

## ORDINANCE NO. 1492

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ADDING A NEW CHAPTER 13.30 TO THE MUNICIPAL CODE OF THE CITY OF SAN CLEMENTE, ENTITLED "USE OF SANITARY SEWER FACILITIES BY FOOD SERVICE ESTABLISHMENTS DISCHARGING TO THE PUBLIC SEWER."

WHEREAS, all persons discharging waste or proposing to discharge waste within the State of California, where such waste may affect the quality of waters of the state within any region, may only do so in accordance with reporting and permitting requirements established in accordance with the Porter Cologne Water Quality Control Act, California Water Code Section 13000, *et seq.*; and

WHEREAS, said state reporting and permitting requirements serve in part to implement the state's in-lieu program for protection of water quality consistent with the requirements of the Federal Water Pollution Control Act, 33 U.S.C.A., Section 1342(a) and 1342(b) ("Federal Clean Water Act"); and

WHEREAS, the California Regional Water Quality Control Board Region 9 ("RWQCB"), has met the requirements for water quality planning through issuance of the Water Quality Plan for the San Diego Basin (9), adopted on September 8, 1994 (the "Basin Plan"), and the Basin Plan contains prohibitions applicable within the region, including prohibiting the unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system (which is a conduit to waters of the state); and

WHEREAS, the RWQCB, acting in accordance with the above authority, adopted Order 2006-0003-DWQ, which is applicable to the City of San Clemente ("City") and other agencies owning, maintaining, and controlling sewer collection systems, and said order prohibits all discharge of sewage from sanitary sewer systems at any point upstream of a sewage treatment plant ("Order 2006-0003-DWQ"); and

WHEREAS, in Order 2006-0003-DWQ, the RWQCB identified a primary cause of sanitary sewer overflows including sewer system blockages resulting from fats, oils, grease, and roots as a primary cause of sanitary sewer overflows and sewer system failures; and

WHEREAS, Order 2006-0003-DWQ requires the City to develop and implement a Sanitary Sewer Overflow Prevention Plan to address the potential for sanitary sewer overflows; and

WHEREAS, by Order No. CWA-402-9-03-29, the United States Environmental Protection Agency (US EPA) Region IX has required that the City adopt a

program applicable to the reduction of fats, oils, and grease from food service establishments; and

WHEREAS, sanitary sewer overflows contain high levels of suspended solids, pathogenic organisms, oil, grease, and other pollutants, which can cause temporary non-compliance with applicable water quality objectives, pose a threat to the public health, adversely affect aquatic life, and impair the public recreational use and aesthetic enjoyment of surface waters within the City's service area; and

WHEREAS, the City Council finds that sewer overflow events within the City's public sewer system are from time to time related to or caused directly by the introduction of materials that block the collection system, including: fats, oils, and grease from food service establishments; and

WHEREAS, pursuant to California Government Code Sections 54350, 54736(f), and 54739, the City has the authority to adopt ordinances and establish rules and regulations relating to the provision of sanitary sewer services and facilities and regulation of those service and facilities; and

WHEREAS, pursuant to California Health and Safety Code Section 5471 *et seq.*, the City has the authority to set rates and charges applicable to the provision of sewer services; and

WHEREAS, the City has previously promulgated rules and regulations governing the discharge of wastewater to its public sewer system, which are set forth in Chapters 13.24 (entitled "Sewer Service System") and 13.28 (entitled "Waste Discharge Pretreatment and Source Control Program") of the City's Municipal Code; and

WHEREAS, pursuant to Government Code Sections 54739(a) (3), 54740, 54740.5, and 53069.4, the City has the authority to assess civil penalties and enact administrative fines and penalties for non-compliance with City pretreatment requirements and/or violations of City ordinances; and

WHEREAS, the City Council desires to supplement City's existing rules and regulations relating to waste discharges into the public sewer system with specific requirements applicable to food service establishments in order to control the discharge of fats, oils, and grease into the public sewer system, reduce damage to the City's public sewer system, and protect the environment and the public health, safety, and welfare.

**Now, therefore, the City Council of the City of San Clemente does hereby ordain as follows:**

**Section 1:** A new Chapter 13.30, entitled “Use of Sewer Service Facilities by Food Service Establishments Discharging to the Public Sewer,” is hereby added to the San Clemente Municipal Code to read in its entirety as follows:

**Article I. General Provisions**

**Section 13.30.010 Purpose and Policy**

**A.** This Chapter 13.30 supplements but is not intended to supersede or replace Chapters 13.24 and 13.28 of the San Clemente Municipal Code. The City Council’s purpose in enacting this Chapter 13.30 is to facilitate the maximum beneficial use of the Public Sewer System by preventing the blockage of sewer lines.

**B.** This Chapter 13.30 establishes specific requirements for Food Service Establishments and applies to direct and indirect discharges of wastewater or waste containing Fats, Oils, and Grease, which may alone or collectively cause or contribute to accumulation of Fats, Oils, and Grease in public sewer lines and cause or contribute to the occurrence of sewer spills.

**C.** This Chapter 13.30 is intended to cause the City and the users of its facilities to comply with federal, state, and local standards applicable to the operation of the Public Sewer System. These standards require the prevention of sewer spills, which may enter the storm drain system and harm public health and safety and the environment.

**D.** This Chapter 13.30 sets quality standards for activities of Food Service Establishments that contribute or have the potential to contribute wastewater and waste discharges containing Fats, Oils, and Grease to the Public Sewer System.

**Section 13.30.020 Applicability and General Requirements**

**A.** This Chapter 13.30 is applicable to each owner and operator of properties connecting to the Public Sewer System by Sewer Lateral. The Sewer Lateral installed from and within the structure served by the lateral to and including the point of connection to the main line of the City is the responsibility of the owner, occupant, or operator of the Food Service Establishment and any other person owning, managing, or controlling the property. All such persons shall be responsible to keep and maintain their Sewer Lateral(s) in good condition and repair and capable of delivering sewage to the Public Sewer free from conditions that cause or contribute to overflows, including but not limited to dirt, rags, debris, root intrusions, Fats, Oils, and Grease, and any other

obstructions that block or have the potential to block the flow of wastewater into or within the Public Sewer System.

**B.** This Chapter 13.30 is applicable to Food Service Establishments and owners and users of private sewer systems having the potential to discharge Fats, Oils, and Grease to the Public Sewer.

**C.** Owners (and agents of owners) of single-parcel commercial properties with multiple tenants (e.g. shopping mall or strip mall) which include one or more Food Service Establishments are subject to the provisions of this Chapter 13.30.

### **Section 13.30.030 Definitions**

As used in this Chapter, the following terms shall have the meanings ascribed:

**A.** “Authorized Inspector” shall mean an inspector or other City representative designated by City’s Utilities Manager.

**B.** “Best Management Practices (BMPs)” shall mean kitchen and general operations practices for Food Service Establishments that establish schedules of activities, prohibitions or practices, maintenance procedures, and other management practices to prevent or reduce the introduction of Fats, Oils, and Grease into the Public Sewer.

**C.** “BMP Training” shall mean Food Service Establishment employee training conducted to educate employees as to the requirements of this Chapter 13.30 and covering kitchen best management practices and Fats, Oils, and Grease control requirements.

**D.** “City” shall mean the City of San Clemente, as the owner and/or operator of the public sewer system serving all sewer line connections to the City of San Clemente Publicly Owned Treatment Works (POTW).

**E.** “Discharge Permit” shall mean a general wastewater discharge permit issued to the Operator of a Food Service Establishment for the control of Fats, Oils, and Grease releases to the Public Sewer, which may be issued following the Operator’s application to the City and approval of that application. The Utilities Manager may from time to time include specific discharge requirements in the Discharge Permit applicable to an individual Food Service Establishment to reduce Fats, Oils, and Grease or the likelihood of Fats, Oils, and Grease discharges to the Public Sewer.

**F.** “Fats, Oils, and Grease” shall mean any grease, fatty or oily substances, and vegetable or animal products used in or the byproduct of cooking or food preparation

processes, which result in insoluble waste that turns or may turn viscous or solidify with change in temperature or other conditions.

**G.** “Food Grinder” shall mean any device installed in the plumbing system for the purpose of grinding food waste or food preparation byproducts for the purpose of disposing it in the Public Sewer (e.g. a garbage disposal).

**H.** “Food Service Establishment” shall mean any restaurant, drive-thru, cafeteria, store, commercial kitchen and any other establishment serving food for consumption and operating for the purpose of any of the following: storing, preparing, serving, manufacturing, packaging, unpacking, displaying, or otherwise handling food for sale or distribution to the public, other entities, and other groups or persons. The term Food Service Establishment shall include any commercial establishment which has processes or equipment that uses or produces Fats, Oils, and Grease, grease vapors, steam, fumes, smoke, or odors that are required to be removed by a Type I or Type II hood, as defined in Section 113785 of the California Uniform Retail Food Facilities Law (CURFFL), as the same may be amended from time to time. In addition, the term Food Service Establishment shall include any operation that changes the form, flavor, or consistency of food for resale or other distribution, assembles. The term Food Service Establishment shall not include food preparation activity in domestic homes.

**I.** “Food Service Establishment Transfer of Ownership” shall mean any voluntary or involuntary sale or transfer of 50% or more of the controlling ownership interest in the Food Service Establishment business (whether said business is owned by an individual, partnership, corporation, or other form of entity).

**J.** “Grease Control Device” shall mean a grease interceptor or a grease trap which attaches to wastewater plumbing fixtures and lines for the purpose of trapping or collecting Fats, Oils, and Grease prior to discharge into the private lateral and/or the public sewer system. A Grease Control Device may also include any other proven method to reduce Fats, Oils, and Grease, subject to the approval of the City Utilities Manager.

**K.** “Grease Interceptor” shall mean a two or three compartment device that is generally located, according to the California Plumbing Code, underground between a Food Service Establishment and the connection to the public sewer system. These devices are large (a minimum of 750 gallons) and primarily use gravity to separate Fats, Oils, and Grease from the wastewater as it moves from one compartment to the next. These devices must be cleaned, maintained, and have the Fats, Oils, and Grease removed and disposed of in a proper manner on a regular interval to work effectively.

**L.** “Grease Trap” shall mean a Food Service Establishment kitchen device for retaining grease that is smaller than a Grease Interceptor (generally, 50 gallons). Grease

Traps need to be emptied more often than Grease Interceptors to be effective due to their small size, and are only permitted in circumstances in which a Grease Interceptor cannot practically be installed.

**M.** “Limited Food Preparation Establishment” shall mean a Food Service Establishment that engages only in beverage services and limited reheating of ready-to-eat food products and as a result generates no wastewater discharge containing Fats, Oils, and Grease (e.g., specialty coffee houses).

**N.** “New Food Service Establishment” shall mean a Food Service Establishment that is new to the City’s service area and did not previously conduct business or operate as a Food Service Establishment.

**O.** “Notice of Non-Compliance” shall mean a notice issued by the Authorized Inspector requiring compliance with a Discharge Permit and/or compliance with other provisions of this Chapter 13.30.

**P.** “Operator” shall mean each owner, tenant, and occupant of any private property on which a Food Service Establishment is located that is directly or indirectly connected by means of a Sewer Lateral to the Public Sewer System.

**Q.** “Public Sewer or Public Sewer System” shall mean the main sewer or trunk sewer dedicated to public use and located and constructed under a street, highway, alley, place, right-of-way, or easement of the City.

**R.** “Remodeling/Change of Use” shall mean a physical or operational change to an existing Food Service Establishment that either: substantially increases the potential for a Sanitary Sewer Overflow to occur, exceeds a cost of \$25,000, requires a building permit or involves any one or combination of the following: 1) plumbing in the food processing area; 2) an increase in the net public seating area; 3) an increase in the size of the kitchen area; or 4) any change in the size or type of food preparation equipment and/or change of Food Service Establishment use.

**S.** “Sewer Lateral” shall mean that portion of a sewer pipe connecting a building or group of buildings to the public sewer system such that the building or group of buildings may receive sewer collection and treatment services from the City’s public sewer system. A Sewer Lateral is generally located at an approximately right angle to the closest Public Sewer, is privately owned, operated, and maintained, and serves a given lot or parcel. The Sewer Lateral includes the point of connection to the Public Sewer or Public Sewer System, which is also the responsibility of the private property owner or occupant.

**T.** “Utilities Manager” shall mean the City’s Utilities Manager or his or her authorized designee or another City representative as assigned by the City’s Utility Manager.

**Section 13.30.040 Discharge Prohibition**

**A.** Each Operator is responsible for the maintenance and repair of the entire Sewer Lateral installed on that Operator’s property to and including the point of connection to the Public Sewer. Each Operator shall be responsible to keep and maintain its Sewer Lateral(s) in good condition and repair and capable at all times of delivering sewage to the Public Sewer free from conditions that cause or contribute to overflows, including but not limited to dirt, rags, debris, root intrusions, Fats, Oils, and Grease, and any other obstructions that block or have the potential to block the flow of wastewater into or within the Public Sewer System.

**B.** No Operator of a Food Service Establishment shall discharge or cause to be discharged into the Public Sewer System any Fats, Oils, or Grease that exceeds a concentration level approved by the Utilities Manager or that may accumulate and/or cause or contribute to blockages in the Public Sewer System or within the Sewer Lateral which connects the Food Service Establishment to the Public Sewer System.

**C.** No Operator of a Food Service Establishment shall:

1. dispose of waste cooking oil and/or spilled oils or greases into drain pipes or drainage systems leading to the Sewer Lateral and/or the Public Sewer System. All waste cooking oils shall be collected and stored in covered receptacles such as barrels or drums for recycling or disposal in accordance with the requirements of Section 13.30.050; or
2. discharge wastewater with temperatures in excess of 140 °F to any Grease Control Device; or
3. discharge wastes from toilets, urinals, wash basins, or other fixtures containing fecal materials to the sewer lines connecting to a Grease Trap or Grease Interceptor; or
4. discharge any waste containing Fats, Oils, or Grease or any solid materials removed from a Grease Control Device to the Sewer Lateral or lines leading to the Public Sewer System; or
5. fail to cause all Fats, Oils, and Grease removed from a Grease Trap or Grease Interceptors to be periodically hauled by a licensed hauler

as part of proper operation and maintenance requirements for Grease Control Devices in accordance with Section 13.30.050 and the Operator's individual discharge permit; or

6. operate a Grease Interceptor with Fats, Oils, and Grease and solids accumulation exceeding 25% of the design hydraulic depth (total operating depth) of the Grease Interceptor; or
7. operate a Grease Interceptor that at any time contains floating oil/grease in the final chamber or sludge in any chamber that is within two (2) inches of the discharge elbow; under such conditions the Operator of the Food Service Establishment shall have the Grease Interceptor serviced immediately such that all Fats, Oils, and Grease, sludge, and other materials are completely removed from the Grease Interceptor after which the Grease Interceptor shall be refilled with cold water; or
8. maintain a Grease Interceptor in a manner that discharges grease into any Sewer Lateral, Public Sewer System, storm drain, or the public right of way; or
9. maintain a Grease Interceptor in a manner that fails to fully pump down the contents of the Grease Interceptor; or
10. install a new Grease Trap or operate an existing Grease Trap in a manner that limits operational effectiveness, e.g. if the Grease Trap is full of hardened Fats, Oils, and Grease; or
11. install a new Food Grinder (garbage disposal) or operate an existing Food Grinder; or
12. dilute any Fats, Oils, or Grease as a partial or complete substitute for proper disposal; or
13. introduce additives into the Food Service Establishment's wastewater system for the purpose of emulsifying Fats, Oils, and Grease or biologically/chemically treating Fats, Oils, and Grease for grease remediation or as a supplement to interceptor maintenance.

### **13.30.050 - Discharge Permit**

**A.** Each Operator of a Food Service Establishment in the City's service area connected or connecting via private lines or Sewer Lateral to the Public Sewer shall be



required to apply for and obtain a City Discharge Permit. Operators of Food Service Establishments existing as of the effective date of the ordinance adopting this Chapter 13.30 shall submit complete applications to the City no later than 60 days after the date this Chapter 13.30 becomes effective and shall diligently process said applications through the issuance of the required Discharge Permit. Operators of Food Service Establishments not in existence as of the effective date of the ordinance adopting this Chapter 13.30 shall be required to apply for and obtain a City Discharge Permit prior to discharging any wastewater directly or indirectly into the Public Sewer System. Discharge Permits are not transferable to a new or successor Operator of a Food Service Establishment. If a new Operator proposes to own or operate a Food Service Establishment, that Operator must first apply for and obtain a new Discharge Permit.

**B.** Upon receipt of an approved Discharge Permit, each Operator of a Food Service Establishment shall conduct its operations and maintenance activities consistent with the requirements of this Chapter 13.30, including but not limited to Section 13.20.040, Discharge Prohibition, and this Section 13.30.050, Discharge Permit.

**C.** Each Operator of a Food Service Establishment operating under a City-issued Discharge Permit shall make its place of business, equipment, and operations available for immediate inspection upon the request of an Authorized Inspector.

**D.** Discharge Permits shall be subject to all provisions of this Chapter 13.30, including without limitation Section 13.30.040, Discharge Prohibition, and all other regulations, charges for use, and fees established by the City. City shall have the authority to enforce the conditions of the Discharge Permit in accordance with this Chapter 13.30 and applicable State and Federal laws and regulations.

**E.** Discharge Permits shall be valid for a maximum period of five (5) years or until a new Operator commences operation of the Food Service Establishment, whichever occurs first. Prior to expiration of the Discharge Permit the Operator shall be responsible for obtaining a renewal or extension. The Operator(s) of a Food Service Establishment shall file an application with the City for permit renewal at least sixty (60) days prior to the expiration date of the then-current permit. Notwithstanding any other provision set forth in this Section 13.30.050 to the contrary, as long as the applicant is diligently processing its application, the terms and conditions of the existing permit shall remain in effect until the new permit is issued or denied, whichever first occurs.

**F.** The Discharge Permit application form and required information shall be as established by the Utilities Manager, and the same may be amended from time to time.

**G.** Discharge Permit conditions shall be included within a general permit format as developed by the Utilities Manager.

**H.** Each Discharge Permit shall refer to the requirements of this Chapter 13.30 relating to Food Service Establishments. Each Operator of a Food Service Establishment shall be required to comply with the following requirements:

1. Grease Traps or Grease Interceptors.
  - a. to properly configure, operate, and maintain Grease Control Devices, e.g. Grease Traps and Grease Interceptors.
  - b. to clean and pump required Grease Control Devices on a specified schedule or at appropriate intervals in order to ensure that the system is maintained in proper operating condition. The Operator of a Food Service Establishment may request that the Utilities Manager or Authorized Inspector issue a revised cleaning or pumping schedule for Grease Interceptors where it can be shown that the change in frequency will not cause or contribute to non compliance with a Discharge Permit or the requirements of this Chapter 13.30.
  - c. to compile, maintain, and submit to the Authorized Inspector a record or log listing regular removal of Fats, Oils, and Grease from Grease Traps and Grease Interceptors for the previous twelve (12) months. The Operator of each Food Service Establishment shall retain Fats, Oils, and Grease disposal logs and supporting manifests and invoices on-site for a period of not less than three (3) years.
2. Waste Oil (Yellow Grease) Collection for Recycling or Disposal.
  - a. to compile, maintain, and submit to the Authorized Inspector a record or log listing regular waste oil (yellow grease) collection by a licensed hauler for the previous twelve (12) months. The Operator of each Food Service Establishment shall retain waste oil collection logs and supporting manifests and invoices on-site for a period of not less than three (3) years.
  - b. to clean and pump waste oil (yellow grease) barrels or drums on a specified schedule or at appropriate intervals in order to ensure that the system is maintained in proper operating condition. The Operator of a Food Service Establishment may request that the Utilities Manager or Authorized Inspector issue a revised pumping schedule for waste oil

(yellow grease) collection where it can be shown that the change in frequency will not cause or contribute to non compliance with a Discharge Permit or the requirements of this Chapter 13.30.

3. Kitchen Best Management Practices and BMP Training for Employees.

- a. to conduct employee BMP Training. Employees with regular duties in food handling and preparation, kitchen duties, clean-up, and/or maintenance duties must receive BMP Training at least 1 time in each six month interval. New hire employees must receive BMP Training within 1 month of the date of hire. The Operators of Food Service Establishments utilizing outside services for clean-up and after-hours maintenance shall require vendors and contractors to conduct BMP Training for all contracted employee providing services at the site of the Food Service Establishment on the same training schedule.
- b. to compile, maintain, and submit to the Authorized Inspector a record or log documenting employee(s) BMP Training. The log shall document employee(s) receiving BMP Training over the previous twelve (12) months and shall be retained by the Operator(s) of the Food Service Establishment on-site for a period of not less than three (3) years. Each entry shall include each employee's name, date, and signature verifying that the required training has been completed.

4. Implementation of Kitchen Best Management Practices (BMPs).

- a. to dispose of food waste and fatty scraps into the trash or garbage bin, not down the sink, use of plastic trash bags to prevent leaks and odor, double-bagging of waste that has the potential to leak in trash bins, and ensuring that trash bins are covered when not in use and the trash hauler is notified if the bin is leaking.
- b. to dry wipe or scrape pots, pans, dishware, floor mats, and work areas to remove grease and food scraps before washing and disposal in the trash.

- c. to install removable screens on all drainage pipes in food preparation areas, maintain screens in the sink and floor drains in a clean condition and in good repair, and to dispose of removed solids in the trash, not down the drain.
- d. to dispose of grease and oil from cooking equipment (pots, pans and fryers) by pouring waste oil and yellow grease into covered containers (drums, barrels) for storage and recycling, to provide a weather proof storage area (covered shelter) and secondary containment capable of capturing 110% of any liquid grease or oil that is stored from the primary container, and to use a licensed waste hauler or recycling facility to dispose of liquid grease and oil before the container is full.
- e. to clean and wash floor mats in a utility mop sink connected to an interceptor, if present, to empty mop water into a sink or drain connected to a grease interceptor, if present, and to refrain from emptying mop or wash water into storm drains.
- f. to clean hoods and filters as frequently as is necessary to maintain good operating condition, to ensure that each hood discharge fan contains a grease guard around the fan's discharge point on the rooftop and to use a licensed waste hauler to dispose of grease collected from cleaning hoods and filters.
- g. to clean existing Grease Traps as frequently as is necessary to keep them free of food residues and hardened Fats, Oils, and Grease, and to inspect Grease Traps for leaking seams and pipes.
- h. to place absorbent materials, such as paper towels or pads, under fryer baskets and other areas where grease may drip or spill during cooking, frying, or during the transfer of grease to storage or disposal containers.
- i. to maintain a spill kit accessible for use by employees, including absorbent pads, granular absorbent or equivalent absorbing material, and paper towels, and to require the use of the spill kit to clean up spilled Fats, Oils, and Grease.
- j. to refrain from pumping or discharging water hotter than 140°F through a Grease Control Device.

- k. to post signs provided by City to show kitchen best management practices (BMPs) in food preparation, dishwashing, and maintenance areas.

**I.** In addition to the other requirements of this Chapter 13.30, the Utilities Manager or the Authorized Inspector may from time to time establish discharger specific requirements for individual Food Service Establishment Discharge Permits to the extent the same will reduce or have the potential to reduce or control Fats, Oils, and Grease. Requests for Discharge Permit changes generated by the Food Service Establishment shall be submitted in writing to the Utilities Manager.

**J.** The Utilities Manager may from time to time modify the requirements or form of the general Discharge Permit used by the City if such modification is appropriate to further the objectives of this Chapter 13.30. The Operator of each Food Service Establishment holding an existing Discharge Permit shall receive at least forty-five (45) days prior written notice of any changes in the requirements or form of the general Discharge Permit that affects such Operator's Food Service Establishment. If the change to an existing Discharge Permit is the result of an Authorized Inspector's evaluation of the Food Service Establishment for permit non-compliance, then the Operator shall be given at least fourteen (14) days prior written notice of the Discharge Permit revision.

**K.** The Operator(s) of each Food Service Establishments operating under a Discharge Permit shall dispose of all wastewater, accumulated Fats, Oils, and Grease, yellow grease, floating materials, sludge, or solid wastes in accordance with the requirements of this Chapter 13.30 and other applicable federal, state, and local laws and regulations.

**L.** In the event that City video monitoring of the connection point of the Sewer Lateral to the Public Sewer indicates that a Food Service Establishment's Fats, Oils, and Grease discharge is causing or contributing to build up of Fats, Oils, and Grease inside the Sewer Lateral where it has discharged or has the potential to discharge to the Public Sewer, or in the event that a Food Service Establishment fails to comply with the provisions of this Chapter 13.30, then in addition to any other remedy the City may have the Utilities Manager shall have the authority to modify the Discharge Permit to require the installation of a City approved Grease Interceptor.

#### **Section 13.30.060 - New Food Service Establishments, Remodeling Food Service Establishments, and Transfers of Ownership**

**A.** Each Operator of a Food Service Establishment that undergoes a Remodeling/Change of Use after the effective date of the Ordinance adopting this Chapter 13.30 and each new Operator that acquires or commences to operate a Food

Service Establishment after the effective date of said ordinance shall, prior to commencing business or operations within the City, install a Grease Interceptor sized and designed in accordance with the requirements of the California Plumbing Code, install a grease guard around the cooking hood exhaust fan discharge on the roof, and install an indoor waste oil container. The Grease Interceptor, grease guard, and indoor waste oil container installation and related construction shall be subject to inspection by the City prior to operation.

**B.** New Grease Interceptors shall be reviewed by submission to the Utilities Manager of facility site plans, mechanical and plumbing plans, with details showing all water meter and sewer connections, backflow prevention devices, Grease Control Devices, and any other proposed pretreatment equipment and appurtenances by size, location, and elevation, and such other information and documentation as may be required by the Utilities Manager. The Grease Interceptor plan shall be approved by the City prior to installation and connection to the Public Sewer.

**C.** No new Food Service Establishment opened for business to the public after the effective date of the ordinance adopting this Chapter 13.30, no Food Service Establishment that undergoes a Remodeling/Change of Use after that date, and no existing Food Service Establishment that is acquired by a new Operator after that date shall install or continue utilizing any Grease Trap or Food Grinder and any existing Grease Trap and Food Grinder shall be promptly removed.

**D.** The Utilities Manager shall determine the criteria applicable to the City's review of new Grease Interceptors, which may include: the type of Food Service Establishment, the volume of projected business, meals, seats, and hours of operation; the peak flow of discharge; the size and nature of the facility (including the kitchen and fixtures); the potential for grease-laden discharges; the location of the facility and its point of connection to the Public Sewer; any prior history of non-compliance with this Chapter 13.30 from the same location; and any other factors related to efficiency or effectiveness of the new Grease Interceptor and the proposed location.

**E.** Each Operator of a Food Service Establishment that undergoes a Remodeling/Change of Use after the effective date of the ordinance adopting this Chapter, and each new Operator acquiring or commencing operation of a Food Service Establishment after the effective date of the ordinance adopting this Chapter shall install a Grease Interceptor. Installations shall require one or more cleanouts installed on the private Sewer Lateral in location(s) approved by the Utilities Manager and provide a sanitary tee in the sample box on the discharge side in conjunction with plan review.

**F.** The Utilities Manager shall have the authority to require the Operator(s) of a Food Service Establishment to install a dedicated water meter to the building for all sewers

collecting waste that discharge into the Grease Interceptor in addition to any other requirements for the installation of a new Grease Interceptor.

**G.** The Utilities Manager may from time to time grant a variance or waiver of the requirements of this Chapter for the installation of a new Grease Interceptor if the Operator of a Food Service Establishment can demonstrate that: (i) a proven alternative treatment technology is available and capable of observation under specific Discharge Permit requirements approved by the City; or (ii) that a negligible grease discharge will be released from the Food Service Establishment, such discharge will not cause or contribute to Fats, Oils, and Grease accumulation in the Public Sewer, and the Food Service Establishment is otherwise capable of compliance with the requirements of this Chapter, including the Discharge Permit requirements.

### **Section 13.30.070 - Commercial Property Owners (Single Parcel, Multiple Tenants)**

Each owner of a single-parcel commercial property with multiple tenants (e.g. shopping malls and strip malls) which includes one or more Food Service Establishments shall:

1. require that Grease Interceptors or Grease Traps serving each Food Service Establishment within the property are operated and maintained in accordance with the requirements of this Chapter 13.30 and that the Operator of each Food Service Establishment has obtained a Discharge Permit; and
2. notify each Operator of a new or remodeled Food Service Establishment and each new Operator after the effective date of the ordinance adopting this Chapter 13.30 of the requirements for installation and maintenance of a Grease Interceptor under Section 13.30.060; and
3. properly inspect, clean, and maintain or cause to be inspected, cleaned, and maintained the private Sewer Laterals that connect tenants and the commercial property to the Public Sewer to reduce or eliminate the likelihood of sewer overflows from the property and/or the introduction of Fats, Oils, and Grease into the Public Sewer; and
4. notify the Utilities Manager immediately of any sewer overflows on private property that cannot be immediately stopped, contained, and prevented from entering the public street, gutters or storm drains. The City will report the private spill to the Orange County Health Department and to the Regional Water Quality Control Board as required by law.

## **Section 13.30.080 - Enforcement**

**A. Purpose and Scope.** The City Council finds that specific enforcement provisions must be adopted in order for the City to comply with the laws, regulations, and rules imposed by federal, state, and local regulatory authorities, and to ensure that the Public Sewers are protected and able to operate free from conditions that cause or contribute to overflows, including but not limited to Fats, Oils, and Grease, dirt, rags, debris, root intrusions, and other obstructions that block or have the potential to block the flow of wastewater into or within the Public Sewer System.

**B. Inspection.** Upon the request of an Authorized Inspector made during normal business hours, the Operator(s) of any Food Service Establishment shall allow the Authorized Inspector access to that Food Service Establishment's facilities generating wastewater and all disposal facilities and equipment. The Authorized Inspector shall have the right to inspect the Food Service Establishment's place of business, operations, and records or logs for compliance with the Discharge Permit and this Chapter 13.30. The Authorized Inspector may inspect for noncompliance with BMPs, Grease Control Device conditions, maintenance and disposal records and logs, BMP Training logs, and other Discharge Permit requirements or items related to verification of compliance with this Chapter. No person shall interfere with, delay, or resist entrance to authorized City representatives attempting to inspect any Food Service Establishment or facility discharging to the Public Sewer System. Inspections during off hours (after normal business hours) may be requested by the Authorized Inspector or City representative if an emergency condition is present due to a sewer overflow or suspected sewer overflow coming from the Food Service Establishment's private sewer system. In order to determine the origin of a condition of noncompliance with this Chapter or the source of a sewer overflow event, the Authorized Inspector or City representative may enter adjoining businesses or properties that share sewer systems.

**C. Sampling.** From time to time the Utilities Manager may conduct sampling of wastewater discharge to determine compliance with this Chapter 13.30. Any sample taken from a sample point within the Food Service Establishment's facility or sewer system may in the Utilities Manager's or his or her authorized representative's discretion be considered to be representative of the discharge to the Public Sewer. In order to determine the characteristics of wastewater discharge, the Utilities Manager may require sampling or flow monitoring for a facility, and to accomplish sampling may require installation of sampling facilities, sample collection ports, or use of sampling devices.

**D. Due Process.** To ensure that all interested parties are afforded due process of law and that violations are resolved as soon as possible, the general policy of the City is as follows:



1. The Authorized Inspector, working in cooperation with the Utilities Manager, shall have the authority to make inspections and determine compliance with this Chapter, with a right of appeal to the Utilities Manager pursuant to the procedures set forth in this Chapter. Any appeal of an action of the Authorized Inspector to the Utilities Manager shall be filed in writing with the Utilities Manager no later than ten (10) days after the action of the Authorized Inspector is communicated or delivered to the Operator of the Food Service Establishment or otherwise responsible party.
2. Persons may request that the City Council review a decision of the Utilities Manager. Such a request may be granted or denied by the City Council. Any appeal of an action of the Utilities Manager to the City Council shall be filed in writing with the City Clerk no later than ten (10) days after the action of the Utilities Manager is communicated or delivered to the Operator of the Food Service Establishment or otherwise responsible party.
3. City decisions issued in connection with review of an action or an appeal shall be made based on findings supported by substantial evidence, and shall be made in writing to the affected party or parties.
4. The City, at its discretion, may utilize any one or combination of enforcement remedies identified in this Chapter or the Municipal Code in response to noncompliance with any Discharge Permit or any provision of this Chapter. The issuance or exercise of any type of enforcement action in accordance with this Chapter is not a prerequisite for any other or additional enforcement action.
5. Provided that they timely exhaust all available administrative remedies provided herein, all persons subject to this Chapter 13.30 have a right of appeal or any final City decision taken pursuant to this Chapter 13.30. The City shall provide notice to affected parties concurrent with the City's notice of final decision that Section 1094.6 of the Code of Civil Procedure governs the time within which judicial review must be sought.

**E. Notice of Noncompliance.**

1. In the event that noncompliance with the provisions of a Discharge Permit or this Ordinance occurs, the Authorized Inspector or the Utilities Manager may issue a Notice of Noncompliance. The

Operator of the Food Service Establishment or otherwise responsible party shall comply with all directives, conditions, and requirements contained within the Notice of Noncompliance within the time so prescribed. The Operator and/or other responsible party may be directed by a Notice of Noncompliance to cease and desist from activities or actions that are prohibited by this Chapter, including without limitation any Discharge Permit. Except in situations involving an immediate threat to the public health or safety, as determined by the Authorized Inspector or Utilities Manager in his or her discretion, each Notice of Noncompliance shall provide a reasonable time period for the Operator or other responsible party to come into compliance.

2. The Operator of the Food Service Establishment or otherwise responsible party shall promptly pay all noncompliance charges reflecting the City's actual costs for any additional inspection, follow-up, notice preparation, monitoring, and any other costs associated with the Notice of Noncompliance, which charges shall be in addition to and not in lieu of any penalties assessed under this Chapter or Chapter 13.24.
3. The Operator of the Food Service Establishment or otherwise responsible party may be assessed an administrative fine in the amount of \$600 per day applicable to each day of continuing noncompliance beyond the time period for corrective action as set forth in the Notice of Noncompliance.
4. The Operator of the Food Service Establishment or otherwise responsible party receiving a Notice of Noncompliance may appeal the issuance of the Notice of Noncompliance to the Utilities Manager and the City Council within the times and in the manner set forth in Section 13.30.080.D.

**F. Compliance Schedule Order.**

1. In the event that noncompliance with the provisions of a Discharge Permit or this Chapter 13.30 has occurred or is continuing, the Utilities Manager may require that the Operator of the Food Service Establishment or otherwise responsible party enter into a Compliance Schedule Order. The Compliance Schedule Order may state terms and conditions to allow the Operator or otherwise responsible party to come into compliance with a Discharge Permit or other provisions of this Chapter.

2. The Utilities Manager shall not enter into a Compliance Schedule Order until all amounts due and owing to the City under applicable City ordinances, resolutions, and policies have been paid, or until a payment arrangement has been approved by the Utilities Manager.
3. Persons in receipt of a Compliance Schedule Order may appeal the terms thereof to the Utilities Manager and the City Council within the times and in the manner set forth in Section 13.30.080.D.

**G. Discharge Permit Suspension and Revocation.**

1. A Discharge Permit may be suspended and/or revoked for any of the following reasons: (a) failure to comply with a Notice of Noncompliance or a Compliance Schedule Order issued to require compliance with a Discharge Permit or other provision of this Chapter; (b) knowingly providing a false Discharge Permit application or making false representations, or submitting false documents, reports, or logs to the Authorized Inspector or the Utilities Manager; (c) refusal to allow inspections during normal business hours or after hours if emergency conditions exist (overflow or suspected overflow) as required by Section 13.30.080.B; (d) interference with an Authorized Inspector during inspection of a Food Service Establishment, sampling of a Food Service Establishment's discharge, or inspection and sampling of an overflow event; or (e) causing or contributing to sewer blockages or sewer overflows within the Public Sewer or failing to address the conditions leading to more than one (1) overflow event from a private system within a twelve (12) month period.
2. The Utilities Manager shall have the authority to suspend or revoke a Discharge Permit. The Utilities Manager or his/her designee shall cause written notice to be mailed to the Operator of the Food Service Establishment or otherwise responsible party identifying the time and place for a hearing to be conducted by the Utilities Manager (which shall be not less than ten (10) days after the date the notice is personally delivered or deposited in the United States mail, postage prepaid). The notice of hearing shall briefly state the reasons for the proposed suspension or revocation. The Utilities Manager's decision shall be in writing and shall state his or her findings or conclusions and the action to be taken. The Operator of the Food Service Establishment or other party(ies) subject to any order suspending or revoking a Discharge Permit shall have the right to

appeal said decision to the City Council within the time and in the manner set forth in Section 13.30.080.D.

**H. Emergency Discontinuance of Service.** In the event that a violation of this Chapter 13.30 causes or contributes to a Public Sewer System overflow event or an overflow event emanating from a Sewer Lateral or Private System and such event is creating or contributing to an immediate or impending threat to health or safety of persons or the environment, then the Authorized Inspector may discontinue the water service to the Food Service Establishment or to the property, and such service discontinuance shall remain in effect until the Private System is repaired or until the matter is heard and water service is ordered continued by the City Utilities Manager or his designee. The following procedures shall apply in the event of emergency water service discontinuance:

1. the Authorized Inspector shall provide personal or telephonic notice as soon as practicable to the Food Service Establishment's emergency contact as stated on the Discharge Permit application for the Food Service Establishment;
2. in the event the overflow is coming from a property with multiple tenants/occupants, the City shall make reasonable efforts to provide personal or telephonic notice as soon as practicable to the owner or manager of the property as the name of said owner or manager appears in available City records; provided, however, that the City's inability or failure to provide said notice shall not delay or invalidate any other action taken by the City hereunder;
3. any City notice of service discontinuance shall provide a time within forty-eight (48) hours of the service discontinuance for a hearing on the action before the City Utilities Manager or his or her designee, and the holder of the Discharge Permit or owner or manager of the property shall be notified of the time and location of such hearing and shall have the opportunity to attend said hearing in person or by telephone to address the action. A written decision shall be issued within twenty-four (24) hours after the conclusion of said hearing by the City Utilities Manager or his designee;
4. the decision of the Utilities Manager or his or her designee to continue the water service interruption shall be subject to a right of further appeal to the City Manager. Any such appeal shall be filed with the City Manager's Secretary or Administrative Assistant within two (2) business days after the decision of the Utilities Manager or designee is delivered to or received by the affected

party(ies). In the event of a timely appeal to the City Manager, the Utilities Manager or his/her designee who initially decided the matter shall present the basis for his/her decision to the City Manager within four (4) days of the affected party's appeal, unless an extension of time is agreed to by the appealing party. The holder of the Discharge Permit shall be notified of the time and location of such hearing and shall have the opportunity to attend said hearing in person to address the action. The City Manager shall issue a written decision within two (2) days after conclusion of the hearing. The City Manager's decision shall be final, subject to judicial review in accordance with Section 13.30.090.

**I. Civil Liability, Administrative Civil Penalties, and Criminal Penalties.**

1. All persons discharging to the Public Sewer System are subject to further enforcement actions of federal, state, and local regulatory agencies. In the event any court or any federal, state, or regional administrative agency imposes any fines or penalties on the City or any lawsuit or administrative proceeding is initiated against the City as a result of actions of the Operator of a Food Service Establishment or other person in violation of a Discharge Permit or this Chapter 13.30, the City shall be entitled to recover from the responsible party all costs and expenses to which it has been subjected.
2. All persons discharging to the Public Sewer System are subject to administrative and/or judicial enforcement actions initiated by one or more governmental agencies with jurisdiction, including without limitation the City, the California Regional Water Quality Control Board, the United States Environmental Protection Agency, and/or the County of Orange. The actions of said agencies may be taken pursuant to the authority of federal and/or state law, including but not limited to: the Federal Clean Water Act and the California Porter-Cologne Water Quality Control Act, among others.
3. Pursuant to Government Code Sections 54739 through 54740, any person who violates any provision of this Chapter, any Discharge Permit condition or prohibition, or any Discharge Permit suspension or revocation order shall be liable civilly for a sum not to exceed Twenty-Five Thousand Dollars (\$25,000) per violation for each day the violation exists or continues. City shall be entitled to petition the Superior Court to impose and assess such penalty in accordance with applicable statutory authority, provided that if City proceeds under

alternative statutory and ordinance authority, the total amount recovered by City shall not exceed the amount permitted under applicable federal, state, and local laws.

4. Pursuant to Government Code Section 54740.5 and 53069.4 City has the authority to issue an administrative complaint to any person in violation of this Chapter, a City issued Discharge Permit, or the terms of any order revoking or suspending a Discharge Permit. As an alternative to any other remedy City may have for any such violation, City shall have the authority to act in accordance with the requirements of this Section 13.30.080.I and may assess civil penalties and administrative fines as provided in this Section.
  - a. The administrative complaint shall be served by personal delivery or certified mail on the person subject to the complaint and shall inform the person that a hearing will be conducted. The hearing date shall be scheduled within thirty (30) days of the service of the administrative complaint. The administrative complaint shall state the alleged act or failure to act that constitutes a violation of this Chapter, including without limitation a violation of any City issued Discharge Permit or order revoking or suspending any such permit. The administrative complaint shall state the provisions of law authorizing civil liability and the proposed civil penalty.
  - b. The matter shall be heard at the time and location provided in the notice of hearing by the Utilities Manager or his or her designee. In the event that the person in receipt of the administrative complaint waives the right to a hearing, the hearing need not be conducted. At the hearing, the charged party shall have the opportunity to respond to the allegations of the administrative complaint with written and/or oral evidence. The Utilities Manager or his or her designee shall issue a notice of decision. The charged party may appeal the notice of decision to the City Council within the times and in the manner set forth in Section 13.30.080.D.
  - c. If after the hearing, or the appeal (if taken), the Utilities Manager or his or her designee or the City Council finds that the charged party has acted or failed to act in violation of this Chapter, the applicable Discharge Permit, or the applicable revoking or suspending the City issued Discharge Permit, the charged party may be assessed a civil penalty in accordance

with the following: (1) in an amount not to exceed two thousand dollars (\$2,000) for each day said person fails or refuses to furnish required reports, logs, or compliance documentation; (2) in an amount not to exceed three thousand dollars (\$3,000) for each day of failing or refusing to timely comply with any applicable Compliance Schedule Order; (3) in an amount not to exceed five thousand dollars (\$5,000) for each day of violation of a Discharge Permit or issued by the City; and (4) in an amount not to exceed (\$10) per gallon for any discharge in violation of a suspended or revoked Discharge Permit, cease and desist order, or other order or prohibition issued or reissued by the City.

5. In determining the amount of any civil penalty under this Section 13.30.080.I, the Utilities Manager or his her designee and the City Council, as applicable, may take into consideration all relevant circumstances, including the extent of harm caused by the violation, the nature and persistence of the violation, the length of the violation, the history of any prior violations by the responsible party, whether the violation was intentional or negligent and the degree of foreseeability or fault related to the violation, and the corrective actions, if any, attempted or taken by the responsible party.
6. An order of the Utilities Manager or his or her designee assessing a civil penalty under this Section 13.30.080.I shall be final on the 11th day after it is served on the Operator of the Food Service Establishment or otherwise responsible party unless such person files an appeal with the City Clerk within the time provided in Section 13.30.080.D.
7. An order assessing civil penalties issued by the City Council shall be final upon issuance. Persons in receipt of a final order of the Board may obtain judicial review pursuant to Government Code Section 54740.6 by filing in the court a petition for a writ of mandate in accordance with Sections 13.30.080.D and 13.30.090.
8. No administrative penalty shall be recoverable for any violation for which the City has recovered civil penalties through a judicial proceeding filed pursuant to this Section 13.30.080.I and applicable law.
9. To the maximum extent permitted by law, the amount of any civil penalty issued under this Section 13.30.080.I shall constitute a lien

against the real property of the fined party if remaining delinquent and unpaid for 60 days, and the lien may be recorded in accordance with Government Code Section 54740.5(d)(5) or the amount may be reduced to judgment in accordance with Section 54740.5(e).

10. Notwithstanding any other provision set forth herein, if a court of competent jurisdiction determines that any administrative or civil fine or penalty prescribed by this Section 13.30.080.I exceeds the maximum fine or penalty that can be imposed under applicable law, the City Council hereby expresses its intent that this Section be interpreted to provide instead that the fine or penalty shall be the maximum fine or penalty that is legally permissible.
11. Any person who violates any provision of this Chapter is guilty of a misdemeanor, which upon conviction shall be punishable by fine of not more than \$600 or punishment by imprisonment for not more than 30 days, or by both fine and imprisonment.

#### **Section 13.30.090 - Judicial Review**

**A.** Pursuant to Section 1094.6 of the Code of Civil Procedure, the City hereby enacts this Section 13.30.090 to limit to ninety (90) days following final decisions in administrative hearings the time within which an action can be brought to review such decisions by means of administrative mandamus.

**B.** As used in this Section 13.30.090, the following terms shall have the meanings ascribed:

1. “Decision” shall mean and include adjudicatory administrative decisions made after hearing or after revoking, suspending, or denying an application for a Discharge Permit.
2. “Complete Record” shall mean the transcript, if any exists, of the proceedings or hearings and all notices, orders, proposed decisions by City officers, agents, or employees, the final decision, all admitted exhibits, and all rejected exhibits in the possession of the City, its officers, agents, or employees, all written evidence, and any other papers in the case.

**C.** Judicial review of any decision of the City, its Utilities Manager or his or her designee, or the City Council may be had pursuant to Section 1094.5 of the Code of Civil Procedure only if the petition for writ of mandate is filed not later than the ninetieth (90<sup>th</sup>) day following the date on which the decision is final. If there is no provision for



reconsideration in the procedures governing the proceedings or if the date is not otherwise specified, the decision is final on the date it is made. If there is provision for reconsideration, the decision is final on the expiration of the period during which reconsideration can be requested if not so requested.

**D.** The City shall prepare the complete record of the proceedings and deliver the record to the petitioner within ninety (90) days after a written request therefore has been filed. The City may recover the actual costs for transcribing or otherwise preparing the record.

**E.** If the petitioner submits a request for the record within ten (10) days after the date of decision becomes final, the time within which a petition pursuant to Section 1094.5 of the Code of Civil Procedure may be filed shall be extended to not later than thirty (30) days following the date on which the record is either personally delivered or mailed to the petitioner or the attorney of record for the petitioner, if he or she has one.

**F.** Notwithstanding this Section 13.30.090, pursuant to Government Code Section 54740.6, judicial review of a City order imposing administrative civil penalties pursuant to Section 13.30.080 may be made only if the petition for writ of mandate is filed not later than the thirtieth (30<sup>th</sup>) day following the day on which the order becomes final.

**Section 2:** If any section, subsection, subdivision, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of this entire Ordinance or any of the remaining portions hereof. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, subdivision, sentence, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional or otherwise invalid.

**Section 3:** The City Clerk shall publish this Ordinance and the same shall take effect as provided by law.

APPROVED, ADOPTED and SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

\_\_\_\_\_  
MAYOR of the City of  
San Clemente, California

STATE OF CALIFORNIA  
COUNTY OF ORANGE  
CITY OF SAN CLEMENTE

I, JOANNE BADDE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. \_\_\_\_\_, having been regularly introduced at the meeting of \_\_\_\_\_, 2009, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

ABSENT:

---

CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:

---

City Attorney