

“Placerville, a Unique Historical Past Forging into a Golden Future “



City Manager's Report
September 22, 2015 City Council Meeting
Prepared By: Pierre Rivas, Development Services Director

Item#: 10.1

Subject: Take the following actions:

1. Waive the second reading of an Ordinance amending Title 7 of the Placerville Municipal Code *Health and Sanitation* adding Chapter 15 *Storm Water Quality Ordinance*; and
2. Adopt the Ordinance.

Background / Discussion:

On September 8, 2015, the City Council, upon recommendation by staff, introduced and waived the first reading of an Ordinance amending the Placerville City Code, Title 7 *Health and Sanitation*, adding Chapter 15 *Storm Water Quality Ordinance*.

The Council unanimously approved staff's recommendation. No written comments were received on the proposed Ordinance.

The staff report to the Council dated September 8, 2015 is attached (Attachment 2) for reference.

This Ordinance is required in accordance with the revised Phase II Permit (NPDES General Permit No. CAS000004). The City must establish, maintain, and enforce, "legal authority" to control pollutant discharges into and from its storm water collection, conveyance, and treatment facilities through an ordinance or other regulatory mechanism. Staff recommends the use of an ordinance as the effective regulatory mechanism (Attachment 1).

Options:

1. Adopt the proposed ordinance as recommended by staff.
2. Amend the proposed ordinance as directed by Council.
3. Table discussion of the ordinance and provide direction to staff to revise the ordinance for consideration by Council.
4. Do not adopt the recommended ordinance, rendering the City in violation of the Phase II Permit.

Cost: The additional cost for administration, permit review and processing, inspections, and enforcement and fines would be minimal since these costs would be borne by the applicant through payment of permit fees.

Budget Impact: None

Recommendation: Take the following actions:

1. Waive the second reading of an Ordinance amending Title 7 of the Placerville Municipal Code *Health and Sanitation* adding Chapter 15 *Storm Water Quality Ordinance*; and
2. Adopt the Ordinance.

This Ordinance will become effective 30 days from adoption.



M. Cleve Morris, City Manager



Pierre Rivas, Development Services Director

Attachments:

1. Proposed Storm Water Quality Ordinance
2. September 8, 2015 Staff Report to Council

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLACERVILLE
ANNOUNCING FINDINGS AND ADOPTING AMENDMENTS TO TITLE 7
HEALTH AND SANITATION, ADDING CHAPTER 15 STORM WATER QUALITY
ORDINANCE TO THE CITY OF PLACERVILLE CITY CODE TO MANAGE,
CONTROL, AND REDUCE POLLUTION DISCHARGES TO THE CITY'S
STORMWATER DRAINAGE FACILITIES AND TO SURFACE WATERS
CONSISTENT WITH THE REQUIRMENTS OF SECTION E.6. OF THE STATE
WATER RESOURCES CONTROL BOARD WATER QUALITY ORDER NO. 2013-0001-
DWQ, NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT NO. CAS000004, WASTE DISCHARGE REQUIRMENTS FOR
STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM
SEWER SYSTEMS (MS4s)**

WHEREAS, storm water is recognized as a resource requiring management to provide for water supply, prevent flooding impacts, mitigate storm water pollution, enhance fish and wildlife habitat, and to protect public health; and

WHEREAS, pollutants of concern found in urban runoff include sediments, non-sediment solids, nutrients, pathogens, oxygen-demanding substances, petroleum hydrocarbons, heavy metals, floatables, polycyclic aromatic hydrocarbons (PAHs), pesticides and herbicides, and trash and litter; and

WHEREAS, the City Council seeks to be compliant with the City's NPDES General Permit and implement a coordinated storm water program including adoption of ordinances and regulatory mechanisms to obtain adequate legal authority to control pollutant discharges into and from its storm water drainage collection system (MS4); and

WHEREAS, on December 8, 1999, the U.S. EPA promulgated Phase II storm water regulations under the authority of the Clean Water Act section 402(p)(6) requiring the State Water Resources Control Board to issue NPDES storm water permits to operators of storm drainage collection systems (Small MS4s); and

WHEREAS, on April 30, 2003, the State Water Resources Control Board adopted Water Quality Order No. 2003-0005-DWQ, NPDES General Permit CAS000004 WDRs for Storm Water Discharges from Small Municipal Separate Sewer Systems (MS4s) to comply with the Clean Water Act section 402(p)(6); and

WHEREAS, on February 3, 2013, the State Water Resources Control Board adopted Water Quality Order No. 2013-0005-DWQ (reissued NPDES General Permit CAS000004 WDRs for Storm Water Discharges from Small Municipal Separate Sewer Systems) to comply with the Clean Water Act section 402(p)(6); and

WHEREAS, on July 1, 2013 the City was covered as a permittee under the reissued NPDES General Permit CAS000004 Waste Discharge Requirements (WDRs) for Storm Water Discharges from Small Municipal Separate Sewer Systems; and

WHEREAS, each permittee is individually responsible for the adoption and enforcement of policies and/or ordinances to prevent or reduce pollutants in storm water and for the operation and maintenance of storm water collection systems; and

WHEREAS, on September 8, 2015, the City Council held a duly noticed public hearing and weighed the evidence presented therein, including staff's report and environmental determination; and

WHEREAS, this ordinance is exempt from environmental review per Section 15307 of the California Environmental Quality Act (CEQA) Guidelines under the Class 7 exemption consisting of actions taken by regulatory agencies for maintenance and enhancement of a natural resource through procedures for protection of the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLACERVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Purpose and Authority:

The purpose of this ordinance is to amend Title 7 *Health and Sanitation*, adding Chapter 15 *Storm Water Quality Ordinance* of the Placerville City Code in conformance with the requirements of Section E.6 of the State Water Resources Control Board Water Quality Order No. 2013-0001-DWQ, NPDES General Permit No. CAS000004, Waste Discharge Requirements (WDRs) for Storm Water Discharges from Small Municipal Separate Sewer Systems (MS4s).

SECTION 2. Findings:

1. That the proposed amendments are in general conformance with the City of Placerville General Plan, including the Public Facilities and Services Element, Goal C and Goal B, Policy 6; the Natural, Cultural, and Scenic Resources Element, Goal A and Goal D; and the Health and Safety Element, Goal F.
2. The City Council of the City of Placerville has determined that the health, safety, and general welfare of the citizens of the City of Placerville are adversely affected by the discharge of pollution into storm water facilities, surface waters, and Waters of the State and that the City Council further finds that violation of this Ordinance may constitute a human and environmental health risk.
3. The adoption of this ordinance is exempt from environmental review per Section 15307 of the California Environmental Quality Act (CEQA) Guidelines under the Class 7 exemption consisting of actions taken by regulatory agencies for maintenance and enhancement of a natural resource through procedures for protection of the environment.

SECTION 3. Action: Add Chapter 15 entitled *Storm Water Quality Ordinance* to Title 7 *Health and Sanitation* as follows:

Chapter 15: STORM WATER QUALITY ORDINANCE

SECTION:

- 7-15-1: Title
- 7-15-2: Purpose and Intent
- 7-15-3: Applicability
- 7-15-4: Definitions
- 7-15-5: Responsibility for Administration
- 7-15-6: Conflicts with Other Laws
- 7-15-7: Discharge Prohibitions
- 7-15-8: Exemptions to Prohibited Discharges
- 7-15-9: Discharge in Violation of Existing NPDES Permit
- 7-15-10: Discharge in Violation of City's NPDES Permit; Indemnification
- 7-15-11: Acts Potentially Resulting in Violation of Federal Clean Water Act and/or Porter-Cologne Act
- 7-15-12: Right of Entry; Inspections
- 7-15-13: Concealment and Abetting
- 7-15-14: Reduction of Pollutants in Storm Water; Best Management Practices
- 7-15-15: Containment and Notification of Illegal Discharges
- 7-15-16: Enforcement
- 7-15-17: Violation
- 7-15-18: Administrative Appeals
- 7-15-19: Nuisance Abatement; Summary Abatement
- 7-15-20: Civil Actions
- 7-15-21: Regulatory Fee Structure Authorized
- 7-15-22: Non-Exclusive Remedies
- 7-15-23: Severability

7-15-1: **TITLE:** This Ordinance shall be known as the “Placerville Storm Water Quality Ordinance,” and may be so cited.

7-15-2: **PURPOSE AND INTENT:**

- (A) The purpose of this Chapter is to ensure that the City of Placerville is compliant with state and federal laws and fulfills its requirements to: 1. Protect the health, safety, and general welfare of the citizens of the City of Placerville; 2. Enhance and protect the quality of Waters of the State in the City of Placerville by reducing pollutants in storm water discharges to the maximum extent practicable and controlling non-storm water discharges to a storm water facility; and 3. To cause the use of Best Management Practices (Section 7-15-4) by the City and its citizens that will reduce the adverse effects of polluted runoff discharges on Waters of the State.
- (B) This Chapter seeks to promote these purposes by: 1. Prohibiting illicit discharges to a storm water facility; 2. Establishing authority to implement and enforce requirements for storm water management, including source control requirements, to reduce pollution to the

Maximum Extent Practicable; 3. Establishing authority to implement and enforce requirements for development projects to reduce storm water pollution and erosion both during construction and after the project is complete; and 4. Establishing authority that will enable the City to implement and enforce any Storm Water Management Plan, Low Intensity Development (LID) standards, development standards contained in the City's Development Guide, or standards and specifications contained in any other development guide or manuals as adopted by the City.

7-15-3: **APPLICABILITY:** This Chapter applies to all incorporated areas within the City of Placerville.

7-15-4: **DEFINITIONS:** For the purposes of this Chapter, the following words and phrases shall have meaning respectively ascribed to them in the section, unless the context of a particular provision clearly requires a different definition.

BEST MANAGEMENT PRACTICES (BMPs): Methods that have been determined to be the most effective, practical means of preventing or reducing pollution from non-point sources, such as pollutants carried by storm water runoff. "BMP" is a broad term that refers to many of the actions that are required under or could be completed as part of the National Pollution Discharge Elimination System (NPDES) Permit, including behavioral BMPs such as education (e.g., placing inlet stencils and regularly educating municipal staff and others about measures to reduce pollution in storm water) or discharging wash water to the sanitary sewer instead of the storm drain, structural BMPs such as source controls (e.g., double containment for hazardous materials) and treatment controls (e.g. vegetated swales and detention basins) to treat runoff before it is discharged to the storm drain or local waterway, and other practices that prevent or reduce pollutants from reaching the storm drain or other waters.

CLEAN WATER ACT (CWA): The primary federal law in the United States governing water pollution. Formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, is Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483 and Public Law 77-117, 33 U.S.C. 1251 et seq.

CITY: The incorporated area of the City of Placerville.

CONSENT: To permit, approve, or agree; comply or yield.

DEVELOPMENT: Any activity that moves soils or substantially alters the pre-existing vegetated or man-made cover of any and all land. Development includes any activity that may be considered new development or re-development. This also includes, but is not limited to, grading, digging, cutting, scraping, stockpiling or excavating of soil, placement of fill materials, paving, pavement removal, exterior construction, substantial removal of vegetation where soils are disturbed including but not limited to removal by clearing or grubbing, or any activity which bares soil or rock or involves streambed alterations or the diversion or piping of any watercourse. Development does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities (i.e. land disturbances) required to protect public health and safety.

DISCHARGE: The release or placement of any material into storm water facilities within the City's jurisdiction, including but not limited to storm water, wastewater, solid materials, liquids, hazardous waste, raw materials, debris, litter, or any other substance.

ENFORCEMENT AGENCY: The City of Placerville Development Services Department is the primary Enforcement Agency for the purposes of this Chapter.

ENFORCEMENT OFFICIAL: Any City employee or agent of the City with the authority to enforce any provision of the Chapter and the authority to make any decision on behalf of the Director required or called for by this Chapter.

ILLICIT CONNECTION: Illicit connections include pipes, drains, open channels, or other conveyances that have the potential to allow an illicit discharge to enter the MS4.

ILLICIT DISCHARGE: Illicit discharges include all non-storm water discharges not otherwise authorized by this Chapter, including discharges from organized car washes, mobile cleaning, and pressure wash operations.

INCIDENTAL RUNOFF: Unintended amounts (volume) of runoff, such as unintended, minimal over-spray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

INDUSTRIAL ACTIVITY: Activities subject to NPDES permits as defined in 40 Code of Federal Regulations 122.26 (b)(14).

MAXIMUM EXTENT PRACTICABLE (MEP): The minimum required performance standard for implementation of municipal storm water management programs to reduce pollutants in storm water. Clean Water Act § 402(p)(3)(B)(iii) requires that municipal permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." MEP is the cumulative effect of implementing, evaluating, and making corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate controls are implemented in the most effective manner. This process of implementing, evaluating, revising, or adding new BMPs is commonly referred to as the iterative process.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, municipal storm water facilities, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, County, City, Town, or other public body, that is designed or used for collecting or conveying storm water, which is not a combined sewer, and which is not a part of a publicly owned treatment works.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES): The primary permitting program under the Clean Water Act (33 U.S.C. § 1251 et seq.) which regulates most discharges to surface waters.

NON-STORM WATER DISCHARGE: Any discharge to municipal storm water collection systems that is not composed entirely of storm water except discharges pursuant to an NPDES permit and discharges resulting from fire-fighting activities.

POLLUTANT: Anything which causes or contributes to pollution, as defined herein. Pollutants include, but are not limited to: sediment, chlorine, paints, varnishes, solvents, fuel, oil, grease, automotive fluids, yard wastes, refuse, rubbish, garbage, litter, food-related wastes, discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, detergents, soaps, hazardous substances, hazardous waste, sewage, fecal coliform and pathogens, dissolved and particulate metals, animal wastes, wastes and residues that result from constructing a building or structure or from grading (including but not limited to sediments, slurries, and concrete residue), and noxious or offensive matter of any kind.

POLLUTION: "The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water" (CWA Section 502 (19)). Pollution also means, "alteration of the quality of the Waters of the State by waste to a degree which unreasonably affects either the waters for beneficial uses of facilities which serve these beneficial uses" (California Water Code Section 13050 (1)).

PORTER-COLOGNE ACT: The Porter-Cologne Water Quality Control Act, as amended (California Water Code section 13000 et seq.).

PROPERTY OWNER: Any person, entity, company, and/or authorized representative having title to real property within the geographic area affected by this Chapter.

REGIONAL WATER QUALITY CONTROL BOARD: The California Regional Water Quality Control Board Valley Region.

STORM WATER: Storm water runoff, snowmelt runoff, and surface runoff and drainage [40 Code of Federal Regulations 122.26 (b)(13)]. As storm water flows over the land or impervious surfaces, it accumulates debris, chemicals, sediment or other pollutants that could adversely affect water quality if the storm water is discharged untreated.

STORM WATER FACILITY: Structures that are designed to capture, convey and treat storm water runoff while removing pollutants and controlling flow rates. These facilities include pipes, ditches, swales, filters, ponds, basins, underground vaults, and drop inlets. Facilities require maintenance in order to remain functional.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP): The construction site water quality management plan required by the State's Construction General Storm Water Permit.

SURFACE WATER: Includes, but is not limited to, perennial and ephemeral streams, lakes, wetlands, springs, and similar waters which flow or reside in natural or artificial impoundments or drainage ways.

WATERS OF THE UNITED STATES: Surface watercourses and water bodies as defined by 40 Code of Federal Regulations section 122.2, including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

WATERS OF THE STATE: All surface watercourses and water bodies, including lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, marshes, inlets, canals, and all other bodies of surface waters (Porter Cologne Section 13050 (e)), and which are within the incorporated areas of the City of Placerville. This definition includes, but is broader than, Waters of the United States.

Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the storm water discharge permitting program issued by the Environmental Protection Agency, as amended, and which are not specifically defined above, shall, when used in this Chapter, have the same meaning as set forth in said act or regulation.

7-15-5: RESPONSIBILITY FOR ADMINISTRATION: The City of Placerville shall administer the provisions of this Chapter with all participating departments with responsibility for implementation and enforcement of the Storm Water Management Plan.

7-15-6: CONFLICTS WITH OTHER LAWS: In the event of any conflict between this Chapter and any federal or state law or regulation or City ordinance, that requirement which establishes the higher standard for public health shall govern. To the extent permitted by law, nothing in this Chapter shall preclude enforcement of any other applicable law, regulation, order, permit, or City ordinance.

7-15-7: DISCHARGE PROHIBITIONS: Except as provided in Section 7-15-8, it is unlawful for any person to make or cause to be made any illicit connection to or illicit discharge into a storm water facility.

Notwithstanding the exemptions provided by Section 7-15-8, if the Enforcement Agency determines any otherwise exempt discharge causes or significantly contributes to violations of any water quality standard, or conveys significant quantities of pollutants to storm water facilities, surface water(s) or watercourse(s), or is a danger to public health or safety, then the Enforcement Agency may give written notice to the property owner or occupant that the otherwise applicable exemption will not apply to the subject discharge following expiration as noted by the applicable notice. Any such discharge shall thereafter be prohibited from entering the storm water facility or surface water.

7-15-8: EXEMPTIONS TO PROHIBITED DISCHARGES: Discharges from the following activities shall not be prohibited unless the Enforcement Agency determines that the discharge causes or significantly contributes to violations of any plan standard, or conveys significant quantities of pollutants to surface water or watercourses, or is a danger to public health or safety.

The Enforcement Agency may give written notice to the property owner or occupant that the otherwise applicable exemption will not apply.

- (A) Water line flushing and discharges from potable water sources.
- (B) Incidental runoff from landscape irrigation and lawn watering. (See Section 7-15-15 for minimum runoff control requirements.)
- (C) Diverted stream flows and irrigation water.
- (D) Springs, rising groundwater, and flows from riparian habitat and wetlands.
- (E) Uncontaminated groundwater infiltration (as defined at 40 Code of Federal Regulation Section 35.2005(b)(20)) to separate storm water sewers.
- (F) Uncontaminated pumped groundwater, foundation drains, footing drains, fountain drains and water from crawl space pumps.
- (G) Air conditioning condensation.
- (H) Individual residential car washing.
- (I) Dechlorinated, pollution-free swimming pool and spa water discharges.
- (J) Fire-fighting flows.

7-15-9: **DISCHARGE IN VIOLATION OF EXISTING NPDES PERMIT:** Any person subject to any individual and/or industrial NPDES storm water discharge permit shall comply with all provisions of such permit, SWPPP, and any regulations or ordinances promulgated thereto. Proof of compliance with said permit may be required in a form acceptable to the Enforcement Agency: (A) prior to or as a condition of a subdivision map, site plan, building permit, or development, re-development, or improvement plan; (B) upon inspection of the facility; (C) during any enforcement proceeding or action; or (D) for any other reasonable cause at any other time.

7-15-10: **DISCHARGE IN VIOLATION OF CITY'S NPDES PERMIT; INDEMNIFICATION:** Any discharge that would result in or contribute to a violation of the City's NPDES permit issued by the Regional Water Quality Control Board and any amendment, revision or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person(s) so causing or responsible for the discharge, and such persons shall defend, indemnify and hold harmless the City and its officers, agents, employees, representatives, and volunteers from any and all claims in any administrative or judicial enforcement action relating to such discharge.

7-15-11: **ACTS POTENTIALLY RESULTING IN VIOLATION OF FEDERAL CLEAN WATER ACT AND/OR PORTER-COLOGNE ACT:** The standards set forth herein and promulgated pursuant to this Chapter are minimum standards. This Chapter does not intend or imply that compliance with these minimum standards will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the Waters of the State. This

Chapter shall not create liability on the part of the City, and its officers, agents, employees, representatives, and volunteers for any damage that results from any discharger's reliance upon this Chapter or any administrative decision made hereunder.

7-15-12: RIGHT OF ENTRY; INSPECTIONS:

- (A) The Enforcement Official is authorized to enter any building or premises upon consent through existing permit or written/verbal consent in accordance with the provisions of this section for the purpose of making an inspection to enforce the provisions of this Chapter and to assure the proper implementation of BMPs. Inspections/investigations shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of the Chapter, including, but not limited to: visual evidence, complaints received, knowledge or physical evidence of industrial activities or other pollutant sources, random sampling, sampling in areas with evidence of storm water contamination, illicit connections, illicit discharge, or similar factors.
- (B) Right to inspect. Unless inspections are authorized pursuant to an existing permit issued to the property owner or occupant, prior to commencing any inspection as hereinabove authorized, the Enforcement Official shall obtain either the consent of the property owner or occupant or shall obtain an administrative inspection warrant or criminal search warrant.
- (C) Compliance assessments. The Enforcement Official may inspect property for the purpose of verifying compliance with this Chapter, including but not limited to: 1. identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property, 2. identifying point(s) of discharge of all wastewater, process water systems and pollutants, 3. investigating the natural slope, including drainage patterns and man-made conveyance systems, 4. establishing the location of all points of discharge from the property, whether by surface runoff, snow melt, or through a storm water facility, 5. locating any illicit connection or the source of any illicit discharge, and 6. evaluating compliance with any storm water discharge permit.
- (D) Portable equipment. For purposes of verifying compliance with this Chapter, the Enforcement Official may inspect any vehicle, truck, trailer, tank truck or other mobile equipment that may pose a threat to surface waters, storm water facilities or the MS4.
- (E) Records review. The Enforcement Official may inspect all records of the property owner or occupant of property relating to State general permits, storm water pollution prevention plans, monitoring program plans and any other record(s) relating to illicit connections, illicit discharges, or any other source of contribution or potential contribution of pollutants to a storm water facility.
- (F) Sample and test. The Enforcement Official may inspect, sample and test any runoff, soils area, process discharge, materials within any waste storage area (including any container contents), and/or treatment system discharge for the purpose of determining the potential for contribution of pollutants to a storm water facility. The Enforcement Official may investigate the integrity of all storm water facilities or other pipelines on the property using

appropriate tests, including but not limited to smoke and dye tests or video surveys. The Enforcement Official may take photographs or video tape, make surveys, measurements or drawings, and create any other record reasonably necessary to document conditions on the property.

- (G) Monitoring. The Enforcement Official may erect and maintain monitoring devices for the purpose of measuring any discharge or potential source of discharge to a storm water facility.
- (H) Test results. The property owner or occupant of property subject to inspection shall, on submission of a written request to the Enforcement Official, receive copies of all monitoring and test results conducted during the investigation.

7-15-13: **CONCEALMENT AND ABETTING:** Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation.

7-15-14: **REDUCTION OF POLLUTANTS IN STORM WATER; BEST MANAGEMENT PRACTICES:**

- (A) General Requirements. Any person engaging in activities that may result in pollutants entering a storm water facility shall implement Best Management Practices to the maximum extent practicable (MEP), or as determined by the Enforcement Agency, to prevent such pollutants.
- (B) Maintenance. All BMPs shall be protected and maintained to ensure continuous and fully effective performance as designed.
- (C) Illicit Connection. It is unlawful and a violation of this Chapter for any person to establish, use, or maintain any unauthorized connection to a storm water facility or MS4.
- (D) Waste Disposal. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of a storm water facility or Waters of the State, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution, as further proscribed by Chapter 2 of this Title.
- (E) Construction Activities. Any person performing construction work within the City shall implement appropriate BMPs to prevent the discharge from the site of pollutants, soil, or construction wastes or debris, including contaminants from construction materials, tools, and equipment to a storm water facility.
- (F) Watercourse Protection. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, and other obstacles that would pollute or contaminate the watercourse.
- (G) Development / Redevelopment. The City may require development and/or redevelopment projects to incorporate appropriate BMPs to control the volume, rate, and potential

pollutant loading of storm water runoff from such development / redevelopment. These required BMPs may be contained in any land use entitlement, conditions of approval, grading plans, improvement plans, or any construction or building-related permit to be issued relative to such development / redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required elsewhere in City Code and adopted Storm Water Management Plans. The City may withhold final approvals or other authorizations if the owner or developer is in violation of the provisions of this Chapter.

7-15-15: **ILLICIT DISCHARGES:** Any person owning or occupying premises who has knowledge of any illicit discharge from or across those premises which might enter a storm water facility, except as provided in Section 7-15-8, shall:

- (A) Cease and desist and/or take all reasonable action to contain, cleanup and abate the Illicit Discharge within 72 hours of notification or, if high risk spill, immediately, and
- (B) Notify the Enforcement Agency or its designated contact person within twenty-four (24) hours of discovery of the illicit discharge. The Enforcement Agency may require the property owner and/or the responsible person to take corrective actions within 30 days or less for uncontrolled sources that could pose an environmental threat.

Additionally, any party responsible for controlling runoff in excess of Incidental Runoff shall do the following: 1. detect leaks and correct the leaks within 72 hours of learning of the leak; 2. properly design and aim sprinkler heads; 3. not irrigate during precipitation events; and 4. manage ponds containing recycle water such that no discharge occurs unless the discharge is a result of a 25-year, 24-hour storm event or greater, and the Regional Water Quality Control Board is notified by email no later than 24 hours after the discharge.

7-15-16: **ENFORCEMENT:** Any person who violates a provision of this Chapter may be subject to administrative, civil, or criminal liability as provided in Title 1, Chapters 4, 4A, and 4B of this Code.

- (A) Primary Authority. The Enforcement Agency is empowered to use any of the provisions of Sections 7-15-16 through 7-15-21 of this Ordinance, and the provisions found in Title 1, Chapters 4, 4A, and 4B where appropriate to correct violations of, and secure compliance with the provisions of this Chapter.
- (B) Warning Not Required. Issuance of a warning shall not be a requirement prior to using any enforcement provision of this Chapter.

7-15-17: **VIOLATION:**

- (A) Informal Warning; Educational Materials. Whenever the Enforcement Official determines that a violation of a provision of this Chapter has occurred or may occur, the Enforcement Official may provide a warning to any person and/or owner responsible for the condition giving rise to such violation or potential violation. Such warning may include the distribution

of educational materials to assist in future compliance with this Chapter. This warning may be provided in person or in writing.

(B) Notice of Noncompliance. Whenever the Enforcement Official determines that a violation has occurred, the Enforcement Official may serve a Notice of Noncompliance to any person and/or property owner responsible for the violation. Each Notice of Noncompliance shall contain the following information:

1. The date of the violation;
2. The address or a definite description of the location where the violation occurred;
3. The Chapter section violated and a description of the violation;
4. A description of how the violation can be corrected;
5. A time limit by which the violation shall be corrected, after which further enforcement and/or corrective actions may be taken by the City if the violation is not fully corrected;
6. The name and signature of the individual preparing the Notice of Noncompliance;
7. A statement outlining the procedure for appeal of the Notice of Noncompliance; and
8. Notice of potential liability under the federal Clean Water Act or State Porter Cologne Water Quality Act.

(C) Administrative Compliance Order. Whenever the Enforcement Official determines that a violation has occurred, the Enforcement Official may serve an Administrative Compliance Order to any person and/or property owner responsible for the violation. Each Administrative Compliance Order shall contain the following information:

1. The date of the violation;
2. The address or a definite description of the location where the violation occurred;
3. The Chapter section violated and a description of the violation;
4. An order to cease all activities which are believed to be causing the violation;
5. A time limit by which the violation shall be corrected, after which corrective actions will be taken by the City if the violation is not fully corrected;
6. A statement that the City will charge the person and/or owner for all administrative costs associated with enforcement actions;
7. An order prohibiting the continuation or repeated occurrence of the violation;
8. The name and signature of the individual preparing the citation;

9. A statement outlining the procedure for appeal of the Order;
10. Notice to the violator of potential liability under the federal Clean Water Act or State Porter Cologne Water Quality Act; and
11. Any other terms or requirements reasonably calculated to achieve full compliance with the terms, conditions, and requirements of any permit issued pursuant hereto.

(D) Citation. The Enforcement Official is authorized to issue citations for infractions of this section using the provisions found in Chapters 4, 4A, and 4B of this Code.

(E) Misdemeanor. Any violation of this Chapter may, at the discretion of the Enforcing Agency, be considered a misdemeanor and, as such, may be punished using the provisions of Code Section 1-4-5, including a fine of not more than \$1,000.00, imprisonment for a period not to exceed six (6) months, or both.

(F) Cost Recovery. The Enforcement Official may deliver to the property owner or occupant, any permittee, or any other person who becomes subject to a Notice of Noncompliance or Administrative Compliance Order, an invoice for costs. An invoice for costs shall be immediately due and payable to the City for the actual costs incurred by the City in issuing and enforcing any notice or order.

If any owner or occupant, permittee, or any other person subject to an invoice for costs fails to either pay the invoice for costs or appeal successfully the invoice for costs or the underlying notice or order in accordance with this section, then the County may institute collection proceedings or resort to any collections methods authorized by Title 1, Chapters 4A and 4B of this Code.

(G) Service. The Enforcement Officer shall use the provisions of Title 1, Chapter 4A of the City's Ordinance Code to serve a Notice of Noncompliance, Citation, Administrative Compliance Order, or Invoice for Costs to effectuate the provisions of this Chapter.

(H) Separate Violation Intent.

1. Each day in which a violation occurs and each separate failure to comply with any provision of this Chapter is a separate offense and punishable by penalties in accordance with this Chapter.
2. A violation of the provisions of this Chapter shall occur irrespective of the negligence or intent of the violator to construct, maintain, operate, or utilize an illicit connection, or to cause, allow or facilitate any illicit discharge or threatened illicit discharge.

7-15-18: ADMINISTRATIVE APPEALS:

(A) Any person receiving a Notice of Noncompliance, Administrative Compliance Order, or Citation under Section 7-15-17 of this Ordinance, or any person required to perform monitoring, analysis, reporting or corrective activities by any Enforcement Official and who is aggrieved by such decision may appeal, in accordance with Code Section 1-4A-32, the Notice of Noncompliance, Administrative Compliance Order, Citation, or decision in

writing to the Hearing Officer within ten days following the effective date of the subject action. Upon receipt of such appeal, the Hearing Officer shall request a report and recommendation from the authorized City employee and shall set the matter for hearing at the earliest practical date. At said hearing, the Hearing Officer may base his or her decision on additional evidence, and may reject, affirm or modify the Enforcement Official's decision.

- (B) The decision of the Hearing Officer may be appealed to the City Council by filing a notice of appeal with the City Clerk within fifteen (15) days of receipt of the decision of the Hearing Officer. Such appeals shall be in writing and shall set forth fully the grounds for the appeal. The City Council shall thereupon fix a time and place for a public hearing of such appeal. The City Clerk shall give notice to the appellant of the time and place of hearing by serving it personally or by depositing it in the U.S. Post Office, postage prepaid, addressed to the appellant at his last known address at least five days prior thereto.

At the hearing before the City Council, the appellant may appear in person or by counsel and present any relevant evidence relating to the grievance; the Enforcement Agency may present evidence in rebuttal thereof. The hearing may be continued from time to time, not to exceed thirty (30) days in all. The City Council shall conduct a hearing and make findings as appropriate. The decision of the City Council shall be final.

- (C) Notwithstanding the foregoing, these administrative appeal procedures shall not apply to criminal proceedings initiated to enforce this Chapter.

7-15-19: NUISANCE ABATEMENT; SUMMARY ABATEMENT:

(A) Nuisance Abatement. The Enforcement Official may, in addition to other authorized procedures set forth in this Chapter, take action to abate any nuisance in accordance with the procedures found in Title 1, Chapters 4A and 4B of this Code. The costs of any such abatement undertaken by the City shall be borne jointly and severally by the property owner and the person creating, causing, committing, allowing, or maintaining the nuisance and shall be collectable in accordance with the provisions of Title 1, Chapters 4A and 4B of this Code.

(B) Summary Abatement. The Enforcement Official may, in addition to other authorized procedures, take immediate action to abate any illicit discharge or threatened illicit discharge from any source to a storm water facility when, in the discretion of the Enforcement Agency, the illicit discharge or threatened illicit discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, or the environment, or a violation of a permit. The Enforcement Official must first make reasonable attempts to contact and compel the responsible person and/or property owner to abate the illicit discharge or threatened illicit discharge in a satisfactory manner. The costs of any such abatement shall be borne jointly and severally by the property owner and the person creating, causing, committing, allowing, or maintaining the nuisance and shall be collectable in accordance with the provisions of Title 1, Chapters 4A and 4B of this Code. Following the summary abatement hearing, within 10 days of taking action in accordance with

this Section, there shall be a post abatement hearing in accordance with Title 1, Chapter 4A and/or Chapter 4B.

7-15-20: **CIVIL ACTIONS:** In addition to any other remedies provided in this Section, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate and allowed by law, any or all of the following remedies:

- (A) A temporary restraining order, preliminary and permanent injunction;
- (B) Reimbursement for the costs of any investigation, inspection or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing action under this Chapter;
- (C) Costs incurred in removing, correcting or terminating the adverse effect(s) resulting from the violation; and
- (D) Compensatory damages for loss or destruction of water quality, wildlife, fish and aquatic life. Costs and damages under this subsection shall be paid to the City and shall be used exclusively for costs associated with monitoring and establishing storm water discharge pollution control system and/or implementing or enforcing the provisions of this Chapter.

7-15-21: **REGULATORY FEE STRUCTURE AUTHORIZED:** The Enforcement Official shall collect such fees as may be authorized by the City Council to establish and collect regulatory costs, which include routine inspections/investigations, and other regulatory functions associated with this Chapter. Any such fees shall be established by resolution of the City Council.

7-15-22: **NON-EXCLUSIVE REMEDIES:** Each and every remedy available for the enforcement of this Chapter shall be non-exclusive and it is within the discretion of the Enforcement Agency to seek cumulative remedies, including those specified in Title 1, Chapter 4A of this Code, except that multiple monetary fines or penalties shall not be available for any single violation of this Chapter. Moreover, the remedies available to the City pursuant to this Chapter shall not limit the right of the City to seek any other remedy that may be available by law.

7-15-23: **SEVERABILITY:**

(A) If any section, subsection, phrase, or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

(B) The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 4. Effective Date.

This ordinance shall become effective on and after the thirtieth (30th) day following adoption.

INTRODUCED on September 8, 2015, and **PASSED AND ADOPTED** on _____,
2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

Mayor Patricia Borelli

ATTEST:

Susan Zito, CMC, City Clerk