

COUNCIL BILL NO. 2020-06

ORDINANCE NO. 2020-06

AN ORDINANCE AMENDING CHAPTER 32 OF TITLE 13 OF THE BUTTE-SILVER BOW MUNICIPAL CODE ENTITLED "STORM WATER MANAGEMENT"; SPECIFICALLY AMENDING SECTIONS 13.32.010, 13.32.020, 13.32.030, 13.32.210, 13.32.220, 13.32.310, 13.32.330, 13.32.340, 13.32.360, 13.32.420, 13.32.430 AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

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

SECTION 1: Amendment: Ordinance 10-13 and Section 13.32.010 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

ARTICLE I -GENERAL PROVISIONS

"13.32.010- Purpose. The purpose of this Chapter is to establish storm water management requirements and controls to protect and

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

SECTION 2: Amendment: Ordinance 10-13 and Section 13.32.020 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

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

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

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

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

D. SAME.

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

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

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

Montana Department of Environmental Quality  
(MDEQ)."

SECTION 3: Amendment: Ordinance 10-13 and Section 13.32.030  
of the Butte-Silver Bow Municipal Code (B-SB MC)  
shall be and are hereby amended to read as  
follows:

"13.32.030 Definitions.

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

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

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

As-built plan means a set of engineering or site

drawings that delineate the specific permitted storm water management features as actually constructed.

Authorized enforcement agency means the Director, employees or designees of the Butte-Silver Bow Public Works Department are designated to enforce this chapter.

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

Butte-Silver Bow means the local government of

the City and County of Butte-Silver Bow, Montana, including all officers, employees, agents, boards, departments, commissions and authorities and includes all of that area within its jurisdiction with authority to inspect or enforce storm water compliance.

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

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

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

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

purposes.

Hazardous materials means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

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

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

a. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm water system including but not limited to any

conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm water system and any connections to the storm water system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency.

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

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

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

Land disturbing activity means any activity

which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial, removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or artificial watercourse.

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

Low Impact Development (LID) means systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat.

Maintenance agreement means a legally recorded document that acts as a property deed

restriction, and which provides for long-term maintenance of storm water management practices.

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

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC ' 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis. The Montana Department of Environmental Quality administers this program in Montana.

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

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

Non-structural BMP means any institutional and pollution-prevention practice designed to prevent or minimize pollutants from entering stormwater runoff. They do not involve fixed, permanent facilities and typically consist of changing behavior through administrative regulation, persuasion, and/or economic means.

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

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

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law, and acting as either the owner or as the owner's agent. Butte-Silver Bow is considered a person for

purposes of this ordinance when acting as either the owner or as the owner's agent.

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

Responsible party means a business entity, franchised utility company, developer, landowner, contractor or holder of a building

permit who is required to comply with the terms of this chapter.

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

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

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

Storm water management means the use of structural or non-structural practices that are designed to reduce storm water runoff pollutant

loads, discharge volumes, and/or peak flow rates.

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

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

Structural BMP means any stationary or permanent BMP that is designed, constructed and operated to prevent to reduce the discharge of pollutants to stormwater.

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

deposit of soil materials.

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

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

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

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

## ARTICLE II: CONSTRUCTION/POST CONSTRUCTION STORM WATER

### REQUIREMENTS

SECTION 4: Amendment: Ordinance 10-13 and Section 13.32.030 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

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

A. A. Land disturbance activities on agricultural land for production of plants and animal useful to man (crops, dairy, poultry, livestock, etc.), except if the land disturbance includes the construction of a major building which requires the issuance of a building permit.

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

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

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

E. Any activity for which a permit or

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

SECTION 5: Amendment: Ordinance 10-13 and Section 13.32.220 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

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

requirements of this Chapter.

A. Application Requirements. Any landowner or responsible party desiring a permit for a land disturbance activity shall submit to the Butte-Silver Bow Public Works" Department a Storm Water Management Permit Application on a form provided for that purpose. The permit application shall be accompanied by the following in order to be considered:

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

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

with requirements of the current MPDES general permit for storm water discharge associated with construction activity, ~~permit number MTR1000000~~.

B. Application Procedure.

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

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

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

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

shall inform the applicant whether the application is approved.

5. If the permit is approved by the Butte-Silver Bow Public Works Department, the applicant can secure all appropriate development permits and proceed with the proposed project.

6. If the permit application is disapproved, the Butte-Silver Bow Public Works Department will provide a letter detailing the application deficiencies and the applicant may revise and resubmit the ~~submittal~~ application. If additional information is submitted, the Butte-Silver Bow Public Works Department shall have ten (10) business days from the date the additional information is received to inform the applicant that the application is either approved or disapproved.

7. The determination to disapprove of a permit application may be appealed as defined in subchapter 13.32.080 by filing a written notice of appeal within thirty (30) days of the

decision by the Butte-Silver Bow Public Works Department.

C. Application Review Fee. There will be no fee associated with the first submittal and review of the stormwater management permit application. If the permit application is disapproved, a letter will be provided detailing deficiencies in the application package. If an application is resubmitted and identified deficiencies are not addressed or further deficiencies are identified, applicant shall be charged a review fee of \$130.00, not to exceed a total of 8 hours. This fee must be paid prior to final approval and receipt of required permits. Each subsequent resubmittal shall be charged this additional review fee.

GD. Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date the Butte-Silver Bow Public Works Department notifies the permit holder that all storm water management practices

have passed the final inspection required under permit conditions as defined in the Municipal Storm Water Engineering Standards.”

ARTICLE III. ILLICIT DISCHARGE REQUIREMENTS

SECTION 6: Amendment: Ordinance 10-13 and Section 13.32.310 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

“13.32.310 Discharge Prohibitions.

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

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

(1) The following discharges are exempt from discharge prohibitions established by this Chapter: landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, , air conditioning condensation, springs, , natural riparian habitat or wetland flows, fire fighting activities, and any other water source not containing pollutants.

(2) The following discharges are exempt from discharge prohibitions established by this Chapter with written permission from the Butte-Silver Bow Public Works Department: a discharge or flow from waterline flushing or disinfection that contains no harmful quantity of residual chlorine or any other chemical used in line disinfection, a discharge or flow of uncontaminated storm water or ground water pumped from an excavation, a discharge or flow from uncontaminated ground water, foundation or footing drains (not including active groundwater

dewatering systems), sump pumps, noncommercial or charity car washes, swimming pools (if dechlorinated) and discharges associated with dye testing.

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

B. Prohibition of Illicit Connections.

The construction, use, maintenance or continued existence of illicit connections to the storm water system is prohibited. This prohibition

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

SECTION 7: Amendment: Ordinance 10-13 and Section 13.32.330 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

"13.32.330 Monitoring of Discharges.

A. Access to Facilities. The Butte-Silver Bow Public Works Department or its designated representative shall be permitted to enter and inspect facilities subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter.

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

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

(3) The Public Works Department shall have the right to set up on any permitted facility such devices as are necessary in its opinion to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The Public Works Department has the right to require the discharger to install

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

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

(6) Unreasonable delays in allowing the Public Works Department access to a permitted facility is a violation of a storm water discharge permit and of this Chapter. The operator of a facility with a MPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies

the Public Works Department reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Chapter.

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

SECTION 8: Amendment: Ordinance 10-13 and Section 13.32.340 of the Butte-Silver Bow Municipal Code (B-SB MC)

shall be and are hereby amended to read as follows:

"13.30.340 Requirement to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices and/or Low Impact Development (LID).

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

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

B. Low impact Development The purpose of this section is to provide additional and optional stormwater management techniques beyond the standard Best Management Practices listed in Section 13.32.340 (A). These Low Impact Development (LID) techniques strive to mimic pre-disturbance hydrological processes by

emphasizing site conservation, use of on-site natural features, site planning, and distributed stormwater management practices. LID is encouraged for site development and redevelopment. Certain LID techniques may be used to fulfill the requirements set forth in the Butte-Silver Bow Municipal Storm Water Engineering Standards, as approved by the Public Works Director. LID is a requirement of the municipal separate storm sewer system (MS4), as such specific design considerations will be updated over time in the Butte-Silver Bow's Municipal Storm Water Engineering Standards.

SECTION 9: Amendment: Ordinance 10-13 and Section 13.32.360 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

"13.32.360 Watercourse Protection. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the

property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly impact the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. No construction or alteration of a watercourse is allowed without meeting the requirements of this chapter, as well as all required permits from other local, state and federal jurisdictions."

#### ARTICLE IV. STORM WATER FEES

SECTION 10: Amendment: Ordinance 10-13 and Section 13.32.420 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

"13.32.420 Purposes of the Fund. The Storm Water Utility Fund shall be used for the

following purposes:

A. All costs of administration and implementation of the Storm Water Utility Division, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency storm water management requirements.

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

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

D. Operation and maintenance of the storm water system.

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

F. Water quality monitoring and water quality programs.

G. Retrofitting developed areas for pollution control.

H. Assessment, stormwater application and engineering report reviews, stormwater construction permit reviews, inspection and enforcement activities.

I. Billing and administrative costs.

J. Public education.

K. Other activities which are reasonably required."

SECTION 11: Amendment: Ordinance 10-13 and Section 13.32.430 of the Butte-Silver Bow Municipal Code (B-SB MC) shall be and are hereby amended to read as follows:

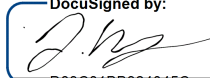
13.32.430 Applicability of Storm Water Utility Fee. Except as provided in Section 13.32.210, fees for collection and conveyance of storm water shall be imposed on the owners of all parcels within the City and County of Butte-

Silver Bow, which is hereby established as the  
Storm Water Utility District Boundary."

SECTION 12: Effective Date. This Chapter shall be in full  
force and effect from and after thirty (30) days  
after its passage and approval.

PASSED this 18th day of November, 2020.

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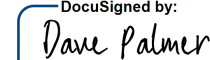


JOHN P. MORGAN

CHAIRMAN OF THE COUNCIL OF COMMISSIONERS

APPROVED this 18th day of Nov, 2020.

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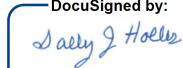
DAVE PALMER

CHIEF EXECUTIVE

ATTEST:

SALLY J. HOLLIS  
CLERK AND RECORDER

DocuSigned by:



BY Sally Hollis

TITLE Clerk & Recorder

APPROVED AS TO FORM:

DocuSigned by:

*Eileen Joyce*

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EILEEN JOYCE  
COUNTY ATTORNEY

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*Brendan McDonough*

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BRENDAN McDONOUGH  
CHAIRMAN, JUDICIARY COMMITTEE