
COUNCIL ORDINANCE NUMBER 20430

COUNCIL BILL NUMBER 4975

AN ORDINANCE ADDING SECTIONS 9.4770 THROUGH 9.4790 TO THE EUGENE CODE, 1971 THAT ESTABLISH A WATER QUALITY OVERLAY ZONE; AMENDING SECTIONS 9.0500 9.1040, 9.7055, 9.7205, 9.7305, 9.7820, 9.8005, 9.8025 9.8030, 9.8055, 9.8215, 9.8220, 9.8320, 9.8325, 9.8415, 9.8470, 9.8472, 9.8474, 9.8515, 9.8520, 9.8855, AND 9.8865 OF THAT CODE; REPEALING ORDINANCE NO. 20194 AND SECTIONS 6.650, 6.655, 6.660, 6.665, AND 6.670 OF THAT CODE; ADOPTING THE WATER QUALITY WATERWAYS MAP; AMENDING THE EUGENE OVERLAY ZONE MAP; ADOPTING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

ADOPTED: March 9, 2009

PASSED: 5/3

REJECTED:

OPPOSED: Clark, Poling, Solomon

ABSENT:

EFFECTIVE: June 10, 2009

ORDINANCE NO. 20430

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THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The definition of “Development Permit” set forth in Section 9.0500 of the Eugene Code, 1971, is amended, and a new definition of “City engineer” is added thereto, to provide:

9.0500 **Definitions.** As used in this land use code, unless the context requires otherwise, the following words and phrases mean:

City Engineer. The person authorized by the city manager to carry out the duties of city engineer under this code, or the city engineer’s designee(s).

Development Permit. A permit authorized or required by the Oregon Structural Specialty Code and Oregon One and Two Family Dwelling Code, including but not limited to permits for:

- (A) New buildings.
- (B) Additional square footage added to a building.
- (C) Building demolition.
- (D) Foundations.
- (E) Change of occupancy.
- (F) Grading/Fill.
- (G) Site improvements.

Section 2. Section 9.1040 of the Eugene Code, 1971, is amended by adding a Water Quality Overlay Zone in alphabetical order to the Table, to provide as follows:

9.1040 **Establishment and List of Overlay Zones.** The overlay zones listed in Table 9.1040 Overlay Zones are established as follows:

Table 9.1040 Overlay Zones	
Overlay	Description
/WP	Waterside Protection Overlay Zone
/WQ	Water Quality Overlay Zone
/WR	Water Resources Conservation Overlay Zone

Section 3. The following caption and Sections 9.4770 through 9.4790 are added to the Eugene Code, 1971, to provide:

/WQ WATER QUALITY OVERLAY ZONE

9.4770 **/WQ Water Quality Overlay Zone - Purpose.** The purpose of the /WQ Water Quality Overlay Zone is to protect the health and safety of the public in a manner that complies with federal and state water quality requirements. The Overlay Zone is intended to protect and improve the physical integrity and water quality function within and adjacent to otherwise unprotected waterways consisting of waterways identified pursuant to section 303(d) of the federal Clean Water Act, waterways that are tributaries to those waterways, and headwater streams.

9.4772 **/WQ Water Quality Overlay Zone – Applicability.** EC 9.4770 through 9.4790 apply to all property to which the /WQ Water Quality Overlay Zone has been applied through the city’s rezoning process or through automatic rezoning upon annexation.

9.4774 **/WQ Water Quality Overlay Zone – Relationship to Other Zones and State and Federal Laws.** When conflicting zoning provisions apply to land within a /WQ Management Area (See EC 9.4778), the /WQ provisions shall control. Consistency with the provisions of EC 9.4780 does not exempt the property owner from state or federal laws or regulations.

9.4776 **/WQ Water Quality Overlay Zone - Siting Requirements.** In addition to the criteria at EC 9.8865, when considering an application to add the /WQ Overlay Zone to a lot, the following criteria apply:

- (1) The subject lot Includes:
 - (a) A waterway identified pursuant to section 303(d) of the federal Clean Water Act, a waterway that is a tributary to a 303(d) waterway, or that is a headwater stream; or
 - (b) A portion of the /WQ Management Area, as described in EC 9.4778(1), for a waterway described in (a); and
- (2) The subject segment of waterway (it may be natural or constructed):
 - (a) Is not already protected by the NR zone or the /WR, /WP or /WB overlay zones;
 - (b) Has a discernable streambed and side banks;
 - (c) Carries water at least part of the year;

- (d) Provides a drainage function for surface runoff from land areas beyond a roadway; and
- (e) If a ponded area, has an inlet and outlet drainage function.

9.4778 WQ Water Quality Overlay Zone – WQ Management Area.

- (1) Except as provided in subsections (2), (3) or (4) the WQ Management Area is that area depicted on the city's adopted Water Quality Waterways Map.
 - (a) As depicted on the Water Quality Waterways Map, the WQ Management Area is comprised of both the waterway channel, which for purposes of EC 9.4770 through 9.4790, and 9.8030(25), means the area between the top of high banks on each side of the waterway, and the applicable setback, as described in (b) or (c) below.
 - (b) For a waterway identified on the Water Quality Waterways Map as a waterway identified pursuant to section 303(d) of the federal Clean Water Act, or a tributary to such a waterway, the applicable setback is 25 feet from top of high bank (THB). For purposes of EC 9.4770 through 9.4790 and 9.8030(25), THB is the highest point at which the vertical rise of the waterway bank meets the horizontal grade of the adjoining topography.
 - (c) For waterways identified on the Water Quality Waterways Map as headwater streams, the applicable setback is 40 feet from the waterway's centerline.
 - (d) The procedures used for mapping these setbacks on the Water Quality Waterways Map shall be more particularly described in an administrative rule adopted by the city manager in accordance with EC 2.019 City Manager – Administrative and Rulemaking Authority and Procedures.
- (2) For a lot that is 6,000 square feet in area or less with a WQ Management Area, alone or in combination with a WR Conservation Area, that constitutes more than 33% of the lot, as part of the city's consideration of an application for a development permit or land use approval, the city shall automatically reduce the applicable setback distance described in (1) above, provided:
 - (a) The lot was created pursuant to a planned unit development, subdivision, partition or property line adjustment application described in EC 9.4780(2)(i)2.;
 - (b) Unless precluded by (2)(d) below, the reduction in setback shall result in the WQ Management Area constituting 33% of the lot area, alone or in combination with a WR Conservation Area; and
 - (c) The new boundary shall be located:
 - 1. Parallel to the original boundary (closer to the waterway); or
 - 2. Through the application of setback averaging. Setback averaging shall be accomplished by expanding the WQ Management Area in an undeveloped area of the development site, and reducing it in another area of the development site.
 - (d) In no case shall the setback boundary be located within the waterway channel.
- (3) As part of the city's consideration of an application for a development permit or land use approval, the city shall exclude from the WQ Management Area:
 - (a) Those areas which the applicant has shown to have been developed prior to June 10, 2009. For purposes of this subsection, "developed areas" are those within the physical ground surface footprint of a legally constructed:
 - 1. Structure (including a manufactured dwelling) with a permanent foundation, constructed or sited pursuant to an approved permit;

2. Utility facility (such as a transmission pole, utility transmission vault box, or pump station), telecommunication tower, telecommunication platform, satellite dish, sign or billboard;
 3. Permanent deck or patio that is attached to a structure listed in subsection 1. above; or
 4. Paved parking area, street, driveway, bike path, or pedestrian path. Fences and landscaping do not cause an area to be “developed” to warrant exclusion from the /WQ Management Area. All other uses and structures that were legally established prior to June 10, 2009 but that do not comply with the allowed uses and standards of the /WQ Overlay Zone are subject to EC 9.1200 through EC 9.1240 Legal Nonconforming Situations; and
- (b) Any land that is included in a:
1. /WP Waterside Protection area as described in EC 9.4720;
 2. /WB Wetland Buffer area as described in EC 9.4820; or
 3. /WR Water Resources Conservation area as described in EC 9.4920.
- (4) Where an existing development under subsection (3)(a)1. or 3. above or an existing developed street or sound wall physically isolates a portion of the /WQ Management Area, as part of the city’s consideration of an application for a development permit or land use approval, the city shall exclude that isolated portion from the /WQ Management Area.

9.4780 **/WQ Water Quality Overlay Zone - Permitted and Prohibited Uses.** Uses are permitted or prohibited within the /WQ Water Quality Overlay Zone based on whether they occur outside or within the /WQ Management Area as follows:

(1) Uses Permitted Outside /WQ Management Area.

- (a) The uses permitted on portions of a lot located outside of the /WQ Management Area are the same as those otherwise permitted on that lot without consideration of the /WQ Water Quality Overlay Zone; and
- (b) Prior to issuance of a development permit, the city shall verify that the /WQ Management Area setback has been accurately demarcated by a prominent and continuous protective feature indicating a “No Disturbance Area.” No site preparation, including but not limited to vegetation removal, may take place within 50 feet of the /WQ Management Area, until such verification has been provided.

(2) Uses Permitted Within /WQ Management Areas. Subject to any applicable development permits, the following uses are the only uses permitted outright within the /WQ Management Area:

(a) Vegetation Planting and Management.

1. Plantings of plants and vegetation provided they are not Invasive, Non-Native Plant species as defined in EC 9.0500 Definitions; and
2. Mowing, replacing and pruning vegetation within lawn and garden landscaped areas existing as of June 10, 2009.

The use of native vegetation in the /WQ Management Area is preferred, in order to reduce the need to apply water, herbicides, pesticides and fertilizers;

(b) Removal of Plants and Vegetation.

1. Other than as permitted pursuant to EC 9.4780(2)(a)2., or approved pursuant to EC 9.4780(3) or EC 9.8030(25), removal of plants and vegetation shall be limited to the following:

- a. Removal of Invasive, Non-Native plant species;
 - b. A public entity's removal of plants or vegetation from publicly owned property by mechanical or manual means within a strip not to exceed 15 feet in width where that property abuts private property that is not within a /WQ Management Area;
 - c. Removal of plants or vegetation that the city fire marshal has declared poses a potential fire hazard to existing structures. Written documentation of the fire marshal's declaration, including a description of the location of the structure and the location of the plants or vegetation to be removed, shall be provided to the planning director prior to the removal. The removal shall be limited to the extent specified by the fire marshal's declaration; and
 - d. Removal of hazardous tree(s), or removal of trees that create an unsafe condition due to proximity to existing structures, proposed construction, or interference with utility services or pedestrian or vehicular safety, so long as prior to removal the property owner is able to produce upon request a written evaluation of any tree proposed for removal prepared by a certified arborist declaring the tree(s) to be hazardous or creating an unsafe condition and recommending removal;
2. Areas of bare soil existing as a result of plant or vegetation removal shall be:
- a. Protected or covered consistent with EC 6.625 through EC 6.645;
 - b. Replanted as soon as practicable, but no later than March 15 of the calendar year following disturbance; and
 - c. If not replanted within 15 days of disturbance, areas of bare soil shall be mulched and seeded with straw mulch and native seed for temporary stabilization within 15 days of disturbance.
- (c) Maintenance, Repair and Reconstruction Activities.
- 1. Removal of refuse;
 - 2. Removal of fill in response to a written determination from a regulating agency that the fill is in violation of local, state or federal regulations;
 - 3. Maintenance, repair and reconstruction of streets, bridges, driveways, parking areas and pathways, including, but not limited to, sweeping, striping, sealing, and resurfacing, provided such activity is not a part of a broader project for which additional incursion into the /WQ Management Area is proposed;
 - 4. Channel maintenance practices, including mowing and sediment removal necessary to maintain stormwater conveyance and flood control capacity or to protect water quality, as required by local policies, local, state, and federal regulations, and intergovernmental agreements;
 - 5. Maintenance, repair, and reconstruction of utility facilities such as wastewater and stormwater pipes, culverts, electrical transmission lines, and television and cable systems, provided such activity is not a part of a broader project for which additional incursion into

- the /WQ Management Area is proposed; and
6. Maintenance, repair, and reconstruction of a fence that was legally established prior to June 10, 2009, provided that for any reconstruction it occurs in the same location and to the same dimensions as the pre-existing fence;
- (d) Emergency Activities.
1. Emergency repair of utility facilities (such as wastewater and stormwater pipes, electrical transmission lines, and television and cable systems) and transportation facilities (such as roadways, bridges, bikeways and pathways), failing slopes or eroding channel banks or channel beds; provided the city engineer has declared in writing that:
 - a. Immediate repair is necessary to avert an imminent threat to water quality, the environment, public health, public safety, or the structural integrity of the utility facilities, transportation facilities, stream channel banks or stream channel beds, or structural integrity of adjacent structure(s); and
 - b. The method of repair will minimize impacts to water quality and any emergency repairs resulting in bare soil conditions will comply with EC 9.4780(2)(b)2.;
 2. Emergency response to spills of materials that threaten water quality;
 3. Fire suppression and medical emergency response operations;
- (e) Construction and Maintenance of Vegetated Stormwater Management Facilities. Swales, filter strips, constructed wetlands, and other vegetated stormwater management facilities for pollution reduction or flow control are permitted if otherwise approved through the provisions of EC 9.6791 through 9.6797 in accordance with the Stormwater Management Manual adopted by administrative order of the city manager;
- (f) Public Improvement Projects. For purposes of this subsection (f), a public improvement project is defined as any improvement which upon construction and acceptance by a public entity shall become the entity's responsibility to maintain, repair or replace. Public improvement includes, but is not limited to, local improvements or other structures or facilities constructed upon or under public or private property. Provided the city has on file the certification described in (f)4. below, the following public improvement projects, are permitted:
1. Construction of a public water quality improvement project that is identified in an approved city plan (including but not limited to the repair or rehabilitation of stream channels and banks, installation of aeration features, construction of facilities for removing stormwater pollutants, plantings for improving pollutant filtration, channel shading, or erosion control);
 2. Construction or improvement of parks, recreation facilities, open space, and habitat enhancements (including but not limited to footpaths, bike paths, pedestrian and bike bridges, site furniture, boardwalks, kiosks, signs, planting of native species, hydrology and landscape restoration, and barriers for species containment);
 3. Construction of public infrastructure including but not limited to streets, bridges, sidewalks, stormwater facilities, and other public utilities provided:

- a. Construction will take place within an existing public way, or at the location shown in a plan adopted by the city or another public entity prior to June 10, 2009;
 - b. The public facility is a water dependent structure or use such as a boat ramp, dock, bridge or an accessway to such a structure or use, which by its nature cannot be located anywhere except within the /WQ Management Area; or
 - c. The facility is intended to provide safe public access to the waterway for the purposes of public education or to provide protection of the waterway by managing access;
4. For any public improvement project authorized by (2)(f), the city shall have on file for city projects a certification from the city engineer, and for other public entities a certification from a licensed civil engineer with authority to represent the public entity, that all of the following were addressed in the project's design:
- a. Pervious surface materials have been considered for all pathways, bikeways, driveways and parking areas where well draining soils are present as defined by the requirements of the Stormwater Management Manual adopted by administrative rule of the city manager as authorized by EC 9.6790 Stormwater Management Manual;
 - b. Applicable stormwater development standards contained in EC 9.6791 through 9.6795 and erosion control requirements contained in EC 9.6792 and EC 6.625 through EC 6.645 are met;
 - c. For areas located outside the footprint of construction-related impervious surfaces:
 - (1) Soil permeability rates and sheet-flow drainage patterns are restored to pre-construction conditions or improved from preconstruction conditions by increasing soil permeability or enhancing sheet flow patterns; and
 - (2) Plants and vegetation are planted to the following specifications:
 - (a) 80% of the area is covered;
 - (b) Species planted are not Invasive, Non-Native species as defined in EC 9.0500;
 - (c) Species consist of a balance of trees, shrubs and forbs;
 - d. Bio-engineering methods are used to stabilize stream banks and repair areas of erosion, including but not limited to bank failure, bank sloughing, and channel incision, or the city engineer has provided written approval of alternative methods;
 - e. Based on the city's Water Quality Function Rating System, (see EC 9.4782), the project will result in a water quality function rating equal to or greater than previously existed; and
 - f. For a public improvement project allowed pursuant to (f)2. or (f)3., impervious surfaces are minimized by constructing the facility or infrastructure with as little impervious surface as allowed by city standards and the Americans With Disabilities Act;

- (g) Authorized Enhancement and Restoration. Wetland, stream and riparian enhancement and restoration if the proposed activity is authorized:
1. Under a Mitigation Improvement Plan approved by the Oregon Department of State Lands (DSL) and, if required, by the U. S. Army Corps of Engineers (ACOE);
 2. Under a wetland restoration permit or wetland enhancement permit approved by the DSL, and if required by the ACOE; or
 3. By a "Finding of No Significant Impact" or a "Record of Decision" under the federal National Environmental Policy Act (NEPA) that identifies the restoration or enhancement activity as the final selected alternative;
- (h) Other Activities.
1. Construction and maintenance of paths with no impervious surface for pedestrian or bicycle use not to exceed 5 feet in width;
 2. Construction and maintenance of facilities for monitoring water quality and gauging stream flows;
 3. Construction and maintenance of publicly accessible recreational/environmental interpretative signs with a ground disturbance not to exceed 12 square feet in area;
 4. Construction or replacement of fences located at least 20 feet from THB, provided that they are not constructed with continuous footings or other obstructions to surface drainage;
 5. Construction and maintenance of publicly accessible educational/interpretive facilities including concrete pads for benches with a ground disturbance not to exceed 120 square feet in area;
 6. Construction and maintenance of a slatted deck of no more than 120 square feet in area, with no impervious surface, and located at least 20 feet from THB;
 7. Construction and maintenance of accessory structures that do not require a building permit such as a garden shed, playhouse or greenhouse of no more than a total of 120 square feet, located at least 20 feet from THB;
 8. Installation and maintenance of erosion control measures that have been approved pursuant to EC 6.625 through 6.645;
 9. Single family residential composting located outside the channel, and at least 10 feet from THB;
 10. City placement and maintenance of fences or woody debris for purposes of habitat or species protection;
 11. Construction of new underground utilities for providing service to an existing lot of record where there is no other alternative location; or
 12. Maintenance, repair, replacement, upgrading and expansion of telecommunications facilities and facilities used for the transmission of television and radio signals, including towers, satellite dishes and related support structures such as foundations, footings, platforms, and wiring, that were legally established prior to June 10, 2009, provided that for any expansion, the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the expansion will result in a water quality function rating equal to or greater than previously existed; and

- (i) Prior Approved Development. Uses, structures, streets and utilities that are explicitly authorized, or that are necessary to carry out the uses or development explicitly authorized, by a city approval of:
 1. An application for a development permit that was submitted prior to June 10, 2009; or
 2. An application for a land use approval that was submitted prior to June 10, 2009 and was deemed by the city to be complete when first submitted or made complete by the submittal of all requested additional information within 180 days of the application's submittal date.
- (3) **Uses Subject to Standards Review Within the /WQ Management Area.** Unless prohibited by subsection (4), or permitted outright in subsection (2), the following uses are permitted, subject to the standards review process beginning with EC 9.8460. Consistency with the specific standards provided or referenced for each use below shall be used as the criteria for approval. These uses may require additional development permits pursuant to other provisions of this code.
 - (a) Construction of private water quality improvements, including stabilization or reconfiguration of channels and pond banks to improve stability and installation of aeration features. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3) and (7) through (11);
 - (b) Realignment or reconfiguration of channels and pond banks to accommodate a proposed development:
 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, there is no other feasible option for locating the proposed development outside the /WQ Management Area;
 2. Provided the realignment will not cause the /WQ Management Area to:
 - a. Occupy any portion of an adjacent lot not currently having the /WQ overlay zone, unless the standards review application is accompanied by an owner-authorized rezoning application to apply the /WQ overlay zone to the newly affected lot; or
 - b. Increase an existing /WQ Management Area on an adjacent lot, unless the standards review application is accompanied by the written consent of the affected lot owner(s);
 3. Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the realignment will result in a water quality function rating equal to or greater than previously existed; and
 4. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3) and (7) through (11);
 5. If a realignment under 2. above is approved, necessitating a correction to the Water Quality Waterways Map, the planning director shall update that Map to reflect the correction. If the correction results in the complete removal or relocation of the

- /WQ Management Area from a lot, or a determination that the /WQ Overlay Zone should be removed or relocated from a lot, the planning director shall update the Eugene Overlay Zone Map to reflect the determination;
- (c) Construction of public improvements not already permitted under subsection (2) above (including but not limited to streets, bridges, boardwalks, paths, flood control structures, and public utilities):
 - 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, there is no feasible option for locating the proposed improvements outside the /WQ Management Area;
 - 2. Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the construction will result in a water quality function rating equal to or greater than previously existed; and
 - 3. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (11);
 - (d) Construction of a private stream crossing with a culvert or bridge for an access road or pedestrian use:
 - 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources or lot configuration, no point of access to an adjacent street or road is available within the applicant's real property ownership that is outside the /WQ Management Area;
 - 2. Where the number of stream crossings is the minimum necessary for the approved use; and
 - 3. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (6), (8), (10) and (11);
 - (e) Construction of a private street and related infrastructure including utilities not already permitted under subsection (2) above:
 - 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources or lot configuration, or access location restrictions by the city, there is no feasible option for locating the street outside of the /WQ Management Area;
 - 2. Provided the applicant has submitted a certification signed by a professional referenced in EC 9.4782(2) that, based on the city's Water Quality Function Rating System, the construction will result in a water quality function rating equal to or greater than previously existed; and
 - 3. Subject to EC 9.4790 /WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (6), (10) and (11);
 - (f) Construction of new underground utility lines not already permitted under subsection (2) above:
 - 1. Where, due to the physical constraints of the development area, including, but not limited to, slope/hillsides, natural hazards, natural resources, lot configuration or existing right of way, no reasonable alternative route exists outside the /WQ Management Area to

- provide service to an unserved area or to connect to an existing line;
and
2. Subject to EC 9.4790 WQ Water Quality Overlay Zone Development Standards (1) through (4) and (10) and (11);
 - (g) Construction of water dependent structures and uses not already permitted under subsection (2) above, and access ways to those structures and uses, which, by their nature, cannot be located anywhere except within the WQ Management Area, such as boat ramps or docks. Subject to EC 9.4790 WQ Water Quality Overlay Zone Development Standards (1) through (3), (5), (10), and (11); and
 - (h) Non-emergency repair or stabilization of a failing slope or eroding channel bank that is not already permitted under subsection (2) above:
 1. Subject to EC 9.4790 WQ Water Quality Overlay Zone Development Standards (1) through (3), (9) through (11); and
 2. Provided the applicant submits to the planning director a report from a registered engineer or an Oregon licensed engineering geologist that, based on the city's Water Quality Function Rating System, the repair or stabilization will result in a water quality function rating equal to or greater than previously existed.
- (4) Uses Prohibited Within the WQ Management Area.** Uses that are not specifically allowed under subsections (2) or (3) are prohibited within the WQ Management Area unless an adjustment is granted pursuant to EC 9.8030(25)(c)1. Such prohibited uses include, but are not limited to the piping of a waterway (other than culverts explicitly permitted), storage of wood, building materials, vehicles, machinery, or other items or materials, and dumping, piling, or disposal of refuse, fill, yard debris, pet waste, or other material.

9.4782 Water Quality Function Rating System.

- (1) When this code requires the use of the city's Water Quality Function Rating System, the applicant shall comply with the requirements contained in the administrative order adopted by the city manager pursuant to EC 2.019 City Manager – Administrative and Rulemaking Authority and Procedures. As more specifically described in that order, the city's Water Quality Function Rating System sets out a process for evaluating a specific WQ Management Area's water quality function based on the presence or frequency of enumerated characteristics.
- (2) Unless waived by the planning director, that portion of the application utilizing the city's Water Quality Function Rating System shall be prepared by one or more of the following professionals:
 - (a) Oregon licensed architect;
 - (b) Oregon licensed civil or geotechnical engineer;
 - (c) Oregon licensed landscape architect;
 - (d) Oregon licensed geologist;
 - (e) A professionally trained botanist, biologist, ecologist or geomorphologist;
or
 - (f) A creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology or a closely related field.

9.4784 WQ Water Quality Overlay Zone – Adjustments.

- (1) Adjustments to the provisions of EC 9.4778 WQ Water Quality Overlay Zone – WQ Management Area may be made subject to compliance with the criteria for adjustment in EC 9.8030(25)(a) or (b).
- (2) Adjustments to the provisions of EC 9.4780 WQ Water Quality Overlay Zone – Permitted and Prohibited Uses or 9.4790 WQ Water Quality Overlay Zone – Development Standards may be made subject to compliance with the criteria for adjustment in EC 9.8030(25)(c).

9.4786 WR Water Quality Overlay Zone – Map Correction/Removal of Overlay Zone.

Consistent with the application requirements at EC 9.7010, proposals to correct the Water Quality Waterways Map shall be subject to the procedures and criteria in this section. When considering an application to remove the WQ Water Quality Overlay Zone from a specific lot, the provisions of this section apply instead of the zone change procedures and criteria described at EC 9.8850 through 9.8865.

- (1) **Application Requirements.** Except as provided in EC 9.8005(2), the application shall be processed under the Type II application procedure (EC 9.7200 – 9.7230).
 - (a) If an error on the Water Quality Waterways Map is alleged, the application shall:
 1. Identify the waterway or WQ Management Area alleged to have been incorrectly mapped;
 2. Identify the tax lots and a description of any right-of-way alleged to have been incorrectly included in the WQ Management Area; and
 3. Include a description of the alleged error, the basis of the error, including evidence such as a land survey, ortho-photo and topographic information, and the proposed correction;
 - (b) If the application proposes to remove the WQ Water Quality Overlay Zone from a lot or parcel due to a partition, subdivision or property line adjustment that results in a new or reconfigured lot onto which the WQ Management Area does not extend, the application shall:
 1. Include a copy of the proposed or recorded plat for such partition, subdivision or, for a property line adjustment, a copy of the recorded deed and approved map; and
 2. Identify the waterway or WQ Management Area that is located on the parent lot.
- (2) **Approval Criteria.** Approval shall be based on consideration of the procedures for mapping described in EC 9.4778(1), the administrative rule referenced therein, and compliance with the following criteria:
 - (a) For an allegation of error on the Water Quality Waterways Map, the evidence submitted demonstrates that:
 1. The waterway does not have a discernable streambed and side banks;
 2. The waterway does not carry water at least part of the year;
 3. The waterway only provides a drainage function for surface runoff from a roadway;
 4. The waterway is a ponded area with no inlet or outlet drainage feature;

5. The waterway location or alignment is incorrect; or
 6. The /WQ Management Area as depicted on the map extends beyond the applicable 25 foot or 40 foot setback as described in EC 9.4778(1);
- (b) For removal of the /WQ Overlay Zone that is proposed due to a partition, subdivision or property line adjustment:
1. The newly created lot does not include any portion of a /WQ Management Area; and
 2. In cases where the lot has not yet been recorded, removal of the /WQ Overlay Zone shall be conditioned upon recordation.
- (3) Update of the Water Quality Waterways Map and the Eugene Overlay Zone Map. If the Type II process described above results in the approval of a correction to the Water Quality Waterways Map, the planning director shall update that Map to reflect the correction. If the correction results in the complete removal or relocation of the /WQ Management Area from a lot under (2)(a) or a determination that the /WQ Overlay Zone should be removed or relocated from a lot under (2)(b), the planning director shall update the Eugene Overlay Zone Map to reflect the determination.

9.4790 **/WQ Water Quality Overlay Zone - Development Standards.** The following standards apply only as specifically required by EC 9.4780(3):

- (1) **Vegetation Removal.** Vegetation removal in order to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:
- (a) Vegetation removal in excess of that allowed by EC 9.4780(2)(b) shall be the minimum necessary to accommodate the use; and
 - (b) Any clearing of vegetation that is not within the footprint of uses approved in accordance with EC 9.4780(3), or uses approved through an adjustment approved under EC 9.8030(25), must be followed by replanting in accordance with the requirements of subsection (2) below.
- (2) **Planting and Replanting.** Planting or replanting of areas that are cleared or graded in order to accommodate a use listed in EC 9.4780(3) and that are located outside of the use's footprint shall comply with the following standards:
- (a) Plantings of plants and vegetation provided they are not Invasive, Non-Native Plant species as defined in EC 9.0500 Definitions, including some tree or large shrub species and planted in sufficient quantity and location to provide bank stability and to create substantial shading of the channel during times of peak solar input;
 - (b) Except as required in (d) below, the plant species and plant spacing to be utilized shall further the objective of increasing, to the greatest extent practicable, the capacity of the /WQ Management Area to filter pollutants from runoff that flows across the /WQ Management Area;
 - (c) Plant species selected for all plantings shall be appropriate to the site given its topography, hydrology, and soil type;
 - (d) Areas of bare soil existing as a result of vegetation removal shall be protected or covered consistent with EC 6.625 through EC 6.645, and replanted or mulched and seeded with straw mulch and native seed within 15 days of disturbance;

- (e) Disturbed areas shall be re-planted consistent with this section as soon as practicable, but no later than March 15 of the calendar year following disturbance; and
 - (f) A 70% survival rate of plantings shall be guaranteed for a 3-year period in the form of a financial deposit, bond or other means sufficient to cover the cost to remove dead and dying species, and to purchase and replant with living species. City staff shall be granted access to the planted area by the property owner as a condition of approval for this use in order to monitor the establishment of the plantings during this 3-year period.
- (3) Construction Practices.** Construction to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:
- (a) Construction, maintenance, repair, reconstruction and restoration activities shall be planned and timed so as to minimize adverse impacts to water quality;
 - (b) For purposes of this subsection, heavy machinery is defined as motorized or mechanized machinery or equipment capable of deliberately or inadvertently damaging vegetation, or damaging or compacting soil. The following standards shall apply to use of heavy machinery within the /WQ Management Area:
 1. The use of heavy machinery shall be the minimum necessary for the use or activity and shall be restricted to those areas where its use is necessary;
 2. The use of heavy machinery within the channel shall be limited to the period between June 15 and September 30 except as allowed by permit from the Army Corps of Engineers or Oregon Department of State Lands; and
 3. On sites where soils are severely compacted through the use of heavy machinery, the soils shall be tilled or re-tilled to a depth of 6 inches.

Construction may also be subject to construction site management practices such as the erosion prevention provisions of EC chapter 6, which apply to, among other things, clearing, grading, grubbing, excavation and filling.
- (4) Utility Alignment.** Routing of new utility lines to accommodate a use listed in EC 9.4780(3) shall be designed so as to minimize adverse impacts to water quality within the /WQ Management Area to the greatest extent practicable.
- (5) Paved Surfaces.** Construction of new paved surfaces to accommodate a use listed in EC 9.4780(3) shall comply with the following standards:
- (a) Impervious surfaces shall be minimized by constructing the facility or infrastructure with as little impervious surface as allowed by city standards and the Americans With Disabilities Act;
 - (b) Impervious surfaces shall be located as far from the waterway as practicable; and
 - (c) For paved foot paths, lightly used access roads, or low volume parking areas where soils and flat topography will facilitate infiltration of runoff, pervious pavement systems, or other infiltration devices approved by the planning director or city engineer shall be used in lieu of standard impervious paving surfaces to increase infiltration of stormwater where practicable. For the purposes of this subsection, gravel surfaces are considered pervious unless they cover impervious surfaces or are

compacted to a degree that causes their rational method runoff coefficient to exceed 0.8, determined in accordance with the city's adopted Public Improvement Design Standards Manual.

- (6) **Stream and Channel Crossings.** Bridges, culverts or other structures that cross waterways permitted under EC 9.4780(3) shall comply with the following standards:
 - (a) Crossings shall be designed and constructed in a manner that results in the least physical impact to the waterway, utilizing a minimum width, appropriate invert elevations and slope, and aligned at right angles to the waterway whenever practicable;
 - (b) Culverts and bridges shall not increase or decrease water depth, velocity or flow rate upstream or downstream from the culvert, except as necessary to address conveyance needs identified in the city's adopted Stormwater Management Manual or as otherwise allowed or required by this code;
 - (c) When a culvert 72 inches in diameter or greater would be required, bridges shall be utilized, or box or arch culverts with bottoms filled to a depth of at least 12 inches with stone; and
 - (d) Stream banks and stream beds must be stabilized at crossings, using vegetative bio-engineering methods to the maximum extent practicable.
- (7) **Hydrology.** Existing hydrology shall be maintained unless modification of hydrology is an element of an approved use and/or intended to improve water quality to minimize flow concentration, downcutting, and erosion.
- (8) **Stormwater Discharges.**
 - (a) Improvements shall not increase or decrease stormwater conveyance capacity either upstream or downstream of improvements except as necessary to address conveyance needs identified in the city's adopted Stormwater Management Manual, or as otherwise allowed or required by this code;
 - (b) Improvements shall meet the stormwater development standards of EC 9.6790 through EC 9.6797; and
 - (c) Flow spreaders and energy dissipaters shall be utilized to prevent erosive impacts to protected areas from stormwater discharges where practicable to avoid concentrating stormwater discharges.
- (9) **Repair and Reconstruction of Stream Banks and Channels.** Bio-engineering methods are to be used to repair stream bank failures and channel erosion problems and to reconstruct stream banks and channels except where those methods by themselves would be ineffective. Where bio-engineering alone is inadequate, stones and boulders may be used to augment bank repair efforts, dissipate energy or control flows.
- (10) **Removal of Materials Harmful to Water Quality.** All refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the /WQ Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the /WQ Management Area shall be removed.
- (11) **Protect Management Area During Construction.** Prior to engaging in the use authorized under EC 9.4780(3), the applicant shall demarcate the /WQ Management Area setback area by a prominent and continuous protective feature indicating a "No Disturbance Area." No site preparation, including but not limited to vegetation removal, may take place within 50 feet of the /WQ Management Area, until the city has verified the required demarcation.

Section 4. Section 9.7055 of the Eugene Code, 1971, is amended by adding an entry for “/WQ Water Quality Overlay Zone” in alphabetical order therein to provide:

9.7055 **Applications and Review Authorities.** Table 9.7055 Applications and Review Authorities, lists applications and the typical review authorities for the decision and the appeal of the decision. To accommodate a request for concurrent review, the city may instead review multiple applications according to the highest applicable type.

Table 9.7055 Applications and Review Authorities						
R = Recommendation, D = Decision Maker, A = Appeal Review Authority						
Application	Type	Planning Director	Hearings Official	Historic Review Board	Planning Commission	City Council
/WQ Water Quality Overlay Zone - Map or Zone Error (See EC 9.4786)	II	D	A			

Section 5. Table 9.7205 of the Eugene Code, 1971, is amended by adding an entry for “/WQ Water Quality Overlay Zone” in alphabetical order therein to provide:

9.7205 **Type II Application Requirements and Criteria Reference.** The following applications are typically reviewed under the Type II review process according to the requirements and criteria set forth for each application as reflected in the beginning reference column in Table 9.7205. To accommodate a request for concurrent review, the city may instead review multiple applications according to the highest applicable type.

Table 9.7205 Type II Application Requirements and Criteria	
Type II Applications	Beginning Reference
/WQ Water Quality Overlay Zone – Map Correction/Removal of Overlay Zone	EC 9.4786(3)

Section 6. The paragraph following Table 9.7305 of the Eugene Code, 1971, is amended to provide:

9.7305 **Type III Application Requirements and Criteria Reference.** The following applications are typically reviewed under the Type III review process according to the requirements and criteria set forth for each application as reflected in the beginning reference column in Table 9.7305. To accommodate a request for

concurrent review, the city may instead review multiple applications according to the highest applicable type.

Table 9.7305 Type III Application Requirements and Criteria	
Type III Applications	Beginning Reference
Adjustment Review (when part of a Type III Application)	EC 9.8015
Conditional Use Permits (CUP)	EC 9.8075
Historic Landmark Designation	EC 9.8150
Planned Unit Development, Tentative Plan	EC 9.8300
Willamette Greenway Permit	EC 9.8800
Zone Changes*	EC 9.8850

*Zone changes processed concurrently with a Metro Plan amendment, the adoption or amendment of a refinement plan, or a land use code amendment shall follow the applicable procedure for the amendment. A zone change to apply the /ND overlay zone shall be processed according to EC 9.4260. Removal of the /WQ overlay zone is controlled by EC 9.4786. Removal of the /WR overlay zone is controlled by EC 9.4960.

Section 7. Subsection (3) of Section 9.7820 of the Eugene Code, 1971, is amended to provide:

9.7820 Annexation – Procedures.

- (3) Land annexed to the city according to the procedures in EC 9.7800 – 9.7835 shall be automatically rezoned as of the effective date of the annexation from Lane County land zones and zoning overlays to equivalent Eugene zones and overlay zones as shown in Table 9.7820 Equivalent Zones and Overlay Zones.

Table 9.7820 Equivalent Zones and Overlay Zones			
Urbanizable Land Zones		Eugene Zones	
AG/UL	Agricultural	AG	Agricultural
PL/UL	Public Land	PL	Public Land
R-1/UL	Low-Density Residential	R-1	Low Density Residential
R-2/UL	Medium-Density Residential	R-2	Medium Density Residential
GO/UL	General Office	GO	General Office
C-1/UL	Neighborhood Commercial	C-1	Neighborhood Commercial
C-2/UL	Community Commercial	C-2	Community Commercial
I-2/UL	Light-Medium Industrial	I-2	Light-Medium Industrial
I-3/UL	Heavy Industrial	I-3	Heavy Industrial
Urbanizable Land Zoning Overlay		Eugene Overlay Zones	
/SR	Site Review	/SR	Site Review
/CAS	Commercial Airport Safety	/CAS	Commercial Airport Safety
/WR	Water Resources Conservation Overlay Zone	/WR	Water Resources Conservation Overlay Zone

For purposes of this section, land that is also within an area identified as a Nodal Development Area on the Metro Plan Diagram shall be automatically included in the Eugene /ND Nodal Development Overlay Zone. A parcel that was identified on Exhibit C to Ordinance No. 20430 as one to which the /WQ Water Quality Overlay Zone should be applied upon annexation, or any portion of such a parcel that contains a /WQ Management Area, will also automatically be changed to include the /WQ Overlay Zone. The official city zoning map shall be amended to reflect the change of zone.

Section 8. Subsection (2) of Section 9.8005 of the Eugene Code, 1971, is amended to provide:

9.8005 Applicability and Effect of Application Requirements, Criteria, and Concurrent Review.

- (2) If an initial proposal also requires an application be submitted for one or more of the following:
- (a) Adjustment review;
 - (b) Site review;
 - (c) Conditional use permit;
 - (d) Planned unit development;
 - (e) Zone change;
 - (e) Willamette Greenway permit; or
 - (f) Standards review,
- the applicant may elect to have the applications reviewed concurrently according to the highest application type. All other provisions of this code would continue to apply to each application, including, but not limited to, the approval criteria.

Section 9. The lead sentence of Subsection (1) of Section 9.8025 of the Eugene Code, 1971, is amended, and a new Subsection (3) added thereto, to provide:

9.8025 Adjustment Review – General Requirements.

- (1) Except as provided in subsections (2) and (3), the adjustment review application shall be prepared by one or more of the following professionals unless waived by the planning director:
- (3) **Unless waived by the planning director:**
- (a) An application for adjustment review under EC 9.8030(25)(a) and (b) shall be prepared by one or more of the following professionals:
 - 1. Oregon licensed architect;
 - 2. Oregon licensed civil engineer;
 - 3. Oregon licensed landscape architect; or
 - 4. Oregon licensed land surveyor.

- (b) An application for adjustment review under EC 9.8030(25)(c) shall be prepared by one or more of the following professionals:
1. Oregon licensed architect;
 2. Oregon licensed civil or geotechnical engineer;
 3. Oregon licensed landscape architect;
 4. Oregon licensed geologist;
 5. A professionally trained botanist, biologist, ecologist or geomorphologist; or
 6. A creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology or a closely related field.

Section 10. Section 9.8030 of the Eugene Code, 1971, is amended, by adding a new

Subsection (25) thereto, to provide:

9.8030 **Adjustment Review - Approval Criteria.** The planning director shall approve, conditionally approve, or deny an adjustment review application. Approval or conditional approval shall be based on compliance with the following applicable criteria.

(25) WQ Water Quality Overlay Zone Adjustment. In accordance with EC 9.4784, a provision of the WQ Water Quality Overlay Zone may be adjusted only upon a finding that the proposed adjustment meets criterion (a), (b), or (c) below:

- (a) Adjustment to Applicable Setback to Limit WQ Management Area to 33% of Development Site. For any parcel greater than 6,000 square feet (not eligible for an automatic setback reduction under EC 9.4778(2)), the city shall make an adjustment to the applicable setback set out at EC 9.4778(1)(b) and (c) if no previous adjustment under this section has been approved for the specific portion of the WQ Management Area and all of the following are met:
1. More than 33 percent of the development site, as defined in EC 9.0500, is occupied by the WQ Management Area alone or in combination with a WR Conservation Area;
 2. The proposed reduction in the applicable setback will result in the WQ Management Area, alone or in combination with a WR Conservation Area constituting no less than 33 percent of the development site;
 3. The new boundary of the WQ Management Area shall be located:
 - a. Parallel to the original boundary (closer to the waterway); or
 - b. Through the application of setback averaging. Setback averaging shall be accomplished by expanding the WQ Management Area in an undeveloped area of the development site, and reducing it in another area of the development site;
 4. For either the parallel adjustment in 3.a above or the setback averaging adjustment in 3.b. above, the applicable setback is not reduced by more than 15 feet for a 25 foot setback or more than 20 feet for a 40-foot setback unless further reduction is necessary

to achieve the reduction in the /WQ Management Area to 33%, and in no case shall the setback boundary be located within the waterway channel;

5. For parcels 13,500 square feet or greater, the water quality function rating when the proposed adjustment is implemented will be equal to or greater than the pre-adjustment water quality function rating for the /WQ Management Area based on the city's Water Quality Function Rating System; and
 6. Removal of all refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the /WQ Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the /WQ Management Area shall be a condition of approval.
- (b) Adjustment to Applicable Setback Due to Development Constraints. For a parcel containing a /WQ Management Area, an adjustment to the applicable setback provisions of EC 9.4778(1)(b) and (c) shall be made if no previous adjustment under this section has been approved for the specific portion of the /WQ Management Area, consistent with the following:
1. The adjustment is necessary due to development constraints on the lot caused by the unique physical characteristics of the lot, including but not limited to narrow lot dimensions, irregular shape, and the relationship of these characteristics to the location and extent of the /WQ Management Area;
 2. The adjustment is the minimum necessary to allow the proposed use;
 3. Except as provided under (b)4. below, the new setback boundary shall be located through the application of setback averaging with no overall reduction in the /WQ Management Area. Setback averaging shall be accomplished by expanding the /WQ Management Area in an undeveloped area of the development site and reducing it in another area of the development site, provided:
 - a. At any location, the applicable setback is not reduced by more than 15 feet for a 25-foot setback or by more than 20 feet for a 40-foot setback; and
 - b. The water quality function rating when the proposed adjustment is implemented will be equal to or greater than the pre-adjustment water quality function rating for the /WQ Management Area based on the city's Water Quality Function Rating System;
 4. If, after applying the provisions of (b)3. above, the parcel remains physically constrained as described in (b)1. above, then the overall /WQ Management Area may be reduced. The new setback boundary shall be located:
 - a. Parallel to the original boundary (closer to the waterway); or
 - b. Through the application of setback averaging. Setback averaging shall be accomplished by expanding the /WQ Management Area in an undeveloped area of the development site, and reducing it in another area of the development site.
 - c. For either the parallel adjustment in 4.a. or the setback averaging adjustment in 4.b., the applicable setback is not

- reduced by more than 15 feet for a 25-foot setback or by more than 20 feet for a 40-foot setback;
- d. For either the parallel adjustment in 4.a. or the setback averaging adjustment in 4.b., the water quality function rating when the proposed adjustment is implemented will be at least 150% of the pre-adjustment water quality function rating for the /WQ Management Area based on the city's Water Quality Function Rating System.
5. Removal of all refuse, toxics, fill, unauthorized auto bodies, or similar materials located within the /WQ Management Area that are harmful to water quality or that limit the filtration of pollutants from runoff that flows across the /WQ Management Area shall be a condition of approval.
- (c) Adjustment to Allowed Uses and Development Standards. For property containing a /WQ Management Area, an adjustment to the provisions of EC 9.4780 or EC 9.4790 shall be made consistent with the following:
1. If the proposed adjustment is to allow a use that is otherwise prohibited under EC 9.4780(4), one of the following shall apply:
 - a. General Use Adjustment.
 - (1) The proposed use is of similar nature to a specific use listed in EC 9.4780(2) or (3);
 - (2) The applicant has submitted evidence through a qualified professional that the proposed use will have a water quality impact similar to the specific use identified pursuant to a.(1) above; and
 - (3) The applicant has shown compliance with any standards applicable to the specific use identified pursuant to a.(1), above.
 - b. Public Transportation System Improvements.
 - (1) The use or activity is:
 - (a) Necessary to construct a transportation facility included on a financially constrained or illustrative table in the federally approved Regional Transportation Plan; or
 - (b) Necessary to protect the public safety by ensuring the structural integrity of existing flood control structures; and
 - (2) The applicant has demonstrated that, based on the city's Water Quality Function Rating System (see EC 9.4782), the project will result in a water quality function rating equal to or greater than previously existed.
 - (3) If the applicant demonstrates that it is not feasible to meet the standards described in (c)1.a.(3) above, the applicant shall, instead, make improvements to another /WQ waterway over which the applicant also has management control. The applicant shall demonstrate that, based on the city's Water Quality Function Rating System (see EC 9.4782), such improvements will result in an increase in the water quality function rating of that waterway by an amount that is equal to or greater than

the rating of the subject waterway prior to the approved adjustment.

2. If the proposed adjustment is to a development standard of EC 9.4790, the applicant has provided evidence that the proposed alternative approach for effectively addressing a specific water quality concern is equal to or greater than the standard that would be otherwise required.

Section 11. Subsection (1)(c) of Section 9.8055 of the Eugene Code, 1971, is

amended to provide:

9.8055 **Cluster Subdivision- Approval Criteria - General.** The planning director shall approve, approve with conditions, or deny a proposed cluster subdivision. Approval or approval with conditions shall be based on the following:

- (1) The proposed subdivision complies with:
 - (c) Within the /WR Water Resources Conservation Overlay Zone or the /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 2. The /WQ Management Area;

Section 12. Subsection (1)(a) of Section 9.8215 of the Eugene Code, 1971, is

amended to provide:

9.8215 **Partition, Tentative Plan Approval Criteria- General.** The planning director shall approve, approve with conditions, or deny a partition, with findings and conclusions. Approval, or approval with conditions, shall be based on compliance with the following criteria:

- (1) The proposed partition complies with all of the following:
 - (a) Lot standards of EC 9.2000 through 9.3915 regarding applicable parcel dimensions and density requirements. Within the /WR Water Resources Conservation Overlay Zone or the /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 2. The /WQ Management Area.

Section 13. Subsection (2)(a) of Section 9.8220 of the Eugene Code, 1971, is amended to provide:

9.8220 **Partition, Tentative Plan Approval Criteria- Needed Housing.** The planning director shall approve, conditionally approve, or deny the partition application. Unless the applicant elects to use the general criteria contained in EC 9.8215 **Partition, Tentative Plan Approval Criteria- General**, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a partition based on compliance with the following criteria:

- (2) The proposed partition complies with all of the following:
 - (a) Lot standards of EC 9.2000 through 9.3915 regarding applicable parcel dimensions and density requirements. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 - 1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 - 2. The /WQ Management Area.

Section 14. Subsection (11)(a) of Section 9.8320 of the Eugene Code, 1971, is amended to provide:

9.8320 **Tentative Planned Unit Development Approval Criteria- General.** The hearings official shall approve, approve with conditions, or deny a tentative PUD application with findings and conclusions. Decisions approving an application, or approving with conditions shall be based on compliance with the following criteria:

- (11) The PUD complies with all of the following:
 - (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 - 1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 - 2. The /WQ Management Area.

Section 15. Subsection (7)(a) of Section 9.8325 of the Eugene Code, 1971 is amended to provide:

9.8325 **Tentative Planned Unit Development Approval Criteria - Needed Housing.** The hearings official shall approve, conditionally approve, or deny the PUD application with findings and conclusions. Unless the applicant elects to use the general criteria contained in EC 9.8320 Tentative Planned Unit Development Approval Criteria - General, where the applicant proposes needed housing, as defined by the State statutes, the hearings official shall approve or approve with conditions a PUD based on compliance with the following criteria:

- (7) The PUD complies with all of the following:
 - (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 - 1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 - 2. The /WQ Management Area.

Section 16. Subsection (5) of Section 9.8415 of the Eugene Code, 1971, is amended to provide:

9.8415 **Property Line Adjustment Approval Criteria.** The planning director shall approve, approve with conditions, or deny the property line adjustment application. Approval or approval with conditions shall be based on compliance with the following criteria:

- (5) Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 - (a) The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 - (b) The /WQ Management Area.

Section 17. Section 9.8470 of the Eugene Code, 1971 is amended, to provide:

9.8470 **Standards Review Approval Criteria.** The decision-maker shall determine whether the application is in compliance with the standards setout in the code section that calls for standards review.

Section 18. Section 9.8472 of the Eugene Code, 1971 is amended, to provide:

9.8472 **Standards Review – Application Requirements.** In addition to the provisions in EC 9.7010 Application Filing, applications for uses subject to standards review under EC 9.4780(3) or EC 9.4930(3) shall be subject to the following requirements:

- (1) Unless waived by the planning director, the application shall be prepared by one or more of the following professionals:
 - (a) Oregon licensed architect.
 - (b) Oregon licensed civil engineer.
 - (c) Oregon licensed landscape architect.
 - (d) For applications submitted under EC 9.4780(3), a professionally trained botanist, biologist, ecologist, or geomorphologist or creek restoration specialist with a bachelor's degree in the subject field and at least 5 years of applied experience in botany, biology, ecology, geomorphology, or a closely related field, or an Oregon licensed geologist.
 - (e) For applications submitted under EC 9.4930(3), a professionally trained botanist or biologist, with sufficient training and experience in planning and design to evaluate consistency of the application with all applicable standards.
- (2) Unless waived by the planning director, if the application submitted under EC 9.4930(3) is not prepared by a professionally trained botanist or biologist, one or more of the professionals preparing the application shall have sufficient professional expertise and training in field botany or related biological sciences to evaluate consistency of the application with application standards.
- (3) The application shall include a site plan that shows sufficient detail and supporting narrative information to demonstrate compliance with applicable standards. Unless waived by the planning director, the site plan shall be prepared by an Oregon licensed civil engineer or Oregon licensed surveyor.
- (4) The site plan and application shall be signed by each of the professionals preparing the application, certifying that the application is true and correct to the best of his or her professional ability, and that, if applicable, the professional standards of his or her profession have been met therein.

Section 19. Section 9.8474 of the Eugene Code, 1971 is amended, to provide:

9.8474 **Standards Review – Modification.** Modification of an approved standards review granted pursuant to EC 9.4780(3) or 9.4930(3) may be requested following the Type II process. The planning director shall approve the request if it complies with the following criteria:

- (1) The proposed modification is consistent with the conditions of the original approval.
- (2) The proposed modification will not result in a greater impact to the resource than permitted by the initial approval.

If the planning director determines that the modification is not consistent with the above criteria, the proposed modification may not occur until a new standards review application is submitted and reviewed based on the Type II application procedures in section 9.7200 and the requirements and criteria in sections 9.4770-9.4790 or 9.4900-9.4980. Nothing in this section shall preclude the applicant from initially submitting the requested modification as a new standards review application.

Section 20. Subsection (1)(a) of Section 9.8515 of the Eugene Code, 1971, is amended to provide:

- 9.8515** **Subdivision, Tentative Plan Approval Criteria - General.** The planning director shall approve, approve with conditions, or deny a proposed subdivision. Approval, or approval with conditions shall be based on compliance with the following criteria:
- (1) The proposed subdivision complies with the following:
- (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 - 1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 - 2. The /WQ Management Area;

Section 21. Subsection (3)(a) of Section 9.8520 of the Eugene Code, 1971, is amended to provide:

- 9.8520** **Subdivision, Tentative Plan Approval Criteria- Needed Housing.** The planning director shall approve, conditionally approve, or deny the subdivision application. Unless the applicant elects to use the general criteria contained in EC 9.8515 Subdivision, Tentative Plan Approval Criteria- General, where the applicant proposes needed housing, as defined by the State statutes, the planning director shall approve or approve with conditions a subdivision based on compliance with the following criteria:
- (3) The proposed subdivision complies with all of the following:
- (a) EC 9.2000 through 9.3915 regarding lot dimensions and density requirements for the subject zone. Within the /WR Water Resources Conservation Overlay Zone or /WQ Water Quality Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by either:
 - 1. The combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback; or
 - 2. The /WQ Management Area.

Section 22. Section 9.8855 of the Eugene Code, 1971, is amended by adding a new Subsection (6) thereto, to provide:

- 9.8855** **Applicability.** Changes in zoning, including the application of or change of an overlay zone or special area zone shall be processed as a Type III application as provided in EC 9.7300 through EC 9.7340 Type III Application Procedures, with the

following exceptions:

- (6) The proposed zone change is to remove the /WQ Water Quality Overlay Zone, in which case the zone change shall be processed as described in EC 9.4786.

Section 23. Subsection (4) of Section 9.8865 of the Eugene Code, 1971 is amended by adding a new subsection (p) thereto, and relettering the current subsections (p), (q) and (r), to (q), (r) and (s) to provide:

9.8865 Zone Change Approval Criteria. Approval of a zone change application, including the designation of an overlay zone, shall not be approved unless it meets all of the following criteria:

- (4) The proposed zone change is consistent with the applicable siting requirements set out for the specific zone in:
 - (p) EC 9.4776 /WQ Water Quality Overlay Zone Siting Requirements (only for the purposes of adding the overlay zone. See EC 9.4786.).
 - (q) EC 9.4915 /WR Water Resources Conservation Overlay Zone Siting Requirements (only for the purposes of adding the overlay zone. See EC 9.4960.).
 - (r) EC 9.4815 /WB Wetland Buffer Overlay Zone Siting Requirements.
 - (s) An uncodified ordinance establishing a site specific S-H Historic Special Area Zone, a copy of which is maintained at the city's planning and development department.

Section 24. Ordinance No. 20194 and Sections 6.650, 6.655, 6.660, 6.665, and 6.670 of the Eugene Code, 1971, are repealed.

Section 25. The Map on the attached compact disc (Exhibit A-1), depicting the location of lot lines, applicable setback measurement points (centerline or top of high bank) and /WQ Water Quality Overlay Zone Management Areas, is hereby adopted as the City's official Water Quality Waterways Map. The Map, attached hereto as Exhibit A-2, is a printed copy of the Water Quality Waterways Map attached only for illustrative purposes. As provided by EC 9.4786(3), future amendments to the Map may be

effected by an administrative order of the City Manager adopted pursuant to Section 2.019 of the Eugene Code, 1971.

Section 26. The /WQ Water Quality Overlay Zone is hereby applied to the properties listed on Exhibit B hereto and the Eugene Overlay Zone Map is amended to add the /WQ Overlay Zone to those properties.

Section 27. The City Council adopts Exhibit C hereto as the list of properties to which the /WQ Overlay Zone should be applied upon annexation.

Section 28. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and that holding shall not affect the validity of the remaining portions of this Ordinance.

Section 29. Although not part of this Ordinance, the City Council adopts the Legislative Findings set forth in the attached Exhibit D in support of this action.

Section 30. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended, or repealed herein.

Section 31. Notwithstanding the effective date of ordinances as provided in the Eugene Charter of 2002, this Ordinance shall become effective at midnight on June 10, 2009.

Passed by the City Council this
9th day of March, 2009



Acting City Recorder

Approved by the Mayor this
10th day of March, 2009



Mayor