

## Chapter 5-36

### WATER QUALITY CONTROL

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#### **5-36.010 Declaration of purpose.**

The United States Congress passed the Clean Water Act (33 U.S.C. Section 1251 et seq., as amended, including Section 402(p) therein, the “Clean Water Act”) as a mandate, in part, that municipal separate storm sewer systems, such as in Orange County, obtain permits to “effectively prohibit non-stormwater discharges into the storm sewers” and “require controls to reduce the discharge of pollutants to the maximum extent practicable....” This permitting authority has been delegated by the United States Environmental Protection Agency (EPA) to the state of California, which has authorized the State Water Resources Control Board and its local regulatory agencies, the regional water quality control boards, to control nonpoint source discharges to California’s waterways.

The Santa Ana and San Diego Regional Water Quality Control Boards have addressed the obligation to implement the Clean Water Act by issuing Waste Discharge Requirements for the County of Orange, Orange County Flood Control District, and the incorporated cities of Orange County. These permits shall be referred to collectively herein as the National Pollution Discharge Elimination System permit or “NPDES permit.”

The city is participating as a “co-permittee” under the NPDES permit in the development and adoption of an ordinance to accomplish the requirements of the Clean Water Act.

Stormwater runoff is one step in the cycle of water. However, human activities, such as agriculture, construction, and the operation and maintenance of an urban infrastructure may result in undesirable discharges of pollutants and certain sediments, which may accumulate in local drainage channels and waterways and eventually may be deposited in the waters of the United States.

The purpose of this chapter is to participate in the improvement of water quality and comply with federal requirements for the control of urban pollutants to runoff, which enters the network of storm drains throughout Orange County. (Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); Ord. 2003-10 § 2; prior code § 5-01.005)

#### **5-36.020 Findings of fact.**

The city is authorized by Article XI, Section 5 and Section 7 of the State Constitution to exercise the police power of the state by adopting regulations promoting the public health, public safety, and general prosperity.

The city has determined that a legitimate local purpose is present in complying with the provisions of the NPDES permit.

A reduction in stormwater borne pollution will promote the public health and protect the general welfare of the locality by reducing the level of artificial and naturally occurring constituents, which may improve the quality of the waters in this region.

The land use authority exercised by the city pursuant to California Government Code Section 65300 et seq., requires regional planning and the adoption of policies protecting the environment through the imposition of reasonable conditions on the use of land.

This chapter conforms to the policies and goals of the general plan adopted by the city, pursuant to California Planning and Zoning Law, for the protection of the portions of watersheds located within Orange County by implementing measures to control erosion and prevent the pollution of streams and other waters.

The Subdivision Map Act, California Government Code Section 66411, authorizes the city to regulate and control the design and improvement of subdivided lands and mitigate the burdens of proposed development by imposing reasonable conditions on map approval.

California Constitution Article XI, Section 7 and Government Code Section 38660 authorize the city to establish appropriate conditions for the issuance of building permits, which require the installation of improvements reasonably related to the proposed use of property.

Government Code Section 38771 authorizes the city to declare as public nuisances undesirable acts which may injure health or cause interference with the comfortable enjoyment of life or property and to provide for the abatement of the same.

The NPDES permit requires that the city: (A) develop and implement stormwater management programs and implementation plans; (B) enact legislation and ordinances as necessary to ensure compliance with the stormwater management programs and implementation plans;

(C) pursue enforcement actions as necessary to ensure compliance with stormwater management programs and implementation plans; (D) prohibit illicit and illegal discharges from entering the stormwater conveyance systems, subject only to specific exceptions; (E) ensure adequate response to emergency situations, including spills, leaks, and illicit or illegal discharges; and (F) develop and require implementation of best management practices (BMPs) to ensure that pollution is reduced to the maximum extent practicable.

The city may commence civil actions, pursuant to Federal Clean Water Act Section 505(a), against any person or any governmental agency acting in violation of any condition of the NPDES permit.

All industrial dischargers subject to the provisions of the Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities Permit (state industrial general permit) and the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities (state construction general permit) (referred to collectively herein as the “state general permits”) must comply with the lawful requirements of the city, which regulate discharges of stormwater to the storm drain system within its jurisdiction.

All industrial dischargers subject to the provisions of the state general permits are required to maintain stormwater pollution prevention plans on site and make them available to the city for inspection.

All dischargers subject to the provisions of the state construction general permit may be required by the city, with the concurrence of the Santa Ana or San Diego Regional Water Boards, to amend any stormwater pollution prevention plan.

All industrial dischargers subject to the provisions of the state industrial general permit are required to maintain a description of the required monitoring program on site and make it available to the city for inspection.

The city has jurisdiction over certain stormwater facilities and other watercourses within the city, and the water discharges into these facilities may be subject to the provisions of the state industrial general permit; accordingly, the city may (but is not required to) certify in writing that regulated dischargers have developed and implemented effective stormwater pollution prevention plans and should not be required to collect and analyze stormwater samples for pollutants.

The city has jurisdiction over certain stormwater facilities and other watercourses within the city, and these facilities may receive stormwater discharges from proper-

ties and activities regulated under the provisions of the state general permits, and city may request that the regulated dischargers furnish information and records necessary to determine compliance with the state general permits.

The city has jurisdiction over certain stormwater facilities and other watercourses within the city, and these facilities may receive stormwater discharges from properties and activities regulated under the provisions of the state general permits, and city may, upon presentation of credentials and other documents required by law: (A) enter upon the discharger’s premises where a regulated facility is located or where records must be kept under the conditions of the state general permits; (B) access and copy, at reasonable times, any records that must be kept under the conditions of the state general permits; (C) inspect, at reasonable times, any facility or equipment related to or impacting stormwater discharge; and (D) sample or monitor for the purpose of ensuring compliance with the state general permits.

The enacting of this chapter is a condition of the NPDES permit, the requirements of which are exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et seq., including but not limited to Sections 21083 and 21084.

This chapter is subject to CEQA categorical exemption classes 1 through 4, 6 through 9, 21 and 22, pursuant to the CEQA Guidelines, respectively, Title 14, California Code of Regulations Sections 15301, 15302, 15303, 15304, 15306, 15307, 15308, 15309, 15321, and 15322. (Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); prior code § 5-01.010)

### **5-36.030 Definitions.**

“Additional controls” means those BMPs designated by the City Engineer for: (A) sites or sources tributary to Clean Water Act Section 303(d) impaired water bodies where the site or source generates pollutants for which the water body is impaired; and (B) receiving waters within environmentally sensitive areas, as defined in the NPDES permit.

“Authorized inspector” means the City Manager, or his or her designee under the instruction and supervision of the City Manager, who are assigned to investigate compliance and detect violations of this chapter.

“BMPs,” as defined in the DAMP and NPDES permit mean the best practical and economical measures to control the addition of pollutants to the waters of the United States through the application of pollution prevention, source control, and treatment control practices, technolo-

gies, processes, siting criteria, operating methods, or other alternatives.

“City” means the city of Laguna Hills, Orange County, California.

“City Engineer” means the City Engineer for the city of Laguna Hills or his or her designee under the supervision of the City Engineer.

“Co-permittee” means the County of Orange, the Orange County Flood Control District, and/or any one of the thirty-one (31) municipalities, including the city of Laguna Hills, which are responsible for compliance with the terms of the NPDES permits.

“DAMP” means the Orange County drainage area management plan, including the city’s LIP, as the same may be amended from time to time.

“Development project guidance” means collectively the current version of the City of Laguna Hills’ Water Quality Management Plan (“City WQMP”) and the DAMP Chapter 7 and Appendix thereto, entitled Model Water Quality Management Plan and the respective attachments thereto, as the same may be amended from time to time.

“Discharge” means any release, spill, leak, pump, flow, escape, leaching (including subsurface migration or deposition to groundwater), dumping, or disposal of any liquid, semi-solid or solid substance.

“Discharge exception” means the group of activities not restricted or prohibited by this chapter, including only:

- A. Discharges composed entirely of stormwater;
- B. Discharges authorized by current EPA or regional water quality control board issued NPDES permits, state general permits, or other waivers, permits or approvals granted by government agencies with jurisdiction over such discharges;
- C. Discharges to the stormwater drainage system from:
  1. Water line flushing, not including discharges for fire suppression sprinkler system maintenance and testing discharges, and provided such discharges are in compliance with all applicable state or regional water quality control board permits and/or other local ordinances;
  2. Emergency fire fighting activities;
  3. Diverted stream flows;
  4. Rising groundwater;
  5. Springs;
  6. Uncontaminated groundwater infiltration to the stormwater drainage system (from leaks in joints or connections or cracks in water drainage pipes or conveyance systems);

7. Potable water sources, provided such discharges are in compliance with all applicable state or regional water quality control board permits and/or other local ordinances;
8. Air conditioning condensation;
9. Uncontaminated pumped groundwater, water from crawl space pumps, foundation drains, or footing drains, provided such discharges are in compliance with all applicable state or regional water quality control board permits and/or other local ordinances;
10. Individual residential vehicle washing;
11. Flows from riparian habitats and wetlands;
12. Dechlorinated swimming pool discharges; and
13. Discharges authorized pursuant to federal or state laws or regulations.

The discharge exception does not include discharges resulting from active groundwater dewatering systems.

In any action taken to enforce this chapter, the burden shall be on the person who is the subject of such action to establish that a discharge was within the scope of this discharge exception.

“Enforcing attorney” means the City Attorney or District Attorney acting as counsel to the city which counsel is authorized to take enforcement action as described herein. For purposes of criminal prosecution, only the District Attorney or the City Attorney shall act as the enforcing attorney.

“EPA” means the Environmental Protection Agency of the United States.

“Hearing Officer” means the City Manager or his or her designee, who shall preside at the administrative hearings authorized by this chapter and issue final decisions on the matters raised therein.

“Illicit connection” means any natural or manmade conveyance or drainage system, pipeline, conduit, inlet, or outlet, through which the discharge of any pollutant to the stormwater drainage system occurs or may occur. The term “illicit connection” does not include legal nonconforming connections or connections to the stormwater drainage system that are hereinafter authorized by the agency with jurisdiction over the system at the location at which the connection is made.

“Invoice for costs” means the actual costs and expenses of the city, included but not limited to administrative overhead, salaries, and other expenses recoverable under state law, incurred during any inspection conducted pursuant to Section 5-36.060, where a notice of noncompliance, administrative compliance order, or other enforcement option under Section 5-36.070 is utilized to obtain compliance with this chapter.

“Legal nonconforming connection” means connections to the stormwater drainage system existing as of the adoption of the ordinance codified in this chapter that were in compliance with all federal, state, and local rules, regulations, statutes, and administrative requirements in effect at the time the connection was established, including but not limited to any discharge permitted pursuant to the terms and conditions of an individual discharge permit issued pursuant to Sections 4-3-148 through 4-3-190 of the Codified Ordinances of the County of Orange.

“Local implementation plan” or “LIP” means the city’s plan for implementation of the NPDES permit, as the same may be amended from time to time.

“New development” means all public and private residential (whether single-family, multi-unit, or planned unit development), industrial, commercial, retail, and other nonresidential construction projects, or mass grading for future construction, for which either a discretionary land use approval, grading permit, building permit, or nonresidential plumbing permit is required.

“Nonresidential plumbing permit” means a plumbing permit authorizing the construction and/or installation of facilities for the conveyance of liquids other than stormwater, potable water, reclaimed water or domestic sewage.

“NPDES permit” means the currently applicable municipal discharge permits issued by the San Diego Regional Water Quality Control Board and/or the Santa Ana Regional Water Quality Control Board, which permits establish waste discharge requirements applicable to stormwater runoff in the city.

“Person” means any natural person as well as any corporation, partnership, government entity or subdivision, trust, estate, cooperative association, joint venture, business entity, or other similar entity, or the agent, employee, or representative of any of the above.

“Pollutant” means any liquid, solid, or semi-solid substances, or combination thereof, including and not limited, to:

- A. Artificial materials, chips, or pieces of natural or man-made materials (such as wood, floatable plastics, and metal shavings);
- B. Household waste (such as trash, paper, plastics, lawn clippings and yard wastes; animal fecal materials; excessive pesticides, herbicides and fertilizers; used oil and fluids from vehicles, lawn mowers, and other common household equipment);
- C. Metals, such as cadmium, lead, zinc, copper, silver, nickel, chromium, and nonmetals, such as phosphorus and arsenic;
- D. Petroleum hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants, and grease);
- E. Excessive eroded soils, sediment, and particulate materials;
- F. Animal wastes (such as discharge from confinement facilities, kennels, pens, and recreational facilities, including stables, show facilities, or polo fields);
- G. Substances having characteristics such as a pH less than 6.5 or greater than 8.5, or unusual coloration, or turbidity, or excessive levels of fecal coliform, fecal streptococcus, or enterococcus;
- H. Waste materials and wastewater generated on construction sites and by construction activities (such as painting, staining; use of sealants, glues, limes; excessive pesticides, fertilizers, or herbicides; use of wood preservatives and solvents; disturbance of asbestos fibers, paint flakes or stucco fragments; application of oils, lubricants, hydraulic, radiator or battery fluids; construction equipment washing, concrete pouring, and cleanup wash water or use of concrete detergents; steam cleaning or sand blasting residues; use of chemical degreasing or diluting agents; and super chlorinated water generated by potable water line flushing);
- I. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand, or total organic carbon;
- J. Materials which contain base/neutral or acid extractible organic compounds;
- K. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act;
- L. Any other constituent or material that may interfere with or adversely affect the beneficial uses of the receiving waters, flora, or fauna of the state.

The term “pollutant” does not include uncontaminated stormwater, potable water, or reclaimed water generated by a lawfully permitted water treatment facility.

“Private property” means any real property, irrespective of ownership, which is not open to the general public.

“Prohibited discharge” means any discharge, which is not composed entirely of stormwater or which contains any pollutant, from public or private property to: (A) the stormwater drainage system; (B) any upstream flow, which is tributary to the stormwater drainage system; (C) any groundwater, river, stream, creek, wash or dry weather arroyo, wetlands area, marsh, coastal slough; or (D) any coastal harbor, bay, or the Pacific Ocean. The term “prohibited discharge” does not include: (1) discharges occurring in compliance with the NPDES permit; (2) discharges occurring pursuant to a state general permit or other regional water quality control board, State Water

Resources Control Board, or U.S. Environmental Protection Agency issued NPDES permit or permit waiver; or (3) discharges allowable under the discharge exception.

“Responsible party” means the person(s) identified in and responsible for compliance with the provisions of a water quality management plan approved by the City Engineer or authorized inspector, or in the absence of an approved water quality management plan, the person the authorized inspector deems responsible for the illicit connection or prohibited discharge.

“Significant redevelopment” means the rehabilitation or reconstruction of public or private residential (whether single-family, multi-unit, or planned unit development), industrial, commercial, retail, or other nonresidential structures, for which either a discretionary land use approval, grading permit, building permit, or nonresidential plumbing permit is required.

“State general permit” means either the Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities Permit (state industrial general permit) or the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (state construction general permit) and the terms and requirements of either or both. In the event the U.S. Environmental Protection Agency revokes the in-lieu permitting authority of the State Water Resources Control Board, then the term “state general permit” also refers to any EPA-administered stormwater control program for industrial and construction activities.

“Stormwater drainage system” means street, street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, which is a part of or tributary to the county-wide stormwater runoff system and owned, operated, maintained, or controlled by the county of Orange, the Orange County Flood Control District or any co-permittee city, and used for the purpose of collecting, storing, transporting, or disposing of stormwater. (Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); Ord. 2003-10 § 3: prior code § 5-01.020)

**5-36.040 Prohibition on illicit connections and prohibited discharges.**

A. No person shall:

1. Construct, maintain, operate, and/or utilize any illicit connection;
2. Cause, allow or facilitate any prohibited discharge;

3. Act, cause, permit, or suffer any agent, employee, or independent contractor to construct, maintain, operate, or utilize any illicit connection, or cause, allow, or facilitate any prohibited discharge.
- B. The prohibition against illicit connections applies irrespective of whether the illicit connection was established prior to the date of enactment of this chapter; however, legal nonconforming connections shall not become illicit connections until the earlier of the following:
1. For all structural improvements to property installed for the purpose of discharge to the stormwater conveyance system, the expiration of five years from the adoption of this chapter;
  2. For all nonstructural improvements to property (including natural surface flow patterns, depressions, or channels traversing one or more properties) existing for the purpose of discharge to the stormwater conveyance system, the expiration of six months following delivery of a notice to the owner or occupant of the property, which states a legal nonconforming connection has been identified. The notice of a legal nonconforming connection states the date of expiration of use under this chapter.
- C. A civil or administrative violation of subsection A of this section occurs 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 prohibited discharge.
- D. If an authorized inspector reasonably determines that a discharge, which is otherwise within the discharge exception, may adversely affect the beneficial uses of receiving waters, then the authorized inspector may give written notice to the owner of the property or facility that the discharge exception does not apply to the subject discharge following expiration of the thirty (30) day period commencing upon delivery of the notice. Upon expiration of the thirty (30) day period, any such discharge constitutes a violation of subsection A of this section.
- E. The owner or occupant of property on which a legal nonconforming connection exists may request an administrative hearing, pursuant to the procedures set forth in Section 5-36.070(A)(6) through (10) for an extension of the period allowed for continued use of the connection. A reasonable extension of use may be authorized by the City Manager or his or her designee upon consideration of the following factors:

1. The potential adverse effects of the continued use of the connection upon the beneficial uses of receiving waters;
  2. The economic investment of the discharger in the legal nonconforming connection; and
  3. The financial effect upon the discharger of a termination of the legal nonconforming connection.
- (Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); prior code § 5-01.030)

**5-36.050 Control of discharges.**

- A. New Development and Significant Redevelopment.
1. Upon enactment of this chapter, and continuing thereafter, all new development and significant redevelopment within the city shall be undertaken in accordance with:
    - a. The DAMP, including but not limited to the development project guidance;
    - b. A water quality management plan, including BMPs, which shall be prepared in accordance with the development project guidance; and
    - c. Any conditions and requirements established by the City Council or the City Engineer which are reasonably related to the reduction or elimination of pollutants in stormwater runoff from the project site.
  2. Prior to the issuance by the city of a grading permit, building permit, and/or nonresidential plumbing permit for any new development or significant redevelopment, the property owner shall submit to and obtain the approval of the Engineering Department of a water quality management plan.  
If the new development or significant redevelopment will be approved without application for a grading permit, building permit, or nonresidential plumbing permit, the property owner shall submit to and obtain the approval of the City Engineer of a water quality management plan prior to the issuance of a discretionary land use approval or, at the city's discretion, prior to recordation of a subdivision map.
  3. Notwithstanding subsections (A)(1) and (A)(2) of this section, a water quality management plan is not required for construction of a (one) single-family detached residence unless the City Engineer determines that the construction may result in the discharge of significant levels of a pollutant into a tributary to the stormwater drainage system.

4. Compliance with the conditions and requirements of a water quality management plan shall not exempt any person from the requirement to independently comply with each provision of this chapter.
  5. If the City Engineer determines in his or her reasonable discretion that the project will have a de minimis impact on the quality of stormwater runoff, then the City Engineer may issue a written waiver of the requirement for preparation and approval of a water quality management plan.
  6. Each water quality management plan shall name a responsible party for the project.
  7. The owner of a new development or significant redevelopment project, their successors and assigns, and each named responsible party shall implement and adhere to the terms, conditions, and requirements of the approved water quality management plan.
    - a. Each failure by the owner of the property, their successors or assigns, or a named responsible party to implement and adhere to the terms, conditions and requirements of an approved water quality management plan shall constitute a violation of this chapter.
  8. The authorized inspector or his or her designee may require that the water quality management plan and/or a covenant or similar document requiring ongoing maintenance of applicable post-construction BMPs be recorded with the County Recorder's office by the property owner. The signature of the owner of the property, any successive owner, or the named responsible party shall be sufficient for the recording of the plan or any revised plan and a signature on behalf of the city shall not be required for recordation.
- B. Cost Recovery. The costs and expenses of the city incurred in the review, approval, or revision of any water quality management plan are assessed to the property owner or responsible party and are due and payable to the city. The City Manager or his or her designee may elect to require a deposit of estimated costs and expenses, and the actual costs and expenses shall be deducted from the deposit, and the balance, if any, refunded to the property owner or responsible party.
- C. Litter Control. No person shall discard any waste material, including but not limited to common household rubbish or garbage of any kind (whether generated or accumulated at a residence, business, or other location), upon any public or private property,

whether occupied, open or vacant, including but not limited to any street, sidewalk, alley, right-of-way, open area, or point of entry to the stormwater drainage system.

Every person occupying or having charge and control of private property on which a prohibited disposal of waste materials occurs shall cause the proper collection and disposal of same.

A prohibited disposal of waste materials creates a danger to public health, safety, and welfare, and otherwise threatens the environment, surface waters, and groundwater; therefore, any owner or occupant of private property who fails to remove waste material within a reasonable time may be charged with creating a nuisance upon the property.

- D. **Urinating and Defecating.** It is unlawful and subject to punishment in accordance with Chapter 1-32 for any person to urinate or defecate on private property in any area exposed to the public view, or on any public street, sidewalk, alley, park, or other public place, except in a public or private restroom.
- E. **Existing Development.** The City Engineer shall have the authority to designate required BMPs, including additional controls, for existing industrial, commercial, and residential development. Once designated, such BMPs are implemented by persons owning real property or operating on real property in the city. Failure to implement or comply with such BMPs is a violation of this Section 5-36.050 and basis for enforcement action under Section 5-36.070. BMPs designated by the City Engineer are on file with the public services department and BMP fact sheets may be requested for industrial, commercial and residential development, including homeowner association activities.
- F. **Construction and Grading.** The City Engineer shall have the authority to ensure that pollutant discharges are reduced to the maximum extent practicable and water quality objectives are not violated during the construction phase. Such requirements include, without limitation, the following, or their equivalent:
1. Require project proponent to develop and implement a plan to manage stormwater and nonstormwater discharges from the site at all times;
  2. Require project proponent to minimize grading during the wet season and coincide grading with seasonal dry weather periods to the extent feasible. If grading does occur during the wet season, require project proponent to implement additional BMPs for any rain events which may

occur, as necessary for compliance with this order;

3. Require project proponent to emphasize erosion prevention as the most important measure for keeping sediment on site during construction;
4. Require project proponent to utilize sediment controls as a supplement to erosion prevention for keeping sediment on site during construction, and never as the single or primary method;
5. Require project proponent to minimize areas that are cleared and graded to only the portion of the site that is necessary for construction;
6. Require project proponent to minimize exposure time of disturbed soil areas;
7. Require project proponent to temporarily stabilize and reseed disturbed soil areas as rapidly as possible;
8. Require project proponent to permanently revegetate or landscape as early as feasible;
9. Require project proponent to stabilize all slopes; and
10. Require project proponents subject to the state construction general permit to provide evidence of existing coverage under the state construction general permit.

(Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); Ord. 2003-10 § 4: prior code § 5-01.040)

#### **5-36.060 Inspections.**

- A. **Right to Inspect.** Prior to commencing any inspection as herein below authorized, the authorized inspector shall obtain either the consent of the owner or occupant of the private property or shall obtain an administrative inspection warrant or criminal search warrant.
- B. **Entry to Inspect.** The authorized inspector may enter private property to investigate the source of any discharge to any public street, inlet, gutter, storm drain, or the stormwater drainage system located within the jurisdiction of the city.
- C. **Compliance Assessments.** The authorized inspector may inspect private 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 at the location, including drainage patterns and manmade conveyance systems; (4) establishing the location of all points of discharge from the

private property, whether by surface runoff or through a storm drain system; (5) locating any illicit connection or the source of prohibited discharge; (6) evaluating compliance with any water quality management plan; (7) evaluating compliance with any permit issued pursuant to Section 5-36.080; and (8) investigating the condition of any legal nonconforming connection.

- D. **Portable Equipment.** For purposes of verifying compliance with this chapter, the authorized inspector may inspect any vehicle, truck, trailer, tank truck or other mobile equipment.
- E. **Records Review.** The authorized inspector may inspect all records of the owner or occupant of private property relating to chemicals or processes presently or previously occurring on site, including material and/or chemical inventories, facilities maps, or schematics and diagrams, material safety data sheets, hazardous waste manifests, business plans, pollution prevention plans, state general permits, stormwater pollution prevention plans, monitoring program plans, and any other record(s) relating to illicit connections, prohibited discharges, a legal nonconforming connection, or any other source of contribution or potential contribution of pollutants to the stormwater drainage system.
- F. **Sample and Test.** The authorized inspector may inspect, sample, and test any area runoff, soils area (including groundwater testing), 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 the stormwater drainage system. The authorized inspector may investigate the integrity of all storm drain and sanitary sewer systems, any legal nonconforming connection, or other pipelines on the property using appropriate tests, including but not limited to smoke and dye tests or video surveys. The authorized inspector may take photographs or video tape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.
- G. **Monitoring.** The authorized inspector may erect and maintain monitoring devices for the purpose of measuring any discharge or potential source of discharge to the stormwater drainage system.
- H. **Test Results.** The owner or occupant of property subject to inspection shall, on submission of a written

request, receive copies of all monitoring and test results conducted by the authorized inspector.  
(Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); prior code § 5-01.050)

### **5-36.070 Enforcement.**

#### **A. Administrative Remedies.**

1. **Notice of Noncompliance.** The authorized inspector may deliver to the owner or occupant of any private property, or to any person responsible for an illicit connection or prohibited discharge, a notice of noncompliance. The notice of noncompliance is delivered in accordance with subsection (A)(5) of this section.
  - a. The notice of noncompliance identifies the provision(s) of this chapter, the applicable water quality management plan or permit which has been violated. The notice of noncompliance states that continued noncompliance may result in additional enforcement actions against the owner, occupant, and/or person.
  - b. The notice of noncompliance states a compliance date that must be met by the owner, occupant and/or person; provided, however, that the compliance date may not exceed ninety (90) days unless the authorized inspector extends the compliance deadline an additional ninety (90) days where good cause exists for the extension.
2. **Administrative Compliance Orders.**
  - a. The authorized inspector may issue an administrative compliance order. The administrative compliance order is delivered in accordance with subsection (A)(5) of this section. The administrative compliance order may be issued to:
    - i. The owner or occupant of any private property requiring abatement of conditions on the property that cause or may cause a prohibited discharge or an illicit connection in violation of this chapter;
    - ii. The owner of private property or a responsible party subject to the requirements of any water quality management plan to ensure implementation of and adherence to the terms, conditions and requirements of the plan;
    - iii. Any person responsible for an illicit connection or prohibited discharge.

- b. The administrative compliance order may include the following terms and requirements:
    - i. Specific steps and time schedules for compliance as reasonably necessary to prevent threatened or future unauthorized discharges, including but not limited to the threat of a prohibited discharge from any pond, pit, well, surface impoundment, holding, or storage area;
    - ii. Specific steps and time schedules for compliance as reasonably necessary to discontinue any illicit connection;
    - iii. Specific requirements for containment, cleanup, removal, storage, installation of overhead covering, or proper disposal of any pollutant having the potential to contact stormwater runoff;
    - iv. Any other terms or requirements reasonably calculated to prevent continued or threatened violations of this chapter, including, but not limited to, requirements for compliance with best management practices guidance documents promulgated by any federal, state, or regional agency;
    - v. Any other terms or requirements reasonably calculated to achieve full compliance with the terms, conditions, and requirements of any water quality management plan.
3. Cease and Desist Orders.
- a. The authorized inspector may issue a cease and desist order. A cease and desist order is delivered in accordance with subsection (A)(5) of this section. A cease and desist order may direct the owner or occupant of any private property and/or other person responsible for a violation of this chapter to:
    - i. Immediately discontinue any illicit connection or prohibited discharge to the stormwater drainage system;
    - ii. Immediately contain or divert any flow of water off the property, where the flow is occurring in violation of any provision of this chapter;
    - iii. Immediately discontinue any other violation of this chapter;
    - iv. Clean up the area affected by the violation.
- b. The authorized inspector may direct by cease and desist order that the owner of any private property or the responsible party subject to the terms and conditions of any water quality management plan:
    - i. Immediately cease any activity not in compliance with the terms, conditions, and requirements of the applicable water quality management plan.
4. Recovery of Costs. The authorized inspector may deliver to the owner or occupant of any private property or any responsible party, or any other person who becomes subject to a notice of non-compliance or administrative order, an invoice for costs. An invoice for costs is delivered in accordance with subsection (A)(5) of this section. An invoice for costs is immediately due and payable to the city for the actual costs incurred by the city in issuing and enforcing any notice or order.
- a. If any owner or occupant or responsible party, or any other person fails to either pay the invoice for costs or appeal successfully the invoice for costs in accordance with subsection (A)(6) of this section, then the enforcing attorney may institute collection proceedings.
5. Delivery of Notice. Any notice of noncompliance, administrative compliance order, cease and desist order, or invoice of costs to be delivered pursuant to the requirements of this chapter is subject to the following:
- a. The notice states that the recipient has a right to appeal the matter as set forth in subsections (A)(6) through (A)(10) of this section.
  - b. Delivery is deemed complete upon (i) personal service to the recipient; (ii) deposit in the U.S. mail, postage prepaid for first class delivery; or (iii) facsimile service with confirmation of receipt.
  - c. Where the recipient of notice is the owner of the property, the address for notice is the address from the most recently issued equalized assessment roll for the property or as otherwise appears in the current records of the city.
  - d. Where the owner or occupant of any private property cannot be located after the reasonable efforts of the authorized inspector, a notice of noncompliance or cease and desist order is deemed delivered after posting on the property for a period of ten business days.

6. Administrative Hearing for Notices of Noncompliance, Administrative Compliance Orders, Invoices for Costs and Adverse Determinations. Except as set forth in subsection (A)(8) of this section, any person receiving a notice of noncompliance, administrative compliance order, a notice of legal nonconforming connection, an invoice for costs, or any person who is subject to any adverse determination made pursuant to this chapter may appeal the matter by requesting an administrative hearing.
7. Request for Administrative Hearing. Any person appealing a notice of noncompliance, an administrative compliance order, a notice of legal nonconforming connection, an invoice for costs, or an adverse determination shall, within thirty (30) days of receipt thereof, file a written request for an administrative hearing, accompanied by an administrative hearing fee as established by separate resolution, with the office of the City Clerk with a copy of the request for administrative hearing mailed on the date of filing to the City Manager. Thereafter, a hearing on the matter is held before the Hearing Officer within forty-five (45) business days of the date of filing of the written request unless, in the reasonable discretion of the Hearing Officer and pursuant to a written request by the appealing party, a continuance of the hearing is granted.
8. Administrative Hearing for Cease and Desist Orders and Emergency Abatement Actions. An administrative hearing on the issuance of a cease and desist order or following an emergency abatement action is held within five business days following the issuance of the order or the action of abatement, unless the hearing (or the time requirement for the hearing) is waived in writing by the party subject to the cease and desist order or the emergency abatement. A request for an administrative hearing is not required from the person subject to the cease and desist order or the emergency abatement action.
9. Hearing Proceedings. The authorized inspector shall appear in support of the notice, order, determination, invoice for costs, or emergency abatement action, and the appealing party shall appear in support of withdrawal of the notice, order, determination, invoice for costs, or in opposition to the emergency abatement action. The city shall have the burden of supporting any enforcement or other action by a preponderance of the evidence.

Each party shall have the right to present testimony and other documentary evidence as necessary for explanation of the case.

10. Final Decision and Appeal. The final decision of the Hearing Officer is issued within ten business days of the conclusion of the hearing and is delivered by first-class mail, postage prepaid, to the appealing party. The final decision includes notice that any legal challenge to the final decision is made pursuant to the provisions of Code of Civil Procedure Sections 1094.5 and 1094.6 and is commenced within ninety (90) days following issuance of the final decision.
  - a. Notwithstanding subsection (A)(10) of this section, the final decision of the Hearing Officer in any proceeding determining the validity of a cease and desist order or following an emergency abatement action is mailed within five business days following the conclusion of the hearing.
11. City Abatement. In the event the owner of private property, the operator of a facility, a responsible party, or any other person fails to comply with any provision of a compliance schedule issued pursuant to this chapter, the authorized inspector may request the enforcing attorney to obtain an abatement warrant or other appropriate judicial authorization to enter the property, abate the condition and restore the area. Any costs incurred by the city in obtaining and carrying out an abatement warrant or other judicial authorization may be recovered pursuant to subsection (B)(4) of this section.
  - B. Nuisance. Any condition in violation of the prohibitions of this chapter, including but not limited to the maintenance or use of any illicit connection or the occurrence of any prohibited discharge, shall constitute a threat to the public health, safety, and welfare, and is declared and deemed a nuisance pursuant to Government Code Section 38771.
    1. Court Order to Enjoin or Abate. At the request of the City Manager, or his or her designee, the enforcing attorney may seek a court order to enjoin and/or abate the nuisance.
    2. Notice to Owner and Occupant. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the City Manager, or his or her designee, shall provide notice of the proposed injunction or abatement to the owner and occupant, if any, of the property where the nuisance or threatened nuisance is occurring.

3. **Emergency Abatement.** In the event the nuisance constitutes an imminent danger to public safety or the environment, the City Manager, or his or her designee, may enter the property from which the nuisance emanates, abate the nuisance, and restore any property affected by the nuisance without prior notice to or consent from the owner or occupant thereof and without judicial warrant.
    - a. An imminent danger includes, but is not limited to, exigent circumstances created by the dispersal of pollutants, where the same presents a significant and immediate threat to the public safety or the environment.
    - b. Notwithstanding the authority of the city to conduct an emergency abatement action, an administrative hearing pursuant to subsection (A)(8) of this section follows the abatement action.
  4. **Reimbursement of Costs.** All costs incurred by the city in responding to any nuisance, all administrative expenses, and all other expenses are recoverable from the person(s) creating, causing, committing or maintaining the nuisance.
  5. **Nuisance Lien.** All costs become a lien against the property from which the nuisance emanated and a personal obligation against the owner thereof in accordance with Government Code Sections 38773.1 and 38773.5. The owner of record of the property subject to any lien is given notice of the lien prior to recording as required by Government Code Section 38773.1.
    - a. At the direction of the City Manager, or his or her designee, the enforcing attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the County Assessor of a special assessment against the property in accord with the conditions and requirements of Government Code Section 38773.5.
- C. **Criminal Sanctions.**
1. **Prosecutor.** The enforcing attorney may act on the request of the City Manager to pursue enforcement actions in accordance with the provisions of this chapter.
  2. **Infractions.** Any person who may otherwise be charged with a misdemeanor under this chapter may be charged, at the discretion of the prosecuting attorney, with an infraction punishable by a fine of not more than one hundred dollars (\$100.00) for a first violation, two hundred dollars (\$200.00) for a second violation, and a fine not exceeding five hundred dollars (\$500.00) for each additional violation occurring within one year.
  3. **Misdemeanors.** Any person who negligently or knowingly violates any provision of this chapter, undertakes to conceal any violation of this chapter, continues any violation of this chapter after notice thereof, or violates the terms, conditions, and requirements of any water quality management plan is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period of not more than six months, or both.
- D. **Consecutive Violations.** Each day in which a violation occurs and each separate failure to comply with either a separate provision of this chapter, an administrative compliance order, a cease and desist order, or an applicable water quality management plan issued pursuant to this chapter shall constitute a separate violation of this chapter punishable by fines or sentences issued in accordance herewith.
- E. **Nonexclusive Remedies.** Each and every remedy available for the enforcement of this chapter shall be nonexclusive, and it is within the discretion of the authorized inspector or enforcing attorney to seek cumulative remedies, except that multiple monetary fines or penalties are not available for any single violation of this chapter.
- F. **Citations.** Pursuant to Penal Code Section 836.5, the authorized inspector shall have the authority to cause the arrest of any person committing a violation of this chapter. The person is released and issued a citation to appear before a magistrate in accordance with Penal Code Sections 853.5, 853.6, and 853.9, unless the person demands to be taken before a magistrate. Following issuance of any citation the authorized inspector shall refer the matter to the enforcing attorney.
- Each citation to appear states the name and address of the violator, the provisions of this chapter violated, and the time and place of appearance before the court, which is at least ten business days after the date of violation. The person cited shall sign the citation giving his or her written promise to appear as stated therein. If the person cited fails to appear, the enforcing attorney may request issuance of a warrant for the arrest of the person cited.
- G. **Violations of Other Laws.** Any person acting in violation of this chapter also may be acting in violation of the Federal Clean Water Act or the State Porter-

Cologne Act and other laws and also may be subject to sanctions including civil liability. Accordingly, the enforcing attorney is authorized to file a citizen suit pursuant to Federal Clean Water Act Section 505(a), seeking penalties, damages, and orders compelling compliance, and other appropriate relief. The enforcing attorney may notify EPA Region IX, the Santa Ana or San Diego Regional Water Quality Control Board, or any other appropriate state or local agency, of any alleged violation of this chapter.

- H. Injunctions. At the request of the City Manager, or his or her designee, the enforcing attorney may cause the filing in a court of competent jurisdiction of a civil action seeking an injunction against any threatened or continuing noncompliance with the provisions of this chapter.
1. Order for Reimbursement. Any temporary, preliminary, or permanent injunction issued pursuant hereto may include an order for reimbursement to the city of all costs incurred in enforcing this chapter, including costs of inspection, investigation and monitoring, the costs of abatement undertaken at the expense of the city, and costs relating to restoration of the environment and all other expenses as authorized by law.
- I. Other Civil Remedies.
1. The City Manager, or his or her designee, may cause the enforcing attorney to file an action for civil damages in a court of competent jurisdiction seeking recovery of (a) all costs incurred in enforcement of the chapter, including but not limited to costs relating to investigation, sampling, monitoring, inspection, administrative expenses, all other expenses as authorized by law and consequential damages, (b) all costs incurred in mitigating harm to the environment or reducing the threat to human health, and (c) damages for irreparable harm to the environment.
  2. The enforcing attorney is authorized to file actions for civil damages resulting from any trespass or nuisance occurring on public land or to the stormwater drainage system from any violation of this chapter where the same has caused damage, contamination or harm to the environment, public property, or the stormwater drainage system.
  3. The remedies available to the city pursuant to the provisions of this chapter shall not limit the right of the city to seek any other remedy that may be available by law.

(Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); prior code § 5-01.060)

**5-36.080 Interagency cooperation.**

- A. The Federal Clean Water Act authorizes the NPDES permit for the Orange County area and provides for cooperative implementation of requirements and interagency allocations of program resources and burdens. The coordinated effort of the county and the committees is reflected in the National Pollutant Discharge Elimination System Permit Implementation Agreement Santa Ana/San Diego Regions, the NPDES permit, the DAMP, this chapter, the appendices to the DAMP, including, but not limited to, the development project guidance, monitoring and data collection cooperation and regular emergency and spill response planning activities.
- B. The city may elect to contract for the services of any public agency or private enterprise to carry out the planning approvals, inspections, permits, and enforcement authorized by this chapter.

(Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); prior code § 5-01.080. Formerly 5-36.090)

**5-36.090 Miscellaneous.**

Compliance Disclaimer. Full compliance by any person or entity with the provisions of this chapter does not preclude the need to comply with other local, state or federal statutory or regulatory requirements, which may be required for the control of the discharge of pollutants into stormwater and/or the protection of stormwater quality. (Ord. 2010-5 § 2 (part); Ord. 2003-12 § 2 (part); prior code § 5-01.090. Formerly 5-36.100)