx, 4889xx,</u>
<u>Utilities</u>	<u>49</u>		<u>2211xx</u>

<u>Business or Activity</u>	<u>Standard Industrial Code (SIC) Major Group</u>	<u>SIC Industry Group No.</u>	<u>North American Industry Classification System (NAICS) Major Group</u>
<u>Wholesale Trade – Durable Goods</u>		<u>501, 503, 505, 506, 507, 509</u>	<u>423140, 423930, 423110, 4233xx, 4237xx, 4238xx,</u>
<u>Wholesale Trade – Nondurable Goods</u>		<u>514, 515, 516, 517, 518, 519</u>	<u>424930, 4244xx, 4246xx, 4247xx, 4248xx,</u>
<u>Building Materials, Hardware, Garden Supplies Dealers</u>		<u>521, 523, 526</u>	<u>444</u>
<u>Food and Beverage Stores</u>	<u>54</u>		<u>445</u>
<u>Automotive Dealers and Gasoline Service Stations</u>	<u>55</u>		<u>441, 447</u>
<u>Food Services and Drinking Places</u>	<u>58</u>		<u>722</u>
<u>Rental and Leasing Services</u>		<u>735</u>	<u>5321xx, 5324xx</u>
<u>Repair and Maintenance</u>	<u>75</u>		<u>811192, 8111xx, 8112xx, 8113xx, 8114xx,</u>
<u>Ambulatory Health Care Services and Hospitals</u>		<u>806, 807</u>	<u>621910,</u>
<u>Educational Services</u>	<u>82</u>		<u>6111xx, 6112xx, 6113xx, 6115xx</u>
<u>Museums, Historical Sites, and Similar Institutions</u>		<u>842</u>	<u>712</u>

Notes:

Listing is from Washington State Department of Ecology Western Washington Phase II Municipal Stormwater Permit, Appendix 8 – Urban Land Uses and Pollutant Generating Sources, August 2019. Listing is for consistency with NPDES Permit and does not imply the business or activity will be permitted by the City.

2. Source control BMPs for new businesses or activities Listed in Table 1 shall be identified in permit application packages. Source control BMPs shall be identified in the Stormwater Site Plan (SSP) for projects triggering a SSP.

3. No later than August 1, 2022, existing businesses or activities listed in Table 1 shall begin implementing operational source control BMPs where operational BMPs are not currently provided. The basis of operational source control BMPs shall be provided to the City if the City

finds that the selected source control BMPs or their implementation are not effective in preventing or reducing pollutant runoff. Selection and implementation of structural source control BMPs may be required by the City subject to the enforcement provisions of Chapters 9-5B-11 and 9-5B-12 OMC. Source control BMPs for existing businesses or activities listed in Table 1 shall be fully compliant as required by Chapter 9-5B-11 OMC.

4. Source control BMPs shall be selected, implemented and maintained in accordance with the adopted stormwater manual identified in Chapter 9-5A-9.A OMC.

5. Source control BMPs not identified in the adopted stormwater manual but which may still be appropriate may be submitted for an adjustment or variance in accordance with Chapter 9-5A.16 OMC provided that such source control BMPs provide equivalent protection to the BMPs identified in the adopted stormwater manual. Permit applications shall document proposed source control BMPs, identify why BMPs in the adopted stormwater manual are not applicable or suitable, and state that the proposed BMPs will provide equivalent or better protection.

6. Structural source control BMPs, or treatment BMPs/facilities, or both, shall be required for pollutant generating sources if operational source control BMPs do not prevent illicit discharges or violations of surface water, groundwater, or sediment management standards because of inadequate stormwater controls.

Section 4. OMC 9-5A-17, Amended. Orting Municipal Code 9-5A-17 is hereby amended to read as follows:

9-5A-17: ENFORCEMENT:

A. General: Except with regard to illicit discharges and illicit connections or stormwater source control for land uses listed in Chapter 9-5A-9.J.1 Table 1, enforcement action shall be in accordance with this article and title 1, chapter 13 of this code whenever a person has violated any provision of this article, or any requirement imposed or order issued pursuant to this article. The choice of enforcement action and the severity of any penalty shall be determined by the director, in consultation with the city attorney when considering criminal penalties, based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action, and whether or not the violation was intentional. Violation of this article includes any act or omission causing, allowing, permitting, aiding, abetting, directing, controlling, suffering or concealing an act or omission in violation of this article. In addition to the listed enforcement options, the city may also pursue any other lawful civil, criminal or equitable remedy or relief. Enforcement options are cumulative and shall not be deemed exclusive. The definitions set forth in title 1, chapter 13 of this code shall apply throughout this section.

H. Enforcement: Enforcement regarding illicit connections or illicit discharges or stormwater source control for land uses listed in Chapter 9-5A-9.J.1 Table 1 will be performed by the city in accordance with section 9-5B-11 of this chapter.

Section 5. OMC 9-5A-18, Amended. Orting Municipal Code 9-5A-18 is hereby amended to read as follows:

9-5A-18: ADMINISTRATIVE ENFORCEMENT/PENALTY:

H. Penalties Imposed: Penalties for illicit connections or illicit discharges or violation of stormwater source control requirements will be imposed by the city in accordance with sections 9-5B-11 and 9-5B-12 of this chapter.

Section 6. OMC 9-5B-10, Amended. Orting Municipal Code 9-5B-10 is hereby amended to read as follows:

9-5B-10: INSPECTION, AND ILLICIT DISCHARGE, AND STORMWATER SOURCE CONTROL PROGRAM:

A. Inspection: Whenever implementing the provisions of the inspection program or whenever there is cause to believe that a violation of this article has been or is being committed through illicit connection, illicit discharge or other means, or violation of the stormwater source control requirements, the director is authorized to inspect during regular working hours and at other reasonable times all public or private stormwater drainage systems within the city to determine compliance with the provisions of this article.

D. Inspection And Maintenance Records: As existing stormwater facilities or operational source control BMPs are encountered, they shall be added to the master inspection and maintenance schedule. For existing business or activities in Chapter 9-5A-9.J.1 Table 1 permitted prior to August 1, 2022, documentation shall be prepared and retained supporting the basis of the selected operational control BMPs required per Chapter 9-5A-9.J.3 OMC. Records of new stormwater facilities shall include the following:

1. As built plans and locations;
2. Findings of fact from any exemption granted by the local government;

3. Operation and maintenance requirements and records of inspections, maintenance actions and frequencies; and
4. Engineering reports, as appropriate.

E. Reporting Requirements: The director shall report annually to the utility committee of the city council about the status of the inspections. The annual report may include, but need not be limited to, the proportion of the components found in and out of compliance, the need to upgrade components, enforcement actions taken, compliance with the inspection schedule, the resources needed to comply with the schedule, and comparisons with previous years.

F. Illicit Connections, ~~Or~~ Illicit Discharges, Or Stormwater Source Control Violations:

1. Access For Inspection: Access to the following shall be obtained by the city in accordance with the provisions of this section:

a. Areas known or thought to contain illicit connections or illicit discharges or activities contributing to illicit discharges or stormwater source control violations; and

b. Locations identified through the city's illicit discharge detection and elimination program as documented in the stormwater management plan developed in accordance with the NPDES phase II permit.

c. Businesses or activities identified in 9-5A-9.J.1 OMC requiring stormwater source control BMPs.

2. Enforcement: Illicit connections or illicit discharges or stormwater source control violations shall be corrected in accordance with the provisions of sections 9-5B-11 and 9-5B-12 of this article.

3. Penalties: Penalties for not complying with illicit connection or illicit discharge or stormwater source control enforcement actions shall be assessed in accordance with the provisions of sections 9-5B-11 and 9-5B-12 of this article. (Ord. 911, 8-31-2011)

Section 7. OMC 9-5B-11, Amended. Orting Municipal Code 9-5B-11 is hereby amended to read as follows:

9-5B-11: ENFORCEMENT:

A. General: Enforcement action shall be in accordance with this article and title 1, chapter 13 of this code whenever a person has violated any provision of this article, or any requirement imposed or order issued pursuant to this article, or any prohibition upon an illicit

connection or illicit discharge or stormwater source control violation pursuant to article A of this chapter. Businesses or activities that were permitted prior to August 1, 2022 and are identified in Chapter 9-5A-9.J.1 Table 1 for which source control BMPs were not previously required shall be subject to the full provisions of Chapter 9-5B-11 and in full compliance with Chapter 9-5A-9.J OMC by January 1, 2023. The choice of enforcement action and the severity of any penalty shall be determined by the director, in consultation with the city attorney when considering criminal penalties, based on the nature of the violation, the damage or risk to the public or to public resources, and/or the degree of bad faith of the person subject to the enforcement action, and whether or not the violation was intentional. Violation of this article, or any prohibition upon an illicit connection or illicit discharge pursuant to article A of this chapter, includes any act or omission causing, allowing, permitting, aiding, abetting, directing, controlling, suffering or concealing an act or omission in violation of this article. In addition to the listed enforcement options, the city may also pursue any other lawful civil, criminal or equitable remedy or relief. Enforcement options are cumulative and shall not be deemed exclusive. The definitions set forth in title 1, chapter 13 of this code shall apply throughout this section.

B. Unlawful Activities: Any structure, condition, act or omission which violates any provision of this article, or any prohibition upon an illicit connection or illicit discharge or stormwater source control violation pursuant to article A of this chapter, or any provision of a civil regulatory order shall be, and the same is declared to be, unlawful and is subject to the enforcement and penalty provisions of this section and section 9-5B-12 of this article and title 1, chapter 13 of this code.

C. Nuisance: Any act or omission declared to be unlawful pursuant to this article shall constitute a public nuisance, and may be abated using the procedures for abatement of public nuisances as set forth in this code or as otherwise allowed by law.

D. Criminal Violation: Any act or omission declared to be unlawful pursuant to this article shall constitute a misdemeanor and punishable by a fine of up to one thousand dollars (\$1,000.00) or imprisonment up to ninety (90) days in jail, or by both such fine and imprisonment.

E. Violation: Any act or omission declared to be unlawful pursuant to this article shall constitute a violation and shall be subject to enforcement by the director pursuant to title 1, chapter 13 of this code.

F. Monetary Penalties: Any act or omission declared to be unlawful pursuant to this article is subject to monetary penalties pursuant to section 9-5B-12 of this article.

G. Civil Regulatory Order: The director shall have the authority to issue and serve a civil regulatory order pursuant to title 1, chapter 13 of this code that orders the cessation of any activity that is in violation of this article or any prohibition upon an illicit connection or illicit discharge or stormwater source control violation pursuant to article A of this chapter, whether occurring on public or private property. The director shall have authority to include in the civil regulatory order, or to issue and serve in a separate civil regulatory order, an order to take

corrective action to bring any noncompliant activity, structure, or condition into compliance with this article. The director shall have the authority to serve a person responsible for the violation a civil regulatory order if an action is being undertaken in violation of this article, or for any prohibition upon an illicit connection or illicit discharge or stormwater source control pursuant to article A of this chapter.

Section 8. OMC 9-5B-12, Amended. Orting Municipal Code 9-5B-12 is hereby amended to read as follows:

A. Monetary Penalties: Any person in violation of this article, or any prohibition upon an illicit connection or illicit discharge or stormwater source control violation pursuant to article A of this chapter, may, in addition to any other penalty imposed pursuant to this article, be subject to monetary penalties per day or portion thereof for each civil violation. Monetary penalties imposed, or to be imposed shall be specified in the notice of violation.

H. Voluntary Correction Agreement:

1. Initiation: Either the person responsible for the violation or the director may initiate negotiations for a voluntary correction agreement at any time pursuant to section 1-13-5 of this code and the requirements of this subsection H. The director has no obligation to enter into any voluntary correction agreement.

2. Contents: A voluntary correction agreement shall set forth actions to be taken by the responsible party that will correct past or existing violations of this article, or any prohibition upon an illicit connection or illicit discharge or stormwater source control violation pursuant to article A of this chapter. It may also set forth actions to mitigate the impacts of violations. The voluntary correction agreement shall set forth a schedule for completion of the corrective and mitigating actions. It shall contain a provision allowing the director to inspect the premises to determine compliance with the voluntary compliance agreement.

3. Effect Of Voluntary Compliance Agreement:

a. A voluntary compliance agreement is a binding contract between the party executing it and the city. It is not enforceable by any other party. All voluntary compliance agreements shall provide that the responsible party agrees the city may perform the actions set forth in the voluntary compliance agreement if the responsible party fails to do so according to the terms and schedule of the agreement, and the responsible party will pay the costs, expenses, and damages the city incurs in performing the actions. By entering into a voluntary compliance agreement, a responsible party admits the violation and waives the right to an administrative appeal of the stop work/corrective action order.

b. Monetary penalties may be reduced or waived if violations are corrected or mitigated according to the terms and schedule of a voluntary correction agreement. If the responsible party fails to perform according to the terms and schedule of the voluntary compliance agreement, penalties for each violation addressed in the agreement may be assessed starting from the date the violation occurred.

4. Modification: The terms and schedule of the voluntary compliance agreement may be modified by mutual agreement of the responsible party and the director if circumstances or conditions outside the responsible party's control, or unknown at the time the agreement was made, or other just cause necessitate such modifications.

L. Businesses or activities that were permitted prior to August 1, 2022 and are identified in Chapter 9-5A-9.J.1 Table 1 for which source control BMPs were not previously required shall be subject to the full provisions of Chapter 9-5B-12 and in full compliance with Chapter 9-5A-9.J OMC by January 1, 2023.


Section 9. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

Section 10. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 11. Designation of Emergency Ordinance; Immediate Effective Date. Pursuant to RCW 35A.13.190, the City Council declares and designates this ordinance as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or the public peace. Upon adoption of this ordinance by a majority plus one of the whole membership of the council, this ordinance shall take effect and be in full force immediately upon its adoption. Pursuant to Matson v. Clark County Board of Commissioners, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts necessary to support this emergency declaration are included in the recitals set forth above, which are adopted by reference.

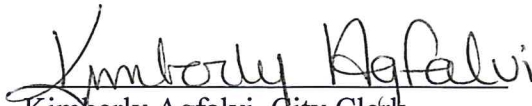
**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF
ON THE 27th DAY OF JULY, 2022.**

CITY OF ORTING




Joshua Penner, Mayor

ATTEST/AUTHENTICATED:


Kimberly Agfalvi, City Clerk

Approved as to form:



Charlotte A. Archer
Inslee Best
City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:
Effective Date: