

Ordinance 2020-44

**AN ORDINANCE AMENDING THE MUNICIPAL CODE OF PARK CITY, UTAH, CHAPTER 13 WATER AND STORMWATER CODE BY ADDING SECTION 13-4 REGULATION AND ENFORCEMENT OF STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES**

WHEREAS, the Municipal Code was adopted by the City Council of Park City, Utah to promote the health, safety and welfare of the residents, visitors, and property owners of Park City; and

WHEREAS, the Municipal Code implements the goals, objectives and policies of the Park City General Plan to maintain the quality of life and experiences for its residents and visitors; and to preserve the community's unique character and values; and

WHEREAS, the City owns and operates a stormwater-collection system which has been developed over many years and consists of a network of natural conveyances, manmade structures, and conduits that collect, control, and route stormwater runoff; and

WHEREAS, pursuant to the Federal Clean Water Act, 33 U.S.C. Chapter 26, the U.S. Environmental Protection Agency (EPA) has established rules and regulations setting for the National Pollutant Discharge Elimination System permit requirements for municipal stormwater discharges (Phase II Permit Program);

WHEREAS, the State of Utah, through its Department of Environmental Quality, has been delegated by EPA to administer the Phase II Permit Program and has adopted state rules and regulation implementing the Phase II Permit Program; and

WHEREAS, the City is required, among other things, to implement a stormwater-management program and associated ordinance to (1) control the contribution of pollutants to the stormwater system associated with industrial sites, construction sites, and other activities within the City; (2) prohibit illicit discharges of pollutants into the stormwater-collection system, including spills, dumping, or disposal of materials other than stormwater; (3) promote implementation and maintenance of long-term stormwater controls on development sites; (4) educate City residents and businesses about the stormwater program; and (5) enforce compliance with the program and ordinance; and

WHEREAS, the Council finds that inadequate management of the quantity and quality of stormwater runoff causes flooding and property damage; carries concentrations of heavy metals, oils, and toxic materials into receiving and ground waters; and degrades the integrity of the integrity of City neighborhoods and infrastructure; and

WHEREAS, the Council finds that such are hazards and pose a significant risk to public health, safety, and welfare; and

WHEREAS, the City Council conducted a public hearing at its regularly scheduled meeting on September 17, 2020; and

WHEREAS, it is in the best interest of the residents of Park City, Utah to the amend the Municipal Code to be consistent with the Federal and State law and to be consistent with the values and identified goals of the Park City community and City Council to protect health and safety, maintain the quality of life for its residents, preserve and protect the residential neighborhoods, and preserve the community's unique character.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Park City, Utah as follows:

SECTION 1. AMENDMENTS TO TITLE 13 – Water and Stormwater Code. The recitals above are incorporated herein as findings of fact. Chapter 13-4 of the Water And Stormwater Code of Park City is hereby amended as attached (see Attachment A).

SECTION 2. EFFECTIVE DATE. This Ordinance shall be effective upon publication.

PASSED AND ADOPTED this 17<sup>th</sup> day of September, 2020

PARK CITY MUNICIPAL CORPORATION

DocuSigned by:  
*Andy B*

0340104CDC42481

Andy Beerman, Mayor

Attest:



DocuSigned by:

*Michelle Kellogg*

E5F905BB533F431

Michelle Kellogg, City Recorder

Approved as to form:

DocuSigned by:

*Mark Harrington*

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City Attorney's Office

**ATTACHMENT A - AN ORDINANCE PROVIDING FOR THE  
REGULATION AND ENFORCEMENT OF STORM WATER DISCHARGES  
ASSOCIATED WITH CONSTRUCTION ACTIVITIES**

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### **13-4-1. Purpose**

The purpose of this Chapter is to prevent the discharge by storm water runoff of sediment and other pollutants from land disturbance activities such as excavating, grading, filling, or grubbing. These activities are a major source of pollution to waterways and storm drain systems located within Park City and the surrounding area. Storm water runoff carries sediment from sites where these activities occur into nearby waterways, lakes, canals, irrigation systems, and storm drain systems. Such sediment clogs storm drain systems, pollutes the water in the streams and lakes, and damages wildlife habitat and water quality.

### **13-4-2. Definitions**

For the purpose of this Chapter, the definitions listed hereunder shall be construed as specified in this section.

- A. ALTERNATIVE BEST MANAGEMENT PRACTICES (BMPs). BMPs that do not conform to BMP Standards identified by the City Engineer. The City Engineer may, in his discretion, approve a SWPPP containing alternative BMPs if the alternative BMPs will satisfy the objectives of this Chapter.
- B. BEST MANAGEMENT PRACTICES (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the City. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, off-site vehicular tracking of Pollutants, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- C. BEST MANAGEMENT PRACTICES STANDARDS (BMP Standards). In order to provide uniform BMPs and to facilitate the issuance of Land Disturbance Permits, the City Engineer may identify for certain types of land Disturbance Activities certain sets of BMPs that most effectively or practicably mitigate the discharge of pollutants due to storm water. These BMP Standards may be included in any document that is maintained by the City Engineer and relates to engineering standards to facilitate the issuance of Land Disturbance Permits.
- D. COMMENCEMENT OF CONSTRUCTION. The initial disturbance of soils associated with clearing, Grading or Excavating activities or other construction activities, excluding activities necessary to install erosion Control Measures under a Land Disturbance Permit.
- E. COMMON PLAN PERMIT. A permit issued through the Utah State Department of Environment Quality. This permit may be commonly referred to as a Notice of Intent or NOI.
- F. CONSTRUCTION GENERAL PERMIT. A Permit issued through the Utah State Department of Environment Quality. This permit may be commonly referred to as a Notice of Intent or NOI.
- G. CONTROL MEASURE. Any Best Management Practice or other method used

to prevent or reduce the discharge of Pollutants.

- H. EXCAVATION. The mechanical removal of earth material.
- I. FILL. A deposit of earth material placed by artificial means.
- J. FINAL STABILIZATION. A point in time at which all Land Disturbance Activities at the site have been completed, and a uniform (e.g. evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of rip rap, gabions, or geotextiles) have been employed. In some parts of the City, background native vegetation will cover less than 100% of the ground (e.g. arid areas). Establishing at least 70% of the natural cover of native vegetation meets the vegetative cover criteria for final stabilization. For example, if the native vegetation covers 50% of the ground, 70% of 50% would require 35% cover for final stabilization.
- K. GRADING. “Grading” as used in this Chapter is defined in Section 15-15-1.
- L. GRUBBING. “Grubbing” as used in this Chapter is defined in Section 15-15-1.
- M. LAND DISTURBANCE ACTIVITY. Any Excavation, Grading, placement of Fill, or Grubbing.
- N. LAND DISTURBANCE PERMIT. A permit issued by the City Engineer authorizing the permittee to engage in specific Land Disturbance Activities. The permit may require the implementation of a SWPPP or any other conditions to mitigate the discharge of Pollutants.
- O. NOTICE OF INTENT (NOI). A Construction General Permit or Common Plan Permit.
- P. PERSON. Any individual, corporation, partnership, association, public utility, company or body politic, including Park City Municipal Corporation and any agency of the State of Utah and the United States Government.
- Q. POLLUTANT. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
- R. SITE. Any lot or parcel of land or contiguous combination thereof, under the same ownership, where a Land Disturbance Activity is performed or permitted.
- S. STORM WATER. Storm water runoff, snow melt runoff, and surface runoff or drainage.
- T. STORM WATER POLLUTION PREVENTION PLAN (SWPPP). A plan for the mitigation of discharge of Pollutants from a Site, conforming to BMP Standards or identifying Alternative BMPs. At a minimum, the SWPPP shall have: a drawing of the location of the intended Land Disturbance Activity; the pertinent dimensions thereof; and the layout, typical sections, and details of the Control Measures to be used.

### **13-4-3. Prohibition on Unpermitted Land Disturbance Activities**

#### **A. General Prohibition on Unpermitted Land Disturbance Activities**

No Person shall make or cause to occur any Land Disturbance Activity except in compliance with a Land Disturbance Permit issued under Section 13-4-4.

#### **B. Emergency Conditions**

An emergency Land Disturbance Activity may be made without a Land Disturbance Permit if the reason for the excavation or grading or placement fill is to prevent imminent loss of life or damage to property. In such emergency situations, the Person making the Land Disturbance Activity shall contact the City Engineer's Office to secure a Land Disturbance Permit at the earliest possible time, but in no case later than the first working day following the emergency work. None of the provisions of this Chapter are waived for emergency situations except for the prior permit requirement.

#### **C. Exemptions**

The following activities are exempt from the requirements of this Chapter:

- (1) actions by a public agency or utility, Park City, or other governmental agency to remove or alleviate an emergency condition, restore utility service, or reopen to traffic a public thoroughfare;
- (2) actions by any Person if the City determines and documents in writing that the actions are necessary to remove or alleviate an emergency condition, restore utility service, or reopen to traffic a public thoroughfare;
- (3) landscape maintenance activities on fully developed property; or
- (4) bona fide agricultural and farming operations which constitute the principle use of any parcel or tract of ground located in the City and which meet the requirements of the zoning for that portion of the City in which the operation is located.

### **13-4-4. Land Disturbance Permit**

#### **A. Requirements**

1. The City Engineer may issue a Land Disturbance Permit, in a form to be determined by the City Engineer, for the discharge of Pollutants associated with Land Disturbance Activities upon condition that such discharge will meet either: (a) any Best Management Practices Standards (BMP Standards) identified by the City Engineer, or (b) such conditions as the City Engineer determines are necessary to fulfill the requirements of this Chapter. A Land Disturbance Permit shall be required for any project that requires a permit under any other ordinance, development code, or building permit issued by Park City that includes any Land Disturbance Activity. Where required by state law, City permits shall require the submission of a Utah Pollutant Discharge Elimination System permit and NOI from the State of Utah Division of Water Quality.
2. The permit holder shall comply with all provisions of the required permits at all times.

## B. Applications

Applications shall be made using permit forms published by the City Engineer and completed by the owner of the property on which the work is being done. Applications shall be made, in the case of work within a public right-of-way, by the firm, public utility, public agency or corporation actually doing the work, or in the case of work within a private road or private road right-of-way, by the owner of the road or association responsible for the maintenance of the road. Applications for all permits shall be made to the City Engineer's office and state the purpose therefore; the person, firm, public utility, or corporation doing the actual work; and the name of the person, firm, public utility, or corporation for whom or by which the work is being done. The application shall contain:

1. an agreement that the applicant will comply with all ordinances and laws of Park City, the State of Utah, and the Federal Government relating to the work to be done;
2. an agreement that the applicant shall indemnify the City for any loss, liability, or damage that may result from or because of the making, placement, existence, or manner of guarding or constructing any such Land Disturbance Activity; and
3. either:
  - a. a copy of the applicant's Construction General Permit or Common Plan Permit, if applicable, or
  - b. a Storm Water Pollution Prevention Plan (SWPPP).

## C. Fees

The City Council may adopt a review and inspection fee to provide for the requirements of this Chapter. Such fee, if adopted, shall accompany each application for a permit.

## D. Review and Approval of Applications

1. The City Engineer or his designee will review each application for a Land Disturbance Permit to determine its conformance with the provisions of this Chapter. The City Engineer may, in his discretion, approve a SWPPP containing Alternative BMPs. Within fifteen (15) days after receiving an application, the City Engineer shall provide one of the following responses in writing:
  - a. Approval of the permit application and issuance of the Land Disturbance Permit;
  - b. Approval of the permit application, subject to such reasonable conditions as may be necessary to substantially secure the objectives of this Chapter, and issuance of the Land Disturbance Permit subject to these conditions; or
  - c. Denial of the permit application, indicating the reason(s) for the denial.
2. If the City Engineer has granted conditional approval of the permit, the applicant shall submit a revised plan that conforms to the conditions established by the City Engineer. However, the applicant shall be allowed to proceed with his land disturbance activities so long as those activities conform to the conditions established by the City Engineer

3. No development plans will be released until the Land Disturbance Permit has been approved and the applicant has paid in full all plan review and inspection fees.

#### E. Content of Permit

The Land Disturbance Permit shall contain all elements required under the SWPPP or the most current Construction General Permit or Common Plan Permit, whichever is applicable to the site. The Land Disturbance Permit may require more than the minimum control requirements specified within the SWPPP or Construction General Permit or Common Plan Permit if hydrologic, geologic, or topographic conditions warrant, or if unique flooding, stream channel erosion, or water quality problems exist upstream or downstream from a proposed project.

#### F. Appeals

An applicant for a Land Disturbance Permit whose application has been denied or approved with conditions may appeal the denied or imposed conditions in the same manner as other impact fees, pursuant to Section 11-13-5.

### **13-4-5. Proper Operation and Maintenance**

#### A. Installation of Control Measures

The permittee shall install any Control Measures required by the Land Disturbance Permit before commencing any construction activities on the site to which the Land Disturbance Permit applies, or at such time as indicated on the Land Disturbance Permit. The Control Measures shall be properly installed and maintained in accordance with the manufacturer's specifications and good engineering practices. Prior to commencing other construction activities, the permittee shall contact the Park City Building Department to schedule an inspection of the installed Control Measures. This inspection may be performed as part of a Limits of Disturbance inspection under Sections 15-7.3-2(J), 15-7.3-3(H), or 11-15-4(K), if any such inspection is required for the same project.

#### B. Maintenance of Control Measures

The permittee shall maintain such Control Measures on the site in good condition until the disturbed areas have achieved Final Stabilization, and the measures are no longer necessary to prevent or minimize, to the maximum extent practicable, the discharge of sediment, debris, and other Pollutants from the site by Storm Water runoff or vehicular tracking. Once any temporary Control Measures have been deemed no longer necessary, or once the site is finally stabilized, the temporary Control Measures shall be removed from the site in a timely manner.

#### C. Removal of Control Measures

Upon completion of Land Disturbance Activities under the Land Disturbance Permit, the owner shall request an inspection from the City Engineer. Once the City inspector deems the site stabilized, the owner shall remove in a timely manner any temporary Control Measures.

### **13-4-6. Inspection and Entry**

- A. The permittee shall allow authorized employees and representatives of Park City, State of Utah Division of Water Quality, and the United States Environmental Protection Agency to enter the site to which the Land Disturbance Permit applies and to inspect the temporary and permanent Control Measures installed and maintained by the permittee or property owner. Such entry and inspection may be made at any time during or a reasonable time after construction. If permanent Control Measures are required, such entry and inspection may be made in perpetuity.
- B. Inspections During Construction
  - 1. For construction sites requiring a Construction General Permit or Common Plan Permit, inspection frequency and maintenance and repair consistent with BMPs are as defined in such permit. Sites deemed high priority by the City shall also be inspected by the owner after every rainfall event in accordance with the permit.
  - 2. All other construction sites shall at a minimum conduct a bi-weekly visual inspection of BMPs to ensure they are in good condition. Disturbed areas and areas used for storage of materials exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering a drainage system.
  - 3. Repair to BMPs shall be made in accordance with the Land Disturbance Permit or as noted in the inspection report, whichever is more stringent.

### **13-4-7. Revocation or Suspension of Land Disturbance Permit.**

#### **A. Reasons for Revocation or Suspension**

The City Engineer or his designee may revoke or suspend a Land Disturbance Permit upon the occurrence of any of the following:

- a. failure of the permittee to comply with any condition of the Land Disturbance Permit;
- b. failure of the permittee to comply with any provision of this Chapter or any other applicable law, ordinance, rule or regulation; or
- c. a determination by the City Engineer that the Control Measures implemented by the permittee pursuant to the Land Disturbance Permit are inadequate to prevent or minimize, to the maximum extent practicable, the discharge of sediment, debris or other Pollutants from the construction site by Storm Water runoff or vehicular tracking.

Revocation or suspension of a Land Disturbance Permit shall suspend all related work on the subject property(ies).

#### **B. Notice**

Before revoking or suspending a Land Disturbance Permit, Park City shall mail the permittee written notice of non-compliance or personally serve notice to the person

responsible for maintaining the erosion control and sediment control measures. The notice shall state the nature and location of the non-compliance and shall specify what action is required for the permittee to avoid revocation or suspension of the permit, which in the absence of exceptional circumstances shall not be less than 7 working days or more than 10 working days. The notice shall be sent by certified mail to the address listed for the permittee on the application or delivered in person to the responsible party on site.

C. Exceptional Circumstances

For the purposes of this Chapter, exceptional circumstances include, but are not limited to, situations which involve risk of injury to persons, damage to storm drain facilities, imminent release of Pollutants to waterways, or damage to other property. Park City may take any action deemed necessary to alleviate any such exceptional circumstances defined above and may bill the permittee, property owner, developer, or contractor responsible for creating the exceptional circumstances for the cost of alleviating said circumstance.

D. Stop Work Order

A stop work order on all construction activity on the site may be issued upon the discovery of any condition that the City Engineer or his appointed designee determines is in violation of any portion of the Land Disturbance Permit. No construction activity may be commenced or continued on any site for which a permit has been revoked or suspended and a stop work order issued until the permit has been reinstated or reissued.

E. Reinstatement

A Land Disturbance Permit may be reinstated or reissued upon review and approval of a written description of the permittee's proposed actions to bring the Control Measures into compliance with all provisions of this Chapter, or upon submission, review, and approval of a revised SWPPP.

### **13-4-8. Penalties**

A. Criminal Penalties

Any person failing to comply with the provisions of this Chapter shall be guilty of a Class B misdemeanor and on conviction therefore shall be punished by fine or by imprisonment for not more than six months or by both fine and imprisonment.

B. Continuing Offenses Deemed Daily Violation

In all instances where the violation of this Chapter is a continuing violation, a separate offense shall be deemed committed on each day during or on which the violation occurs or continues.

C. Civil Penalties

In addition to criminal actions, Park City may bring for violations of this Chapter civil actions including injunctions, mandamus, abatement, civil damages, and any other remedies provided by law.

D. Additional Penalties Provided by State Law and Federal Law

In addition to municipal penalties, any person violating any provisions of this Chapter may be subject to federal and state penalties, including but not limited to Utah Code § 19-5-115.

E. Control Measures Undertaken by Park City

If a permittee fails to comply with the Land Disturbance Permit, Park City shall, in its discretion, have the right to have Control Measures installed and maintained by City personnel or to hire a private contractor to perform such work at the expense of the permittee, property owner, developer or contractor responsible for such measures. The City may assess said expenses against a bond posted by the permittee.

**13-4-9. Compliance with Federal and State Law**

Nothing contained in this Chapter is intended to relieve any Person from any obligation to comply with applicable federal and/or state laws and any other regulations pertaining to clean water and/or storm water runoff and erosion control.

**13-4-10. Perimeter Control Exemptions**

A. Purpose

Exemptions for silt fence or other perimeter controls are for construction sites where such controls may be ineffectual, excessive, and/or detrimental to nearby water resources and other natural resources.

B. Definition

Certain construction sites may be exempt from installing silt fences or other temporary perimeter controls if the site meets the following criteria.

C. Criteria

All exemptions must be approved by the Park City Engineer and are limited to the following:

a. projects where:

- i. total disturbance is less than 1 acre;
- ii. a 50 foot wide vegetated buffer exists down gradient from the disturbed portion(s) of the site;
- iii. a 100 foot wide vegetated buffer exists down gradient between the disturbed portions(s) of the site and any live stream or existing drainage way;
- iv. the site and vegetated buffer have less than 5% slope (slope must be documented);
- v. and the vegetated buffer has at least 70% ground cover;

b. linear construction projects such as pipelines or utility work that do not discharge to waterways; or

c. Sites bound by natural or man-made features that would prohibit discharge from the Site.

**13-4-11. Severability**

Should any section, paragraph, sentence, clause, or phrase of this Chapter be declared unconstitutional or invalid for any reason, the remainder of this Chapter shall not be affected thereby.

**13-4-12. Effective Date**

This Chapter shall become effective after publication of such in accordance with applicable state law.