

**ORDINANCE NO. 9**  
**Series 2019**

October 2, 2019: Introduced as Council Bill 8, Series 2019 by Councilor Dan Sheldon, seconded by Councilor Al Blum and considered in full text on first reading. Passed by a vote of 5 yes and 0 no.

October 15, 2019: Considered in full text on second reading. Passed by a vote of 4 yes and 0 no.

**A BILL FOR AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE,  
REPEALING CHAPTER 19, STORMWATER QUALITY AND CONTROL, OF THE  
CHERRY HILLS VILLAGE MUNICIPAL CODE AND REPLACING SUCH CHAPTER  
WITH AN UPDATED CHAPTER 19, STORMWATER QUALITY AND CONTROL**

**WHEREAS**, the City of Cherry Hills Village is a home rule municipal corporation created and organized pursuant to Article 20 of the Colorado Constitution and the Home Rule Charter of the City of Cherry Hills Village ("Charter"); and

**WHEREAS**, in accordance with Article IV of the Charter, the City Council is authorized to adopt ordinances regarding the use and development of property, and provide for penalties for the violation thereof; and

**WHEREAS**, the City Council finds that the current Chapter 19 has become outdated, and that an updated Chapter 19 is desired in order to modernize the Chapter, update external cross-references, and resolve potential misunderstandings regarding its application; and

**WHEREAS**, at a duly noticed meeting held on September 10, 2019, the Cherry Hills Village Planning and Zoning Commission considered a proposed updated version of Chapter 19 and voted unanimously to recommend that the City Council adopt the updated Chapter 19; and

**WHEREAS**, the City Council finds and determines that the updated Chapter 19 advances the health, safety, and general welfare of the public.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:**

**Section 1.** Chapter 19 Repealed and Replaced. Chapter 19 of the Cherry Hills Village Municipal Code is repealed in its entirety and replaced by a new Chapter 19, a copy of which is attached hereto as **Attachment A** and incorporated herein by reference.

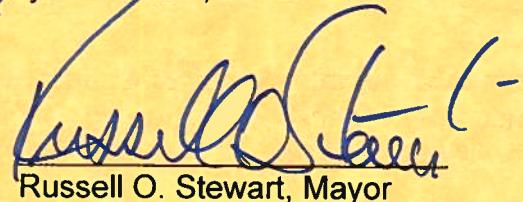
**Section 2.** Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion be declared invalid.

**Section 3.** Safety. This ordinance is deemed necessary for the protection of the health, welfare, and safety of the community.

**Section 4.** Codification Amendments. The codifier of the City's Municipal Code, Municode, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this ordinance within the Cherry Hills Village Municipal Code.

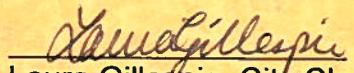
**Section 5.** Effective Date. This ordinance shall become effective ten (10) days after publication after second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. 9 Series 2019, by the City Council of the City of Cherry Hills Village, Colorado this 15<sup>th</sup> day of October, 2019.



Russell O. Stewart, Mayor

ATTEST:

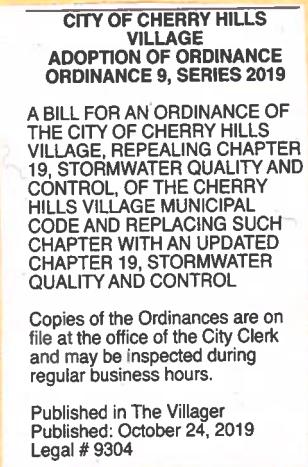
  
Laura Gillespie, City Clerk

Published in the Villager

Published: 10-24-19

Legal # 9304

APPROVED AS TO FORM:

  
Kathie B. Guckenberger, City Attorney

**ATTACHMENT A**

# CHAPTER 19 -

## Stormwater Quality and Control

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### **Sec. 19-1-10. - Purpose and Objectives.**

- (a) The purpose of this Chapter is to regulate non-stormwater discharges to the storm drainage system, as required by federal and state law, and to protect and enhance the quality of watercourses, water bodies and wetlands in a manner consistent with the federal Clean Water Act.
- (b) The objectives of this Chapter are:
  - (1) To regulate and diminish the introduction of pollutants to the municipal separate storm sewer system;
  - (2) To prohibit illicit connections and discharges to the municipal separate storm sewer system;
  - (3) To establish inspection, observation, and monitoring procedures necessary to ensure compliance with this Chapter;
  - (4) To promote public awareness of the hazards involved in the improper discharge of pollutants into the storm drainage system;
  - (5) To require temporary and permanent stormwater runoff controls to be constructed along with development to prevent the deterioration of water quality;
  - (6) To establish provisions for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural stormwater management practices to ensure that they continue to function as designed, are maintained, and do not threaten public safety; and
  - (7) To establish timely and appropriate enforcement actions for violations of this Chapter.

(Ord. 06 §1, 2007)

### **Sec. 19-1-20. - Definitions.**

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

**Best Management Practices** ("BMPs") means the specific management practices used to control pollutants in stormwater as set forth in the Urban Storm Drainage Criteria Manual. BMPs are of two types: "source controls" (a.k.a. nonstructural controls) and "treatment controls" (a.k.a. structural controls). Source or nonstructural controls are practices that minimize pollution by reducing potential pollutants at their source before they come into contact with stormwater. Treatment or structural controls, such as constructed water quality detention facilities, remove pollutants already present in stormwater. Best management practices are further classified as either temporary (e.g., a silt fence used during construction activity) or permanent (e.g., detention facilities to control pollutants in stormwater).

**City** means the City of Cherry Hills Village.

**City Manager** means the Cherry Hills Village City Manager or his or her duly authorized representative.

**Clean Water Act** ("CWA") means the Clean Water Act, formerly known as the Federal Water Pollution Control Act, , now codified as 33 U.S.C. § 1251, *et seq.*, as amended.

**Colorado Discharge Permit System** ("CDPS") means the system of permitting established pursuant to Part 5 of the Colorado Water Quality Control Act, which allows for authorization of the discharge of pollutants into waters of the State

**Colorado Discharge Permit System Permit** ("CDPS Permit") means a permit issued by the State of Colorado under Part 5 of the Colorado Water Quality Control Act that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable to a person, group or area.

**Colorado Water Quality Control Act** means Article 8 of Title 25, Colorado Revised Statutes, as amended.

**Commercial** means a term used to describe any business, trade, industry, or other activity that is engaged in for profit.

**Construction** means to make or form by combining or arranging building materials, building parts, or building elements, or to install horizontal infrastructure (e.g., streets, trails, sidewalks, utilities, parking areas, and drainage systems), including the initial disturbance of soils associated with clearing, grading, excavating, and stockpiling of materials in connection with the these activities. The term "construction" includes, but is not limited to, road construction and commercial, residential, and parks development. .

**Construction Site** means any location where construction or construction-related activity occurs.

**Contaminated** means containing harmful quantities of pollutants that exceed state or federal guidelines.

**Contractor** means any person or firm performing or managing construction work at a construction site or delivering materials to the site, including but not limited to any construction manager, general contractor, or subcontractor.

**Development** means any public or private construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure within the jurisdiction of the City, as well as any man-made change or alteration to the landscape, including but not limited to mining, drilling, dredging, grading, paving, excavating and/or filling, but does not include maintenance activities that do not alter grades, structures, or building exteriors.

**Director** means the Community Development Director or designee thereof.

**Discharge** means any addition or release of any pollutant, stormwater, subsurface water, groundwater, or any other substance whatsoever to the storm drainage system.

**Disturbed Area** means an area of the 'land's surface that is disturbed by any work or activity upon the land by means including but not limited to grading; excavating; stockpiling soil, fill, or other materials; clearing; vegetation removal; removal or deposit of any rock, soil, or other materials; or other activities which expose soil. The phrase "disturbed area" does not include disturbance caused by normal agricultural activities, not including construction activities.

**Domestic Animal Waste** means excrement and other waste from domestic animals, including household pets.

**Domestic Sewage** means sewage originating primarily from kitchen, bathroom, and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets, baths, showers, and sinks.

**Drainageway** means any natural or artificial (man-made) channel which provides a course for water flowing either continuously or intermittently to downstream areas.

**Environmental Law** means the following federal laws and their State of Colorado counterparts: the COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 ("CERCLA"), as amended, 42 U.S.C. § 9601, *et seq.*; the RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 ("RCRA"), as amended, 42 U.S.C. § 6901, *et seq.*; the TOXIC SUBSTANCES CONTROL ACT OF 1976, as amended, 15 U.S.C. § 2601, *et seq.*; the CLEAN AIR ACT, as amended, 42 U.S.C. § 7401, *et seq.*; the FEDERAL WATER POLLUTION CONTROL ACT (a.k.a. "CLEAN WATER ACT"), as amended, 33 U.S.C. § 1251, *et seq.*; the HAZARDOUS MATERIALS TRANSPORTATION ACT, 49 U.S.C. § 5101, *et seq.*; the SOLID WASTE DISPOSAL ACT, Subchapter IX, Regulation of Underground Storage Tanks, 42 U.S.C. § 6991, *et seq.*; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency ("EPA") and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the City.

**Environmental Protection Agency** ("EPA" or "USEPA") means the United States Environmental Protection Agency, the regional office thereof with jurisdiction within the City, any federal department, agency or commission that may succeed to the authority of the EPA, and any duly authorized official of the EPA or such successor agency.

**Fertilizer** means a substance or compound that contains an essential plant nutrient element in a form available to plants that is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop or a mixture of two or more fertilizers.

**Fire Protection** means any water and any substances or materials contained therein, used by any person to control or extinguish a fire or to inspect or test fire equipment.

**Fungicide** means a substance that destroys or inhibits the growth of fungi.

**Garbage** means putrescible animal or vegetable waste materials resulting from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

**Groundwater** means any water present below the surface of the ground or percolating into or out of the ground.

**Harmful Quantity** means the amount of any substance that may cause an adverse impact to the storm drainage system and/or will contribute to the failure of the City to meet the water quality based requirements of the CDPS/NPDES permit for discharges from the municipal separate storm sewer system.

**Hazardous Substance** means any material or substance that is:

- (1) Defined as a “hazardous substance,” “hazardous material,” “toxic substance,” “pollutant,” “hazardous waste,” “regulated substance,” or “solid waste” in any Environmental Law;
- (2) Listed in the U.S. Department of Transportation Hazardous Materials Table, 49 C.F.R. § 172.101, as may be amended from time to time;
- (3) Listed by the U.S. Environmental Protection Agency (“EPA”) (or any successor agency) as hazardous substances, see 40 C.F.R. § 301, et seq., as may be amended from time to time;
- (4) Qualified as an “unlisted hazardous substance” pursuant to 40 C.F.R. § 302.4(b), as may be amended from time to time;
- (5) Asbestos; or
- (6) A petroleum product.

**Hazardous Waste** means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261 as amended.

**Herbicide** means a chemical substance used to destroy plants, especially weeds.

**Illegal Discharge** means illicit discharge.

**Illicit Connection** means any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drainage system.

**Illicit Discharge** means any discharge to a storm drainage system that is not composed entirely of stormwater, except discharges pursuant to a CDPS/NPDES permit, discharges resulting from emergency firefighting activities, and discharges further exempted by this Chapter.

**Industrial Waste** means any wastes produced as a byproduct of any industrial, manufacturing, agricultural, commercial, trade, or business activity, as distinguished from domestic or residential waste.

**Mechanical Fluid** means any fluid used in the operation and maintenance of machinery, vehicles and any other equipment, including but not limited to lubricants, antifreeze, petroleum products, oil, and fuel.

**Minimize** means to reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

**Mobile Commercial Cleaning** means washing, steam cleaning, and any other method of mobile cleaning of vehicles and/or building interiors and/or exterior building surfaces that is engaged in for commercial purposes or related to a commercial activity.

**Municipal Separate Storm Sewer System** (“MS4”) means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, curbs, gutters, drainage ditches, inlets, drains, catch basins, pipes, tunnels, culverts, channels, detention basins, and ponds owned and

operated by the City, that are designed or used for collecting or conveying stormwater, that are not a combined sewer or otherwise also used for collecting or conveying sanitary sewage.

**National Pollutant Discharge Elimination System** (“NPDES”) means the regulatory, permitting, and enforcement system established under Section 402 of the Clean Water Act.

**National Pollutant Discharge Elimination System Permit** (“NPDES Permit”) means a permit issued pursuant to EPA authority that allows the discharge of pollutants to navigable waters of the United States or waters of the State, whether the permit is applicable on an individual, group or area basis.

**Notice of Violation** (“NOV”) means a written notice detailing any violations of this Chapter and any action expected of the violators.

**Oil** means any kind of oil in any form, including but not limited to petroleum, fuel oil, crude oil, synthetic oil, motor oil, cooking oil, vegetable or animal fat, grease, sludge, oil refuse, and oil mixed with waste.

**Owner** means a person having sufficient interest to convey property or having a possessory interest in property. The term “owner” also includes the owner’s agent.

**Part of a Larger Common Plan of Development or Sale** means a contiguous area where multiple separate and distinct construction activities will be taking place at different times on different schedules under one plan. An example would be a commercial development with multiple separate buildings constructed over the course of multiple construction phases.

**Person** means any individual, partnership, co-partnership, firm, company, corporation (whether for-profit, non-profit, or public benefit), limited liability company, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or its legal representatives, agents, or assigns, including all federal, state, and general- or special-purpose local governmental entities.

**Pesticide** means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest.

**Petroleum Product** means a product that is obtained from distilling and processing crude oil that is capable of being used as a fuel or lubricant in a motor vehicle or aircraft, or as a solvent, including but not limited to motor oil, gasoline, gasohol, other alcohol-blended fuels, aviation gasoline, kerosene, distillate fuel oil, #1 and #2 diesel fuel, benzene, toluene, or xylene.

**Pollutant** means any substance to which water pollution may be attributable, including but not limited to dredged spoil; solid waste; incinerator residue; filter backwash; sewage; septic waste; sewage sludge; rubbish; garbage; solid waste; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; sediment, rock, dirt, sand, mud, or soil; industrial, municipal, or agricultural waste; litter; debris; yard waste; pesticides; herbicides; fertilizers; domestic animal waste; mechanical fluid, oil, motor oil, used oil, grease, or petroleum products; antifreeze or chlorides; surfactants; solvents; detergents; cleaning agents; paint; heavy metals; toxins; household hazardous waste; small quantity generator waste; hazardous substances; and hazardous waste.

**Pollution** means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water, resulting in the water becoming harmful, detrimental, or injurious to humans, animal life, plant life, or property, or the public health, safety, or welfare, or otherwise impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

**Potable Water** means water that has been treated to federal Safe Drinking Water Act standards and/or is safe for human consumption.

**Private Drainage System** means all privately owned grounds, improved surfaces, structures or systems, excluding the municipal separate storm sewer system, that contribute to or convey stormwater, including but not limited to roofs; gutters; downspouts; lawns; driveways; pavement; private roads, streets, curbs, or gutters; ditches; inlets; drains; catch basins; pipes; tunnels; culverts; channels; detention basins; ponds; draws; swales; streams; and any ground surface.

**Qualified Person** means a person who possesses the required certification, license, and appropriate competence, skills, and ability as demonstrated by sufficient education, training and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity, and who may, for certain duties, be required to be a professional engineer licensed in the State of Colorado, or as otherwise required under C.R.S. § 12-25-101, *et seq.*

**Receiving Waters** means creeks, streams, rivers, lakes, estuaries, or other bodies of water into which surface water and/or treated or untreated waste are discharged, either naturally or in man-made systems.

**Release** means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose, or otherwise introduce into the Storm Drainage System.

**Rubbish** means nonputrescible solid waste that consist of: (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit). The term "rubbish" does not include ashes.

**Safe Drinking Water Act** ("SDWA") means the Federal Safe Drinking Water Act, codified at 42 U.S.C. § 300f, *et seq.*

**Safety Data Sheet** ("SDS") (formerly Material Safety Data Sheet or "MSDS") means a disclosure form regarding hazardous chemicals that is provided at the point of sale of such chemicals, as required by 29 CFR § 1910.

**Sanitary Sewage** means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system for conveyance to the sewage treatment plant for treatment.

**Sanitary Sewer System** means the system of pipes, conduits, and other conveyances that carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).

**Sediment** means soil, mud, dirt, gravel, and rocks that have been disturbed, eroded and/or transported naturally by water, wind, or gravity, and/or mechanically by any person, vehicle or equipment.

**Septic Tank Waste** means any domestic sewage from holding tanks such as vessels, grease interceptors, chemical toilets, campers, trailers, septic tanks, or aerated tanks.

**Site** means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity, the boundaries of which may be delineated or described in an approved stormwater management plan.

**Solid Waste** means any garbage, rubbish, refuse, yard waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, municipal, commercial, construction, mining, or agricultural operations or from residential, community, or institutional activities.

**Storm Drainage System** means all surfaces, structures, and systems that contribute to or convey stormwater, including private drainage systems, to the municipal separate storm sewer system, and any nonmunicipal drain or pipe, channel, or other conveyance, including natural and man-made washes and ditches for conveying water, groundwater, drainage water, or unpolluted water from any source, excluding sewage and industrial wastes, to waters of the State and United States. The phrase "storm drainage system" does not include irrigation ditches unless a right exists to use the ditch for stormwater conveyance.

**Storm Water Management Plan** ("SWMP") means a specific individual construction plan that describes the best management practices ("BMPs"), according to the technical standards and specifications that are required by Section 19-1-90, that will be implemented at a site to prevent or reduce the discharge of pollutants. The purpose of a SWMP is to identify possible stormwater pollutant sources, and to set out BMPs that, when implemented, will reduce or eliminate any potential water quality impacts.

**Stormwater** means surface runoff resulting from precipitation and other storm events.

**Surface Water** means water bodies and any water temporarily present on the surface of the ground, including oceans, lakes, reservoirs, rivers, ponds, streams, puddles, channeled flow, and runoff.

**Toxic** means a substance that is harmful or poisonous. Where an SDS is available for the substance, its toxicity is described on the SDS.

**Uncontaminated** means not containing harmful quantities of pollutants that exceed state or federal guidelines.

**Upset** means an exceptional incident in which there is an unintentional and temporary noncompliance because of factors beyond reasonable control. An upset does not include noncompliance to the extent caused by operational error, improperly designed or inadequate treatment, lack of preventive maintenance, or careless or improper operation.

**Urban Storm Drainage Criteria Manual** ("USDCM ") means Volumes 1, 2, and 3 of the Urban Storm Drainage Criteria Manual, as updated or amended, or its successor, published by the Urban Drainage and Flood Control District, with Volumes 1 and 2 providing guidance for planning and

design of drainageway channels and hydraulic structures, and with Volume 3 providing guidance for the selection and design of stormwater quality best management practices.

**Wastewater** means any water or other liquid, other than uncontaminated stormwater, discharged from a facility or the community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, institutions, or industrial establishments, together with any incidental groundwater, surface water, or stormwater that may be present.

**Waters of the State** means any and all surface and subsurface waters which are contained in or flow in or through the State of Colorado, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

**Waters of the United States** means all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: (i) which are or could be used by interstate or foreign travelers for recreational or other purposes, or (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce, or (iii) which are used or could be used for industrial purposes by industries in interstate commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; tributaries of waters identified above; the territorial sea; and wetlands adjacent to waters (other than waters that are themselves wetlands) identified in this definition. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) and prior converted cropland are not waters of the United States. **Wetland** means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

**Yard Waste** means leaves, grass clippings, tree limbs, brush, soil, rocks, or debris that result from landscaping, gardening, yard maintenance or land clearing operations.

(Ord. 06 §1, 2007; Ord. 10 §1, 2012)

### **Sec. 19-1-30. - Prohibitions.**

- (a) No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated stormwater, except as allowed by Section 19-1-40. Common stormwater contaminants that shall not be released into the storm drainage system include, but are not limited to, herbicides and lawn chemicals, construction debris and wastes, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment, dirt and toxic substances, and other such substances that are defined in Section 19-1-20 as "pollutants."

- (b) The construction, use, maintenance, or continued existence of illicit connections to the storm drainage system are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law, or pursuant to practices that were applicable or prevailing at the time of connection.
- (c) No person shall connect a line conveying sanitary sewage, domestic sewage, or industrial waste to the storm drainage system; or to allow such a connection to continue. Any existing connection shall be removed.
- (d) No person shall maliciously damage, destroy, or interfere with any best management practices that are implemented pursuant to this Chapter.

(Ord. 06 §1, 2007; Ord. 10 §1, 2012)

#### **Sec. 19-1-40. - Exemptions.**

The following non-stormwater discharges are exempt from the prohibitions established by this Chapter unless they are found by the City to be significant sources of pollutants to the MS4. Non-stormwater discharges that are exempt from this Section may still require a CDPS Permit.

- (1) Intermittent uncontaminated discharge from landscape irrigation, lawn watering, or irrigation return flows.
- (2) Uncontaminated discharge from foundation, footing, or crawl space drains and sump pumps.
- (3) Uncontaminated groundwater, including rising groundwater, groundwater infiltration into storm drains, pumped groundwater, and springs.
- (4) Diverted stream flows and natural riparian habitat or wetland flows.
- (5) Uncontaminated discharges from the occasional noncommercial or charity washing of vehicles or occasional not-for-profit car washing events.
- (6) De-chlorinated and uncontaminated swimming pools and hot tubs.
- (7) Discharges approved by the authorized public agency as being necessary to protect property and/or public health and safety, such as flows from firefighting.
- (8) Waterline flushing and other infrequent discharges from potable water sources and waterline repair work as necessary to protect public health and safety.
- (9) Street wash water after mechanical cleanup (sweeping) has taken place.
- (10) Discharges authorized by and in compliance with a CDPS or NPDES Permit, or discharges that do not require a CDPS or NPDES Permit and are otherwise compliant with applicable CDPHE Policies and Guidance.
- (11) Runoff associated with normal agricultural activities, not including construction activities.

(Ord. 06 §1, 2007; Ord. 10 §1, 2012)

### **Sec. 19-1-50. - Requirements Applicable to Certain Dischargers.**

Process waters generated from any industrial or commercial source, including but not limited to carpet and rug cleaners and mobile commercial cleaning operations, shall not discharge to the storm drainage system without a valid CDPS Permit. In the absence of a CDPS Permit, substances used in mobile commercial cleaning operations shall be reclaimed via wet vacuum sweeping or other type of containment before they enter the storm drainage system.

### **(Ord. 06 §1, 2007) Sec. 19-1-60. - Release Reporting and Cleanup.**

Notwithstanding any other requirement of law, as soon as any person responsible for any premises, 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 stormwater, the storm drainage system, the MS4, or waters of the State, that person shall take all necessary steps to ensure the discovery, notification to the City Manager, containment, abatement, and cleanup of such release. In the event of a release of hazardous waste or hazardous substances, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

(Ord. 06 §1, 2007; Ord. 10 §1, 2012)

### **Sec. 19-1-70. - Best Management Practices.**

The owner or operator of a commercial or industrial establishment or of a disturbed area shall provide, at their own expense, reasonable protection from the accidental discharge of pollutants into the MS4 or Waters of the State through the use of structural and nonstructural best management practices. Further, any person responsible for premises, which are, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural best management practices to prevent the further discharge of pollutants to the MS4.

(Ord. 06 §1, 2007)

### **Sec. 19-1-80. - General Permit Requirements.**

#### **(a) Stormwater Permit Required.**

- (1) It shall be unlawful for any person to conduct any activity resulting in any of the following total disturbed areas without first obtaining a stormwater permit pursuant to this Section:
  - a. One acre or more.
  - b. Less than one acre, if such activities are part of a larger common plan of development or sale.
- (2) The City also requires a stormwater permit, regardless of the size of the total disturbed area, in conjunction with approval of a final subdivision plat, special use permit, building permit, or expanded use permit, if the construction activities are within 100 feet of the boundaries of a watercourse or wetland.

(b) **Stormwater Permit Application.** Applications for stormwater permits shall be filed on a form approved by the Director and thereafter promulgated by the City.

- (1) In support of the application, the applicant shall submit all information required on the City's form, and any additional information requested by the City.
- (2) The application shall be signed by all persons responsible for compliance with the permit throughout the permit's term.
- (3) The application shall include a Storm Water Management Plan (a "SWMP"), which must:
  - a. include an erosion and sediment control plan;
  - b. include a detailed description of the best management practices to be implemented at the site; and
  - c. comply with all standards set forth in this Chapter.

(c) **Waste and Waste Disposal.** Solid waste, industrial waste, yard waste, rubbish, discarded building materials, chemicals, sanitary wastes, and any other pollutants or waste on any construction site shall be controlled through the use of best management practices. Waste containers shall be provided and maintained by the owner or contractor on construction sites where there is the potential for release of waste. Uncontained waste, rubbish, and other pollutants or toxins that may blow, wash, or otherwise be released from the site are prohibited.

(d) **Concrete Wash-out.** Ready-mixed concrete, or any materials resulting from the washing or cleaning of vehicles or equipment containing or used in transporting or applying ready-mixed concrete, shall be contained in a designated area on construction sites for proper disposal. All washing-out of concrete mixer truck bowls and chutes and release of these materials into storm drains is prohibited.

(e) **Erosion and Sediment Control.** Best management practices shall be implemented to prevent the release of sediment from construction sites and development. Disturbed areas shall be minimized, and disturbed soil, including but not limited to that on construction sites and entrances and exits therefrom, shall be managed to prevent tracking, blowing, and fugitive emissions release. Any water used in cleaning operations shall not be disposed into the storm drainage system. Sediment, dirt and mud that are tracked onto streets shall be removed immediately by sweeping, scooping, or shoveling at the owner's expense. Sediment that is not removed within the specified time limits as stated in a notice of violation will be removed by the City or designated contractor. Such removal costs will be billed to the property owner and, if not paid, become a lien on the property.

(f) **Stormwater Permit Issuance or Denial.** The stormwater permit may be denied if the applicant fails to provide the information required by the City Manager pursuant to this Chapter. If a stormwater permit is denied, the applicant shall be notified in writing of the grounds for denial and of the corrective actions that must be taken to obtain a stormwater permit.

(g) **Fees.** Fees for any stormwater permit required by this Chapter shall be paid per the schedules on the stormwater permit form. No stormwater permit shall be issued unless and until the fees have been paid in full.

(Ord. 06 §1, 2007; Ord. 10 §1, 2012)

### **Sec. 19-1-90. - Technical Standards and Specifications.**

All best management practices that are designed and implemented to meet the requirements of this Chapter shall comply with the USDCM, Volume 3, as updated or amended, or its successor.

(Ord. 06 §1, 2007)

### **Sec. 19-1-100. - Storm Water Management Plan.**

- (a) The SWMP shall be prepared in accordance with the requirements of the most current SWMP guidance document prepared by the Colorado Department of Public Health and Environment.
- (b) The area included in the SWMP shall be presumed to include the entire site, unless the SWMP specifically excludes certain areas, and such exclusion is approved by the City.
- (c) The SWMP must address all phases of development, including but not limited to sanitary sewer and storm drainage system, waterline, street, and sidewalk construction; grading, installation of other utilities; and the construction of all buildings and landscaping.
- (d) The SWMP shall be prepared under the direction of a qualified person, as defined in Section 19-1-20 of this Chapter.
- (e) The SWMP shall provide the name, address, and phone number of the project owner, for purposes of correspondence and enforcement.
- (f) The SWMP shall specifically describe and provide construction, operational, and ongoing maintenance details concerning all best management practices that are selected and implemented to meet the requirements of this Chapter.

(Ord. 06 §1, 2007)

### **Sec. 19-1-110. - Implementation of Approved Storm Water Management Plans.**

- (a) The BMPs set forth in an approved SWMP shall be installed and maintained by a qualified person, as defined in Section 19-1-20 of this Chapter.
- (b) The owner or its representative shall have the SWMP on site at all times during construction, and shall be prepared to respond to the maintenance requirements of the BMPs required by the SWMP.
- (c) The owner or its representative shall inspect all BMPs at least every 14 days, and within 24 hours after any precipitation or snow melt event that causes surface runoff, and when specifically requested by the City. Inspections of BMPs shall be conducted by a qualified person, as defined in Section 19-1-20 of this Chapter.

- (d) Based upon inspections performed by the owner or by authorized City personnel, modification of the SWMP shall be required if at any time the specified BMPs do not meet the objectives of this Chapter.
- (e) Construction site BMPs must be implemented and maintained in operable condition at all times.
- (f) Minor Modifications to SWMP. Based on inspections performed by the owner or by City personnel, minor modifications to the SWMP will be necessary if at any time the specified BMPs do not meet the objectives of this Chapter, or if equivalent or better BMPs are implemented. All minor modifications shall be implemented immediately and recorded on the owner's copy of the SWMP that is located on site at all times. The modified SWMP shall be made available to City personnel during inspections.
- (g) Major Modifications to SWMP. Whenever there is a significant change in design, construction, operation, or maintenance, which has a significant effect on the hydrology or potential for discharge of pollutants to the MS4 or receiving waters, a revised SWMP shall be submitted to the City for review and approval.
- (h) Upon completion of a construction project and before a certificate of occupancy or other final approval of the City's Building Official shall be granted, the City shall be provided a written certification signed by a qualified person stating that the completed project is in compliance with the approved SWMP. All applicants are required to submit "as-built" plans for any permanent best management practices after final construction is completed. A digital copy of the as-built plans is required in current AutoCAD format. A final inspection by the City is required before the release of any performance securities may occur.

(Ord. 06 §1, 2007; Ord. 10 §1, 2012)

### **Sec. 19-1-120. - Post-Construction Requirements for Permanent Best Management Practices.**

- (a) **Generally.** Owners that are subject to the requirements of this Chapter, specifically including but not limited to Section 19-1-80, are required to address stormwater runoff quality through the use of permanent BMPs and shall maintain those BMPs in perpetuity and in accordance with the requirements of this Section. If the permittee can document that permanent BMPs exist as part of an original or previous subdivision or building process, no new BMPs will be required if the existing BMPs meet the requirements of this Chapter, specifically including but not limited to Section 19-1-90, *Technical Standards and Specifications*.
- (1) All permanent BMPs on any site including, without limitation, detention basins, retention basins, ponds, inlets, outlets, outfall ditches, and structures for which the owner thereof or his or her predecessor-in-interest obtained approval from the City for the construction or establishment, shall be maintained in good repair and in substantially the form, condition, and nature which was represented at the time they were constructed. It is the intention of this Section that such permanent BMPs, having once been approved for construction or development, shall not be allowed to

deteriorate to a condition that is in any respect inferior to the condition or state upon which the original approval for construction or development was based. For purposes of this Section, either or both the owner or tenant of the structure or real property shall be considered the responsible party.

(2) Maintenance of all permanent BMPs shall be ensured through the creation of a formal maintenance covenant that must be approved by the City and recorded against the title of the subject property. The covenant shall be binding on all subsequent owners of land served by the permanent BMPs. As part of the covenant, a schedule shall be developed, detailing when and how often maintenance will occur to ensure proper function of the permanent BMPs. The covenant shall also include plans for periodic inspections by the City to ensure proper performance of the BMPs between scheduled cleanouts. The covenant shall provide for access to the facility at reasonable times for periodic inspection by the City, or its contractor or agent, for maintenance by the City at the owner's expense if the owner fails to complete same within 30 days after notice by the City that such maintenance is required, for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Chapter. The covenant shall be memorialized on the subdivision plat, annexation plat, development agreement, or other instrument, or in a separate form acceptable to the City, and shall be recorded in the office of the County Clerk and Recorder.

**(b) Inspections of Permanent Best Management Practices.**

(1) All permanent BMPs must undergo, at the minimum, periodic inspections by the City, as deemed appropriate by the City Manager, to document maintenance and repair needs and to ensure compliance with the requirements of this Chapter and accomplishment of its purposes. These needs may include, but are not limited to: the removal of silt, litter and other debris from all catch basins, inlets, ponds and detention/retention basins, outlet structures and drainage pipes; grass cutting and vegetation removal; and necessary replacement of landscape vegetation. Any maintenance needs found by City inspection or otherwise must be addressed in a timely manner, as determined by the City Manager. The inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the permanent BMPs.

(2) Inspection programs may be established by the City on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the CDPS

Permit; and joint inspections with other agencies inspecting under environmental or safety laws.

- (3) Inspections may include, but are not limited to reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.
- (4) Parties who are responsible for the operation and maintenance of a permanent BMP shall make records of its installation and of all maintenance and repairs, and shall retain the records for at least two years. These records shall be made available to the City during inspection of the facility and at other reasonable times upon request.

(Ord. 06 §1, 2007; Ord. 10, 2009; Ord. 10 §1, 2012)

### **Sec. 19-1-130. - Enforcement.**

- (a) **Investigation.** Whenever the City Manager has cause to believe that there exists, or potentially exists, in or upon any private premises, any condition that constitutes a violation of this Chapter or any permit issued pursuant to this Chapter, the City Manager shall have the right to request entry upon the private premises at any reasonable time to investigate whether the owner or occupant of the premises is complying with all requirements of this Chapter or such permit. In the event that the owner or occupant refuses entry after a request to enter has been made, the City Manager is hereby empowered to seek assistance from the City Attorney and the Municipal Court in obtaining such entry. In addition to the inspections set out in Section 19-1-120(3), investigation may include, but is not limited to, the following: the taking of photographs, interviewing of any person having any knowledge related to the suspected discharge or violation, and access to any and all facilities or areas within the site that may have any effect on the discharge or alleged violation.
- (b) **Order of Compliance; Notice to Stop Activity.** Whenever the Director finds that any person has violated any provision of this Chapter or any permit issued pursuant to this Chapter, the Director may order compliance by verbal direction, written notice of violation, or implement other enforcement action under this Section. In addition to or in lieu of the issuance of a written notice of violation, whenever the Director or his designee determines that any activity is occurring that is not in compliance with the requirements of this Chapter or any permit issued pursuant to this Chapter, the Director may order the activity stopped upon service of written notice upon the responsible owner and/or operator. The owner and/or operator shall immediately stop all activity until authorized in writing by the Director to proceed. If the owner and/or operator cannot be located, the notice to stop activity shall be posted in a conspicuous place upon the area where the activity is occurring and shall state the nature of the violation. It shall be unlawful for any owner and/or operator to fail to comply with any order of the Director made pursuant to this Subsection.
- (c) **Termination of Illicit Connections.** The City Manager may order City representatives to terminate an illicit connection to the municipal separate storm sewer system.

(d) **Immediate Danger to Public Health or Safety.** In the event that a violation of this Chapter or of any permit issued pursuant to this Chapter constitutes an immediate danger to the public health or safety, the Director is authorized to enter upon the subject property, without giving notice, to take any and all measures reasonably necessary to abate the violation.

(e) **Costs of Abatement; Protests; Hearings.**

- (1) If the City abates a violation of this Chapter, within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs, by personal delivery or by mail to the last known address of the owner as shown in the records of the County Assessor. The notice shall be effective upon the date of mailing or personal delivery. The property owner may file a written protest to the Director objecting to the amount of the abatement costs within 15 days after the effective date of the notice.
- (2) If no protest is filed, then the charges shall become due and payable on the date set forth in the notice, which date shall be after the expiration of the time in which to file a protest.
- (3) In the event a protest is filed, a hearing considering such protest shall be held before the City Manager or his or her designee within 30 days after the date of receipt of the written protest.
- (4) The property owner shall be given notice of the hearing by personal delivery or by mail to the last known address of the owner as shown in the records of the County Assessor..
- (5) Hearings shall be conducted informally. Rules of civil procedure and evidence shall not determine the conduct of the hearing or the admissibility of evidence. All testimony shall be given under oath, and a tape recording or other evidence of the verbatim content of the hearing shall be made.
- (6) The burden of persuasion in the hearing shall be upon the protester. The standard of proof to be utilized by the City Manager or his or her designee in making findings and decisions shall be that of competent evidence.
- (7) If any charges are upheld upon completion of such hearing, then such charges shall become due and payable 10 days after the issuance of the decision of the City Manager or his or her designee. The decision with respect to any protest may be appealed pursuant to the provisions of Subsection (h) of this Section.

(f) **Nonpayment; Lien.** If the amount due is not paid within 10 days after the decision of the City Manager or his or her designee or after the expiration of the time in which to file a protest, the charges shall constitute a lien on the property for the amount due. The amount due shall be certified by the City Treasurer to the office of the County Treasurer for collection in the same manner as the collection of general property taxes.

- (g) **Surety.** Where necessary or desirable for the reasonable implementation of this Chapter, the Director may, by written notice, order any owner of a construction site or subdivision development to post surety, in a form approved by the City Attorney and not to exceed a value determined by the Director to be reasonably necessary to achieve consistent compliance with this Chapter. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such surety has been provided to the City.
- (h) Except as set forth in Subsections (e) and (f), with respect to protests of an amount of abatement costs, any person wishing to appeal any decision, action, assessment, determination, or order made and issued by the City Manager in interpreting, enforcing or implementing the provisions of this Chapter shall file an appeal to the City Board of Adjustment and Appeals within 30 days of the decision, action, assessment, determination, or order of the City Manager. Any such appeal shall be determined pursuant to the provisions of Section 16-7-540 of this Code.

(Ord. 06 §1, 2007; Ord. 10 §1, 2012)

### **Sec. 19-1-140. - Penalties.**

- (a) It is unlawful and an offense for any person to do or perform, or cause or permit to be done or performed, any act that is prohibited or declared to be unlawful by this Chapter or to fail to do or perform, or cause or permit a failure to do or perform, any act that is required by this Chapter. Further, it is unlawful and an offense for an owner to fail to comply with the requirements of any stormwater permit issued pursuant to this Chapter or any order of the Director or City Manager made pursuant to the provisions of Section 19-1-130 above. Violators shall be punishable as provided in Chapter 1, Section 1-4-20 of this Code. Each day or part of a day during which any violation occurs or continues shall constitute a separate offense.
- (b) Any condition caused or permitted to exist in violation of any of the provisions of this Chapter, or in violation of the provisions of any permit or order issued under this Chapter, is a threat to public health, safety, and welfare and is declared and deemed a public nuisance. Any court of competent jurisdiction may enjoin violations of this Chapter upon proof of such violations. If any person violates any provision of this Chapter or the orders or permits issued hereunder, or discharges into the storm drainage system or into state waters contrary to the provisions of this Chapter, the City may commence an action in a court of record for appropriate legal and equitable relief. In such action, the City may recover from the defendant reasonable attorney fees, court costs, deposition, and discovery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation, if the City prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this Chapter shall become liable to the City for any expense, loss, or damage to the City or to the storm drainage system occasioned by such violation.

- (c) Any person who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation, or certification in any hearing, or in any permit application, record, report, plan, or other document filed or required to be maintained pursuant to this Chapter, or who falsifies, tampers with, bypasses or knowingly renders inaccurate any monitoring device, testing method, or testing samples permitted or required under this Chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed the maximum fine authorized in Section 1-4-20 of this Code per day for each violation, or imprisonment for a period not to exceed one year, or both.
- (d) The remedies provided for in this Chapter are cumulative and the exercise of any one or more remedies shall not prejudice any other remedies that may otherwise be pursued for a violation of this Chapter or any order or permit issued under this Chapter. 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.

(Ord. 06 §1, 2007; Ord. 10 §7, 2013)

### **Sec. 19-1-150. - Upset Condition.**

- (a) **Generally.** An upset condition determination constitutes an affirmative defense to an action brought for noncompliance with this Chapter, or with any order or permit issued under this Chapter, when the terms of this Chapter or any order or permit issued under this Chapter are met. An owner who wishes to establish the affirmative defense of upset must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (1) An upset occurred and that the causes of the upset can be identified;
  - (2) The facility or operation was at the time being properly operated;
  - (3) Notice of the upset was submitted as required in Section 19-1-60; and
  - (4) Remedial measures were implemented as required.
- (b) **Burden of Proof.** In any enforcement proceeding the one seeking to establish the occurrence of an upset has the burden of proof.

(Ord. 06 §1, 2007)