

CITY OF EVERETT

ORDINANCE #3071-08

GREASE CONTROL ORDINANCE

2008

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ORDINANCE NO. 3071-08

AN ORDINANCE relating to uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the City of Everett, adding a new chapter to Everett Municipal Code Title 14, Water and Sewers, and repealing section 2.8 B. of Ordinance 2034-95 (EMC 14.40.120) as amended by Ordinance 2247-97, section 2 (EMC 14.40.120) which may be referred to as the “Grease Control Ordinance”.

WHEREAS, the City of Everett City Council deems it necessary to set forth uniform requirements for certain users of the POTW as identified herein in order to comply with all applicable State and Federal laws and regulations and prevent sanitary sewer and combined sewer overflows; and

WHEREAS, the City’s wastewater pretreatment regulations relating to dischargers of wastewater containing fats, oils and greases were last amended in 1997 and are no longer consistent with federal regulations; and

WHEREAS, Washington State’s Department of Ecology and the United States Environmental Protection Agency have reviewed and approved the requirements for dischargers of fats, oils and greases contained in this Ordinance;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

SECTION 1 - GENERAL PROVISIONS

1.1 *Purpose and Policy*

This ordinance sets forth uniform requirements for Food Service Establishments (FSEs) and Non-FSE FOG Dischargers (NFDs), collectively Fats, Oils and Greases (FOG) dischargers, that discharge wastewater to the City of Everett Publicly Owned Treatment Works (POTW). The objectives of this ordinance are:

- A. To prevent the introduction of pollutants into the POTW by FOG dischargers that will interfere with the operation of the POTW;
- B. To prevent the introduction of pollutants into the POTW by FOG dischargers that will cause Combined Sewer Overflows (CSOs) or Sanitary Sewer Overflows (SSOs);
- C. To protect the environment from pollution caused by CSOs and SSOs;
- D. To adequately regulate the sale and use of additives added to Grease Removal Systems (GRSs).

This ordinance shall apply to all non-residential users as defined herein as FSEs or NFDs, except those defined as Significant Industrial Users under 40CFR403, that discharge or may discharge excess Fats, Oils and Greases (FOG) to the POTW. The ordinance authorizes inspection and regulation of these users; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user record keeping; provides for the issuance of control mechanisms if deemed necessary by the Director; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein if deemed necessary by the Director.

1.2 Administration

Except as otherwise provided herein, the Director shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Director may be delegated by the Director to other City of Everett personnel. The Director may create administrative guidelines to implement the provisions of this ordinance.

1.3 Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

- A. Accessible. Accessible, when applied to required pretreatment monitoring or treatment equipment, shall mean direct access without the necessity of removing any panel, door, vehicle, equipment, materials, or other similar obstruction.
- B. Additive. Any material, in any physical form, put into a Grease Removal System (GRS) or any drain lines or appurtenances discharging to a GRS intended in any way to modify the operation of the GRS.
- C. Administrative Penalty (fine). A punitive monetary charge unrelated to treatment cost, which is assessed by the Director rather than a court.
- D. Approval Authority. The state of Washington Department of Ecology.
- E. Authorized Representative of the User.
 - (1) If the user is a corporation:
 - (a) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other

person who performs similar policy or decision-making functions for the corporation; or

(b) The manager of one or more facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility; initiate and direct measures to assure long-term compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for required reports; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(2) If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively;

(3) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her authorized designee.

(4) The individuals described in paragraphs 1 through 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

F. Automatic Grease Removal System (AGRS) A GRS that has provision to automatically remove separated FOG and/or settled solids from the tank and collect them for disposal.

G. Best Management Practices (BMPs). means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

H. Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter amenable to measurement by the methods described in Standard Methods for the examination of Water and Wastewater, latest approved edition or other methods approved by 40CFR136.

I. Chemical Oxygen Demand (COD). A measure of the oxygen consuming capacity of inorganic and organic matter present in wastewater amenable to measurement by the methods described in Standard Methods for the examination of Water and Wastewater,

latest approved edition or other methods approved by 40CFR136. COD is expressed as the amount of oxygen consumed from a chemical oxidant in mg/L during a specific test.

- J. City. The City of Everett, Washington.
- K. Combined Sewer Overflow (CSO). Any unplanned discharge from the combined sewer system.
- L. Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.
- M. Day. Day shall be defined as a calendar day.
- N. Director. The Director of the City of Everett Public Works Department, or his duly authorized representative.
- O. Discharge Authorization. A waste water discharge permit authorizing users to discharge wastewater to the Everett POTW. These permits are for users requiring a control mechanism.
- P. Domestic Sewage. Domestic sewage means the liquid and water borne wastes derived from ordinary living processes, free from industrial wastes, and of such character to permit satisfactory disposal, without special treatment, into the POTW.
- Q. Domestic User (Residential User). Any person who contributes, causes, or allows the contribution of wastewater into the City POTW that is of a similar volume and/or chemical make-up as that of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to 100 gallons per capita per day at 250 mg/L of BOD and TSS.
- R. Environmental Protection Agency (EPA). The US Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, or other duly authorized official of said agency.
- S. Existing User. An "existing user" is defined as any user which is discharging wastewater prior to the effective date of this ordinance.
- T. Fats, Oils and Grease (FOG). The term fats, oils, and grease shall mean those components of wastewater amenable to measurement by the methods described in Standard Methods for the examination of Water and Wastewater, latest approved edition or other methods approved by 40CFR136. For the purposes of this ordinance, the term Fats, Oils And Grease shall include polar fats, oils, and grease and other components extracted from wastewater by these methods, excluding the non-polar fraction.
- U. Food Service Establishment (FSE). Any establishment, commercial or noncommercial, primarily engaged in the preparing, serving, or otherwise making available for

- consumption foodstuffs in or on a receptacle that requires washing more than two (2) days per week and that discharges to the POTW.
- V. Grab Sample. A sample which is taken from a wastestream on a one-time basis without regard to the flow in the wastestream and without consideration of time.
- W. Grease/Greases. See FOG.
- X. Grease Impact Area. Any area of the POTW collection system where grease deposits originating at FSEs and/or NFDs create maintenance requirements exceeding normal sewer maintenance. These areas will be identified by the Director and updated as needed.
- Y. Grease Interceptor/Interceptor/Interceptor-style GRS. Any relatively large in ground or above-ground tank, generally, but not always, of precast concrete, with internal plumbing and baffling intended to act as a GRS or AGRS to serve one or more fixtures and which shall be remotely located.
- Z. Grease Removal System (GRS). Any device designed for, and intended for, separating, collecting, and removing waterborne FOG and settleable solids prior to discharging to the POTW. This includes any AGRS.
- AA. Grease Trap/Trap/Trap-style GRS. Any relatively small appurtenance, generally, but not always, of cast iron or fabricated steel, with internal configuration and internal or external flow control, intended to function as a GRS or AGRS. All trap-style grease removal systems shall be PDI or IAPMO approved.
- AB. High Strength Waste. Any waters or wastewater having a concentration of BOD or Total Suspended Solids in excess of 250 mg/L, or having a concentration of Fats, Oil and Grease in excess of 50 mg/L.
- AC. Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources, either: (1) inhibits or disrupts the POTW, its treatment processes or operations; (2) inhibits or disrupts its biosolids (sludge) processes, use or disposal; or (3) is a cause of a violation of the City's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/ regulatory provisions or permits issued thereunder: Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.
- AD. Liquid Waste. Liquid waste is the discharge from any fixture, appliance or appurtenance in connection with a plumbing system which does not receive fecal matter.

- AE. Maximum Allowable Discharge Limit. The maximum concentration (or loading) of a pollutant allowed to be discharged at any time.
- AF. New User. A "new user" is defined as a user that applies to the City for a new building permit or any person who occupies an existing building and plans to discharge wastewater to the City's collection system after the effective date of this ordinance. Any person that buys an existing facility that is discharging non-domestic wastewater will be considered an "existing user" if no substantial remodel is made in the operation.
- AG. Non-FSE FOG Discharger (NFD). Any establishment, such as a church, synagogue, worship hall, banquet facility, or meeting space, with a commercial-style kitchen that is used for preparing, serving, or otherwise making available for consumption foodstuffs in or on a receptacle that requires washing two days a week or less and that discharges to the POTW.
- AH. Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation).
- AI. Permittee. A person or user issued a wastewater discharge permit, or discharge authorization.
- AJ. Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all Federal, State, or local governmental entities.
- AK. pH. A measure of the acidity or alkalinity of a substance, expressed in standard units.
- AL. Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater [i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, or odor].
- AM. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to (or in lieu of) introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means (except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard).
- AN. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

- AO. Pretreatment Standards or Standards. Pretreatment standards shall mean prohibited discharge standards, categorical pretreatment standards, and local limits established by the City (POTW).
- AP. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Sections 2.1 (A) and (B) of this ordinance.
- AQ. Publicly Owned Treatment Works (POTW). A "treatment works," as defined by Section 212 of the Act (33 USC 1292) which is owned by the City. This definition includes all devices facilities, or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant. The term also means the City of Everett Water Pollution Control Facility.
- AR. Sanitary Flow: Sewage.
- AS. Sanitary Sewer Overflow (SSO). Any unplanned discharge from the separate sanitary sewer system.
- AT. Septic Tank Waste. Any domestic and/or residential sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
- AU. Settleable Solids. The solids that sinks to the bottom of water, wastewater, or other liquid, and which is amenable to measurement by the methods described in Standard Methods for the examination of Water and Wastewater, latest approved edition or other methods approved by 40CFR136.
- AV. Sewage. Human excrement and gray water (household showers, dishwashing operations, food preparation, etc.)
- AW. Sewer. Any pipe, conduit, ditch, or other device used to collect and transport sewage from the generating source.
- AX. Shall, May. "Shall" is mandatory, "may" is permissive.
- AY. Solids Interceptor. Any device designed for, and intended for, separating, collecting, and removing waterborne solids prior to being discharged to a GRS. A Solids Interceptor must remove solids greater than 1/8 inch.
- AZ. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.
- BA. State. The State of Washington.

- BB. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.
- BC. Substantial Remodel. Any modification to an existing FSE or NFD kitchen that involves changes to 50% or more of the floor area of the kitchen.
- BD. Total Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering and is amenable to measurement by the methods described in Standard Methods for the examination of Water and Wastewater, latest approved edition or other methods approved by 40CFR136.
- BE. Toxic Pollutant. One of the pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by EPA under Section 307 (33 USC 1317) of the Act, or other pollutants as may be promulgated.
- BF. Treatment Plant Effluent. The discharge from the POTW into waters of the United States.
- BG. User. For the purposes of this ordinance a user is any FSE or NFD. This shall not include "domestic user" as defined herein.
- BH. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- BI. Wastewater Discharge Permit (Industrial Wastewater Discharge Permit, Discharge Permit, Discharge Authorization). An authorization or equivalent control document issued by the City to users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this ordinance.
- BJ. Wastewater Treatment Plant or Treatment Plant or Pollution Control Facility. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use. The use of either the male or female shall be construed to include both genders.

1.4 Abbreviations

The following abbreviations shall have the designated meanings:

AGRS	Automatic Grease Removal System
AKART	All Known Available and Reasonable Technology
BMPs	Best Management Practices
BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand
CSO	Combined Sewer Overflow
EPA	US Environmental Protection Agency
FOG	Fats, Oils, and Grease
FSE	Food Service Establishment
GPD	gallons per day
GRS	Grease Removal System
L	liter
mg	milligrams
mg/L	milligrams per liter
NFD	Non-FSE FOG Discharger
O&M	Operation and Maintenance
POTW	Publicly Owned Treatment Works
SSO	Sanitary Sewer Overflow
TSS	Total Suspended Solids

SECTION 2 - GENERAL REQUIREMENTS

2.1 *Prohibited Discharge Standards*

- A. General Prohibitions: No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.
- B. Specific Prohibitions: No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
- (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
 - (2) Wastewater having a pH less than 5.0 or more than 11.0, or otherwise causing corrosive structural damage to the POTW or equipment;
 - (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one quarter inch (1/4");
 - (4) Pollutants, including oxygen-demanding pollutants (BOD, COD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
 - (5) Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C) unless the Approval Authority, upon the request of the POTW, approves alternate temperature limits;
 - (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
 - (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

- (8) Trucked or hauled pollutants (except Domestic Sewage or Septic Tank Wastes) unless authorized by the director, and at discharge points designated by the City.
- (9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
- (10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life;
- (11) Wastewater containing any radioactive wastes or isotopes except as specifically approved by the Director in compliance with applicable State or Federal regulations;
- (12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized by the Director;
- (13) Any sludges, screenings, or other residues from the pretreatment of industrial or commercial wastes or from industrial or commercial processes, except as authorized by the Director;
- (14) Medical wastes, except as specifically authorized by the Director;
- (15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- (16) Detergents, surface-active agents, or other substances in amounts which may cause excessive foaming in the POTW;

- (17) Any liquid, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two (2) successive readings on an explosion meter, at the point of discharge into the system (or at any point in the system), be more than five (5%) per cent nor any single reading over ten (10%) per cent of the lower explosive limit (LEL) of the meter.
- (18) Animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dusts, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (19) Any substance which will cause the POTW to violate its NPDES and/or other disposal system permits.
- (20) Any wastewater, which in the opinion of the Director can cause harm either to the sewers, sewage treatment process, or equipment; have an adverse effect on the receiving stream; or can otherwise endanger life, limb, public property, or constitute a nuisance, unless allowed under special agreement by the Director (except that no special waiver shall be given from categorical pretreatment standards).
- (21) The contents of any tank or other vessel owned or used by any person in the business of collecting or pumping sewage, effluent, septage, or other wastewater unless said person has first obtained testing and approval as may be generally required by the City of Everett and paid all fees assessed for the privilege of said discharge.
- (22) Any hazardous or dangerous wastes as defined in rules published by the State of Washington (WAC 173-303) and/or in EPA rules 40 CFR Part 261.
- (23) Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA)
- (24) Any substance which may cause the POTW's effluent or treatment residues, sludges, or scums to be unsuitable for reclamation and reuse, or to interfere with the reclamation process.
- (25) Fats, oils and grease in amounts that may cause obstructions or maintenance problems in the collection/conveyance system, or interference in the POTW.

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they are likely to be discharged to the POTW unless the user has in place an accidental spill prevention plan (ASPP)/slug control plan.

2.2 State Requirements

State requirements and limitations on discharges to the POTW shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations, or those in this ordinance or other applicable ordinances.

2.3 Local Limits

The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following daily maximum allowable discharge limit.

nonpolar fats, oils, 200 mg/L
and grease (NPFOG)

The above limit applies at the point where the wastewater is discharged to the POTW (end of the pipe).

The City Council authorizes the Director to revise local limits.

2.4 City's Right of Revision

The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

2.5 Special Agreement

The City reserves the right to enter into special agreements with users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement.

2.6 Dilution

A user shall not increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on users that he believes may be using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

2.7 Pretreatment Facilities

- A. General: Users shall provide all known, available, and reasonable methods of prevention, control, and treatment (AKART) as required to comply with this ordinance and shall achieve compliance with all applicable pretreatment standards and requirements set out in this ordinance within the time limitations specified by the EPA, the State, or the Director, whichever is more stringent.

Any facilities required to pretreat wastewater to a level acceptable to the City shall be provided, operated, and maintained at the user's expense.

In addition, the Director may establish Best Management Practices (BMPs) for particular groups of users. These BMPs may include, but are not limited to types or methods of pretreatment technology to be used, methods of source control, minimum maintenance requirements, spill prevention practices, or other requirements as deemed necessary.

- B. If a failure to maintain any GRS results in partial or complete blockage of the building sewer, private sewer system discharging to the City Sewer System, or other parts of the City Sewer System, or adversely affects the treatment or transmission capabilities of the POTW, or requires excessive maintenance by the City, or poses a possible health hazard, the discharger responsible for the facilities shall be subject to the remedies herein, including cost recovery, enforcement and penalties.

2.8 Additional Pretreatment Measures

- A. Whenever deemed necessary, the Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.

- B. When determined necessary by the Director, each user discharging into the POTW, shall install and maintain, on his property and at his expense, a suitable storage and flow-control facility to ensure equalization of flow. The Director may require the facility to be equipped with alarms and a rate of discharge controller, the regulation of which shall be determined by the Director. A wastewater Discharge Authorization (DA) may be issued solely for flow equalization.

SECTION 3 – GREASE REMOVAL SYSTEM REQUIREMENTS

All FSEs and NFDs shall have an adequate grease removal system installed and exercise proper kitchen best management practices to ensure that excess concentrations of FOG are not discharged to the POTW.

3.1 *New Construction*

All new construction FSEs and NFDs shall submit kitchen fixture plan views and kitchen waste plans showing all potential grease discharging lines, all GRSs, and connecting piping to the Director or his designee for approval prior to construction. The plumbing shall be installed in accordance with the approved plans. Failure to submit plans or construct in accordance with approved plans is a violation of this ordinance.

- A. All new single occupancy Food Service Establishment buildings shall be constructed with properly sized interceptor-style grease removal systems. Where bona-fide space or gradient limitations make the use of an interceptor-style GRS impractical, and with prior approval of the Director, a FSE may install properly sized trap-style GRSs. All kitchen drains and any other drains that may carry grease-laden waste shall be connected to this GRS (except the dishwasher if a trap-style GRS is installed.) If a trap-style GRS is installed, the kitchen may not have a garbage disposal/garbage grinder/macerator or similar unit installed.
- B. All new construction multi-tenant buildings (strip centers) shall include a separate waste line for all leasable spaces that discharges to a common 2000 gallon or larger interceptor. This waste line shall be permanently marked to identify it as required by the Director. When a space is leased, sold, or rented to a FSE or NFD, all kitchen drains and any other drains that may carry grease-laden waste shall be connected to this waste line; no domestic sewage may be connected to this line. The property owner shall be responsible for proper maintenance of this interceptor in accordance with the provisions of this ordinance.
- C. All new single occupancy Non-FSE FOG Discharger buildings shall install a properly sized GRS. Interceptor-style GRSs are recommended, but trap-style GRSs are permissible. All kitchen drains and any other drains that may carry grease-laden waste shall be connected to this GRS (except the dishwasher if a trap-style GRS is installed.) If a trap-style GRS is installed, the kitchen may not have a garbage disposal/garbage grinder/macerator or similar unit installed.
- D. Any FSE or NFD undertaking a Substantial Remodel, as defined herein, will be considered to be new construction for the purposes of this ordinance.

3.2 Existing Users

- A. Any existing FSE without a functional GRS shall be required to install one. The type of GRS required will be determined by the Director, taking into account cost, available space and gradient, whether the user is in a grease impact area, and any other pertinent information. Where feasible, all kitchen drains and any other drains that may carry grease-laden waste shall be connected to this GRS (except the dishwasher if a trap-style GRS is installed.) If a trap-style GRS is installed, the kitchen may not have a garbage disposal/garbage grinder/macerator or similar unit installed.
- B. Any existing NFD without a functional GRS may be required to install one. The type of GRS required will be determined by the Director, taking into account cost, available space and gradient, whether the user is in a grease impact area, and any other pertinent information. Where feasible, all kitchen drains and any other drains that may carry grease-laden waste shall be connected to this GRS (except the dishwasher if a trap-style GRS is installed.) If a trap-style GRS is installed, the kitchen may not have a garbage disposal/garbage grinder/macerator or similar unit installed.

3.3 Grease Removal System Maintenance

- A. All grease removal systems shall be maintained to ensure proper operation. At a minimum, interceptor-style GRSs shall be cleaned at least once every 90 days and trap-style GRSs cleaned at least once per week. These required frequencies may be extended with the approval of the Director. Grease Removal Systems must be cleaned whenever the combined thickness of the floating greases and settled solids is equal to, or greater than, 25% of the total liquid depth in the GRS.
- B. When cleaned, an interceptor-style GRS must be completely pumped out, all solids removed, solidified grease scraped from the interior and the structure and all internal plumbing inspected for damage and corrosion. The GRS shall be refilled with water prior to being placed back into operation. If repairs are required, they shall be performed within 7 days.
- C. Trap-style GRSs may be maintained by the FSE or NFD. When cleaned, the trap must have surface grease and oil removed, settled solids removed, all sides scraped, removable parts removed and cleaned, be inspected for damage and corrosion, and be properly reassembled. If repairs are required, they shall be performed within 7 days.

- D. The material that is removed in the process of cleaning a GRS shall not be discharged back into the GRS, any part of the POTW, any private sewer, any drainage piping, or storm sewer system. All materials removed shall be handled and disposed of in accordance with Federal, State, County and Local laws, rules and regulations.
- E. In addition to the maintenance required above, Automatic Grease Removal Systems shall be maintained in accordance with the manufacturers' guidelines.

3.4 Grease Removal System Additives

No user may use an additive of any type for the GRS without the approval of the Director. The Director will adopt procedures for the approval of additives.

No vendor may sell, attempt to sell or otherwise distribute any additive in the City of Everett without prior approval of the additive by the Director. Any vendor selling, or attempting to sell, or otherwise distributing any additive intended for use in a GRS that has not been approved for use by the Director is in violation of this ordinance and is subject to all enforcement actions contained herein.

3.5 Solids Interceptor

If a garbage disposal/garbage grinder/macerator or similar unit is installed in a kitchen, it must discharge to the GRS through a solids interceptor plumbed immediately after the garbage disposal/garbage grinder/macerator or similar unit. The solids interceptor shall be maintained in proper operating condition at all times there is flow through it.

3.6 Grease Removal System Sizing

- A. Trap-style grease removal systems shall be sized in accordance with the standards in the currently adopted Plumbing Code.
- B. The minimum size for an interceptor-style grease removal system shall be determined using the following table:

Drainage Fixture Units ¹	Nominal Interceptor Volume (gallons)
21	750
35	1000
90	1250
172	1500
216	2000
307	2500
342	3000
428	4000
576	5000
724	6000
880	7000
1036	8000
>1036	8000

Note:

¹ Drainage Fixture Units (as defined in the currently adopted Plumbing Code) for installed equipment plumbed to kitchen drain lines connected to the Grease Removal System.

- C. In no case shall an interceptor smaller than 750 gallons be installed without prior approval of the Director. If a garbage disposal/garbage grinder/macerator or similar unit is installed, the minimum size is 1500 gallons to adequately retain the added settleable solids loading.
- D. The maximum size for an interceptor shall be 4000 gallons. If the calculated minimum size is larger than this, two interceptors of approximately equal size shall be installed in series. If the calculated minimum size is larger than 8000 gallons, two 4000-gallon interceptors shall be installed in series.

3.7 Flow Controls

All trap-style grease removal systems shall have an internal or external flow control installed to ensure that wastewater flow through the trap does not exceed the manufacturer’s design flow rating. This flow control shall be maintained in operating condition at all times.

SECTION 4 – RECORD KEEPING/REPORTING REQUIREMENTS

4.1 *Record Keeping*

Users subject to this ordinance shall document all cleaning and maintenance activities performed on their GRS. These records shall be maintained for a minimum of three (3) years and be available for inspection and copying by the Director or his representative. This period shall be automatically extended for the duration of any litigation concerning the user or the POTW, or where the user has been specifically notified of a longer retention period required by the Director.

4.2 *Reporting*

Where the Director has determined that a user must provide written reports, these reports shall be submitted in accordance with the requirement of the Director. Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report by the City shall govern.

SECTION 5 - CONFIDENTIAL INFORMATION

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from City inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes or methods of production that are exempt from disclosure under the Public Records at Chapter 42.56 RCW, or as hereafter amended.

When requested and demonstrated by the user furnishing a report that such information should be held confidential, the City shall make reasonable efforts to protect the portions of a report which might disclose trade secrets or secret processes from inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report.

Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

SECTION 6 - ADMINISTRATIVE ENFORCEMENT REMEDIES

6.1 *Notification of Violation (Notice of Violation, NOV)*

When the Director finds that a user has violated (or continues to violate) any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that user a written Notice of Violation. The Director may select any means of service which is reasonable under the circumstances.

Within seven calendar (7) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

6.2 *Consent Orders*

The Director may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for non-compliance. Such documents will include specific action to be taken by the user to correct the non-compliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 6.4 and 6.5 of this ordinance and shall be judicially enforceable. Use of a Consent Order shall not be a bar against, or prerequisite for, taking any other action against the user.

6.3 *Show Cause Hearing*

The Director may order a user which has violated or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten business (10) days prior to the hearing. Such notice may be served on any authorized

representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

6.4 Compliance Orders

When the Director finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may issue an order to the user responsible for the discharge directing that the user come into compliance within a time specified in the order. Compliance Orders may require users to refrain from certain activities, install additional pretreatment equipment, increase self monitoring, use best management practices designed to minimize the amount of pollutants discharged to the sewer. If the user does not come into compliance within the time specified in the order, sewer service may be discontinued. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

6.5 Cease and Desist Orders

When the Director finds that a user has violated (or continues to violate) any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

6.6 Administrative Fines

- A. When the Director finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may fine such user in an amount not less than \$250 and not to exceed \$10,000. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation. Said Administrative fines shall constitute a sewer

service surcharge, and upon assessment, shall be subject to collection in the same manner as all other sewer utility rates, charges and penalties.

- B. Unless other arrangements have been made with, and authorized by the Director, unpaid charges, fines, and penalties shall accrue thereafter at a rate of one percent (1%) per month. After 90 days, if charges, fines, and penalties have not been paid, the City may revoke the user's discharge permit.
- C. Users desiring to appeal and dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within ten calendar (10) days of being notified of the fine. Upon receipt of a timely appeal, the Director shall set a date and time for an appeal hearing, but in no case shall the hearing be set more than thirty business (30) days from the receipt of the timely notice of appeal. The appellant shall be notified in writing of the date, time, and place for the appeal hearing. The Director or his/her designee shall serve as the Hearing Examiner. In the event the user's appeal is successful, any payments made shall be returned to the user. Affirmation or modification of an administrative fine by the Public Works Director shall relate back to the original date of assessment.

The City shall recover the costs of preparing administrative enforcement actions, such as notices and orders, including the cost of additional inspections, sampling and analysis, and may add them to the fine.

- D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.
- E. Users seeking judicial review of administrative fines must do so by filing a Petition for Review in the Snohomish County Superior Court within thirty calendar (30) days of the decision of the Director.

6.7 Emergency Suspensions

The Director may immediately suspend a user's discharge (after informal notice to the user) whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons.

The Director may also immediately suspend a user's discharge (after informal notice and opportunity to respond) that threatens to interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.

- A. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director shall take such steps as

deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals.

The Director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City that the period of endangerment has passed. If the Director does not allow the user to recommence its discharge within 15 days of the emergency suspension, the Director shall initiate termination proceedings pursuant to Section 6.8 of this ordinance.

- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under Sections 9.3 and 9.8 of this ordinance.

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

6.8 Termination of Discharge (Non-Emergency)

Any user that violates the following conditions is subject to discharge termination:

- A. Violation of wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; or
- E. Violation of the pretreatment standards in Section 2 of this ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity for hearing pursuant to Section 6.9 of this ordinance to dispute the proposed termination action. Initiation of a termination proceeding by the City shall not be a bar to, or a prerequisite for, taking any other action against the user.

6.9 Appeal Procedures

- A. Appeals.
 - 1. Any user who has been subject to an enforcement action by the City and who seeks to dispute a Notice of Violation, order, fine, or other action of the Director may file an appeal. No other person may appeal an enforcement action.
 - 2. The notice of appeal must be filed in writing and received by the Director, in writing, within ten (10) calendar days of the receipt of the disputed action or proposed action. If the notice of appeal is not received by the Director within the 10 day period, the right to an appeal is waived. The notice of appeal shall state with particularity the basis upon which the appellant is disputing the action taken or proposed to be taken.
 - 3. Upon receipt of a timely notice of appeal, the Director shall set a date and time for an appeal hearing, but in no case shall the hearing be set more than sixty (60) days from the receipt of the timely notice of appeal. The appellant shall be notified in writing of the date, time, and place for the appeal hearing. The Director or his/her designee shall serve as the hearing examiner and be the presiding officer at the hearing.
- B. Appeal Hearing.
 - 1. Content of Notice of hearing. The notice of hearing shall include:
 - (a) Names and mailing addresses of all parties to whom notice is being given, and if known, the names and addresses of their representatives;
 - (b) If the City intends to appear, the mailing address and telephone number of the office designated to represent the City in the proceeding;
 - (c) The official file or other reference number and name of proceeding;
 - (d) The name, official title, mailing address and telephone number of the presiding officer, if known;
 - (e) A statement of the time, place and nature of the proceeding;
 - (f) A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - (g) A reference to the particular section of the ordinance or regulations involved;
 - (h) A short and plain statement of the matters asserted by the agency; and
 - (i) A statement that a party who fails to attend or participate in a hearing or other stage of an appeal hearing may be held in default.
 - 2. Procedures at hearing. The hearing examiner/presiding officer, who may be the Director or his or her designee, shall regulate the course of the hearing. The presiding officer shall afford to all parties the opportunity to respond, present

evidence and argument, conduct cross-examination, and submit rebuttal evidence; provided, however, the presiding officer may control the manner and extent of cross-examinations and rebuttal. In the discretion of the presiding officer, all or part of the hearing may be conducted by telephone or other electronic means as long as each party in the hearing has an opportunity to effectively participate and hear.

3. Rules of evidence. Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. All testimony of parties and witnesses shall be made under oath or affirmation. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference. Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the City's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, this state or another state, or by a nationally recognized organization or association. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.
4. Default. If a party fails to attend or participate in any stage of a hearing, the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of grounds for the order. Within seven (7) calendar days after service of a default order, the party against whom it was entered may file a written motion requesting that the order be vacated, stating the grounds for the motion. If the party against whom the default order is entered fails to timely file a motion to vacate or the motion to vacate is not granted, the default order will be the final decision of the City.
5. Burden of proof. The appellant shall have the burden of proof by a preponderance of the evidence.

C. Appeal Conclusion.

At the conclusion of the hearing, the hearing examiner shall determine if the disputed action was proper, and shall approve, modify, or rescind the disputed action. The final determination of the hearing examiner shall be in writing, and all parties shall be provided a copy of the final determination. This decision will include findings of fact that are supported by and based on the record. These findings will be entitled to deference on any judicial review.

D. Judicial Review of Appeal.

1. Any party, including the City, the Washington State Department of Ecology, the United States Environmental Protection Agency, or the user/appellant, is entitled to review of the final determination of the hearing examiner in the Snohomish County Superior Court. Provided, that any petition for review shall be filed no later than thirty (30) calendar days after date of the final determination.
2. Copies of the petition for review shall be served as in all civil actions.
3. The filing of the petition shall not stay enforcement of the final determination except by order of the superior court and on posting of a bond to be determined by the court naming the City as beneficiary.
4. The review shall be conducted by the court without a jury. The record shall be satisfied by a narrative report certified by the hearing examiner and no verbatim record of proceedings before the hearing examiner shall be required to be presented to the superior court.
5. The court may affirm the final determination or remand the matter for further proceedings before the hearing examiner; or the court may reverse the final determination if the substantial rights of the petitioners may have been prejudiced because the final determination was:
 - i. In violation of constitutional provisions; or
 - ii. In excess of the authority or jurisdiction of the hearing examiner; or
 - iii. Arbitrary and capricious.

SECTION 7 - JUDICIAL ENFORCEMENT REMEDIES

7.1 *Injunctive Relief*

When the Director finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may petition the Snohomish County Superior Court through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the user.

The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user. Injunctive relief shall be nonexclusive to other remedies available to the City.

7.2 *Civil Penalties*

- A. A user which has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty of \$10,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- B. The Director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
- C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for taking any other action against a user.

7.3 Criminal Prosecution

- A. A user who violates any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a gross misdemeanor, punishable by a fine of not more than \$5,000 and/or one year in jail. Each day a violation occurs shall constitute a separate offense.
- B. A user who introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a gross misdemeanor and be subject to a penalty of not more than \$5,000 and/or one year in jail. Each day a violation occurs shall constitute a separate offense. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.
- C. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be guilty of a gross misdemeanor, and punished by a fine of not more than \$5,000 and/or one year in jail. Each day a violation occurs shall constitute a separate offense.

In addition, the user shall be subject to:

- 1) the provisions of 18 USC Section 1001 relating to fraud and false statements;
- 2) the provisions of Sections 309 (c) 4 of the Clean Water Act, as amended governing false statements, representation, or certification; and
- 3) the provision of Section 309 (c) (6) of the Clean Water Act, regarding responsible corporate officers.

7.4 Remedies Non-exclusive

The provisions in Sections 6 through 9 of this ordinance are not exclusive remedies. The City reserves the right to take any, all, or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City reserves the right to take other action against any user when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any non-compliant user. These actions may be taken concurrently.

SECTION 8 - SUPPLEMENTAL ENFORCEMENT ACTION

8.1 *Performance Bonds*

The Director may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this ordinance, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance.

8.2 *Financial Assurances*

The Director may decline to issue or reissue a wastewater discharge permit to any user which has failed to comply with any provision of this ordinance, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to meet pretreatment requirements, and/or restore or repair damage to the POTW caused by its discharge.

8.3 *Service Severance*

Whenever a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, water and/or sewer service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

8.4 *Public Nuisances*

A violation of any provision of this ordinance, wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the Director.

8.5 *Contractor Listing*

Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or

services to the City. Existing contracts for the sale of goods or services to the City held by a user found to be in significant non-compliance with pretreatment standards or requirements may be terminated at the discretion of the City.

8.6 *Publication of Violations and/or Enforcement Actions.*

The Director may publish violations and/or enforcement actions at any time, where monetary fines may be inappropriate in gaining compliance, or in addition to monetary fines. Violations and/or enforcement actions may also be published when the Director feels that public notice should be made, or at other appropriate times. The cost of such publications will be recovered from the user.

SECTION 9 - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

9.1 *Upset*

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary non-compliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for non-compliance with applicable pretreatment standards if the requirements of paragraph (C) are met.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset;
 - (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - (3) The user has submitted the following information to the POTW and treatment plant operator within twenty four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
 - (a) A description of the indirect discharge and cause of non-compliance;
 - (b) The period of non-compliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue; and
 - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the non-compliance.
- D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

- E. A User may appeal any enforcement action due to an upset as provided under Section 6.9 of this ordinance.
- F. Users shall control production of all discharges to the extent necessary to maintain compliance with applicable pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

9.2 Prohibited Discharge Standards

A user shall have an affirmative defense to an enforcement action brought against it for non-compliance with the prohibitions in Section 2.1 A and B (3) through (7) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

9.3 Bypass

- A. For the purposes of this section,
 - (1) "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
 - (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. A user may allow any bypass to occur which does not cause applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.

- C. (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW, at least ten (10) days before the date of the bypass, if possible.
- (2) A user shall submit oral notice to the City of an unanticipated bypass that exceeds applicable pretreatment standards within twenty four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.
- D. (1) Bypass is prohibited, and the POTW may take an enforcement action against a user for a bypass, unless
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (c) The user submitted notices as required under paragraph (C) of this section.
- (2) The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

SECTION 10 - MISCELLANEOUS PROVISIONS

10.1 *Pretreatment Charges and Fees*

The Director may adopt reasonable fees for reimbursement of costs of setting up and operating the City's FOG Control Program.

These fees relate solely to the matters covered by this ordinance and are separate from all other rates or charges for sewer service, provided that the City shall collect said charges in the same manner as other sewer utility rates are collected, including but not limited to the sewer lien procedures provided under 35.67 RCW.

Fees may include:

- A. Fees for wastewater discharge permits, including the cost of processing the permit applications, public noticing, issuing and administering the permit, and reviewing monitoring reports submitted by users;
- B. Fees for modifying or transferring permits.
- C. Fees for monitoring, inspection, surveillance and enforcement procedures including the cost of collection and analyzing a user's discharge;
- D. Fees for reviewing accidental discharge procedures and construction;
- E. Fees for preparing and executing enforcement action;
- F. Fees for filing appeals;
- G. Fees for High Strength Waste and non-domestic flow; and
- H. Other fees as the City may deem necessary to carry out the requirements contained herein.
- I. Permit Fees Should the Director determine that adequate FOG control activities require issuance of control mechanism to FSEs and NFDs, the fees shall be as follows:

A 5 year Discharge Authorization shall be \$1000.

A 1 year Discharge Authorization shall be \$500.

Permit Transfer Fee \$500

Permit Modification Fee \$500. Permit modification fees will only be charged in a case where changes in the user's operation require the modification, or when the user requests a modification.

J. Monitoring Fees

Any user establishing a pattern of non compliance, or having a history of non compliance, or suspected of being in non compliance, may require additional monitoring visits as deemed appropriate by the Director. Any additional inspections, sampling, surveillance monitoring activities, and analysis performed which detect non compliance will be billed directly to the user.

K. Enforcement Actions

All expenses in preparing enforcement actions will be billed directly to the User.

L. Cost Recovery

The City may recover any expenses incurred due to noncompliance by a user, including, but not limited to; costs of opening a plugged sewer, costs of repairing a damaged sewer, costs of determining the cause of a SSO or CSO, and costs of cleaning up and mitigating a SSO or CSO.

All fees or charges will be collected via direct billing. Unless the Director has been made aware of extenuating circumstances that would prevent prompt payment, all fees are payable within 30 days of the billing. Fees past due will be considered a violation of this ordinance. Users not paying fees within 60 days of the billing period will be subject to termination of service. The Director may change existing or adopt new fees.

10.2 Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

10.3 Conflicts / Repeal

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance, are hereby repealed to the extent of the inconsistency or conflict. Specifically, Section 19 of Ordinance 1506-88 (EMC 14.08.250 - Pretreatment), and section 2.8 B. of Ordinance 2034-95 (EMC 14.40.120), as amended by Ordinance 2247-97, section 2 (EMC 14.40.120), are repealed. Permits issued under Ordinance 2034-95, as amended by Ordinance 2247-97, shall hereafter be subject to the provisions of this ordinance.

10.4 Non-Liability

It is expressly the purpose of this ordinance to provide for and promote the health, safety and welfare of the general public. It is not the intent of this ordinance to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms or requirements of this ordinance.

It is the specific intent of this ordinance to place the obligation of complying with these regulations upon the applicant or Discharger and no provision nor any term used in this ordinance is intended to impose any duty whatsoever upon the City or any of its officers, employees or agents, except as provided under the Act or other related statutes of the United States or the State of Washington.

Nothing contained in this ordinance is intended to be nor shall be construed to create or form the basis for any tort liability on the part of the City or its officers, employees or agents, for any injury or damage resulting from the failure of an applicant or Discharger to comply with the provisions of this ordinance, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this ordinance, or inaction on the part of the City related in any manner to the implementation or the enforcement of this ordinance by its officers, employees or agents.

10.5 Savings.

The enactments of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this ordinance.

SECTION 11 - EFFECTIVE DATE

This ordinance shall be in full force and effect fifteen days after the date of this ordinance becoming valid.



Ray Stephanson, Mayor

ATTEST:



Sharon Marks, CITY CLERK

Passed: 5/07/08

Valid: 5/09/08

Published: 5/13/08

Effective: 5/24/08