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**CITY OF FIRCREST
ORDINANCE NO. 1704**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
FIRCREST, WASHINGTON, AMENDING ORDINANCE NO. 1640
SECTION 1 FMC 20.24 STORMWATER MANAGEMENT.**

WHEREAS, the Fircrest City Council recognizes the necessity to amend the Fircrest Municipal Code (FMC) in order to stay in compliance of changes and updates to the City's NPDES permit and Western Washington Phase II Municipal Permit requirements; and

WHEREAS, City Staff, with the aid of the City's on-call consultant, KPG Psomas, P.S., made recommendations to modify and update the FMC; and

WHEREAS, the proposed FMC changes have been reviewed by City Staff and undergone legal review. Now, Therefore,

THE CITY COUNCIL OF THE CITY OF FIRCREST DO ORDAIN AS FOLLOWS:

Section 1. Section 1 of 20.24.020 Definitions.

(a) For all development, redevelopment, and construction site activities, the definitions published in Appendix 1 of the current Western Washington Phase II municipal stormwater permit shall govern.

(b) In this chapter, "director" means the public works director appointed under Chapter 2.34 FMC. (Ord. 1640 § 2, 2019).

Section 2. Section 2 20.24.050 Long-term stormwater facility operation and maintenance.

(a) The person or persons holding title to the property shall remain responsible for the facility's continual performance, operation and maintenance in accordance with the standards and requirements of the current edition of the "Stormwater Management Manual for Western Washington," published by the Washington State Department of Ecology, and remain responsible for any liability as a result of these duties.

(b) The city is authorized to inspect a private stormwater drainage facility at least annually unless there are maintenance records justifying a different frequency pursuant to FMC 20.24.060. (Ord. 1640 § 2, 2019).

Section 3. Section 3 20.24.060 Requirement to implement best management practices.

(a) Best management practices (BMPs) as specified in the Ecology Manual shall be applied to:

(1) Any activity that might result in a prohibited discharge; and

(2) All existing, new, and proposed businesses and commercial entities (including publicly and privately owned institutional, commercial, and industrial sites; multi-family sites and home-based businesses) that have the potential to discharge pollutants into the city's stormwater drainage system regardless of whether the property is covered under a separate NPDES permit.

a. Pollutants shall be controlled by implementing appropriate source control and/or treatment BMPs as specified in the Ecology Manual.

1 b. Pollutants associated with land uses or activities not addressed in the Ecology Manual
2 shall be controlled using BMPs reviewed and accepted by the city.

3 (b) If, upon inspection of existing BMPs, the director determines that the BMPs are
4 inadequate at controlling prohibited discharges or pollutants, the director may require
5 any person responsible for a property or premises which is, or may be, the source of a
6 prohibited discharge or pollutant to implement, at their own expense, additional BMPs
7 to prevent the further discharge of prohibited discharges or pollutants into the
8 stormwater drainage system.

9 (c) Failure to implement or maintain the required BMPs shall constitute a violation of
10 this chapter and enforced as provided in Section 20.24.080.

11 **Section 4. Section 4 20.24.070 Inspection.**

12 (a) Authority. Whenever implementing the provisions of this chapter or whenever there
13 is cause to believe that a violation of this chapter has been or is being committed, the
14 city's inspector is authorized to inspect, during regular working hours and at other
15 reasonable times, all new development, redevelopment, and construction sites within
16 Fircrest to determine compliance with the provisions of this chapter. The city shall have
17 the authority to periodically inspect private stormwater facilities for compliance with
18 this chapter, and the city shall have the authority to inspect sources of prohibited
19 stormwater discharges and pollutants and BMPs.

20 (b) Inspection Procedures.

21 (1) Prior to making any inspections on private property, the inspector shall present
22 identification credentials, state the reason for the inspection and request entry. Any
23 private landowner engaging in new development, redevelopment, or construction
24 activities as defined under this chapter must, as a condition of the building permit
25 required for such development, consent to the creation of an easement for purposes of
26 ingress and egress for inspection of the site.

27 (2) If the property or any building or structure on the property is unoccupied, the
28 inspector shall first make a reasonable effort to locate the owner or other person(s)
29 having charge or control of the property or portions of the property and request entry.

30 (3) If after reasonable effort the inspector is unable to locate the owner or other person(s)
31 having charge or control of the property, and has reason to believe the condition of the
32 stormwater system creates an imminent hazard to persons or property, the inspector may
enter.

(4) Unless entry is consented to by the owner or person(s) in control of the property or
portion of the property or unless conditions are reasonably believed to exist which create
imminent hazard, the inspector shall obtain a search warrant, prior to entry, as authorized
by the laws of the state of Washington.

(5) The inspector may inspect the stormwater system without obtaining a search warrant
provided for in subsection (b)(4) of this section, provided the inspection can be
conducted while remaining on public property or other property on which permission to
enter is obtained.

(6) Inspection of private stormwater facilities may include the following activities:

- 1 a. Inspection, sampling, and testing of any constructed stormwater facility for the
2 purpose of determining compliance with standards for inspection, maintenance, or repair
3 adopted by the director and applicable to the facility;
- 4 b. Investigation of the integrity of any constructed stormwater facility components using
5 any appropriate test deemed necessary, including, but not limited to, dye or smoke
6 testing or video surveys;
- 7 c. Creation of records reasonably necessary to document conditions related to
8 compliance with the standards described above, including but not limited to
9 photographs, video, measurements, and drawings; and
- 10 d. Inspection and copying of nonconfidential records relating to inspection,
11 maintenance, or repair of the constructed stormwater facilities.

12 (7) Inspections of sources of prohibited stormwater discharges and pollutants and BMPs
13 may include, but are not limited to:

- 14 a. Examination of vehicles, trailers, tanks, or mobile or stationary equipment which
15 could cause a prohibited discharge;
- 16 b. Inspection, sampling, and testing any area, discharge, metal, or drainage facility for
17 the purpose of determining the potential for contribution of pollutants to drainage
18 facilities or waters of the state;
- 19 c. Screening for and/or tracking illicit discharges or illicit connections;
- 20 d. Inspecting land uses and potential pollution-generating activities to ensure that
21 appropriate source control BMPs are implemented and maintained;
- 22 e. Investigation of the integrity of drainage facilities on the premises using appropriate
23 tests including but not limited to dye or smoke testing or video surveys;
- 24 f. Creating records reasonably necessary to document conditions related to stormwater
25 pollution or BMPs implemented on the premises, including but not limited to
26 photographs, video, measurements and drawings; and
- 27 g. Inspection and copying of nonconfidential records relating to site activity or processes
28 presently or previously occurring, including but not limited to safety data sheets,
29 stormwater pollution prevention plans, spill response plans, hazardous waste manifests,
30 drainage inspection records, state or federal stormwater permits, or other records related
31 to prohibited connections or discharges.

32 (8) The director shall have the right to set up devices on any premises as are necessary
in the director's opinion to conduct monitoring or sampling of discharge from
stormwater facilities.

(9) Any temporary or permanent obstruction to the safe and easy access to the premises
and any stormwater facility to be inspected and/or sampled shall be promptly removed
by the property owner at the written or oral request of the director. The director may
follow up oral requests with written requests if the obstruction is not removed. Such
obstructions shall not be replaced. The costs of removing obstructions shall be borne by
the property owner.

(c) Inspection Requirements. The director is authorized to develop inspection
procedures and requirements, including checklists, for all stormwater facilities in the
city of Fircrest. (Ord. 1640 § 2, 2019). The director has the right to require the property
owner to install monitoring equipment as necessary to ensure compliance with this
chapter. Sampling and monitoring equipment shall be maintained at all times in a safe
and proper operating condition at the property owner's expense. All devices used to
measure stormwater flow and water quality shall be calibrated to ensure their accuracy.
The director shall maintain records of all notices and orders given, issued warnings, and
inspections not taken place due to denial of access.

1 (d) Inspection Fees. Inspection fees shall be established by the city's master fee
2 resolution

3 **Section 5. Section 5 of 20.24.080 Enforcement.**

4 Any person violating the provisions of this chapter shall be subject to those penalties
5 outlined in Chapter 22.95 FMC. (Ord. 1640 § 2, 2019).

6 Additionally, the director is authorized to enforce the provisions of this chapter utilizing
7 the procedures as outlined below.

8 (a) Notice and Order to Cease Violation.

9 (1) Whenever the director has reason to believe that a condition exists in violation of
10 this chapter, rules, regulations, or standards required hereunder, the director may cause
11 a notice and order to be issued to either the owner or operator of the source of this
12 violation, the person in possession of the property where the violation originates, and/or
13 the person otherwise causing or responsible for the violation, which may include an
14 order to immediately cease the activity causing the violation or take another action to
15 abate the violation.

16 (2) The notice and order shall include the following information:

- 17 a. The name(s) of the person(s) determined to be responsible for the violation and/or the
18 owner of the property where the violation is occurring or has occurred;
- 19 b. The address or legal description of the real property on which the violation exists or
20 occurred;
- 21 c. A description of the conditions found to be in violation, including the specific
22 provision of this chapter which has been violated;
- 23 d. If applicable, a brief description of any activity which is causing the violation to exist
24 or occur;
- 25 e. A statement of the corrective action required to be taken. If a director has determined
26 that corrective work is required, the order shall require that all required permits be
27 secured, that work physically be commenced and that the work be completed within
28 such times as a director determines are reasonable under the circumstances;
- 29 f. The signature and written name of the city official issuing the notice and order;
- 30 g. The contact information for the city's designated contact person or office to which
31 questions regarding the notice and order may be directed;
- 32 h. The date of the notice and order; and
- i. Notice of the right to contest the notice and order as provided in subsection F of this
section.

(3) A notice and order may be amended at any time to correct clerical errors. An
amendment made pursuant to this subsection shall not affect the validity or effective
date of the original notice and order.

(4) The notice and order shall be served upon all persons identified in the notice and
order by one of the following methods:

- a. By personal service;
- b. By certified mail, sent to the last known address of all the persons identified in the
notice and order; or
- c. If the address of all persons identified in the notice and order is unknown, by posting
a copy of the notice and order in a conspicuous place at the site of the violation.

(b) Warning Notice as an Alternative to Notice and Order.

(1) As an alternative to issuing a notice and order, the director may issue a warning
notice to the owner or operator of the source of the violation, the person in possession
of the property where the violation originates and/or the person otherwise causing or
responsible for the violation of this chapter if, in the opinion of the director, the apparent
violation can be voluntarily corrected within a reasonable amount of time. A warning

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notice is a communication by the director containing recommended actions that may be taken by the person(s) responsible for an apparent violation in order to potentially avoid the issuance of a notice and order.

Section 6. Corrections. The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerk errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Section 7. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

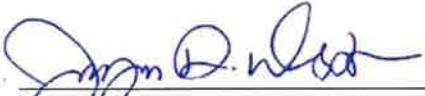
Section 8. Publication and Effective Date: A summary of this ordinance consisting of its title shall be published in the official newspaper of the city. This ordinance shall be effective five (5) days after such publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, at a regular meeting thereof this 28th day of February 2023.

APPROVED:


Brett L. Wittner, Mayor

ATTEST:


Jayne Westman, City Clerk

APPROVED AS TO FORM:


Hillary J. Evans, City Attorney

**DATE OF PUBLICATIONS:
EFFECTIVE DATE:**