



Seattle City Council

Central Staff - Memorandum

Date: August 31, 2015

To: Sally Bagshaw – Chair, Seattle Public Utilities and Neighborhoods Committee
Kshama Sawant – Vice-Chair
Bruce Harrell – Member

From: Peter Lindsay, Council Central Staff

Subject: CB 118465 and CB 118466 – Legislation relating to changes in the City’s Stormwater Code and amending the City’s Land Use Code, Building Code and Residential Code.

The Executive has submitted two pieces of legislation related to the City’s Stormwater Code, Seattle Municipal Code Ch. 22.800. CB 118465 changes development requirements for public and private projects within the city, requires update of the City’s Stormwater Manual and modifies vesting rights for existing and future permit holders. CB 118466 implements the changes in the relevant sections of the City’s Land Use Code, Building Code and Residential Code.

This memo provides background on (1) why the City periodically changes the Stormwater Code, (2) summarizes the substantial changes jointly proposed by Seattle Public Utilities (SPU) and the Department of Planning and Development (DPD), (3) explains what the changes mean to development within the city, (4) discusses the major policy changes that arise from the legislation, and (5) recommends an amendment and approval of both bills.

Background

Federal Clean Water Act (CWA) requirements and scientific evidence linking human health to environmental factors, led to adoption of the Stormwater Code in 1979. The Stormwater Code protects people, property, and the environment from flooding, pollution and erosion.

The Stormwater Code is required to maintain permit coverage for the City’s municipal separate storm sewer system (MS4) through the federal National Pollution Discharge Elimination System program established by the CWA and the State of Washington Water Pollution Control Law. The Washington State Department of Ecology (ECY) has delegated authority by the federal government to issue municipal stormwater permits to counties and cities in Washington State operating a stormwater system.

The CWA requires Seattle to have an MS4 permit issued by ECY. The MS4 is issued to large cities and counties, typically with populations greater than 100,000, operating a municipal stormwater system. Among other requirements, the MS4 permit details the specific minimum threshold requirements and definitions for new development, redevelopment and construction

activities. Periodically, ECY updates permit requirements and municipalities are similarly required to update their regulations to reflect ECY's regulatory interpretations of federal and state law. Seattle's MS4 permit was issued in August 2012 and was modified in January 2015.

Non-compliance is risky and potentially costly. If the City were *not* to comply with DOE's updated threshold requirements by January 15, 2016, DOE could levy fines of up to \$25,000 per day, and the City would be open to a citizen civil suit for violation of the federal Clean Water Act and the state Water Pollution Control Act.

Impacts of the Legislation

CB 118465 contains the major Stormwater Code revisions proposed by the Executive. The proposed changes would:

- revise terminology related to code exemptions for pavement maintenance projects;
- modify and update the definition of certain terms throughout the code to align with the MS4 permit;
- revise and clarify regulations for prohibited and permissible discharges to be equivalent to the MS4 permit;
- clarify property owner responsibilities related to code enforcement, site maintenance and source control;
- update minimum requirements for public and private development activities including applicability thresholds for impervious and hard surfaces, use of best management practices (BMPs) during construction to protect stormwater runoff and implementing BMPs for on-site stormwater management; and
- revise administrative policies for project design and code enforcement.

The Executive anticipates budget impacts resulting from changes in code requirements resulting in an increase of projects with required on-site stormwater management improvements. Specifically, staff resources are required to perform on-site drainage plan review and site inspections. The Department of Planning and Development (DPD) will request about \$570,000 in annual appropriations to fund two additional drainage review positions and two additional site inspectors. As required under a memorandum of understanding between SPU and DPD, funding for about half of the new appropriations will come from drainage and wastewater rate payers and the other half will be funded by permit fees.

Operational and capital budget impacts from the legislation are varied. SDOT anticipates a spending increase of about \$65,000 in capital and about \$40,000 annually in operational spending. For context, SDOT's 2015 capital budget is \$295 million and operating budget is \$430 million. The Department of Parks and Recreation (DPR) experienced a greater impact with about \$2.2 million in additional capital spending over 6 years due to code changes. The increased capital costs are related to a change in the definition of pollution-generating surfaces to include natural and artificial turf. DPR projects converting natural fields to synthetic turf or

replacing synthetic turf will need to incorporate on-site stormwater management BMPs. DPR's 6-year capital budget is about \$422 million.

DPD and SPU will also update the City's Stormwater Manual by Directors' Rule to reflect definitional changes and minimum threshold requirements for development actions within the City. The next section describes the more substantial policy code changes required by ECY.

Major Policy Changes

Pavement Maintenance Exemptions— In previous iterations of the MS4 permit, Stormwater Code exemptions were permitted for certain road maintenance activities such as grind and overlay or asphalt patching. The 2016 Stormwater Code update changes the term "road maintenance practices" to "pavement maintenance practices" to stay consistent with the MS4 permit language. The change results in a broader range of exempt pavement maintenance projects such as parking lots.

Code Applicability – To maintain consistency with permit conditions, the target effective date for the Stormwater Code update is January 1, 2016. As it applies to existing permit holders and projects considered under current law, applicants will need to begin construction no later than June 30, 2020 or the permit expires and the new permit conditions apply. Large developers with long-range development plans and existing building or master use permit could be impacted. Materials supporting the legislation do not specify which projects or entities may be affected.

Minimum Requirements for Public and Private Development – Probably the most substantial change in the Stormwater Code is the minimum development requirements for green stormwater infrastructure—now on-site stormwater management—to improve flow control and water quality. The new requirements are more prescriptive and structured than in previous permit conditions. The minimum threshold requirements, typically articulated as the amount of new or replaced impervious surface, are updated to reflect ECY's permit conditions. As under current law, there are four project categories under the Stormwater Code; each category comes with its own minimum requirements trigger. The categories are (1) single-family residential, (2) parcel-based, (3) roadways, (4) and trail/sidewalks. Lower thresholds for on-site stormwater management were added for single-family residential and parcel-based project categories that apply to multiple contiguous smaller lots created from one larger lot. The new threshold was created to close a loophole that did not require constructing on-site stormwater management infrastructure because under current law each individual lot is typically below the on-site stormwater management threshold. On-site stormwater management does not apply to utility and routine maintenance work.

Changes to Permissible Discharges—The regulations controlling permissible discharges for various recreational and work related functions are clarified. The changes emphasize that property owners should minimize water use and not use detergents and chemicals if they are discharging to the stormwater system.

DPD and SPU have collaborated on development of the proposed Stormwater Code changes. Although most of the changes are permit requirements some are policy changes aiming to improve functionality and implementation of the code. For instance, changes to Chapter 22.803 require property owners to map drainage infrastructure to clarify authority and applicability of the Stormwater Code. These types of changes are intended to help property owners apply the code and assist SPU in enforcing code requirements.

CB 118466

CB 118466 is complementary legislation that implements changes to the Stormwater Code in the City's Land Use Code, Building Code, Grading Code and Residential Code. The bill is necessary to ensure that regulations related to development uniformly reflect when the new requirements take effect. Passing the bill means the changes codified in CB 118465 will apply to all relevant City development regulations starting January 1, 2016.

Amendments

Law is offering one friendly amendment to correct typographical errors in the legislation (see Attachment A to this memo). The errors are non-substantive and do not have policy implications and I recommend passing the amendment prior to a vote on the bill.