



## Staff Report

**File #:** 24-234  
**Version:** 1

**Date:** 7/8/2024  
**Item #:** 7.1a.

**TO:** Mayor and City Council  
**THROUGH:** Keith Stahley, City Manager  
**FROM:** Brian D. Martin, PE, Public Works Director

### **SUBJECT:**

Amending Salem Revised Codes Chapter 70 (Utilities) and Chapter 71 (Stormwater).

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Natural Environment Stewardship; Safe, Reliable and Efficient Infrastructure.

### **SUMMARY:**

In 2021, the Oregon Department of Environmental Quality (DEQ) issued to the City of Salem a permit authorizing discharges of stormwater from the City's municipal stormwater system into waters of the state. This permit, issued under the authority of the federal Clean Water Act, follows an earlier permit issued to the City in 2010. The new permit contains updated requirements related to stormwater discharges from new development and redevelopment projects. To comply with the requirements of the new permit, the City must amend *Salem Revised Code* (SRC) Chapter 70 (Utilities) and SRC Chapter 71 (Stormwater) with an effective date of November 1, 2024. A summary of the changes to SRC Chapters 70 and 71 is included in Attachment 1.

### **ISSUE:**

Shall the City Council initiate the amendments of *Salem Revised Code* Chapter 70 (Utilities) and SRC Chapter 71 (Stormwater) by conducting first reading of Ordinance Bill No. 9-24, schedule a public hearing for August 26, 2024, and after conducting the public hearing advance the ordinance to second reading?

### **RECOMMENDATION:**

Initiate the amendments of *Salem Revised Code* Chapter 70 (Utilities) and SRC Chapter 71 (Stormwater) by conducting first reading of Ordinance Bill No. 9-24, schedule a public hearing for August 26, 2024, and after conducting the public hearing advance the ordinance to second reading.

## FACTS AND FINDINGS:

1. In 2010, the Oregon Department of Environmental Quality (DEQ) issued to the City of Salem a Municipal Stormwater Permit authorizing discharges from the City's municipal stormwater system into waters of the state. This permit was issued under the National Pollutant Discharge Elimination System (NPDES) program, which is a component of the federal Clean Water Act.
2. In 2014, to comply with the 2010 NPDES permit, the City created *Salem Revised Code* (SRC) Chapter 71 (Stormwater). In addition to meeting the specific requirements of the NPDES Municipal Stormwater Permit, SRC Chapter 71 contains provisions that reduce risks of flooding, reduce impacts of high stormwater flows on the aquatic environment, and reduce discharges of pollutants into Salem's creeks, lakes, and the Willamette River.
3. In 2021, DEQ renewed the City's 2010 permit. The 2021 NPDES Municipal Stormwater Permit contains revised provisions that require the City to amend several definitions in SRC Chapter 70 (Utilities) that apply to the provisions in SRC Chapter 71. Additionally, amendments are needed to SRC Chapter 71 related to thresholds and performance standards for stormwater runoff from new development and redevelopment projects. Other amendments are also being proposed to SRC Chapter 70 and SRC Chapter 71 based on lessons learned by City staff over the past ten years implementing the two codes.
4. In addition to amending SRC Chapter 70 and SRC Chapter 71, staff are also working on revisions to the *Public Works Design Standards* related to stormwater. These standards are contained in Administrative Rule 109-004. The revisions to the *Public Works Design Standards* will follow the rulemaking procedures of SRC 20J (Administrative Rulemaking and Contested Case Procedures). Council will be receiving notification of the proposed revisions to the *Public Works Design Standards* in a separate informational staff report expected later this fall.
5. To inform and guide the work on revising SRC Chapter 70, SRC Chapter 71, and the *Public Works Design Standards*, City staff have been working with two engineering consulting firms (Brown and Caldwell; Otak, Inc) and a team of stakeholders, collectively known as the Stormwater Advisory Group (SWAG). The SWAG includes representatives from MultiTech Engineering Services, Inc; AKS Engineering and Forestry; Westech Engineering; Studio 3 Architecture; the Home Builders Association of Marion & Polk Counties; Glenn-Gibson Watershed Council; City of Keizer; Marion County; and the City Councilor from Ward 2.
6. A summary of the proposed amendments to SRC Chapter 70 and SRC Chapter 71 is provided in Attachment 1.

7. Ordinance Bill 9-24 (Attachment 2) and Exhibit A to Ordinance Bill 9-24 (Attachment 3) contain the recommended amendments to SRC Chapter 70 and SRC Chapter 71. In general:
  - a. In SRC Chapter 70, adjustments are recommended to existing definitions to ensure the definitions support the changes proposed for SRC Chapter 71 and to align with definitions contained in the NPDES Municipal Stormwater Permit.
  - b. In SRC Chapter 71, the key changes involve amending the requirements triggering construction of stormwater flow control and stormwater treatment facilities for new development and redevelopment projects. These changes are based on the requirements in the 2021 NPDES Municipal Stormwater Permit.
8. SRC 300.1110 (Legislative Procedures) contains the procedures to be followed for legislative land use proceedings.
9. SRC 300.1110(a)(3) allows City staff to initiate a legislative land use proceeding by preparing an ordinance bill and placing it on the City agenda for first reading. Council may schedule a public hearing on the ordinance bill, may refer the ordinance bill to public hearing before the Planning Commission for its review and recommendation, may refer the ordinance to a Council subcommittee for further review, or may decline to advance the ordinance to second reading.
10. SRC 300.1110(b)(1) requires at least one public hearing be held for the purpose of receiving evidence and testimony in a legislative land use proceeding.
11. Staff recommend Council conduct the public hearing on August 26, 2024.
12. Per SRC 300.1110(c)(1) and *Oregon Revised Statutes* (ORS) 197.610, notices will be sent to the Oregon Department of Land Conservation and Development (DLCD) at least 35 days prior to the public hearing.
13. Per SRC 300.1110(e)(2), notices will be published in the *Statesman-Journal*.
14. Per the provisions of Oregon Ballot Measure 56, notices will be mailed to landowners regarding the proposed legislation at least 20 days prior to the public hearing.
15. The 2021 NPDES Municipal Stormwater Permit requires the City's amended ordinances implementing the new thresholds and performance standards be effective no later than November 1, 2024. The proposed Ordinance No. 9-24 includes a clause establishing November 1, 2024, as the effective date.

## Substantive Findings

SRC 110.085 (Amendments to the Unified Development Code) establishes two approval criteria that must be met for an amendment to the Salem Revised Code to be approved:

1. The amendment is in the best interest of the public health, safety, and welfare of the City; and
2. The amendment conforms with the *Salem Area Comprehensive Plan*, applicable Statewide Planning Goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.

These criteria are reviewed below.

***1. The amendment is in the best interest of the public health, safety, and welfare of the City.***

**Finding:** The Code amendments are in the best interest of the public health, safety, and welfare of the City because they reduce risks of flooding, reduce impact of high stormwater flows on the aquatic environment, and reduce discharges of pollutants into Salem's creeks, lakes, and the Willamette River.

***2. The amendment conforms with the Salem Area Comprehensive Plan, applicable Statewide Planning Goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.***

**A. Conformance with the Salem Area Comprehensive Plan**

The Salem Area Comprehensive Plan (SACP) is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meet the needs of present and future residents of the Salem urban area.

**Finding:** The proposed amendments will, among other results, provide for orderly and efficient development by requiring new development and redevelopment projects to meet performance standards related to discharges into the public stormwater system. The proposed Code amendments are also in conformance with the applicable goals and policies of the Salem Area Comprehensive Plan. Among these:

CE 1 (Community Engagement): The City's collaborative work with the members of the Stormwater Advisory Group resulted in meaningful changes and overall

improvements to the proposed amendments to SRCs and updates to the *Public Works Design Standards*. (See Facts and Findings above.)

E 4.4 (Sustainability): The requirements contained in SRC Chapter 71 (Stormwater) reduce adverse impacts of stormwater runoff on the environment by removing pollutants, reducing flows, and encouraging the use of green stormwater infrastructure.

L 4.2 (State and federal regulations): Implementing the proposed amendments to SRC Chapter 70 and Chapter 71 will ensure the City remains compliant with the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer Systems Phase I Individual Permit issued pursuant to the Oregon Revised Statute 458B.050 and Section 402 of the Federal Clean Water Act (Permit No. 101513, File No. 108919).

N 1.1 (Natural resource protection): The revised stormwater and treatment requirements contained in SRC Chapter 71 serve to protect and enhance the quality of Salem's natural resources by reducing the introduction of pollutants into our waterways and lowering the adverse impacts of high stormwater flows into Salem's creeks.

## **B. Conformance with Applicable Statewide Planning Goals**

**Goal 1: Citizen Involvement.** Goal 1 calls for the opportunity for residents to be involved in all phases of the planning process.

**Finding:** Residents were provided several opportunities for input as required by SRC 300.1110. Additionally, the involvement of the Stormwater Advisory Group provided an opportunity for representatives of the business, engineering, and environmental advocacy groups to be involved in the redrafting of the codes and administrative rules. The work of the Stormwater Advisory Group was posted on the City's public website, meetings were open to the public with times, locations, and minutes of previous meetings provided on the public website. The Salem Area Home Builders Association of Marion and Polk Counties (HBA) were made aware of the project at their monthly meeting on February 12, 2024, and HBA had a representative on the Stormwater Advisory Group. The proposed amendments satisfy this criterion.

**Goal 2: Land Use Planning.** Goal 2 requires each local government in Oregon to have and follow a comprehensive land use plan and implementing regulations.

**Finding:** The proposed amendments conform with the *Salem Area Comprehensive Plan* (see discussion in Section 2.A above). Therefore, this criterion is satisfied.

**Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces.** Goal 5 is a broad statewide planning goal for local governments that covers more than a dozen areas of interest, natural resources among them.

**Finding:** The proposed amendments will reduce the adverse impacts of stormwater runoff on Salem's waterways from new development and redevelopment. The amendments satisfy this criterion specifically for natural resources.

**Goal 6: Air, Water and Land Resources Quality.** Goal 6 instructs local governments to consider protection of air, water and land resources from pollution and pollutants.

**Finding:** The proposed amendments specifically address protection of water resources through its post-development requirements, which are intended to reduce pollutants in stormwater runoff. The proposed amendments therefore conform with this goal.

**Goal 7: Areas Subject to Natural Disasters and Hazards.** Goal 7 requires local governments to address Oregon's natural hazards.

**Finding:** The proposed amendments will minimize peak stormwater discharges from new development and redevelopment, thereby reducing risks and severity of flooding. The proposed amendments therefore conform with this goal.

**Goal 11: Public Facilities and Services.** Goal 11 is related to local governments ensuring timely, orderly, and efficient arrangement of public facilities to support urban development.

**Finding:** The proposed amendments support public infrastructure by reducing stormwater flows into the public stormwater system through the flow control thresholds and performance standards. The proposed amendments therefore conform with this goal.

*Statewide Planning Goals 3 (Agricultural Lands), 4 (Forest Lands), 8 (Recreational Needs), 9 (Economic Development), 10 (Housing), 12 (Transportation), 13 (Energy Conservation), 14 (Urbanization), 15 (Willamette River Greenway), 16 (Estuarine Resources), 17 (Coastal*

*Shorelands), 18 (Beaches and Dunes), and 19 (Ocean Resources) are not applicable to this proposed amendment.*

**C. Conformance with Applicable Administrative Rules adopted by the Department of Land Conservation and Development**

Oregon Administrative Rule (OAR) 660-018-0020 requires notice be provided to the Department of Land Conservation and Development (DLCD) on any proposed amendment to a local land use regulation at least 35 days prior to the first public hearing. Notice to DLCD will be provided within 35 days of the proposed hearing date. The proposed amendments comply with this requirement.

**BACKGROUND:**

In 2010, the Oregon Department of Environmental Quality (DEQ) issued to the City of Salem a National Pollutant Discharge Elimination System (NPDES) municipal stormwater discharge permit. This permit was issued under the authority of the federal Clean Water Act. The permit authorizes discharges from the City's municipal stormwater system into waters of the state, which include Salem's creeks, lakes, and the Willamette River. To meet the requirements of the 2010 permit, and after significant and comprehensive public engagement, the City established a new chapter in the *Salem Revised Code* (SRC) specific to stormwater. SRC Chapter 71 (Stormwater), which became effective in January 2014.

In 2021, DEQ renewed the City's NPDES Municipal Stormwater Permit. The latest permit contains updated requirements related to discharges from new development and redevelopment projects. To comply with the new permit's requirements, the City must update definitions contained in SRC Chapter 70 (Utilities) and amend several provisions in SRC Chapter 71 (Stormwater) related to stormwater discharge requirements following new development and redevelopment.

Robert D. Chandler, PhD, PE  
Assistant Public Works Director

**Attachments:**

1. Summary of proposed amendments to SRC Chapter 70 (Utilities) and SRC Chapter 71 (Stormwater)
2. Proposed Ordinance Bill No. 9-24, Amending SRC Chapter 70 and SRC Chapter 71
3. Exhibit A to proposed Ordinance Bill No. 9-24, Amending SRC Chapter 70 and SRC Chapter 71

