

PROPOSED BY: HEALTH AND COMMUNITY SERVICES
INTRODUCED: APRIL 14, 2026

ORDINANCE NO. _____

ADOPT A CODE REQUIRING SOURCE CONTROL FOR EXISTING DEVELOPMENT

WHEREAS, in compliance with The State of Washington Water Pollution Control Law (Chapter 90.48 RCW) and the Federal Water Pollution Control Act (The Clean Water Act -Title 33 United States Code, Section 1251 et seq.), the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington is required; and

WHEREAS, the Washington State Department of Ecology issued the Western Washington Phase II Municipal Stormwater Permit on August 1, 2024, and Whatcom County was granted coverage; and

WHEREAS, Section S.5.C.8 of the Western Washington Phase II Municipal Stormwater Permit requires all permittees to implement a program to prevent and reduce pollutants in runoff from areas of existing development that discharge to the municipal separate storm sewer system, and establishing enforcement mechanisms for that program; and

WHEREAS, the policy as proposed is in the best interest of public health and welfare; and

WHEREAS, the Whatcom County SEPA official issued a Determination of Non-Significance on March 18, 2026, and a Public Hearing has been held as scheduled on April 28, 2026.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a source control of existing development code is established as shown in Exhibit A.

ADOPTED this ____ day of _____, 2026

WHATCOM COUNTY COUNCIL

ATTEST:

WHATCOM COUNTY, WASHINGTON

Cathy Halka, Clerk of the Council

Kaylee Galloway, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Janelle C. Wilson by email 4/6/26

Civil Deputy Prosecutor

Satpal Sidhu, County Executive
() Approved () Denied

Date Signed: _____

Chapter 16.38
Source Control of Existing Development

Sections:

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16.38.010 Authority.

This chapter is adopted under the authority of the police power granted to political subdivisions of the state by Article XI, Section 11 of the Washington State Constitution and the state of Washington Water Pollution Control Law (Chapter 90.48 RCW) and the Federal Water Pollution Control Act (also known as the Clean Water Act, Title 33 United States Code, Section 1251 et seq.) as amended.

16.38.020 Purpose and intent.

A. The purpose of this chapter is to comply with provisions of the Western Washington Phase II Municipal Stormwater Permit Requirements and implement a source control program for existing development. This program is focused on addressing pollution from existing land use and activities that have the potential to release pollutants to the Municipal Separate Storm Sewer System (MS4). Discharging certain substances to the county municipal separate storm sewage system (MS4) is prohibited.

B. By prohibiting illicit discharges to the county's stormwater collection system and establishing minimum requirements to implement preventative measures from specified properties, this chapter seeks to:

1. Protect vital drinking water, sensitive habitats, and recreational resources within Whatcom County.

2. Minimize unnecessary maintenance of public facilities.

3. Prevent adverse, cumulative and avoidable environmental impacts.

16.38.030 Applicability.

This chapter applies to existing development in unincorporated areas of Whatcom County within the Department of Ecology's designated Western Washington Phase II Municipal Stormwater Permit area.

16.38.040 Definitions.

- A. "Apparent Control" means a reasonable appearance of authority over a property or facility based on the person's conduct, statements, role, or responsibility for activities occurring at the site.
- B. "Best Management Practices (BMPs)" shall have the same meaning as defined in the stormwater management manuals and National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit issued by the Washington State Department of Ecology, as amended. "Clean Water Act" means the Federal Water Pollution Control Act (33 United States Code, Section 1251 et seq.) and any subsequent amendments thereto.
- C. "Director" means the administrative director of Whatcom County Health and Community Services (WCHCS) or a representative authorized by the administrative director.
- D. "Ground water" means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.
- E. "Illicit discharge" shall have the same meaning as defined in most current Stormwater Management Manual for Western Washington.
- F. "Municipal separate storm sewer system (MS4)" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains).
- G. "National Pollution Discharge Elimination System (NPDES) stormwater discharge permit" means a permit issued by the Department of Ecology under the authority delegated pursuant to the Clean Water Act.

- H. “Nonstormwater discharge” means any discharge to the MS4 that is not composed entirely of stormwater.
- I. “Pollutant” means contamination, or other alteration of the physical, chemical or biological properties, of any surface water or groundwater, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
- J. “Prohibited connection” means any connection to a municipal separate storm sewer system (MS4) that allows prohibited or not-approved conditional discharges.
- K. “Source Control BMP” means the BMP referenced in the most current Stormwater Management Manual for Western Washington (SWMMWW) for the terms “operational BMP”, “structural BMP”, and “treatment BMP”.
- L. “Stationary equipment” means equipment, machinery, containers, or tanks that remain in a fixed location during normal operation and are not designed for transport or regular relocation. Stationary equipment may include, but is not limited to, storage tanks, processing equipment, fueling systems, generators, compressors, hydraulic systems, and other fixed industrial or commercial equipment that may store, use, or handle materials that could contribute pollutants to stormwater runoff.
- M. “Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.
- N. “Violation” means an act or omission contrary to this chapter including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

16.38.050 Administrative provisions.

A. The administrator of this chapter shall be the director of the Health and Community Services Department or their designee.

B. Prohibited Discharges. No person or entity or others under their control shall throw, drain, or otherwise discharge a pollutant to the county’s MS4 and/or surface and ground waters.

C. BMPs shall be applied to any activity that might result in illicit discharges. Compliance with this chapter shall be achieved through the use of BMPs as described in the Volume IV-Source Control BMP Library of the most current version of the SWMMWW. In applying the SWMMWW,

the director of Health and Community Services or their designee shall first require the implementation of source control BMPs. If these are not sufficient to prevent contaminants from entering surface water, stormwater or groundwater, implementation of treatment BMPs may be required. Any person implementing BMPs through another Federal, State, or local program will not be required to implement the BMPs prescribed in the SWMMWW, unless the Director determines that the other program's BMPs are ineffective at reducing the discharge of contaminants or are not being implemented. If the other program requires the development of a stormwater pollution prevention plan or other BMP plan, the person must make the plan available to Whatcom County upon request. Other Federal, State, and local programs including but are not limited to general permit, or individual NPDES permit; or State waste discharge permit from the Washington State Department of Ecology or the United States Environmental Protection Agency.

D. Fees shall be set and renewed by the county council and posted in a fee schedule

16.38.060 Right-of-Entry.

The county may enter onto and inspect properties or facilities to determine compliance with this chapter if (1) the county has the right to enter onto the property or facility for purposes of inspection pursuant to an easement, permit, search warrant or other instrument, or (2) the owner, occupant or operator of the property, or another person having apparent control or authority over the property, grants the county permission to enter and perform an inspection. Such inspections may include the following activities:

(1) Examination of vehicles, trailers, tanks, or mobile or stationary equipment which could cause a prohibited discharge;

(2) Inspection, sampling, and testing any area, discharge, material, or drainage facility for the purpose of determining the potential for contribution of pollutants to drainage facilities or receiving waters;

(3) Investigation of the integrity of drainage facilities on the premises using appropriate tests including but not limited to dye or smoke testing or video surveys;

(4) Creating records reasonably necessary to document conditions related to stormwater pollution or BMPs implemented on the premises, including but not limited to photographs, video, measurements and drawings; and

(5) Reviewing upon request documents or records relating to site activity or processes presently or previously occurring, including but not limited to material safety data sheets, stormwater pollution prevention plans, spill response plans, hazardous waste manifests, drainage inspection records, state or federal stormwater permits, or other records related to prohibited connections or discharges.

16.38.070 Investigation and testing of illicit discharges.

If the director determines that an illicit discharge is occurring or has occurred, they may require the person(s) responsible for the discharge to investigate and test private plumbing, sanitary sewers, and drainage facilities, and test water to determine the nature and character of the discharge, or to determine the source or cause of the discharge. Alternatively, the county may perform such investigations and tests as may be reasonably necessary to enforce this chapter. If the county performs investigations and tests to enforce this chapter, the county may recover the costs of such investigations and tests from the person(s) responsible for the violation, as authorized herein.

16.38.080 Enforcement

Enforcement shall be consistent with WCC 24.07.

16.38.090 Construction - Intent.

This chapter is enacted as an exercise of the county's power to protect and preserve the public health, safety and welfare. Its provision shall be exempted from the rule of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which it was enacted. This chapter is not enacted to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this chapter.

16.38.100 Severability.

Should any chapter, section, clause or provision of this chapter be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this chapter as a whole or any part thereof, other than the part so declared to be invalid.