

**CITY OF BRIGHTON
CITY COUNCIL ORDINANCE**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON,
COLORADO, AMENDING, REPEALING AND ADOPTING SPECIFIED SECTIONS
AND SUBSECTION OF CHAPTER 14, STORM DRAINAGE, OF THE BRIGHTON
MUNICIPAL CODE; AND, SETTING FORTH DETAILS IN RELATION THERETO.**

ORDINANCE NO.: 2260

INTRODUCED BY: Bell

WHEREAS, certain amendments have been proposed by the Utilities Department to Chapter 14, **Storm Drainage** in its efforts to update, clarify and render more efficient, the existing Chapter 14; and

WHEREAS, specifically the proposed changes include,

- a) adding definitions related to “Common Plan of Development,” and Permanent BMPs in Section 14-2-30;
- b) amending sections and provisions of Article 14-2, **Stormwater Management Program** related to Erosion and Sediment Control, MS4 and grading permit requirements;
- c) amending Section 14-16-130 specifying procedures for enforcement of violations;
- d) adopting a new Article 14-9, **Storm Drainage Management Utility**; and
- e) other details related to the foregoing.

WHEREAS, the City Council finds and determines that Chapter 14 of the Brighton Municipal Code related to the City storm drainage provisions and regulations a management utility related thereto should be amended to update, clarify and render more efficient the applicable terms and provisions thereof as recommended by the Utilities Department and the City Manager; and

WHEREAS, the City Council finds that the amendments to Chapter 14 as adopted herein are in the best interest of the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON COLORADO, AS FOLLOWS:

Section 1. Section 14-2-30, **Definitions** of Chapter 14 of the Brighton Municipal Code is amended by the addition of and amendments to “Larger common plan of development or sale” and Permanent BMPs” to read as follows:

Larger common plan of development or sale means a site where multiple separate and distinct construction activities may be taking place at different times on different schedules, but still under a single plan. This includes phased projects, projects with multiple filings or lots, and projects in a contiguous area that may be unrelated but still under the same contract. If the project is part of a common plan of development or sale, the disturbed area of the entire plan must be used in determining permit requirements, and all portions of the project must be covered.

If a common plan of development is completely stabilized such that the entire common plan of development meets the definition of finally stabilized and permit coverage for that common plan of development has been terminated, then a new determination of "common plan of development" shall be made for any future construction activities conducted by a different owner(s)/developer(s) that occur within the previously permitted area to determine if permit coverage is needed.

However, if the original owner/developer of a common plan of development, that achieved final stabilization and terminated permit coverage, is the one who is restarting construction activities within that development, then any construction activity they are engaged in would be considered part of the original larger common plan of development and therefore require permit coverage if one acre or greater. Note that if the site has never been finally stabilized, then this does not apply as the original development is considered ongoing.

Permanent BMPs means those BMPs, including but not limited to ~~a vegetated swale, wetland, pond or water quality structure an extended detention basin, infiltration pond or rain garden~~, to be installed and regularly maintained at a site in order to ensure long-term water quality benefits.

Section 2. Section 14-2-50, **Erosion and sediment control permit requirements** of Chapter 14 of the Brighton Municipal Code is amended by the deletion of the reference to Volume III, Urban Drainage and Flood Control District's I Urban Storm Drainage Criteria Manual.

Section 3. Subsection 14-2-60(5), **Exceptions** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-2-60. - Exceptions.

(5) Notwithstanding the foregoing exemptions in this Section, those operations and construction activities which are exempted from obtaining an ESC permit must nevertheless comply with the rules and regulations concerning erosion specified in this Article and other applicable provisions of this Code, and shall provide adequate stormwater pollution prevention controls to retain soil erosion and protect stormwater runoff quality on the subject construction site.

Section 4. Subsection 14-2-70(f), **Erosion and sediment control permit application procedures**, ~~(f) Erosion and sediment control permits will not be approved prior to final approval of grading plans by the Director~~, is repealed.

Section 5. Subsections 14-2-80(a), **Financial guarantee required** of Chapter 14 of the Brighton Municipal Code is repealed and (a) reenacted to read as follows and subsection (c) is repealed:

(a) As a condition of the issuance of an erosion and sediment control (ESC) permit, all ESC permittees ~~who are also required to apply for grading, right of way or temporary use permit~~ shall provide performance security in the form of cash, surety bond or irrevocable letter of credit for the benefit of the City. The amount of such performance security shall be based upon the estimated cost of the work required to ensure compliance with the permit's terms and conditions, and the requirements of this Article and with Section 16-12-250 of this Code. The Director has the authority to waive the ESC permit's fees and/or the financial guarantee requirements. The Director shall provide written justification and documentation for all waivers granted.

(c) Qualifying construction activities not requiring a grading, right of way or temporary use permit are not required to provide performance security for erosion and sediment control and stormwater quality; however the landowner, developer or permittee shall be financially responsible for the maintenance of best management practices for erosion and sediment control and stormwater quality, and the costs of all remedial measures as required in Subsection 14-2-100(c) in the event of noncompliance.

Section 6. Sections 14-4-140, **Grading permit required** and 14-4-150 **Exemptions** of Chapter 14 of the Brighton Municipal Code are repealed:

~~See. 14-4-140. Grading permit required.~~

~~Except for specific exemptions contained in Section 14-4-150, no person shall do or permit to be done any grading on any site in the City without first obtaining a valid grading permit issued by the Director. Alterations to grading which cause the flow of stormwater to adversely affect water quality, other property owners or City owned properties or structures are prohibited, and all costs for any restorative measures necessitated thereby shall be the financial responsibility of the landowner and/or other person or entity undertaking such change of grade or other grading activities.~~

~~See. 14-4-150. Exemptions.~~

~~The following grading may be done without obtaining a permit. Exemption from the requirement of a permit shall not be deemed to be permission to violate any provision of this Article, this Chapter or other applicable provisions of this Code.~~

~~(1) Minor projects which have cuts or fills, each of which is less than five (5) feet in vertical depth at its deepest point measured from the existing ground surface, and which include the following:~~

- ~~a. Less than fifty (50) cubic yards of graded material.~~
- ~~b. Do not create unstable or erodible slopes or fields, including grading which does not remove topsoil and vegetation.~~
- ~~c. Do not encroach into a drainageway or watercourse.~~
- ~~d. Excavations in connection with constructing a swimming pool authorized by a valid building permit which will not interfere with prevalent grading on the site.~~
- ~~e. Trenching and grading incidental to the construction or installation of approved underground pipelines, septic tanks and sewage disposal fields, conduits, electrical or communication facilities and drilling or excavation for post holes or approved wells.~~
- ~~f. Excavations of less than one hundred fifty (150) cubic yards for soil or geologic investigations by a professional engineer.~~
- ~~g. Grading in accordance with plans incorporated in an approved surface mining permit.~~
- ~~h. Routine cemetery excavations and fills.~~
- ~~i. An excavation below finished grade for basements and footings of a building authorized by a valid building permit.~~

- j. ~~Grading work performed by the City.~~
- k. ~~Normal agricultural and farming activities, including tilling, plowing and excavation for irrigation ditches, on property zoned for agricultural use.~~

Section 7. Sections 14-4-160, **Grading permit** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-4-160, Grading

No person shall undertake, cause, suffer or permit to be done any grading in such a manner that quantities of dirt, soil, rock debris or other material substantially in excess of natural levels are washed, eroded or otherwise moved from the site, ~~except as specifically provided by a valid grading permit.~~

Section 8. Sections 14-4-180, **Hazards** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-4-180. - Hazards.

Whenever the Director determines that any grading activity constitutes a condition which is a hazard to public safety, endangers property, adversely affects the safety, use or stability of adjacent property, an overhead or underground utility, or a public way, watercourse or drainage channel, or could adversely affect the water quality of any water bodies or watercourses, then the landowner of the property upon which the condition is located, or other person or agent in control of said property, upon receipt of notice in writing from the Director, ~~within the period specified therein, obtain a grading permit and conform to the conditions of said permit shall immediately stop grading activities until written permission to begin grading activities is provided by the Director.~~ The Director may require the submission of plans or soil or geological reports, detailed construction recommendations, drainage study or other engineering data prior to and in connection with any corrective or proposed work or activity. The Director may require the plans to be altered to prevent any hazard.

Section 9. The following sections of Chapter 14 of the Brighton Municipal Code are repealed:

Division 2. Procedures

- Sec. 14-4-210, **Filing**,**
- Sec. 14-4-220, **Permit conditions**,**
- Sec. 14-4-230, **Permission of other agencies or owners**,**
- Sec. 14-4-240, **Time limits**,**
- Sec. 14-4-250, **Validity**,**

Division 3. Plans and Specifications

- Sec. 14-4-310, **Application**,**

Division 4. Permit Requirements

- Sec. 14-4-410, **General**,**
- Sec. 14-4-420, **Fees**,**
- Sec. 14-4-430, **Responsibilities of permittee**,**

Division 5. Enforcement

- Sec. 14-4-510, **Suspension or revocation of permit**,**

Sec. 14-4-520, Appeals,
Sec. 14-4-530, Compliance – required.

Sec. 14-4-210. Filing.

~~Applications for grading permits shall be filed with the Department on forms furnished by the City. Each application shall include a preliminary or final overlot grading plan signed by a professional engineer; unless signature requirements are specifically waived by the Director; and an erosion control plan (ECP). The Director shall determine if the application is complete in accordance with the provisions of this Article. The applicant shall be notified within five (5) working days of the submission of the application if the application is deemed incomplete and the requirements for completing the application.~~

Sec. 14-4-220. Permit conditions.

(a) ~~No permit shall be granted unless the grading plan conforms to this Article, this Code, Brighton's Land Use and Development Regulations and Guidelines, as contained in [Chapter 16](#) of this Code, the City's Standards and Specification Manual, Adams County's Development Standards and Regulations Manual, Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume I, II and III, and other ordinances and regulations of the City.~~

(b) ~~If the proposed project requires the filing of a subdivision plat or the intended use requires approval of a conditional or special use permit, no grading permit shall be granted prior to the approval of the Director of the Community Development Department.~~

(c) ~~The permit shall be limited to work shown on the grading plans as approved by the Director. In granting a permit, the Director may impose any condition deemed necessary to protect the health, safety and welfare of the public, to prevent the creation of a hazard to public or private property and to assure proper completion of the grading, including but not limited to:~~

- ~~(1) Mitigation of any adverse environmental impacts;~~
- ~~(2) Requirements for dust, erosion, replacement of vegetation, sediment and noise control, hours of operation, sequence of work, access roads and haul routes and work area traffic control;~~
- ~~(3) Requirements for safeguarding watercourses, whether natural or man-made, from excess deposition of sediment or debris in quantities exceeding normal levels; and~~
- ~~(4) Keeping public streets and rights of ways free from mud and debris. (For purposes of this Article, the definition of debris includes discarded construction material of any type).~~

Sec. 14-4-230. Permission of other agencies or owners.

~~No permit shall relieve the permittee of the responsibility for securing any other permits or approvals required for work which is regulated by any other department of the City, the County, the State or any other public agency, or for obtaining any easements or authorization for grading on property not owned by the permittee. Proof of application for applicable public agency permits may be required prior to issuance of a grading permit.~~

Sec. 14-4-240. Time limits.

(a) The permittee shall perform and complete all the work required by the grading permit, including regular cleanup of mud and debris, within the time limits specified in the permit. If the work cannot be completed within the specified time, a request for an extension of time setting forth the reasons for the requested extension shall be presented in writing to the Director no later than five (5) days prior to the expiration of the permit. The Director may grant additional time for the work.

(b) If the work is not completed within the time limits specified in Subsection (a) above, the City may utilize the financial guarantee required by Section 14.2.80 of this Chapter for the completion of the work and/or restoration of the site.

Sec. 14.4.250. Validity.

The issuance of a permit or approval of plans and specifications shall not be construed as an approval or waiver of any violation of the provisions of this Article or any other applicable laws, ordinances, rules or regulations.

Sec. 14.4.310. Application.

Three (3) or more complete sets of grading plans, including but not limited to profiles, cross-sections, topographic maps and specifications, shall be submitted to the Director with each application for a grading permit. The Director shall determine if the application is complete in accordance with the provisions of this Article. The applicant shall be notified within five (5) working days of the submission of the application if the application is deemed incomplete and the requirements for completing the application. When the final grading plans and other documents required hereunder have been approved, a grading permit will be authorized for issuance by the Director. The work shall be done in strict compliance with the approved plans and specifications, which shall not be altered without the approval of the Director.

Sec. 14.4.410. General.

The Director shall determine if the application for a grading permit is complete in accordance with the provisions of this Article. The applicant shall be notified within five (5) working days of the submission of the application if the application is deemed incomplete and the requirements for completing the application. The Director will authorize the issuance of a grading permit if final grading plans satisfy the provisions of this Article and all of the conditions imposed. If the application for a permit is denied, the Director shall identify the provision, requirement or condition that has not been met or performed by the applicant.

Sec. 14.4.420. Fees.

(a) The schedule of fees and costs shall be those established and adopted from time to time in the annual fee resolution adopted by the City Council.

(b) If grading work is done in violation of this Article or such work is not in accordance with the approved permit, a recovery fee, not less than twice the normal fee, covering investigation of any violation and inspection and plan checking of work required to correct such violation, shall be charged to such violator. No additional permits will be reviewed or considered for that permittee until said costs are paid.

Sec. 14.4.430. Responsibilities of permittee.

(a) The permittee shall be responsible for the following:

(1) Prevention of damage to any public utility or service.

(2) Prevention of damage to adjacent property. (Excavation shall not occur sufficiently close to the property line to endanger any adjoining public street, sidewalk, utilities or other public or private property or easement, without protecting such property from damage which might result.)

(3) Regular removal of any mud or debris that is tracked in the public right of way resulting from vehicles and equipment entering and leaving the site. Regular removal shall mean by the end of every workday that the permittee is working at the construction site, before the permittee leaves the construction site. Failure to remove such mud or debris in accordance with the notice from the Director shall be deemed to create a public nuisance which may be abated in accordance with [Section 14 2-100](#) of this Chapter, in addition to any other remedies provided by this Code.

(4) Protection of all trees designated on the approved grading plan to remain.

(5) Prevention of discharge of sediment or dust from the site to any watercourse, drainage system or adjacent property and to protect from all damage that may result from wind, erosion or sedimentation from the site.

(b) If the permittee fails to comply with the provisions of Subsection (a) above in a manner satisfactory to the Director, the Director shall provide notice to the permittee to correct the condition within three (3) days or a special time limit of twenty four (24) hours for removal of mud or debris from public rights of way. If the permittee does not comply with the notice, the Director may cause the condition to be remedied and assess the cost of equipment, labor and administrative costs incurred by the City in accordance with [Section 14 2-100](#) of this Chapter.

(c) The permittee shall notify the Director at least twenty four (24) hours prior to the start of work.

(d) No permit issued under this Article may be transferred or assigned in any manner without the approval of the Director.

Sec. 14 4-510. Suspension or revocation of permit.

(a) The Director may suspend or revoke a permit for good cause, subject to appeal to the Board of Adjustment.

(b) The Director may, in order to protect against an immediate threat to the public health and safety, or after the permittee's failure to comply with a notice of violation under Subsection 14 4-430(b), issue an immediate stop work order until such time as the violation is corrected.

Sec. 14 4-520. Appeals.

Appeals of any decision of the Director may be made in accordance with [Section 14 4-120](#) of this Article.

Sec. 14 4-530. Compliance required.

(a) It shall be unlawful to perform any grading on, or alter, maintain or use, any land area in violation of any provision of this Chapter.

(b) No permit, certificate, license or other document or oral approval, the use of which is subject to the provisions of this Chapter, shall be issued by any department, agency or board of the City until it has been determined that all substantive requirements of this Chapter have been met and all procedures have been followed.

Section 10. Section 14-6-10, **Purpose/Intent** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-6-10. - Purpose/intent.

The purpose of this Article is to provide for the health, safety and general welfare of the citizens of the City through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system and private storm drainage systems in order to comply with requirements of the Colorado Discharge Permit System's permit for stormwater discharges associated with Municipal Separate Storm Sewer Systems (MS4) and to protect stormwater runoff quality within the City. The objectives of this Article are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system and private storm drainage systems by stormwater discharges by any ~~user~~ person;
- (2) To prohibit illicit connections and discharges to the municipal separate storm sewer system; and
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Article.

Section 11. Section 14-6-20, **Definitions** of Chapter 14 of the Brighton Municipal Code is amended by the repeal and reenactment of the definitions of *Illicit connections*, *Non-stormwater discharge*, and *Storm drainage system* and the addition of *Watercourse* to read as follows:

Sec. 14-6-20. - Definitions.

Illicit connections means either of the following:

- a. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including but not limited to any conveyances which allow any non-stormwater discharge, including sewage, process wastewater and wash water, to enter the storm drainage system and any connections to the storm drainage 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; or
- b. Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

Non-stormwater discharge means any discharge to the MS4 storm drainage system that is not composed entirely of stormwater.

Pollutant means anything which causes, ~~or~~ contributes or may contribute to pollution of the environment. Pollutants may include, but are not limited to: paints, varnishes and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, ordnances and accumulations, so that the 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.

Storm drainage system means any publicly or privately owned facilities by which stormwater is collected, stored 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.

Watercourse means any natural or man-made channel, flowing continuously or intermittently in a definite direction and course or used for the holding, delay or storage of waters, which functions at any time to convey or store stormwater runoff.

Section 12. Section 14-6-30, **Applicability** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Section 14-6-30. **Applicability**

This Article shall apply to all water entering the storm drainage system generate on any private or public developed and undeveloped lands.

Section 13. Section 14-6-60, **Discharge prohibitions** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-6-60. - Discharge prohibitions.

(a) No person shall discharge or cause to be discharged into any storm drainage 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 stormwater.

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

(1) The following discharges are exempt from discharge prohibitions established by this Article:

a. Water line flushing ~~or other potable water sources (as long as adequate BMPs are used, when needed, to minimize erosion; and total residual chlorine is nondetectable prior to reaching any body of water)~~ in accordance with the Colorado Department of Public Health and Environment's Low Risk Policy Discharge Guidance: Potable Water

b. Landscape irrigation or lawn watering;

c. Diverted stream flows;

d. Rising ground water;

e. Uncontaminated groundwater infiltration;

f. Uncontaminated pumped groundwater ~~(note: discharges containing groundwater that comes into contact with construction activity is not considered "uncontaminated" due to the potential for sediment content)~~;

g. Foundation or footing drains ~~(not including active construction groundwater dewatering systems)~~;

- h. Water from crawl space pumps;
- i. Air conditioning condensation;
- j. Springs;
- k. Individual residential car washing;
- l. Flows from riparian habitats and wetlands; ~~Natural riparian habitat or wetland flows~~
- m. Dechlorinated swimming pool discharges in accordance with the Colorado Department of Public Health and Environment Low Risk Policy Discharge Guidance; Swimming Pools;
- n. Discharges resulting from emergency firefighting activities;
- o. Discharges authorized by a CDPS or NDPES permit; ~~Any other water source not containing pollutants~~
- p. Irrigation return flows;
- q. Discharges from potable water sources in accordance with the Colorado Department of Public Health and Environment's Low Risk Policy Discharge Guidance: Potable Water
 - (1) The potable water shall not be used in any additional process. Processes include, but are not limited to, any type of washing, heat exchange, manufacturing, and hydrostatic testing of pipeline not associated with treated water distribution systems.
- r. Water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction; and
- s. Discharges that are in accordance with the Colorado Department of Public Health and Environment Low Risk Policy Discharge Guidance documents or other Colorado Department of Public Health and Environment policies and guidance documents where the Colorado Department of Public Health and Environment has stated that it will not pursue permit coverage or enforcement for specified point source discharges.

(2) Dye testing, in accordance with the manufacturers' recommendations, is an allowable discharge, provided that written notification has been given to the Director prior to the test.

(3) The prohibition shall not apply to any nonstormwater discharge permitted under a NPDES or CDPS permit, waiver or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency or Colorado Department of Public Health and Environment, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(c) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(1) This prohibition expressly includes, without limitation, illicit connections made prior to the effective date of this Article, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(2) A person is considered to be in violation of this Article if the person connects a line conveying sewage ~~to the MS4 or other pollutant to the storm drainage system~~ or allows such a connection to continue.

Section 14. Sections 14-6-70, **Suspension of MS4 access**, and 14-6-80 **Industrial or construction activity discharges** of Chapter 14 of the Brighton Municipal Code are repealed and reenacted to read as follows:

Sec. 14-6-70. - Suspension of MS4 storm drainage system access.

(a) The Director may, without prior notice, suspend ~~MS4 storm drainage system~~ discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons or to the ~~MS4 storm drainage system~~ or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the ~~MS4 storm drainage system~~ or waters of the United States, or to minimize danger to persons.

(b) Any person discharging to the ~~MS4 storm drainage system~~ in violation of this Article may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The Director shall notify a violator of the proposed termination of its ~~MS4 storm drainage system~~ access. The violator may appeal the notice to the Board of Adjustment.

(c) A person commits an offense if the person reinstates ~~MS4 storm drainage system~~ access to premises terminated pursuant to this Section without the prior approval of the Director.

Sec. 14-6-80. - Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES/CDPS stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Director prior to the allowing of discharges to the ~~MS4 storm drainage system~~.

Section 15. Section 14-6-120, **Notification of spills** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec.14-6-120. Notification of spills Discharge of pollutants to the ground

Notwithstanding other requirements of law, as soon as any person responsible for a property, facility or operation, or responsible for emergency response for a property, 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 that may comingle with stormwater runoff, discharge to the storm drainage system, watercourse~~ or water of the United States, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of a nonhazardous ~~materials pollutant~~, said person shall notify the Director in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the

discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years and made available to the Director upon request.

Section 16. Section 14-6-130(b). **Enforcement** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-6-130. **Enforcement**

(b) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the City or a contractor and the expense thereof shall be charged to the violator. All unpaid costs of remediation shall be a lien on the property and enforced as more fully provided in Section 13-4-110 of this Code.

Section 17. Section 14-8-10(b)(1). **Purpose** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-8-10. - **Purpose.**

(b) The objectives of this Article are:

(1) To require the implementation of post-construction practices and ~~promote~~ Low-Impact Development (LID) techniques to control stormwater runoff from development and redevelopment sites in order to prevent flooding, erosion and stormwater pollution;

Section 18. Section 14-8-50(a)(b) **Applicability** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-8-50. - **Applicability.**

(a) ~~This Article shall be applicable to:~~

~~(1) All development or redevelopment projects that disturb an area equal to or greater than one (1) acre.~~

~~(2) A development or redevelopment that disturbs less than one (1) acre but is part of a larger common plan of development, subdivision or parcel of property under single ownership in excess of one (1) acre even though multiple, separate and distinct development activities may take place at different times on different schedules.~~

~~(3) Any development or redevelopment, regardless of its size, identified by the Director, to be an area where:~~

~~a. Significant water quality impacts are anticipated as a result of development or redevelopment.~~

~~b. Significant stormwater runoff detention is required.~~

~~(b) The following activities are exempt from this Article:~~

(1) Development of individual single family or duplex residential lots that are not part of a larger common plan of development and which disturbs less than one (1) acre.

(2) Redevelopment of existing single family or duplex residential structures that are not part of a larger common plan of development and which disturbs less than one (1) acre.

(3) Projects that are exclusively for agricultural use, unless otherwise determined by the Director pursuant to Paragraph (a)(3) above.

(4) Routine maintenance and repair to any post construction BMP deemed necessary by the Director to maintain original grade, hydraulic capacity or original purpose of drainage structures.

(5) Any emergency project that is immediately necessary for the protection of the public health, safety, welfare, property and/or natural resources.

(6) Linear construction projects, such as pipeline or utility line installations that do not result in the installation of any impervious cover, as determined by the Director.

(7) Any part of a development or redevelopment that was approved by the City prior to the effective date of this Article, provided that this exception does not exclude long term maintenance responsibilities of existing drainage structures.

(a) This Article shall be applicable to:

Sites that result in land disturbance of greater than or equal to one acre, including sites less than one acre that are part of a larger common plan of development or sale, unless excluded below. Applicable development sites include all new development and redevelopment sites for which permanent water quality control measures were required in accordance with an MS4 permit. “New Development” means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision for a site that does not meet the definition of redevelopment. “Redevelopment” includes a site that is already substantially developed with 35% or more of existing imperviousness; with the creation or addition of impervious area (including removal and/or replacement), to include the expansion of a building footprint or addition or replacement of a structure; structural development including construction, replacement of impervious area that is not part of a routine maintenance activity; and land disturbing activities.

(1) “Pavement Management Sites”: Sites, or portions of sites, for the rehabilitation, maintenance, and reconstruction of roadway pavement, which includes roadway resurfacing, mill and overlay, white topping, black topping, curb and gutter replacement, concrete panel replacement, and pothole repair. The purpose of the site must be to provide additional years of service life and optimize service and safety. The site also must be limited to the repair and replacement of pavement in a manner that does not result in an increased impervious area and the infrastructure must not substantially change. The types of sites covered under this exclusion include day-to-day maintenance activities, rehabilitation, and reconstruction of pavement. “Roadways” include roads and bridges that are improved, designed or ordinarily used for vehicular travel and contiguous areas improved, designed or ordinarily used for pedestrian or bicycle traffic, drainage for the roadway, and/or parking along the roadway. Areas primarily used for parking or access to parking are not roadways.

(2) Excluded Roadway Redevelopment: Redevelopment sites for existing roadways, when one of the following criteria is met: 1) The site adds less than 1 acre of paved area per mile of roadway to an existing roadway, or 2) The site does not add more than 8.25 feet of paved width at any location to the existing roadway.

(3) Excluded Existing Roadway Areas: For redevelopment sites for existing roadways, only the area of the existing roadway is excluded from the requirements of an applicable development site when the site does not increase the width by two times or more, on average, of the original roadway area. The entire site is not excluded from being considered an applicable development site for this exclusion. The area of the site that is part of the added new roadway area is still an applicable development site.

(4) Aboveground and Underground Utilities: Activities for installation or maintenance of underground utilities or infrastructure that does not permanently alter the terrain, ground cover, or drainage patterns from those present prior to the construction activity. This exclusion includes, but is not limited to, activities to install, replace, or maintain utilities under roadways or other paved areas that return the surface to the same condition.

(5) Large Lot Single Family Sites: A single-family residential lot, or agricultural zoned lands, greater than or equal to 2.5 acres in size per dwelling and having a total lot impervious area of less than 10 percent. A total lot imperviousness greater than 10 percent is allowed when a study specific to the watershed and/or MS4 shows that expected soil and vegetation conditions are suitable for infiltration/filtration of the WQCV for a typical site, and the permittee accepts such study as applicable within its MS4 boundaries. The maximum total lot impervious covered under this exclusion shall be 20 percent.

(6) Non-Residential and Non-Commercial Infiltration Conditions: This exclusion does not apply to residential or commercial sites for buildings. This exclusion applies to applicable development sites for which post-development surface conditions do not result in concentrated stormwater flow during the 80th percentile stormwater runoff event. In addition, post-development surface conditions must not be projected to result in a surface water discharge from the 80th percentile stormwater runoff events. Specifically, the 80th percentile event must be infiltrated and not discharged as Page 28 of 63 Permit No. COR090000 concentrated flow. For this exclusion to apply, a study specific to the site, watershed and/or MS4 must be conducted. The study must show rainfall and soil conditions present within the permitted area; must include allowable slopes, surface conditions, and ratios of impervious area to pervious area; and the permittee must accept such study as applicable within its MS4 boundaries.

(7) Sites with Land Disturbance to Undeveloped Land that will Remain Undeveloped: Permittees may exclude sites with land disturbance to undeveloped land (land with no human-made structures such as buildings or pavement) that will remain undeveloped after the site.

(8) Stream Stabilization Sites: Permittees may exclude stream stabilization sites.

(9) Trails: Permittees may exclude bike and pedestrian trails. Bike lanes for roadways are not included in this exclusion, unless attached to a roadway that qualifies under another exclusion in this section.

(10) Oil and Gas Exploration: Permittees may exclude facilities associated with oil and gas exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be an applicable construction activity.

Section 19. Section 14-8-70(a) Post construction stormwater management requirements of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-8-70. Post-construction stormwater management requirements.

(a) All applications and approvals of applicable development and redevelopment sites developments, redevelopments, subdivisions and applicable projects shall include post-construction stormwater management requirements incorporated into the development design as approved.

(1) Post-construction BMPs shall be designed and constructed according to City of Brighton Standards and Specifications and maintained to the maximum extent possible to minimize stormwater runoff flows and pollutants.

(2) Post construction BMP incorporated into the design shall meet the "No Net Increase Design Goals," including the following:

a. No net increase in nonpoint source pollution. Stormwater control systems shall be designed to prevent the degradation of water quality in receiving watercourses from nonpoint source pollution associated with stormwater runoff.

b. No net increase in sediment loadings. Stormwater control systems shall be designed to reduce to the maximum extent possible, the total suspended solids (TSS) from stormwater runoff.

c. No net increase in stormwater runoff rates and stream channel erosion. Stormwater control systems shall be designed so that, to the maximum extent possible, the post development stormwater runoff rates from the site are no greater than predevelopment rates, in order to retain as closely as possible the predevelopment hydrologic response of the watershed.

d. No net increase in stormwater runoff volumes. Wherever suitable infiltration, soil permeability and favorable geological conditions exist, stormwater control systems shall be designed so that all stormwater runoff from impervious surfaces infiltrates into the soil.

(3) Structural post construction BMP incorporated into the development shall be designed to:

a. In consideration of existing site conditions, avoid adverse effects on water quality or quantity or harm or damage to persons or property.

b. Minimize regular maintenance, facilitate the performance of required maintenance and repair tasks, ensure proper functioning and reduce the potential for extensive, difficult and costly remedial or emergency maintenance efforts.

c. Be strong, durable and corrosion resistant.

- d. Incorporate safety measures.
- e. Include design features to prevent accumulation or discharge of trash and debris in drainage systems.
- f. Include design features to prevent and/or contain spills at industrial or commercial developments.

(4) Post construction requirements must be met prior to receiving approval from the City to proceed with construction of the development or redevelopment.

(5) Prior to development or redevelopment approval by the City, a maintenance agreement shall be submitted to the Director for review and approval by the Director. The agreement shall specify post construction stormwater management requirements necessary for the project to meet the standards set forth in this Article.

(6) If the applicant contends that it is not feasible for engineering, environmental or safety reasons to incorporate any or only specific post construction stormwater management measures in the design of a particular project, the applicant may request exemption from the required measures. The applicant shall identify the alternative measures proposed and provide adequate documentation to the Director, either in writing or by testimony, to establish the basis for the contention and the adequacy of the proposed measures to protect the public health, safety and welfare. The applicant bears the burden of proving any impracticability.

- a. The applicant must provide adequate documentation and/or testimony to establish, to the satisfaction of the Director, qualification for the exemption and adequacy of the proposed measures.
- b. The data provided by the applicant must be substantiated by either professionals in an applicable field or by thorough documentation of how the information was obtained.
- c. The Director may request additional information from the applicant as necessary to make informed decisions.
- d. The applicant may appeal the Director's decision as provided in Section 14-2-120 of this Chapter.
- e. The Director may approve the request or approve the request with conditions, provided that the intent and purpose of this Article are not significantly compromised.

Section 21. Section 14-8-120, **Action without prior notice** of Chapter 14 of the Brighton Municipal Code is repealed and reenacted to read as follows:

Sec. 14-8-120. - **Action without prior notice.**

When attempts to contact the landowners or other responsible person have failed and enforcement and/or remedial actions are necessary to stop an actual or threatened discharge which presents or may present imminent danger to the public health, safety or welfare, to the environment or to the ~~municipal storm sewer~~ storm drainage system, City representatives are authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City is authorized to seek costs of such emergency abatement as outlined in Section 14-2-100 of this Chapter.

Section 22. Chapter 14 of the Brighton Municipal Code is amended by the addition of a new Article 14-9. **Storm Drainage Management Utility** to read as follows:

Sec. 14-9-10. - Authority and applicability.

(a) The City, as a Home Rule municipality has the authority under Sections 2.2, Powers, 14.1, Authority and powers, and 14.2, Utility rates and finances, of the Charter, to adopt this Article.

(b) This Article shall apply to all real property within the City limits.

Sec. 14-9-20. - Purpose and intent.

(a) The purpose of this Article is to promote the protection of the public health, safety and welfare from damage from storm drainage runoff by requiring that property owners in the City pay for a rational and roughly proportionate share of the cost of the facilities reasonably necessary to manage such storm drainage.

(b) It is the intent of the City Council in enacting this Article:

(1) To establish a storm drainage impact fee to finance, coordinate, design, construct, manage, operate and maintain the public facilities described herein; and

(2) To establish a reasonable storm drainage impact fee based on an analysis of the use of the land located within the City.

(c) The City Council further finds, determines and declares that the owners of real property within the City are the ultimate beneficiaries and users of the public facilities contemplated by this Article and should fund and thereby provide the facilities and maintenance capability necessary for the reasonable control of storm drainage and management of storm drainage and also fund and thereby provide the public facilities required to convey such storm drainage from the various drainage basins to the City's major drainageways.

(d) Water from storm drainage runoff may occur which exceeds the capacity of public facilities constructed and maintained by funds made available under this Article. This Article does not imply, represent or guarantee that real property for which a storm drainage impact fee has been established and paid will at all times be free from storm drainage flooding or flood damage. This Article does not purport to reduce the need or the necessity for any property owner to obtain flood insurance.

Sec. 14-9-30. - Definitions.

The following words used in this Article have the following meanings, unless the context clearly indicates otherwise:

Apartment means a structure that contains three (3) or more dwelling units, excluding attached dwellings, as defined herein.

Attached dwelling means attached dwelling units, including duplexes, town homes, patio homes and condominiums.

Code means the Brighton Municipal Code.

Drainage basins means an area tributary to a major drainageway.

Dwelling unit means separate living quarters for one (1) family.

EQR means Equivalent Residential Unit.

Facilities means all structures, equipment and appurtenances, and all uses of land that are made in conjunction with or that are related or incidental to the construction, installation or use of the structures and equipment necessary to contain and control storm drainage, including but not limited to curbs and gutters, cross pans, pipes, collection, drainage or disposal lines, pump inlets, conduits, channels, bridges, detention/retention ponds, and all extensions, improvements, remodeling, additions and alterations thereof.

Impervious areas are those areas with impervious surfaces which prevent or impede the infiltration of storm drainage into the soil as it entered in natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, compacted gravel and soil surfaces, awnings and other fabric or plastic coverings and other surfaces that prevent or impede the natural infiltration of the storm drainage runoff which existed prior to development.

Major drainage ways means a drainage flow path that conveys runoff.

Multi-family dwelling means attached dwellings and apartments.

Nonresidential property means any other real property in the City that is used for other than residential uses, including but not limited to commercial, industrial, public, church and school uses.

OSP means Outfall System Plan.

Public facilities means storm drainage infrastructure accepted by the City as provided in Section 13-20-50 of this Article.

Public park land means an area permanently dedicated for recreation, aesthetic educational or cultural use and generally characterized by units with natural and landscape features.

Residential property means any real property that is used for residential purposes, including but not limited to single-family and multi-family dwellings and accessory uses that are customary to residential uses.

Single-family dwelling means detached houses.

Storm drainage means runoff caused or created by a storm event.

Storm drainage impact fee means the fee created in this Article for the funding of the Utility.

UDFCD means the Urban Drainage and Flood Control District.

Utility means the Storm Drainage Management Utility that is created in this Article.

Sec. 14-9-40. - Storm Drainage Management Utility.

- (a) There is hereby created a Storm Drainage Management Utility in the Department of Utilities under the control of the Director, who is authorized to implement the provisions of this Article.
- (b) The owner of each parcel of real property in the City shall pay the storm drainage impact fee prescribed in Section 13-20-60 for the coordination, management, design, construction, operation, maintenance and replacement of the Storm Drainage Management Utility and its facilities.

Sec. 14-9-50. - Use of storm drainage impact fee.

- (a) The Utility shall hold all funds received by the City under this Section in a separate account to be established as the Storm Drainage Utility Fund and make expenditures thereof only for the purposes of:
 - (1) Administration, coordination, engineering, planning, professional services, design, construction, installation, repair, maintenance, operation, management, improvement, replacement and reconstruction of facilities in the City necessary for the Utility to reasonably handle storm drainage in the City; and
 - (2) The purchase of interests in real property, including, without limitation, fee simple ownership and easements that may be necessary for the Utility to construct and maintain facilities and otherwise implement the purposes of this Section.
- (b) The City may pledge storm drainage impact fees collected under this Section and those anticipated to be collected to the retirement of the principal and interest of revenue, general obligation bonds or notes issued by the City for financing any of the activities and improvements set forth in Subsection (a) above.
- (c) The City may pledge storm drainage impact fees collected under this Article and those anticipated to be collected to participate with the UDFCD or other public entity or private party having a common interest in storm drainage projects or facilities that benefit the Utility.

Sec. 14-9-60. - Storm drainage impact fee schedule.

The storm drainage impact fee shall be paid at the time of application for building permit and shall be in accordance with a schedule of fees, rates, and charges as adopted by the annual fee resolution, ordinance, or otherwise. The storm drainage impact fee ("fee") shall be payable in the following amounts:

- (a) For all properties located in the City of Brighton within the OSP area:
 - (1) Single-family residential: Four thousand two hundred forty-one dollars (\$4,360.00).
 - (2) Multi-family residential, per dwelling unit: Two thousand one hundred twenty-six dollars (\$2,200.00).
 - (3) Non-residential, commercial, mixed use or industrial: Sixty-five cents (\$0.72) per square foot of additional impervious surface, including all remodels and/or additions of one thousand (1,000) square feet or greater.
- (b) For all properties located outside of the OSP area:
 - (1) Single family residential: One thousand six hundred forty dollars (\$1,640.00);
 - (2) Multi family residential, per dwelling unit: Eight hundred twenty four dollars (\$824.00);

~~(3) Non-residential, commercial, mixed use or industrial: Fifty five cents (\$0.55) per square foot of impervious surface area, including all remodels and/or additions of one thousand (1,000) square feet or greater.~~

Sec. 14-9-65. - Payment and use of storm drainage impact fees.

- (a) Payment of impact fees. The storm drainage impact fee herein shall be due and payable at the time a complete application for a building permit is issued.
- (b) Complete application defined. An application shall not be considered complete unless and until:
 - (1) All of the required information and submittal material, in the amounts and dimensions required by the ordinances, rules, regulations and policies of the City, have been submitted to and received by the Department of Community Development or the Chief Building Official as specified in this Article; and
 - (2) The Director of Community Development or the Chief Building Official has certified the application as complete. The decision of the Director of Community Development or the Chief Building Official with respect to completeness and applicability of submission requirements shall be final.
- (c) Funds for capital improvements. All fees collected pursuant to this Article shall be deposited into the appropriate capital improvement fund of the City and shall be used for the storm drainage improvements therein identified. Fees collected from storm drainage impact fees shall be used for the purpose of capital improvements to and expansion or enhancement of storm drainage facilities associated therewith. No such funds shall be used for periodic or routine maintenance of storm drainage facilities.
- (d) Lien for unpaid fees. All unpaid storm drainage impact fees shall be a lien upon each lot or parcel of land within a development from the due date thereof, as set forth herein until paid. If such fees are not paid when due, in addition to any other means provided by law, the City Clerk shall certify such delinquent charges to the treasurer of the county or counties in which the development is located, and the fees shall be collected in the same manner as though they were part of the taxes on the property. The City reserves the right to withhold or revoke any permit, certificate or other approval of an applicant or obligor of the fees or other approval to any applicant who is delinquent in the payment of the fees.

Sec. 14-9-70. - Certain properties exempt from fee.

The following land uses are exempt from payment of the storm drainage impact fee:

- (1) Public park land and open space;
- (2) Public or private ponds, lakes, reservoirs, rivers, creeks, natural water courses or irrigation ditch/canal rights-of way;
- (3) Public or private streets, highways, rights-of-way and alleys;
- (4) Cemeteries; and
- (5) Golf courses.

Sec. 14-9-80. - Review of storm drainage impact fee.

The City Council shall review the amount of the stormwater impact fee provided for in this Article from time to time as it deems necessary, and may modify the amount thereof in accordance with a schedule of fees, rates and charges as adopted by the annual fee resolution, ordinance or otherwise.

Sec. 14-9-81. - Storm drainage maintenance fee; rates.

(a) The storm drainage maintenance fees shall be used solely for administration, engineering, professional services, design, installation, repair, maintenance, operation, management, and improvement of the storm drainage facilities in the City necessary for the utility to reasonably manage storm drainage in the City.

(1) All storm drainage maintenance fee charges shall be assessed pursuant to a schedule of fees to be set by the Annual Fee Resolution or ordinance duly adopted by the City Council after review of such fee schedule as the City Council from time to time may deem necessary. The following monthly storm drainage maintenance fees shall be effective January 1, 2017, and shall be assessed on all utilities account holders within the City limits independent of water and sewer usage.

a. Single-family residential	\$5.00
b. Multi-family residential	\$6.50
c. Non-residential, commercial, mixed used, municipal schools, other	\$14.00

Section 3. Validity. If any part or parts of this ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof, irrespective of the fact that any one part or parts be declared invalid.

Section 3. Repeal. Existing or parts of ordinances covering the same matters as embraced in this ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance. The repeal established herein shall not be construed to revive any ordinance or any part thereof that had been previously repealed by any ordinance repealed by this ordinance.

**INTRODUCED, PASSED ON FIRST READING, AND ORDERED PUBLISHED
THIS 16th DAY OF May, 2017.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Brighton Standard Blade*
First Publication: May 24, 2017

Approved as to Form:

Margaret Brubaker, Esq., City Attorney

**PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY
TITLE ONLY THIS 6th DAY OF June, 2017.**

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

Published in the *Brighton Standard Blade*
Final Publication: June 14, 2017