

**CITY OF MERCER ISLAND
ORDINANCE NO. 17C-09**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON,
AMENDING CHAPTERS 15.09, 15.10, AND 15.11 OF THE MERCER
ISLAND CITY CODE RELATING TO STORMWATER MANAGEMENT
STANDARDS AND STORMWATER LOW IMPACT DEVELOPMENT.**

WHEREAS, the Washington State Department of Ecology issued the Western Washington Phase II Municipal Stormwater Permit (NPDES Permit) on August 1, 2012 pursuant to the requirements of the Federal Clean Water Act – National Pollutant Discharge Elimination System (NPDES); and

WHEREAS, the NPDES Permit requires the City to revise development-related codes to incorporate and require low impact development (LID) where feasible and adopt the 2012 Stormwater Management Manual for Western Washington as amended in 2014 (Stormwater Manual); and

WHEREAS, state and local stormwater management tools, including LID regulations, can help address pollution and other critical environmental issues in Puget Sound cities; and

WHEREAS, comprehensive application of LID practices is necessary where feasible, to reduce the hydrologic changes and pollutant loads to surface and ground waters; and

WHEREAS, the City needs to amend Mercer Island City Code (MICC) to meet the requirements of the NPDES Permit, including revisions to Chapters 15.09, 15.10, and 15.11; and

WHEREAS, the Utility Board was briefed on the NPDES Phase II Permit requirements to update LID regulations and adopt the Stormwater Manual; and

WHEREAS, the City recognizes the need to periodically modify its stormwater regulations within Title 15 MICC, in order to conform to state and federal law, codify administrative practices, and improve efficiency of regulations; and

WHEREAS, an Environmental Determination of Non-Significance (DNS) was issued for the proposed code amendments pursuant to the State Environmental Policy Act (SEPA) on April 10, 2017.

WHEREAS, pursuant to RCW 36.70A.106, the City provided the Washington State Department of Commerce notice of the City's intent to adopt the proposed code amendments on April 10, 2017.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCER ISLAND,
WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

Section 1. Amend Chapter 15.09 MICC, Stormwater Management. Chapter 15.09 MICC, Stormwater Management, is hereby amended as follows:

Chapter 15.09
STORM WATERSTORMWATER MANAGEMENT PROGRAM

Sections:

- 15.09.010 Establishment of a ~~storm-water~~stormwater management program.
- 15.09.020 Applicability.
- 15.09.030 Definitions.
- 15.09.040 Discharges to storm and surface water system and ground waters.
- 15.09.050 Standards for development and redevelopment.
- 15.09.060 Exceptions.
- 15.09.070 Maintenance and inspection requirements.
- 15.09.080 Administration.
- 15.09.090 Appeals process.

15.09.010 Establishment of a ~~storm-water~~stormwater management program.

A. There is hereby created and established, by the adoption of this chapter and the provisions therein, a city ~~storm-water~~stormwater management program, hereinafter referred to as “the program.” The program shall set forth the primary authority and responsibility for carrying out the Action Agenda for Puget Sound Water Quality Management Plan including, but not limited to, responsibilities for planning; establishment of requirements for new development and redevelopment; public education efforts to educate citizens, design, construction, maintenance, administration, operation and improvement of the city’s storm and surface water ~~drainage-~~system; as well as establishing standards for design, construction, and maintenance of improvements and related activities on public and private property where these may affect storm and surface water and/or water quality.

B. The city manager or his/her appointed designee shall be the administrator of the program. (Ord. 09C-09 § 1; Ord. 95C-118 § 1).

15.09.020 Applicability.

A. The provisions of this chapter and the program shall apply to all property and all projects within the limits of the city of Mercer Island. The provisions of this chapter and the program shall control all ~~storm-water~~stormwater management practices; provided, however, if other provisions of this code or any other city ordinance provides more protection of the quality of surface or ground water, it shall control.

B. Applicants for construction projects which involve land disturbing activity shall provide a Construction Stormwater Pollution Prevention Plan (SWPPP)~~storm-water management plan~~ prior to the issuance of any permits.

C. The city manager or his/her designee is authorized to adopt written policies and procedures for the purpose of implementing the program and the provisions of this chapter. (Ord. 09C-09 § 1; Ord. 95C-118 § 1).

15.09.030 Definitions.

For the purposes of this chapter, the following terms shall have the following meanings:

A

“AKART” means all known, available, and reasonable methods of prevention, control, and treatment.

~~B. “Applicable manual” means the Stormwater Management Manual for the Puget Sound Basin (1992 manual) prepared by the Washington State Department of Ecology (in 1992) and as modified by the city manager or his/her designee for projects less than one acre of land disturbing activity and the Stormwater Management Manual for Western Washington (2005-2012 manual as amended in 2014) prepared by the Washington State Department of Ecology (in 2012 and amended in 2014/2005) for projects greater than one acre of land disturbing activity.~~

~~C. B~~

“Best management practices (BMPs)” means the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices approved by the Washington Department of Ecology that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State.

~~D. C~~

“City manager or his/her designee” means the city’s active appointed manager or an employee of the city that acts on his/her behalf.

D

“Development” means new development, redevelopment, or both.

~~E. G~~

“Ground water” means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

HF

“Hard surface” means an impervious surface, a permeable pavement, or a vegetated roof.

“Hazardous materials” means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable material, explosive material, radioactive material, urea formaldehyde foam insulation, asbestos, PCBs, or any other substances the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or shipment of which is restricted, prohibited, regulated, or penalized by any federal, state, county, or municipal statutes or laws.

G-“Hyperchlorinated” means water that contains a chlorine concentration exceeding 10 milligrams per liter.

I

H“Illicit discharge” means any discharge to the city’s storm and surface water system that is not composed entirely of ~~storm water~~stormwater except discharges pursuant to any non-municipal ~~NDPES~~-NPDES permit and discharges from fire-fighting activities.

F“Illicit connection” means any manmade conveyance that is connected to the city’s storm and surface water system without a permit, excluding roof drains and other similar type connections.

L

“Land disturbing activity” means any activity that results in a change in the existing soil cover (both vegetative and nonvegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, demolition, construction, clearing, grading, filling and excavation.

“Low impact development” or “LID” means a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

“Low impact development best management practices” or “LID BMPs” means distributed stormwater management practices, integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated roofs, minimum excavation foundations, and water re-use.

N

“New development” means land disturbing activities, including ~~Class IV General Forest Practices that are conversions from timber land to other uses~~; structural development, including construction or installation of a building or other structure; creation of hard surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

K-“NPDES” means the National Pollutant Discharge ~~and~~-Elimination System, a national program for permitting and imposing pretreatment requirements related to the discharge of pollutants to surface waters of the state from point discharges. The permits are administered by the Washington Department of Ecology.

O

“On-site stormwater management BMPs” are synonymous with LID BMPs.

LP

“Pollutant” means any liquid, gaseous, solid, radioactive or other substance that when introduced into waters of the state will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

“Pollution-generating impervious surface (PGIS)” means impervious surfaces considered to be a significant source of pollutants in stormwater runoff. Such surfaces include those which are subject to: vehicular use; industrial activities (as further defined in the applicable manual); storage of erodible or leachable materials, wastes, or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall; metal roofs unless they are coated with an inert, non-leachable material (e.g., baked-on enamel coating); or roofs that are subject to venting significant amounts of dusts, mists, or fumes from manufacturing, commercial, or other indoor activities.

R

“Redevelopment” means, on a site that is already substantially developed (i.e., has 35% or more of existing hard surface coverage), the creation or addition of hard surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of hard surface that is not part of a routine maintenance activity; and land disturbing activities.

SM

~~“Storm water~~Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff, ~~and drainage or interflow.~~

~~N“Storm water~~Stormwater pollution prevention plan (SWPPP)” means a plan prepared for a site in accordance with ~~Washington Department of Ecology requirements~~applicable manual to control pollutants generated on the site that could enter waters of the state.

“Storm and surface water system” means the entire system within the city, both public and private, naturally existing and manmade, for the drainage, conveyance, detention, treatment and storage of storm and surface waters.

“Stormwater facility” means a constructed component of a stormwater system, designed or constructed to perform a particular function, or multiple functions. Stormwater facilities include, but are not limited to, pipes, swales, ditches, culverts, street gutters, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.

“Stormwater Treatment and Flow Control BMPs/Facilities” means detention facilities, treatment BMPs/facilities, bioretention, vegetated roofs, and permeable pavements that help meet Minimum Requirement #6 (Runoff Treatment), Minimum Requirement #7 (Flow Control), or both according to the applicable manual.

O. “1992 manual” means the Stormwater Management Manual for the Puget Sound Basin as prepared by the Washington State Department of Ecology. Numerical “2005-2012 manual (as amended in 2014)” means the Stormwater Management Manual for Western Washington prepared by the Washington State Department of Ecology in 2012 and amended in 2014. (Ord. 09C-09 § 1).

15.09.040 Discharges to storm and surface water system and ground waters.

A. Prohibited Discharges. No person shall throw, drain, or otherwise discharge, cause or allow others under his/her control to throw, drain, or otherwise discharge into the municipal storm drain system and/or surface and ground waters any materials other than ~~storm water~~stormwater. Examples of prohibited discharges include but are not limited to the following: trash or debris, construction materials, cement, concrete, petroleum products, antifreeze and other automotive products, metals, flammable or explosive materials, radioactive material, batteries, paints, stains, solvents, drain cleaners, pesticides, herbicides, fertilizers, steam cleaning wastes, soaps, detergents, ammonia, dyes, chlorine, bromine, disinfectants, swimming pool or spa filter backwash, interior floor drainage, commercial car wash discharge, heated water, domestic animal waste, sewage, carcasses, food wastes, bark, lawn clippings or leaves, any process-associated discharge except as otherwise allowed in this section, any hazardous material or waste not listed above, and any chemical not normally found in uncontaminated water.

B. Allowable Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter unless the city manager or his/her designee determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater: ~~storm water~~stormwater runoff, diverted stream flows, springs, flows from riparian ~~habitats~~areas and wetlands, rising ground waters, uncontaminated ground water infiltration (as defined in 40 CFR 35.2005(b)(20)), uncontaminated pumped ground water, foundation drains, footing drains, uncontaminated water from crawl space pumps, air conditioning condensation, irrigation water from agricultural sources that is commingled with urban ~~storm water~~stormwater, and discharges from emergency fire-fighting activities.

C. Conditional Discharges. The following types of discharges shall not be considered illegal discharges for the purposes of this chapter if they meet the stated conditions, or unless the city manager or his/her designee determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

1. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a total residual chlorine concentration of 0.1 parts per million or less, pH-adjusted, if necessary, and ~~released volumetrically and velocity controlled~~ to prevent re-suspension of sediments in the ~~storm water~~stormwater system;

2. Lawn watering and other irrigation runoff are permitted, but the city discourages use in excessive amounts through its public involvement program;

3. Dechlorinated swimming pool, spa, and hot tub discharges. These discharges shall be dechlorinated to a concentration of 0.1 parts per million or less, pH-adjusted and reoxygenated, if necessary, and ~~released volumetrically and velocity controlled~~ to prevent resuspension of sediments in the ~~storm water~~stormwater system. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the stormwater system;

4. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted, but the city discourages use in excessive amounts through its public involvement program;

5. ~~Non-storm water~~stormwater discharges covered by another NPDES or state waste discharge permit; 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 been granted for any discharge to the storm ~~drain~~water system;

6. Other non-~~storm water~~stormwater discharges. The discharge shall be in compliance with the requirements of a ~~storm water~~pollution prevention plan (SWPPP) reviewed and approved by the city, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.

D. Prohibition of Illicit Connections. The construction, use, maintenance, or continued existence of illicit connections to the storm drain or surface water system is prohibited. This prohibition expressly includes illicit connections made in the past, regardless of whether the connection was permissible under the law at the time of the connection. A person is considered to be in violation of this chapter if the person connects a line conveying sewage to the storm and surface water system, or allows such a connection to continue. (Ord. 09C-09 § 1).

15.09.050 Standards for new development and redevelopment.

A. The thresholds, definitions, minimum requirements and exceptions, adjustment, and variance criteria found in Appendix I of the NPDES Phase II Municipal Stormwater Permit, including the mandatory incorporated provisions of the ~~2012~~2005 manual (as amended in 2014) and any amendments thereto are hereby adopted by the city of Mercer Island as the minimum standards for ~~storm water~~stormwater management. ~~with the following exceptions for new and redevelopment projects that disturb less than one acre~~ Furthermore, Minimum Requirement #5: On-site Stormwater Management of the aforementioned 2012 manual is amended as follows:

1. Minimum Requirement #5 applies to projects that:

- a. Result in 2,000 square feet, or greater, of new plus replaced hard surface area, or
- b. Have a land disturbing activity of 7,000 square feet or greater, or
- c. Result in a net increase of impervious surface of 500 square feet or greater.

2. For implementing Minimum Requirement #5, the on-site detention BMP is added to List #1 and List #2 for evaluation on all projects as follows:

~~1. All new development and redevelopment projects disturbing less than one acre must comply with the requirements of the 1992 manual as modified by the city manager or his/her designee. Projects which result in a net increase in impervious surface of 500 square feet or more up to one acre of land disturbance must meet the requirements of the 1992 manual. The threshold for flow control in the 1992 manual shall be reduced from 5,000 square feet to 500 square feet of net new impervious surface. The flow control requirement can be waived If all of the on-site stormwater management BMPs included on List #1 and List #2 are determined to be infeasible for roofs and/or other hard surfaces, on-site detention shall be required when applicable. On-site detention is required when the drainage from the site will be discharged to a storm and surface water system that includes a watercourse or there is a capacity constraint in the system. The on-site detention system shall be sized using the city's standard on-site detention sizing table or other method approved by the city engineer. On-site detention is not required if the project discharges directly to Lake Washington or if findings from a ¼ mile downstream analysis ~~indicate~~ confirm that the ~~entire~~ downstream system is free of ~~comprised of pipes/roadside ditches and the proposed project discharges will not exceed the conveyance capacity constraints of the downstream system. However, the stormwater must still be conveyed to an existing storm and surface water system in an approved manner.~~~~

~~2. In the above category, applicants also have the option of using the 2005 manual.~~

~~3. Projects that disturb less than one acre that utilize certain low impact development strategies, measures to minimize the creation of impervious surfaces, measures to minimize the disturbance of native soils and vegetation, and/or other acceptable storm water management techniques will be credited per guidance from the city manager or his/her designee. Provisions for low impact development shall take into account site conditions, access and long term maintenance.~~

~~B. Best management practices ("BMPs") as set forth in the applicable manual shall be used to control pollution at the source prior to discharge to a storm and surface water system. Experimental BMPs are encouraged as a means of improving storm water quality as outlined in the applicable manual. Source control BMPs shall be applied to all projects to the maximum extent practicable. They shall be selected, designed and maintained in accordance with the requirements of the applicable manual.~~

CB. Additional Passive Spill Control Is Required. Projects that replace, modify, or construct a new driveway or parking area with 500 square feet of net new impervious surfaces shall provide passive spill control for that area that receives runoff from non-roof-top pollution-generating impervious surfaces (PGIS), including driveways, prior to discharge from the site or into a natural on-site drainage feature. The intent of this device is to temporarily detain oil or other floatable pollutants before they enter the downstream drainage stormwater system in the event of an accidental spill or illegal dumping. It shall consist of a tee section in a manhole or catch basin (or elbow when allowed by the city engineer). Note that in addition to this spill control

requirement, other spill control requirements may be required for projects that exceed certain thresholds in the applicable manual.

~~DC.~~ All ~~storm water management plans shall, at a minimum, be equivalent to “storm waterstormwater site plans” as required by the applicable manual.~~ Storm water management plans shall include an analysis of off-site ~~storm waterstormwater~~ runoff and water quality impacts and shall mitigate these impacts as necessitated by the applicable manual. The analysis shall extend, where possible, a minimum of one-fourth of a mile downstream from the project. The existing and potential impacts to be evaluated and mitigated include but are not limited to the following:

1. Excessive sedimentation;
2. Streambank erosion;
3. Discharges to ground water and/or their potential;
4. Violations of water quality standards;
5. Discharges of pollutants;
6. Erosion;
7. Flooding;
8. Slope instability; and
9. Other adverse impacts to water quality.

~~E. Any failure of a storm water system, BMPs, erosion and sedimentation control, or water quality protection measures in any new development or redevelopment shall be repaired and/or retrofitted in accordance with the applicable manual.~~

~~FD.~~ Adopted drainage basin plans may be used to modify and/or add to any or all of the minimum requirements for storm and surface water runoff. Basin plans may include requirements for additional runoff detention, retrofitting measures, BMPs, or other measures in order to achieve basin-wide pollutant, flooding, erosion or sedimentation reduction. Standards developed from basin plans shall not modify any of the above requirements until the basin plan has been formally adopted by the Mercer Island city council. (Ord. 09C-09 § 1; Ord. 95C-118 § 1. Formerly 15.09.030).

15.09.060 Exceptions.

Exceptions to the minimum requirements of the applicable manual may be granted prior to permit approval and construction. An exception may be granted by staff; provided, that a written finding of fact is prepared, that meets the following criteria:

- A. The exception provides equivalent water quality protection and complies with the public interest; and that the objectives of safety, function, water quality protection and facility maintenance, based upon sound engineering principles, are fully met;
- B. There exist special physical circumstances or conditions affecting the property such that the strict application of the provisions of the applicable manual would deprive the applicant of all economic use of the parcel of land in question, and every effort to find creative ways to meet the intent of the minimum standards has been made;

C. That the granting of the exception will not be detrimental to the public health and welfare, nor injurious to other properties in the vicinity and/or downstream, and to the quality of waters of the state and city; and the exception is the least possible exception that could be granted to comply with the intent of the minimum requirements of the applicable manual. (Ord. 09C-09 § 1; Ord. 95C-118 § 1. Formerly 15.09.040).

15.09.070 Maintenance and inspection requirements.

A. All public and private ~~stormwater and surface water~~ facilities required by the applicable manual to providing permanent ~~storm water~~stormwater treatment and/or flow control ~~constructed for sites that disturb a land area one acre or greater as required by MICC 15.09.050~~ shall be inspected and maintained in accordance with the standards contained in the applicable manual. ~~This section shall pertain only to treatment and flow control facilities. It shall not include collection or conveyance systems. The following are additional minimum standards:~~

BA. All ~~storm water~~stormwater treatment and flow control facilities shall be inspected annually, but may be reduced based on inspection records. Owners of private facilities shall be responsible for maintenance, inspections and corrections. Records of facility inspections and maintenance actions shall be retained for a period of at least ~~10~~5 years. These maintenance records are to be provided to the city upon request.

CB. All ~~storm water~~stormwater treatment and flow control facilities shall be cleared of debris, sediment and vegetation as conditions warrant, when they threaten to affect the functioning and/or design capacity of the facility, but not less than annually.

~~C. Bare soils shall be seeded, sodded, matted or otherwise covered to prevent the washing off of silt into the system. Grassy swales and other biofilters shall be mowed during the growing season and inspected annually and replanted as needed.~~

~~D. Detention systems, discharge control structures, oil separators and water quality facilities shall be inspected and cleaned and/or repaired annually or whenever sediment buildup exceed one third of the catchment volume. More frequent cleaning may be required on those facilities which exhibit a more rapid buildup.~~

DE. Where the lack of maintenance is causing or contributing to a violation of water quality criteria, property damage or threatens the welfare or safety of the public, actions shall be taken to correct the problem as soon as reasonably feasible.

EF. When an inspection identifies an exceedance of the maintenance standard, maintenance shall be performed within the following time period:

1. Within one year for typical maintenance of facilities, except catch basins~~wet pool facilities, infiltration facilities, and detention facilities including detention pipes, ponds, and vaults;~~

2. Within six months for catch basins~~routine maintenance operations;~~

~~3. Within nine months for maintenance requiring revegetation;~~

34. Within two years for maintenance that requires capital construction of less than \$25,000;
and

45. Within the time frame determined by the city manager or his/her designee for maintenance that requires capital construction greater than \$25,000.

The city manager or his/her designee may order corrective maintenance to occur within a specific time period.

FG. Sediment, oil, street or parking lot sweepings and any material containing pollutants shall be properly disposed of at an approved waste facility or, if appropriate, in accordance with the provisions of Chapters 173-303 and 173-304 WAC.

GH. The city manager or his/her designee shall design and develop an inspection program for facilities and systems for both public and private systems in accordance with the goals and objectives and intent of the applicable manual.

H. Any failure of a stormwater system, BMPs, erosion and sedimentation control, or water quality protection measures in any new development or redevelopment shall be repaired and/or retrofitted in accordance with the applicable manual. (Ord. 09C-09 § 1; Ord. 95C-118 § 1. Formerly 15.09.050).

15.09.080 Administration.

A. The city manager or his/her designee shall have the authority to develop and implement administrative procedures to administer and enforce this chapter and the program. The city manager or his/her designee shall approve, conditionally approve or deny an application for activities regulated by this chapter.

B. Prior to the commencement of any construction on a project or "land disturbing activity," the applicant shall obtain a ~~storm water~~stormwater permit from the city ~~and any other regulatory agencies as required.~~ A bond shall be posted~~may be required by the city engineer~~ in an amount sufficient to cover cost of construction of the system in accordance with approved plans and anticipated city inspection. Upon completion of the work inspection and approval of the ~~storm water~~stormwater facilities by the city ~~and receipt of a maintenance agreement,~~ 70 percent of the bond shall be released. At the 1-year inspection, the remaining 30 percent shall be released. A 2-year bond may be required for vegetated stormwater facilities.

C. All activities regulated by this chapter shall be subject to inspection. ~~Any p~~Projects shall~~may~~ be inspected at various stages of the work requiring approval to determine that adequate control is being exercised and construction practices are being accomplished~~enforcement actions taken as necessary.~~ These inspections will include, but not be limited to, the following:

1. Prior to site clearing and construction to assess site erosion potential on sites with a high potential for sediment transport;

2. During construction to verify proper installation and maintenance of required erosion and sediment control BMPs;

3. Upon completion of construction and prior to final approval or occupancy to ensure proper installation of permanent stormwater facilities and verify that a maintenance plan is completed and responsibility for maintenance is assigned for stormwater facilities;

4. All permanent stormwater facilities and catch basins in new residential developments that are part of a larger common plan of development or sale, every 6 months during the period of heaviest house construction (i.e., 1 to 2 year following subdivision approval to identify maintenance needs and enforce compliance with maintenance standards as needed).

When required, special inspections and/or testing may be required to be performed at the expense of the applicant.

D. The city manager or his/her designee may order the correction or abatement of any storm and surface water facility or condition thereof, a prohibited discharge, or illicit connection constituting a violation of this code or of the applicable manual when such facility or condition thereof has been declared to be a public nuisance. Whenever such a public nuisance is declared, a notice by certified mail shall be made to the violator directing abatement within 30 days of the receipt of the notice. If the required corrective work is not completed within the time specified, the city may proceed to abate the violation as a public nuisance. Summary abatement may be commenced without notice or a stop work order issued when the violation is of such a nature that it is an immediate hazard to life and/or property. Notwithstanding the exercise or use of any other remedy, the city manager or his/her designee may seek legal or equitable relief to enjoin any act or acts or practices which constitute a violation of this chapter.

E. Civil Penalty. In addition to or as an alternative to any other penalty provided herein, or by law, any person who violates the provisions of this chapter, the applicable manual, or an approved ~~storm water~~stormwater management plan shall incur a cumulative civil penalty in the amount of \$50.00 per day from the date set for correction, until the violation is corrected. In lieu of a civil penalty, the city manager or his/her designee may issue a warning notice and provide educational information on discharge practices when the violation is a first violation of this chapter, is not an intentional violation, and the discharge is determined by the city manager or his/her designee as minor. Any subsequent violation of this chapter by the same person shall not be eligible for a warning notice and shall result in a civil penalty.

F. Notice of Violation and Assessment of Penalty. Whenever the city manager or his/her designee has found or determined that a violation is occurring or has occurred he/she is authorized to issue a notice of violation directed to the violator, the property owner, or the occupant. The following provisions shall apply and notice of violation shall contain:

1. The name and address of the violator, if known;
2. The street address when available or a legal description sufficient for identification of the building, construction, premises, or land upon which the violation is occurring;

3. A statement of the nature of such violation(s);

4. A statement of action required to be taken as to be determined by the city manager or his/her designee and a date of correction.

G. The notice shall notify the owner and/or violator that:

1. The owner and/or violator has 14 days to notify the city manager or his/her designee of a proposed schedule of repair or maintenance action;

2. The owner and/or violator has 30 days after the time of notification set forth in subsection (G)(1) of this section to comply with the notice, unless, for good cause shown, the period of compliance is extended.

H. In the event the owners and/or violators fail to comply with the notice, work may be done by and under the authority of the city, at the expense of the owner and/or violator and the expense shall be charged to the owner and/or violator, and shall become a lien on the property. (Ord. 09C-09 § 1; Ord. 95C-118 § 1. Formerly 15.09.060).

15.09.090 Appeals process.

Any person aggrieved by the decision of the city manager or his/her designee in administering this chapter may appeal the decision to the city council of the city of Mercer Island by complying with the procedures set forth in Chapter 2.30 MICC. (Ord. 09C-09 § 1; Ord. 95C-118 § 1. Formerly 15.09.070).

Section 2. **Amend Chapter 15.10 MICC, Storm and Surface Water Utility.** Chapter 15.10 MICC, Storm and Surface Water Utility, is hereby amended as follows:

**Chapter 15.10
STORM AND SURFACE WATER UTILITY**

Sections:

- 15.10.010 Purpose.
- 15.10.020 Construction – Intent – Definitions.
- 15.10.030 Storm and surface water utility authority.
- 15.10.040 Studies and basin plans.
- 15.10.050 Capital improvement and planning program.
- 15.10.060 Maintenance of drainage facilities.
- 15.10.070 Storm and surface water rates.
- 15.10.080 Liability.

15.10.010 Purpose.

The purpose of this chapter is to separate the existing storm and surface water utility function from the combined sewer utility and to provide for the planning, design, construction, use, inspection and maintenance of the ~~drainage~~ stormwater systems; to minimize flooding; and to

provide for an effective system for the control and prevention of ~~storm-water~~stormwater runoff and water quality problems. This chapter supplements other city regulations regarding protection of the storm and surface water system, including the ~~storm-water~~stormwater management program, Chapter 15.09 MICC, and the interim critical area regulations. (Ord. 95C-127 § 2).

15.10.020 Construction – Intent – Definitions.

A. This chapter is enacted as an exercise of the police power of the city of Mercer Island to protect and preserve the public health, safety and welfare and its provisions shall be construed accordingly. The obligation of compliance with ~~storm-water~~stormwater regulations is upon the owner or operator of each private system, until such time as the city accepts the private system into the city drainage network under the provisions of this chapter. Nothing contained in this chapter is intended to be or shall be construed to create or form the basis of liability on the part of the city of Mercer Island, this utility, its officers, employees or agents, for any injury or damage resulting from the failure of the owner or operator of any private system to comply with the provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter by the city of Mercer Island, its utility, officers, employees or agents.

B. For purposes of this chapter, the following definitions shall apply:

~~1.-C~~

“City or public ~~drainage-stormwater~~ system” means those elements of the storm and surface water system of the city that are located on property owned by the city or in the public right-of-way, or are located on property on which the city has an easement, license or the right of use for utility purposes.

L

“Low impact development” or “LID” means a stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

“Low impact development best management practices” or “LID BMPs” means distributed stormwater management practices, integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention, rain gardens, permeable pavements, roof downspout controls, dispersion, soil quality and depth, vegetated roofs, minimum excavation foundations, and water re-use.

O

“On-site stormwater management BMPs” are synonymous with LID BMPs.

~~3.-P~~

“Private system or private ~~drainage~~ stormwater facility” means any element of the storm and surface water system which is not part of the public ~~drainage~~ stormwater system as defined in this chapter.

~~2.~~ S

“Storm and surface water system” means the entire system within the city, both public and private, naturally existing and manmade, for the drainage, conveyance, detention, treatment and storage of storm and surface waters.

“Stormwater Treatment and Flow Control BMPs/Facilities” means detention facilities, treatment BMPs/facilities, bioretention, vegetated roofs, and permeable pavements that help meet Minimum Requirement #6 (Runoff Treatment), Minimum Requirement #7 (Flow Control), or both.

~~4.~~ U

“Utility” means the storm and surface water utility of the city of Mercer Island. (Ord. 95C-127 § 2).

15.10.030 Storm and surface water utility authority.

The storm and surface water utility shall have the authority, by and through the city manager or his/her designee, to plan and implement storm and surface water programs and improvements in the areas described below, and to take such other actions as are deemed necessary and are consistent with the intent of this chapter to control and manage ~~storm water~~ stormwater runoff and water quality. The utility shall have the authority to determine the priorities for working on each of the programs, based on utility funds available and a determination of which programs require primary attention to protect the public health, safety and welfare:

- A. Develop, adopt and carry out procedures to implement this chapter, including the collection and spending of revenue for operations, maintenance and capital improvements. Fund capital project planning, administration, and public education functions of utility. Incur debt and pay debt service for utility functions.
- B. Prepare engineering standards to establish minimum requirements for the design and construction of ~~stormwater~~ drainage facilities and their maintenance, consistent with the standards established in Chapter 15.09 MICC.
- C. Administer and enforce procedures relating to the planning, acquisition, design, construction and inspection of ~~storm water~~ stormwater and ~~surface water~~ facilities.
- D. Enter into any contract for the construction of ~~storm water~~ stormwater facilities with owners of real estate and to accept the facilities as municipal ~~storm water~~ stormwater facilities, with the right to recover costs and expenses, pursuant to Chapter 35.91 RCW.
- E. Accept, reject, or take other appropriate action with regard to easements offered to the utility or city.

- F. Prepare and enforce standards for the maintenance of ~~drainage-stormwater~~ facilities, including retrofit measures, consistent with the standards in Chapter 15.09 MICC.
- G. Develop a program for inspection of private ~~drainage-stormwater~~ facilities, consistent with the standards in Chapter 15.09 MICC.
- H. Advise commissions, the city council, city manager and other city departments on matters relating to the utility.
- I. Prepare comprehensive drainage plans for individual drainage basins for adoption by the city council.
- J. Establish and implement programs to protect and maintain water quality and to ~~limit water-quantity~~ control the duration of stormwater flows.
- K. Perform or direct the performance of financial review and analysis of the utility's revenues, expenses, indebtedness, rates and accounting, and recommend budgets, rates, and financial policy for adoption by the city council.
- L. Conduct public education programs related to protection and enhancement of ~~the-stormwater~~ and surface water and the municipal city drainage-stormwater system. (Ord. 95C-127 § 2).

15.10.040 Studies and basin plans.

The utility may conduct studies and may develop basin plans for adoption by the city council. Basin plans shall be developed according to the engineering standards in Chapter 15.09 MICC. Once a basin plan has been adopted and implemented, it may be modified as authorized by Chapter 15.09 MICC; provided the basin plan and basin-specific policies and requirements provide an equal or greater level of water quality and runoff-control protection. (Ord. 95C-127 § 2).

15.10.050 Capital improvement and planning program.

A. The city manager or his/her designee shall develop a six-year capital improvement and planning program for improvements to or modifications of the public ~~drainage-stormwater~~ system, including the incorporation or extension of stormwater ~~drainage~~-systems and facilities and the acceptance of drainage easements and private drainage facilities.

AB. The city manager or his/her designee shall provide the proposed six-year capital improvement and planning program to the city council prior to the adoption of the biennial budget.

BC. The city manager or his/her designee shall provide to the city council a draft of storm and surface water rules and regulations on inspection and maintenance, basin planning, and acceptance of private systems for review and comment prior to adoption by the city manager or his/her designee of the rules and regulations. (Ord. 95C-127 § 2).

15.10.060 Maintenance of drainage facilities.

A. The utility is responsible for maintaining public ~~drainage~~stormwater systems and facilities.

B. Owners of private stormwater ~~drainage~~ systems and facilities, including but not limited to on-site stormwater management (low impact development) BMPs, flow control (detention) facilities, runoff-treatment facilities and conveyance systems, are responsible for their operation and maintenance.

C. In new subdivisions and short plats, maintenance responsibility for private drainage facilities shall be specified on the face of the subdivision or short plat.

D. If a private drainage facility serves multiple lots, then maintenance responsibility rests with the properties served by the facility, unless there is a legal document placing responsibility on some other entity. (Ord. 95C-127 § 2).

15.10.070 Storm and surface water rates.

A. General. The city council shall establish by resolution service rates for use of the ~~drainage~~stormwater system and related drainage services; such rates are in addition to connection charges and fees for specific services. The city may establish classifications of customers or service and rate structures, using any method or methods authorized by law.

B. Rate Basis. Drainage rates shall be based on revenue requirements to cover all costs of the utility, as authorized by the city council by the adoption of the biennial budget and subsequent amendments.

C. Rate Adjustments. The sufficiency of rates shall be evaluated periodically as part of the review and adoption of the annual budget. Rate adjustments shall be recommended as needed to meet revenue requirements. The recommendation shall consider equity, adequacy, costs and other factors allowed by law.

D. Billing and Collection. The utility shall develop and implement procedures and systems pertaining to the billing and collection of drainage service charges and fees in accordance with state law, and shall provide an appeal process for the review of utility bills.

E. Rate Relief. The city council may establish drainage rate relief measures for specific customer classes as authorized by law. (Ord. 95C-127 § 2).

15.10.080 Liability.

The city manager, his/her designee, or any other employee charged with the enforcement of this chapter, acting for the utility in good faith and without malice in the discharge of his/her duties shall not be liable personally for any damages which may accrue to persons or property as a result of any act required or by reason of any act or omission in the discharge of such duties. (Ord. 95C-127 § 2).

Section 3. Amend Chapter 15.11 MICC, Fee In Lieu of Stormwater Detention. Chapter 15.11 MICC, Fee In Lieu of Stormwater Detention, is hereby amended as follows:

Chapter 15.11
FEE IN LIEU OF ~~STORM WATER~~STORMWATER DETENTION

Sections:

- 15.11.010 Definitions.
- ~~15.11.020 Storm water~~Stormwater detention facilities.
- ~~15.11.0320~~ Fee in lieu.
- ~~15.11.0430~~ Annual adjustment of fee.
- ~~15.11.0540~~ Use of fee.
- ~~15.11.0650~~ Payment of fee.
- ~~15.11.0760~~ Building permit.

15.11.010 Definitions.

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

A

“Applicable manual” means the Stormwater Management Manual for Western Washington (2012 manual as amended in 2014) prepared by the Washington State Department of Ecology in 2012 and amended in 2014.

D

“Developer” means the owner or builder of the property to be developed.

~~B. “Development” shall mean new development, redevelopment, or both, where a proposed new development or redevelopment creates 500 square feet of impervious area or greater, the developer shall provide storm water detention on site to mitigate the impact of the development or when approved by the city engineer, pay a fee in lieu of detention. However, neither detention nor the fee will be applicable when the city engineer determines, in his/her sole discretion, that there will be no material adverse impact to the system capacity and/or water quality.~~

I

“Impervious surface” means a non-vegetated surface area that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

N

“New development” means land disturbing activities, including Class IV General Forest Practices that are conversions from timber land to other uses; structural development, including

construction or installation of a building or other structure; creation of hard surfaces; and subdivision, short subdivision and binding site plans, as defined and applied in chapter 58.17 RCW. Projects meeting the definition of redevelopment shall not be considered new development.

R

“Redevelopment” means, on a site that is already substantially developed (i.e., has 35% or more of existing hard surface coverage), the creation or addition of hard surfaces; the expansion of a building footprint or addition or replacement of a structure; structural development including construction, installation or expansion of a building or other structure; replacement of hard surface that is not part of a routine maintenance activity; and land disturbing activities.

D. “Developer” shall mean the owner or builder of the property to be developed.

E-S

“Subdivision” shall mean the division of, or the act of division of, land into two or more lots for the purposes of building development including short subdivisions and long subdivisions. (Ord. 00C-08 § 1).

15.11.020 Storm waterStormwater detention facilities.

The city of Mercer Island adopted a storm waterstormwater management program through Ordinance No. 95C 118. The applicable manual is adopted in MICC 15.09.050 The program identifies the Washington State Department of Ecology’s Stormwater Management Manual for the Puget Sound Basin as the minimum standards for storm water management. These standards and includes criteria for storm waterstormwater detention facilities. (Ord. 00C 08 § 1).

15.11.0320 Fee in lieu.

A. The developer may pay a fee in lieu of constructing the storm waterstormwater detention facilities required by 15.09.050this section or by Chapter 15.09 MICC, Storm Water Management Program, when authorized by the city engineer. The fee is based on 100 percent of the estimated cost of constructing a detention facility on-site and excludes the costs associated with designing such a facility. The developer shall submit to the city engineer a ¼ mile downstream analysis and calculations determining the total new plus replaced impervious surface area as the basis for determining the fee amount by the city engineer. Appendix 1— Minimum Storm Water Detention Fee, shall be used to determine the fee based on the total impervious area calculated.

B. If the total impervious area of a development or addition exceeds the areas shown in Appendix 1, the fee will be based on the estimated cost of constructing on-site detention. In this case, the developer shall hire a licensed civil engineer to calculate the size of detention system and prepare a cost estimate for construction of the system for review by the city engineer.

CB. A developer will not have the option to pay a fee in lieu of constructing a storm waterstormwater detention facility if, in the opinion of the city engineer, undetained runoff from the development may materially adversely exacerbate an existing problem. (Ord. 00C-08 § 1).

15.11.0430 Annual adjustment of fee.

The fees ~~are established by the city engineer and in Appendix 1~~ shall be adjusted upward on July 1, 2001, and every July 1 thereafter by multiplying the rates in effect on the prior July 1 by 100 percent of the percentage increase in the Consumer Price Index (CPI) for the 12-month period ending the preceding April. The fees shall remain the same in the event the CPI indicates a decrease. If the index ceases to be published on a monthly basis, the adjustment shall be based on the CPI for the most recent 12-month period. The CPI to be used shall be the Consumer Price Index – All Urban Consumers as published by the United States Department of Labor for the Seattle/Tacoma/Bremerton Metropolitan area. In the event the Department of Labor ceases to publish such an index for the Seattle/Tacoma/Bremerton Metropolitan area, then its index for the Puget Sound region or the state shall be used. (Ord. 00C-08 § 1).

15.11.0540 Use of fee.

A fee paid in lieu of constructing ~~storm water~~stormwater detention at the development ~~or addition~~ shall be held by the city of Mercer Island’s ~~storm water~~stormwater utility for the construction of ~~storm water~~stormwater management projects designed to serve the immediate or future needs of the city to reduce ~~storm water~~stormwater flooding and/or erosion, and to enhance water quality, in ravines and watercourses. (Ord. 09C-02 § 1; Ord. 00C-08 § 1).

15.11.0650 Payment of fee.

Payment of the fee shall be made based on the following:

- A. Single-Lot Development ~~or Addition~~. Prior to the issuance of a building permit; or
- B. Subdivision. Prior to recording the final subdivision. Payment may be deferred by the city engineer to issuance of a building permit when determined to be in the best interest of the city. (Ord. 00C-08 § 1).

15.11.0760 Building permit.

No building permit shall be issued for development as provided herein, until all requirements of this chapter are met to the satisfaction of the city engineer. (Ord. 00C-08 § 1).

Appendix 1

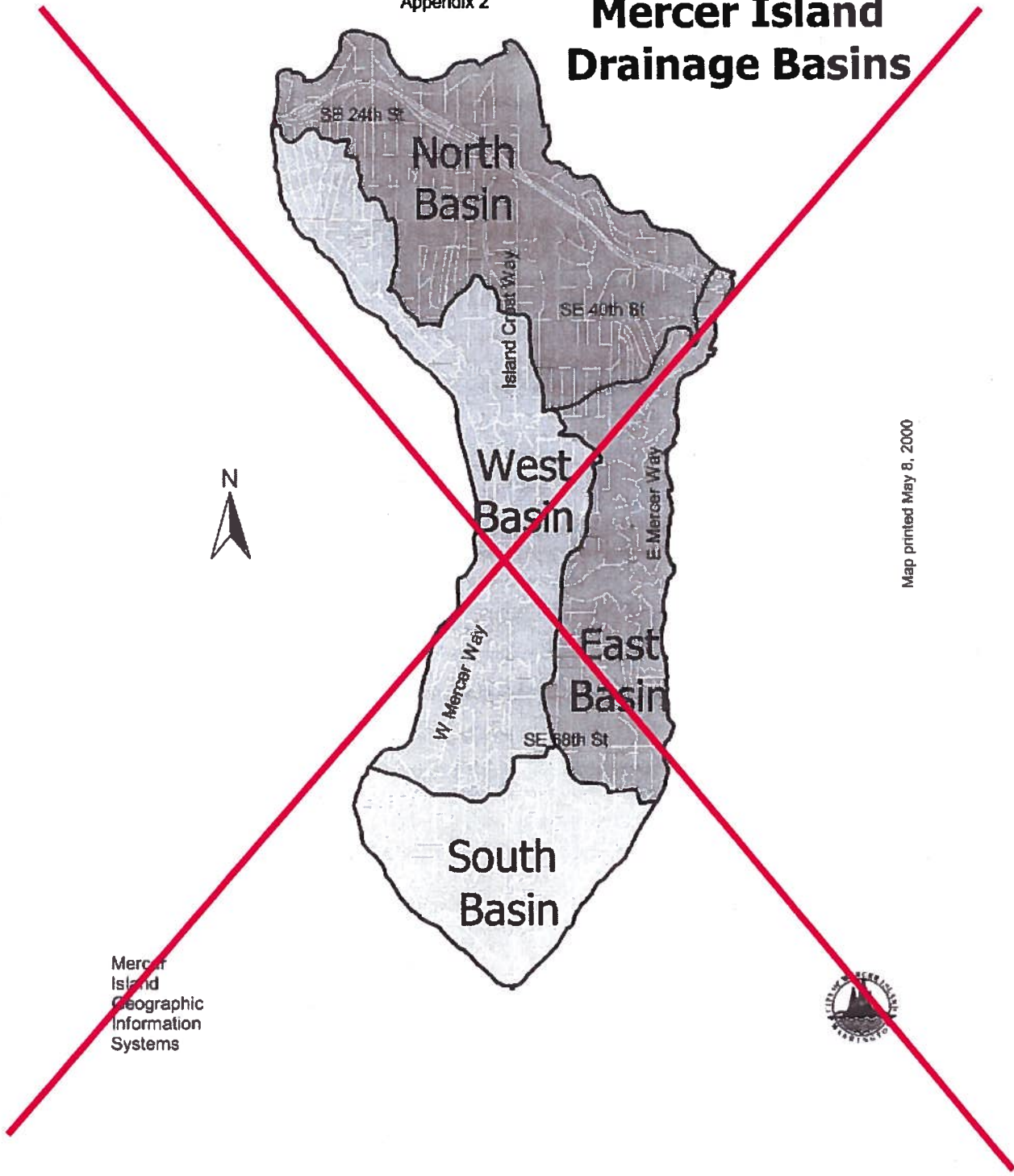
Minimum Storm Water Detention Fee*	
Impervious Surface Area	Fee
Less than 1,000 sq. ft.	\$5,500
1,000 – 2,000 sq. ft.	\$6,260
2,000 – 3,000 sq. ft.	\$6,800
3,000 – 4,000 sq. ft.	\$7,320
4,000 – 5,000 sq. ft.	\$7,850
5,000 – 6,000 sq. ft.	\$8,375
6,000 – 7,000 sq. ft.	\$8,900

7,000—8,000 sq. ft.	\$9,425
8,000—9,000 sq. ft.	\$9,950
9,000—10,000 sq. ft.	\$10,500
greater than 10,000 sq. ft.	**

~~* If the city engineer determines, in his/her sole discretion, that actual construction costs would exceed the fee determined in accordance with Appendix 1 by more than 25 percent, the fee shall be adjusted to be equal to city engineer's construction cost estimate.~~

~~** Fees for impervious areas exceeding 10,000 square feet shall be determined on a case by case basis. The applicant's engineer shall calculate the size of the detention system necessary for the project and develop a construction cost estimate. The cost estimate shall be the amount of the fee upon approval by the city engineer.~~

Mercer Island Drainage Basins



Map printed May 8, 2000

Mercer
Island
Geographic
Information
Systems



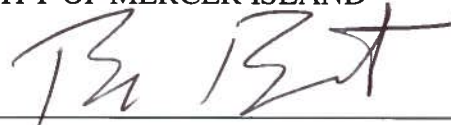
Section 4. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality does not affect the validity of any other section, sentence, clause or phrase of this ordinance.

Section 5. Application. Pursuant to Western Washington Phase II Municipal Stormwater Permit requirement S5.C.4 and the G20 letter extending the City's deadline to adopt new regulations granted by the State of Washington Department of Ecology, the stormwater regulations in this ordinance shall apply to all applications submitted on or after July 6, 2017 and shall apply to applications submitted prior to July 6, 2017, which have not started construction by January 1, 2022.

Section 6. Effective Date. This ordinance shall take effect and be in force on July 05, 2017, provided that said effective date is 5 days or more after passage and publication of this ordinance.

PASSED by the City Council of the City of Mercer Island, Washington at its regular meeting on the 19th day of June 2017, and signed in authentication of its passage.

CITY OF MERCER ISLAND



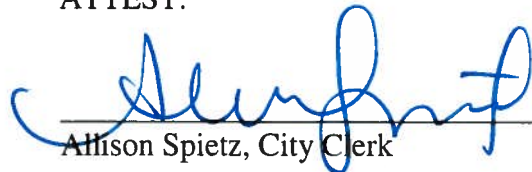
Bruce Bassett, Mayor

Approved as to Form:



Kari L. Sand, City Attorney

ATTEST:



Allison Spietz, City Clerk

Date of Publication: 6/28/17