

**ORDINANCE NO. 1667**

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF SAN CLEMENTE, CALIFORNIA, DELETING  
CHAPTER 12.16.080 CONTROL OF IRRIGATION AND STORMWATER AND  
AMENDING CHAPTER 13.40 STORMWATER RUNOFF CONTROL OF "THE CODE  
OF THE CITY OF SAN CLEMENTE, CALIFORNIA" TO COMPLY WITH THE NPDES  
MS4 PERMIT TO PROHIBIT IRRIGATION RUNOFF

**WHEREAS**, on December 7, 2010, the City of San Clemente ("City") first adopted Ordinance No. 1530 regarding stormwater management and urban runoff ("Stormwater Runoff Control Ordinance") to comply with San Diego Regional Water Quality Control Board ("Regional Board") Order No. R9-2002- 0001, Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems ("MS4s") Draining the Watershed of the County of Orange, the Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region ("Permit"); and

**WHEREAS**, on December 16, 2009, the Regional Water Board reissued the Permit (Order No. R9-2009- 0002) with more stringent state, requirements governing stormwater management and urban runoff; and

**WHEREAS**, on May 8, 2013, the Regional Water Board adopted a regional MS4 Permit (Order No. R9-2013- 0001) that applied to portions of Orange County, including the City, as well as San Diego County and portions of Riverside County, and the Regional Board formally enrolled the City in the regional Permit on February 11, 2015 (Order No. R9-2015- 0001); and

**WHEREAS**, on June 20, 2018, the Regional Board approved the City's Water Quality Improvement Plan, as required by the Permit, which commits the City to certain stormwater program requirements as a condition of being deemed in compliance with the Permit; and

**WHEREAS**, the City has determined that certain additional amendments to its Water Quality Ordinance are necessary to address the City's Water Quality Improvement Plan (WQIP) and the City's ability to impose the implementation of best management practices and to clarify the City's legal authority to implement the Permit; and

**NOW, THEREFORE**, the City Council of the City of San Clemente, California, hereby ordains as follows:

**Section 1:** Chapter Section 12.16.080 Control of irrigation and stormwater is hereby removed:

- **12.16.080 - Control of irrigation and stormwater.**

No person shall allow or permit any irrigation water (except from lawns), stormwater drained from buildings or water drained from swimming pools to run upon or over the surface of any sidewalk in the City, or upon or into the roadway of any street therein except in the gutters thereof, or properly controlled channels which may be approved at the discretion of the Street Superintendent.

**Section 2:** Chapter 13.40 of the Code of the City of San Clemente is hereby replaced in its entirety.

## **Chapter 13.40 - STORMWATER RUNOFF CONTROL**

### **13.40.010 - Authority.**

The Clean Water Act (33 USC Section 1251 et seq., as amended, including Section 402(p) therein) and the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq., as amended) mandate, in part, that municipalities operating municipal separate storm sewer systems obtain permits to effectively prohibit non-stormwater discharges into the city's storm sewers and to reduce the discharge of pollutants. The United States Environmental Protection Agency has authorized the State of California through the State Water Resources Control Board and its regional water quality control boards to control non-point source and point source discharges to California's waterways. The San Diego Regional Water Quality Control Board addresses the obligation to implement the Clean Water Act by periodically issuing combined National Pollutant Discharge Elimination System (NPDES) permits and Waste Discharge Requirements (WDRs) to the County of Orange, Orange County Flood Control District, and the incorporated cities of Orange County within its jurisdiction. The City of San Clemente is named as a co-permittee under this combined NPDES permit and WDRs and must comply with the requirements set forth therein.

Pursuant to Article XI, Section 7 of the California Constitution, which authorizes the city to exercise the police power of the state by adopting regulations promoting the public health, public safety and general prosperity, and in compliance with the conditions of the City's NPDES permit, there is hereby adopted a water quality ordinance.

(Ord. No. 1530, § 1, 12-7-2010)

### **13.40.020 - Purpose and intent.**

The purpose of this chapter is to protect health and safety, and promote the welfare of the community by:

Effectively prohibiting non-stormwater discharges into the stormwater drainage system.

Reducing pollutants in surface runoff, including those pollutants contained in stormwater as it flows over City streets.

Establishing minimum requirements for surface runoff management, including source control requirements to prevent and reduce pollution, and requirements for development and redevelopment projects.

The intent of this chapter is to protect and enhance the water quality of receiving waters in a manner pursuant to and consistent with the Clean Water Act and Porter-Cologne.

(Ord. No. 1530, § 1, 12-7-2010)

### **13.40.030 - Definitions.**

For purposes of this chapter, the following words and phrases have the meanings ascribed to them by this section. Words and phrases not ascribed a meaning by this section have the meanings ascribed by the regulations implementing the National Pollutant Discharge Elimination System, Clean Water Act Section 402, and Division 7 of the California Water Code, as amended, if defined therein, and if not, to the definitions in any applicable permit or order issued by the Regional Board, as amended.

"Accelerated erosion" means the rate and amount of erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away. Erosion includes the movement or loss of soil by the action of water, wind, or chemicals.

"Authorized enforcement staff" means any City employee assigned to duties involving permits and other City approvals, inspections, and enforcement related to this chapter.

"Basin Plan" means the "Water Quality Control Plan for the San Diego Basin" adopted by the Regional Board in September 1994, as amended.

"City" means the City of San Clemente, Orange County, California.

"Clean Water Act" means the federal statute (33 USC Section 1251 et seq., as amended, including Section 402(p) therein) requiring municipal and industrial dischargers to obtain NPDES permits for their discharges of stormwater into waters of the United States.

"DAMP" means the Orange County Drainage Area Management Plan, including all appendices, as amended.

"Department" means the City's Utilities Department.

"Development project" means construction, rehabilitation, redevelopment, or reconstruction of any public or private projects.

"Development project guidance" means Chapter VII of the DAMP and the Water Quality Management Plan requirements, as amended.

"Director" means the Director of the City's Utilities Department, or designee.

"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.

"Enforcement Response Plan" means the plan in the JRMP that describes the applicable approaches and options to enforce the City's legal authority to achieve compliance with the requirements of its NPDES permit.

"Enforcing attorney" means the City Attorney, acting as counsel to the City, or designee, or the District Attorney, which counsel is authorized to take enforcement action as described herein.

"Environmentally sensitive area (ESA)" means areas that include, but are not limited to, all Clean Water Act Section 303(d) impaired water bodies; areas designated as Areas of Special Biological Significance by the State Water Resources Control Board or the Regional Water Quality Control Board; State Water Quality Protected Areas; water bodies designated with the RARE beneficial use by the State Water Resources Control Board; areas designated as preserves or their equivalent under the Natural Communities Conservation Program within Orange County; and any other equivalent environmentally sensitive areas which have been identified by the City.

"EPA" means the United States Environmental Protection Agency.

"Illicit connection" means any 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,

other than discharges that comply with the requirements of this chapter. The term "illicit connection" shall 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.

"Impaired water body" means a water body that is listed by the California State Water Resources Control Board as impaired by a particular pollutant or pollutants pursuant to Section 303(d) of the Clean Water Act.

"Impervious surface area" means the ground area covered or sheltered by an impervious surface, measured in plain view (i.e., as if directly above). For example, the "impervious surface area" for a pitched roof is equal to the ground area it shelters, rather than the surface area of the roof itself.

"Impervious surfaces or covers" means a constructed or modified surface that cannot effectively infiltrate rainfall. The term includes, but is not limited to, building rooftops, pavement, sidewalks, and driveways.

"Invoice for costs" means the actual costs and expenses of the City, including, but not limited to, administrative overhead, salaries, and other expenses recoverable under state law; incurred during any inspection, enforcement, and/or cleanup action conducted pursuant to this chapter; or where an administrative citation, notice of noncompliance, administrative compliance order, or other enforcement option under this chapter is utilized to obtain compliance with this chapter.

"Jurisdictional Runoff Management Plan or "JRMP" means the City of San Clemente Jurisdictional Runoff Management Plan, as amended. The JRMP (previously known as the Local Implementation Plan or LIP) is the document detailing the City's adopted plan for implementation of the NPDES permit.

"National Pollutant Discharge Elimination System permit (NPDES permit)" means the currently applicable and/or Waste Discharge Requirements issued by the Regional Water Quality Control Board regulating the discharge of pollutants into and from the City's stormwater drainage system. "NPDES permit" shall also mean any NPDES permit and/or waste discharge requirements issued to a person, which regulates discharges of pollutants to waters of the State or waters of the United States.

"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 grading for future construction, for which either a discretionary land use approval, grading permit, building permit, or nonresidential plumbing permit is required.

"Non-prohibited discharge" means those discharges not prohibited by this chapter as set forth in Section 13.40.050.

"Non-residential 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.

"Non-stormwater" means all discharges to and from the stormwater drainage system that do not originate from precipitation events (i.e., all discharges from a stormwater drainage system other than stormwater).

"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, but not limited to:

1. Chips, shavings, or pieces of natural or man-made materials, including, but not limited to, plastics, wood, or metal shavings, and by-products of manufacturing;
2. Solid and liquid wastes, including, but not limited to, municipal waste, residential (household) waste (such as trash, paper, plastics, lawn clippings, and yard wastes; animal wastes; pesticides, herbicides, and

fertilizers; and used oil or other fluids from motor vehicles, lawn mowers, and other common household equipment);

3. Metals and non-metals, including compounds of metals and non-metals, such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus, and arsenic;

4. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants, and grease);

5. Animal wastes;

6. Pathogens (e.g., bacteria, viruses, protozoa);

7. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity, or odor;

8. Waste materials and wastewater generated on construction sites and by construction activities (such as painting and staining; the use of sealants and glues; the use of lime; the use of wood preservatives and solvents; the disturbance of asbestos fibers, paint flakes, or stucco fragments; the application of oils, lubricants, hydraulic, radiator, or battery fluids; construction equipment washing, concrete pouring, and cleanup; the use of concrete detergents; steam cleaning or sand blasting; the use of chemical degreasing or diluting agents; and the use of super chlorinated water for potable water line flushing);

9. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;

10. Materials which contain base/neutral or acid extractible organic compounds;

11. Those pollutants defined in 33 U.S.C. Section 1362(6) of the Clean Water Act, including solid waste, incinerator residue, sewage, garbage, sewage sludge, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, and agricultural waste; and

12. 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.

"Porter-Cologne" means the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq., as amended)

"Priority development project" means those land development projects defined in the NPDES permit issued to the City, as amended.

"Prohibited discharge" means any discharge to the stormwater drainage system or to a receiving water that is not composed entirely of stormwater. This includes, "Prohibited discharge" means, but is not limited to, discharges of non-stormwater that are not defined as non-prohibited discharges, landscape irrigation runoff, any discharge from an illicit connection, or any discharge which causes or contributes to the exceedance of Basin Plan receiving water quality objectives. "Prohibited discharge" shall also include any and all discharges that are not in compliance with a separate NPDES permit or waste discharge requirement.

"Receiving Water" shall mean all waters as defined in the NPDES Permit, including but not limited to natural streams, creeks, rivers, lakes, bays, the Pacific Ocean and ground water. "Redevelopment" means the creation, addition, and or replacement of impervious surface on an already developed site. Examples include the expansion of a building footprint, road widening, the addition to or replacement of a structure, and creation or addition of impervious surfaces. Replacement of impervious surfaces includes any activity that is not part of a routine maintenance activity where impervious material(s) are removed, exposing underlying soil during construction. Redevelopment does not include trenching and resurfacing associated with utility work; resurfacing existing roadways; new sidewalk construction, pedestrian ramps, or bike lane on existing roads; and routine replacement of damaged pavement, such as pothole repair.

"Regional Board" means the San Diego Regional Water Quality Control Board.

"State general permit" means the State General Industrial Stormwater Permit, the State General Construction Permit, or any other statewide general permit that has been or will be adopted by the State

Water Resources Control Board, and the terms and requirements of any such permit. In the event EPA 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, construction, and other activities.

"Stormwater" means storm water runoff, snow melt runoff, and surface runoff and drainage, as defined at 40 CFR § 122.26(b)(13), as amended.

"Stormwater drainage system" means the conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that are: (i) owned or operated by the City or other public body having jurisdiction over the discharge of surface runoff, sewage, industrial waters, or other wastes; (ii) designated or used for collection or conveying surface runoff; (iii) which is not a combined sewer; and (iv) which is not part of a publically owned treatment works (POTW). "Stormwater drainage system" shall have the meaning as "municipal separate storm sewer system," as defined at 40 CFR § 122.26(b)(8), as amended.

"Water quality management plan" or "WQMP" means a water quality plan that is designed to minimize pollutant discharges and accelerated erosion and sediment runoff during development construction and operation activities.

"Water quality management plan requirements" or "WQMP requirements" means those requirements as set forth in the South Orange County Model WQMP and Jurisdictional Runoff Management Plan.

(Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.040 - Illicit connections and prohibited discharges.**

- A. It is unlawful for any Person to:
1. Construct, maintain, operate, and/or utilize any illicit connection;
  2. Cause, permit, 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; or
  4. Discharge any material into the stormwater drainage system, or any water body within the City's jurisdiction that may cause or threaten to cause a condition of pollution, contamination, or nuisance within the meaning of California Water Code Section 13050.
  5. Non-stormwater discharges from the following categories are illicit discharges:
    - (a) Discharges from landscape irrigation, irrigation water, and lawn watering;
    - (b) Discharges from uncontaminated pumped groundwater;
    - (c) Discharges from foundation drains when the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year;
    - (d) Discharges from crawl space pumps;
    - (e) Discharges from footing drains when the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year;
    - (f) Water line flushing and water main breaks;

(g) Discharges from recycled or reclaimed water lines

B. Any owner and operator of an illicit connection must immediately cause the connection to be removed or eliminated.

C. A civil or administrative violation 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 authorized enforcement staff reasonably determines that a non-prohibited discharge may adversely affect the beneficial uses of receiving waters, authorized enforcement staff may give written notice to the owner of the property or facility that the non-prohibited discharge became a prohibited discharge upon delivery of notice.

(Ord. No. 1530, § 1, 12-7-2010)

**13.40.050 - Conditionally allowed discharges.**

E. Notwithstanding the prohibitions in Section 13.40.040, the following non-storm water discharges are conditionally permitted if they comply with the following requirements:

F. Any discharge to the stormwater drainage system that is regulated under an NPDES permit issued to the discharger and administered by the State of California pursuant to Division 7 of the California Water Code is conditionally allowed, provided the discharger is in compliance with all requirements of the NPDES permit, waste discharge requirement, and other applicable laws and regulations.

G. The following non-stormwater discharges to the stormwater discharge system are allowed only if: (i) the discharger obtains coverage under an NPDES permit issued by the Regional Board for the discharge or the Regional Board determines in writing that coverage under an NPDES permit is not required; and (ii) the discharger is in compliance with all requirements of the applicable NPDES permit, waste discharge requirement, waiver, or other conditions imposed by the Regional Board, and all other applicable laws and regulations.

H. Non-stormwater discharges to the stormwater drainage system from the following categories are conditionally allowed, unless the City or Regional Board identifies the discharge as a source of pollutants to the stormwater discharge system or receiving waters:

I. Discharges from diverted stream flows;

J. Discharges from rising groundwater;

K. Discharges from uncontaminated groundwater infiltration to the stormwater discharge system;

L. Discharges from springs;

M. Discharges from riparian habitats and wetlands;

N. Discharges from potable water sources, except discharges from water lines requiring an NPDES permit, as set forth in subsection A.2 of this section.

O. Non-stormwater discharges from the following categories are conditionally allowed if they are addressed with BMPs as set forth in the DAMP or JRMP. Otherwise, non-stormwater discharges from the following categories are illicit discharges:

- P. Air conditioning condensation,
- Q. Individual residential vehicle washing,
- R. Water from swimming pools.

S. Non-stormwater discharges to the stormwater discharge system from firefighting activities are conditionally allowed if they are addressed as follows:

T. Non-emergency firefighting discharges. Non-emergency firefighting discharges, including building fire suppression system maintenance discharges (e.g., sprinkler line flushing), controlled or practice blazes, training, and maintenance activities must be addressed by BMPs as set forth in the DAMP or JRMP to prevent the discharge of pollutants to the stormwater discharge system.

U. Emergency firefighting discharges. During emergencies, priority of efforts should be directed toward life, property, and the environment. Emergency firefighting discharges must be addressed by BMPs that do not interfere with emergency response operations or impact public health and safety.

V. Notwithstanding the categories of non-stormwater discharges conditionally allowed by subdivision (a), if the City or Regional Board determines that any of these otherwise conditionally allowed non-stormwater discharges are a source of pollutants to receiving waters, are a danger to public health or safety, or are causing a public nuisance, such discharges are prohibited from entering the stormwater drainage system.

### **13.40.060 - New development and priority development projects.**

A. Development projects. All development projects within the City must be undertaken in compliance with the following:

1. Any person proposing a development project in the City, regardless of whether a permit is required for such work, must effectively prohibit pollutants from entering the stormwater drainage system. At a minimum:

(a) Onsite BMPs must be located so as to remove pollutants from runoff prior to discharging to any receiving waters or to the stormwater drainage system, and be located as close to the source as possible and must be designed and implemented to avoid creating nuisance or additional pollutant sources, including those associated with vector.

(b) Structural BMPs must not be constructed within waters of the United States.

(c) Source control, low impact development BMPs must be implemented where applicable and feasible.

(d) The development must comply with all applicable NPDES permit requirements, the DAMP, and the JRMP, including, but not limited to, development project guidance, and the South Orange County Model WQMP.

2. Any conditions and requirements established by the City's Public Works, and Utilities Departments which are reasonably related to the reduction or elimination of pollutants in surface runoff from the project site. Prior to the issuance by the City of a grading permit, building permit or



nonresidential plumbing permit for any development project, the City's Public Works and Utilities Departments shall review the project plans and impose terms, conditions and requirements on the project in accordance with this section. If the development project will be approved without application for a grading permit, building permit or nonresidential plumbing permit, the Public Works and Utilities Departments shall review the project plans and impose terms, conditions and requirements on the project in accordance with this section prior to the issuance of a discretionary land use approval or, at the City's discretion, prior to recordation of a subdivision map.

3. The owner of each development project, or upon transfer of the property, its successors and assigns, must implement and adhere to the terms, conditions and requirements imposed pursuant to this chapter and any permit or other authorization or mechanism imposing conditions pursuant to this chapter. Failure by the owner of the property or its successors or assigns to implement and adhere to the terms, conditions and requirements imposed pursuant to this section constitutes a violation of this chapter.

4. The Director may require that the WQMP for the development or notice of the WQMP be recorded with the Orange County Clerk-Recorder's Office by the property owner.

B. Priority development projects (PDPs). In addition to the requirements in Section 13.40.060.A, all PDPs are subject to the following:

1. Compliance with Section 13.40.070 of this chapter, Water Quality Management Plan (WQMP) requirements.

2. The owner or applicant of a PDP must install and implement BMPs in accordance with the requirements of this chapter prior to receiving final approval of the project or as otherwise specified in the conditions of approval, including the following:

(a) All PDPs must be designed, constructed, and maintained to employ post-construction BMPs consistent with the DAMP and JRMP, including, but not limited to, the following:

(i) Low impact development BMPs designed to retain (intercept, store, infiltrate, evaporate, and evapotranspire) onsite the pollutants contained in the volume of stormwater runoff produced from a 24-hour 85th percentile storm event (design capture volume). If the applicant demonstrates, to the Director's satisfaction, that onsite retention is not technically feasible, biofiltration or flow-thru BMPs may be used in accordance with the following:

I. Biofiltration BMPs must be designed to have an appropriate hydraulic loading rate to maximize stormwater retention and pollutant removal; prevent erosion, scour, and channeling within the BMP; and be sized to treat 1.5 times the design capture volume not reliably retained onsite.

II. If biofiltration BMPs are not technically feasible, flow-thru treatment control BMPs may be used; provided however, that such BMPs must treat the design capture volume not reliably retained onsite and must be sized and designed in accordance with the requirements of the NPDES permit, DAMP and JRMP.

(ii) Hydromodification management BMPs that are sized and designed such that post-project runoff conditions (flow rates and durations) will not exceed the pre-development runoff conditions by more than 10 percent (for the range of flows that result in increased potential for erosion or degraded instream habitat downstream of the Priority Development Project). A PDP may be exempt from the hydromodification management BMP requirements in this subsection, at the discretion of the Director, where the project discharges water to any of the following: existing underground storm drains that discharge directly to water storage reservoirs, lakes, enclosed embayments, or the Pacific Ocean; conveyance channels whose bed and bank are concrete lined from

the point of discharge to the water storage reservoir, lake, enclosed embayment, or the Pacific Ocean; or an area the City deems appropriate for an exemption pursuant to any watershed management area analysis incorporated into an applicable water quality improvement plan accepted by the Regional Board.

3. All PDPs must avoid critical course sediment yield areas identified by the City or in any watershed management area analysis accepted by the Regional Board unless measures are implemented that allow for no net impact from critical coarse sediment to the receiving water and comply with the DAMP and JRMP.

4. As a condition of development, the owner of a PDP must, prior to occupancy of the development, enter into an agreement for maintenance of any BMPs with the City. The agreement must be recorded to run with the land and be binding upon the owner, heirs, and successors in interest to the project and to any real property developed in conjunction with the project in perpetuity. The agreement must include an annual requirement that verification of the effective operation and maintenance of each approved BMP be conducted by the owner. Maintenance must be performed by the owner and certified to the City prior to each rainy season. The agreement must also include a right of entry on the part of the City for the purpose of inspecting and confirming the condition of permanent BMPs and to perform maintenance or repairs where operation and maintenance is not conducted in a proper or timely fashion.

C. The project applicant must provide for and submit proof of the ongoing long-term maintenance of all BMPs. Compliance with the requirements of the DAMP and JRMP does not exempt any person from the requirement to independently comply with each provision of this chapter.

D. The project applicant must reimburse the City for all costs and expenses incurred by the planning agency in the review of new development or redevelopment projects for compliance with the DAMP and JRMP. The Director may elect to require a deposit of estimated costs and expenses, and the actual costs and expenses will be deducted from the deposit, and the balance, if any, refunded to the project applicant.

(Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.070 - Water quality management plan requirements.**

A. PDP applications. The applicant for every PDP must prepare and submit to the City a WQMP. The City may require a fee, to be paid by the project applicant, for review of the WQMP. The WQMP must include proposed BMPs as specified in the NPDES permit and Section 13.40.060, and the WQMP must be prepared in conformance with the JRMP (including the South Orange County Model WQMP).

B. Compliance with WQMP requirements. No applicant for a PDP may commence any land disturbing activities in connection with the proposed project without first submitting and obtaining the City's approval of a WQMP for the project. All WQMPs must be consistent with the South Orange County Model WQMP, including demonstrating compliance with all applicable WQMP Requirements and low impact development & hydromodification requirements provided for in the City's LIP.

C. Implementation of WQMP. All best management practices set forth in the approved project specific WQMP, including but not limited to, any applicable low impact development requirements, must be implemented and maintained at all PDPs, by the developer, owner, and/or other responsible party.

(Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.080 – Construction projects.**

A. Construction and grading permits. Prior to issuance of any permit or authorization that allows the commencement of activities involving ground or soil disturbance that can potentially generate pollutants in storm water runoff, the project applicant must:

1. Submit a pollution control plan, construction BMP plan, and/or an erosion and sediment control plan, meeting the requirements of the DAMP and JRMP;
2. Obtain and submit evidence of coverage under the state general permit, if applicable.

B. The person in charge of each construction site must comply with all conditions of the state general permit and implement BMPs to prohibit all discharges except for the stormwater and non-stormwater discharges specifically authorized by such permit. BMPs must be site specific, seasonally appropriate, and construction phase appropriate. Dry season BMP implementation must plan for and address unseasonal rain events. At a minimum, BMPs must be selected and implemented in accordance with the DAMP and JRMP. For those construction sites that are tributary to impaired water bodies and/or are within or directly adjacent to or discharging directly to receiving waters within environmentally sensitive areas, BMPs must include such additional controls as the authorized enforcement staff may require.

C. Inspections. Construction and grading sites, and discharges from such sites and operations, are identified under the NPDES permit as creating increased threats to water quality during the rainy season. The authorized inspector is authorized to inspect each high priority construction site at least once weekly during the rainy season, during normal business hours. Authorized enforcement staff may further inspect each medium/low priority construction site at least twice during the rainy season.

D. Cost Recovery. The project applicant must reimburse the City for all costs and expenses incurred in the review of submissions required by this section. The Director may elect to require a deposit of estimated costs and expenses, and deduct the actual costs and expenses from the deposit, and refund the balance, if any, to the project applicant.

#### **13.40.090 - Best management practices and monitoring program requirements.**

A. BMPs. Every person owning property or conducting any activity or operation on a facility must comply with applicable BMPs as may be required by the NPDES permit, DAMP, JRMP or as otherwise may be required by the Director to assure compliance with the NPDES permit, in order to prevent pollutants from entering the stormwater drainage system.

B. Structural BMP maintenance requirement. Every person owning or operating property which includes a structural BMP, must comply with the following:

1. Ensure that every structural BMP is operating effectively and is being adequately maintained.
2. Provide an annual verification of the effective operation and maintenance of every structural BMP, maintain the annual verification records, and provide the annual verification records to authorized enforcement staff upon request.

C. Monitoring Programs. Every person owning property or conducting any activity, operation or facility must implement any monitoring program that may be required by the Director pursuant to the DAMP, JRMP, NPDES permit, or any enforcement under this chapter.

(Ord. No. 1530, § 1, 12-7-2010; Ord. No. 1648, § 8, 12-5-2017)

### **13.40.100 - Inspections.**

A. Right to inspect. Except where exigent circumstances require immediate entry or for annual inspections as required by the DAMP or JRMP, prior to commencing any inspection as herein below authorized, authorized enforcement staff must obtain either the consent of the owner or occupant of the property or obtain an administrative inspection warrant or criminal search warrant. For inspections required by the DAMP, JRMP, NPDES permit or enforcement action, the authorized enforcement staff may inspect a property or facility during normal business hours upon twenty-four (24) hours' written notice to the owner, operator, or person responsible for the day to day activities of such property or facility.

B. Entry to inspect. Upon obtaining the right to inspect in accordance with Subsection 13.40.100.A, authorized enforcement staff may enter upon private property to: (1) investigate a violation or potential violation of this chapter; (2) investigate the source of any discharge of a pollutant or the potential discharge of a pollutant to the stormwater drainage system; (3) conduct an annual or follow-up inspection; or (4) conduct an inspection to verify compliance with this chapter, including, but not limited to, verifying compliance with any BMPs identified as conditions of approval for a project or that were included in the project specific WQMP.

C. Portable equipment. For purposes of verifying compliance with this chapter, the authorized enforcement staff may inspect any vehicle, truck, trailer, tank truck or other mobile equipment.

D. Records review. Authorized enforcement staff may inspect all records of the owner or occupant of property relating to chemicals or processes presently or previously stored or 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, or any other source of contribution or potential contribution of pollutants to the stormwater drainage system.

E. Sample and test. Authorized enforcement staff 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. Authorized enforcement staff may investigate the integrity of all storm drain and sanitary sewer systems, or other pipelines on the property using appropriate tests, including, but not limited to, smoke and dye tests or video surveys. Authorized enforcement staff may take photographs or video tape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.

F. Monitoring. Authorized enforcement staff may erect and maintain monitoring devices for the purpose of measuring any discharge or pollutant or potential source of discharge or pollutant to the stormwater drainage system.

G. Test results. The owner or occupant of property subject to inspection may, upon submission of a written request, obtain copies, at the requesting party's expense, of all monitoring and test results conducted by an authorized enforcement staff.

(Ord. No. 1530, § 1, 12-7-2010)

### **13.40.110 – Enforcement generally.**

A. Administrative Citation. This chapter is enforced pursuant to the procedures set forth in the City's Enforcement Response Plan, which incorporated into and made a part of the JRMP. In addition to all other enforcement mechanisms provided for in this chapter, any violation of this chapter may be enforced through the administrative citation program set forth in chapters 1.20 and 1.22 of the San

Clemente Municipal Code. Authorized enforcement staff is authorized to take any administrative, civil, or criminal enforcement action set forth in this chapter, or by any other means legally available.

B. Notice of noncompliance. Any noncompliance with this chapter or order issued pursuant to this chapter must be corrected no later than thirty (30) days after the violation is discovered, or prior to the next predicted rain event, whichever is sooner. If more than thirty (30) days are required to achieve compliance, the person subject to the administrative remedy must submit a detailed description of the reasons for the requested time extension. Authorized enforcement staff may issue a compliance schedule in conjunction with any administrative remedy.

C. Authorized enforcement staff may, as part of an administrative remedy pursuant to this chapter, require the owner or occupant to conduct any reporting, or monitoring or sampling that authorized enforcement staff is otherwise authorized to conduct.

D. Delivery of any administrative enforcement action must occur in accordance with Section 13.40.130.

E. In any action to enforce this chapter, the burden is on the person who is the subject of such action to establish that a discharge was within the scope of a non-prohibited discharge.

#### **13.40.120 - Administrative remedies.**

A. Notice of noncompliance. In accordance with the Enforcement Response Plan, authorized enforcement staff may deliver to the owner or occupant of any property, and to any person responsible for an illicit connection or prohibited discharge a notice of noncompliance. The notice of noncompliance must:

1. identify the provision(s) of this chapter or the applicable permit or order which has been violated;
2. state that continued noncompliance may result in additional enforcement actions against the owner, occupant and/or person responsible for an illicit connection or a prohibited discharge;
3. state a compliance date that must be met by the owner, occupant, or person; and
4. states that continued noncompliance may result in additional enforcement actions.

B. Administrative Compliance Orders. In accordance with the Enforcement Response Plan, authorized enforcement staff may issue an administrative compliance order which includes the following terms and requirements:

1. Specific steps and time schedules for compliance as reasonably necessary to eliminate an existing prohibited discharge or to prevent the imminent threat of a prohibited discharge, including but not limited to a prohibited discharge from any pond, pit, well, surface impoundment, holding or storage area;
2. Specific steps and time schedules for compliance as reasonably necessary to discontinue any illicit connection;
3. Specific requirements for containment, cleanup, removal, storage, installation of overhead covering, or proper disposal of any pollutant having the reasonable potential to contact surface runoff;

4. Any other terms or requirements reasonably calculated to prevent the imminent threat of or continuing violations of this chapter, including, but not limited to requirements for compliance with BMP guidance documents promulgated by any federal, state or regional agency;

5. Any other terms or requirements reasonably calculated to achieve full compliance with the terms, conditions and requirements of any permit issued pursuant hereto.

C. Cease and Desist Orders. In accordance with the Enforcement Response Plan, authorized enforcement staff may issue a cease and desist order to direct the owner or occupant of any property and/or any other person responsible for a violation of this chapter to:

1. Immediately discontinue any illicit connection or prohibited discharge to the stormwater drainage system;

2. Immediately contain or divert any flow of water off the property, where the flow is occurring in violation of any provision of this chapter;

3. Immediately discontinue any other violation of this chapter;

4. Immediately clean up all areas affected by the violation.

5. Cease and desist with any or all continued work on a project (i.e., a stop work order) until such time as appropriate BMPs are implemented, the prohibited discharge is eliminated, or other appropriate actions are taken to ensure compliance with this chapter.

No cease and desist order is to be stayed, tolled or otherwise put on hold as a result of any administrative or other legal challenge to its terms. A cease and desist order is only to be stayed, tolled or put on hold where required as a result of the administrative review process or by a court of competent jurisdiction.

D. Stop work order. In accordance with the Enforcement Response Plan, authorized enforcement staff may issue an order identifying the provision(s) of this chapter or applicable permit or order that has been violated and directing any or all work or activities causing or contributing to the noted violation to immediately stop. A person ordered to stop any work or activity in accordance with this section must not restart the work or activity until the City has verified that corrective actions have been implemented and authorizes work or activities to resume.

E. Permit and license revocation or denial. In accordance with the Enforcement Response Plan, authorized enforcement staff may suspend, revoke, or deny a permit, license, or other approval for a development project or business or deny future permits or licenses in accordance with the hearing procedures set forth in Section 13.40.130.

F. Monetary fines and penalties. In accordance with the Enforcement Response Plan, authorized enforcement staff may issue a monetary penalty or fine for any violation of this chapter or order or authorization issued pursuant to this chapter. Such fine or penalty is payable directly to the City. Monetary fines and penalties will be assessed in the amounts as set forth in Chapter 1.20.070 of the San Clemente Municipal Code.

G. Invoice for costs. Authorized Enforcement Staff may deliver to the owner or occupant of any property, any permittee and/or any other person who becomes subject to a notice of noncompliance or administrative order, an invoice for costs. An invoice for costs must be delivered in accordance with subsection 13.40.130. 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, including any costs incurred by the City to prevent, contain and/or clean up any potential or actual discharges to the stormwater drainage system. If any owner or occupant, permittee or any other person subject to an invoice for costs fails to either pay

the invoice for costs or successfully appeal the invoice for costs in accordance with Section 13.40.130, then the enforcing attorney may institute collection proceedings.

H. Abatement of the discharge of pollutants on public property. Notwithstanding anything in this chapter to the contrary, the City may take all action necessary to inspect, investigate, assess, remedy or otherwise abate any discharge of a pollutant on or into any public property, including all publicly owned portions of the stormwater drainage system. All costs and fees incurred by the City or any other responsible governmental agency and/or contractor of the City in this regard may be included within an invoice for costs and recovered against the responsible party or parties in accordance with provisions of this chapter.

### **13.40.130 - Procedures for administrative enforcement actions**

A. Delivery of notice. Except where the nuisance abatement procedure under subsection 13.40.140 is being followed, all administrative enforcement actions are subject to the service and administrative hearing procedures provided for in Chapters 1.20 and 1.22 of the San Clemente Municipal Code.

B. Administrative hearing. Except as set forth in subsection 13.40.130.C or where the nuisance abatement procedure under section 13.40.140 is being followed, all administrative enforcement actions are subject to the administrative hearing procedures set forth in Chapters 1.20 and 1.22 of the San Clemente Municipal Code. Notwithstanding the foregoing, these administrative appeal procedures do not apply to criminal proceedings initiated to enforce this chapter.

C. Administrative hearing for emergency abatement actions. An administrative hearing on the existence of violations following an emergency abatement action must be held, unless waived by the person subject to the emergency abatement order, within five (5) business days following the action of abatement. The hearing proceeding, decision and appeal requirements of Chapters 1.20 and 1.22 of the San Clemente Municipal Code shall apply.

D. City abatement. In the event the owner of property, the operator of a facility, a permittee, or any other person fails to comply with any provision of a compliance schedule issued pursuant to this chapter, authorized enforcement staff 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 13.40.120.G or 13.40.150.

(Ord. No. 1530, § 1, 12-7-2010)

### **13.40.140 - Nuisance.**

A. 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 or threatened occurrence of any prohibited discharge, constitutes a threat to the public health, safety and welfare, and is declared and deemed a nuisance pursuant to Government Code § 38771, which may be abated pursuant to any of the following:

1. Emergency abatement. In the event the nuisance constitutes an imminent danger to public safety or the environment, the City Manager, or designee, may enter the property from which the nuisance emanates, abate the nuisance and restore any property affected by the nuisance. To the extent reasonably practicable, notice must be provided to the owner or occupant prior to abatement. If necessary to protect the public safety or the environment, abatement may proceed without prior notice to or consent from the owner or occupant thereof and without judicial warrant. For purposes of this section, 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.

2. Administrative abatement. Authorized enforcement staff may institute administrative abatement proceedings in accordance with Chapter 8.52.

3. Civil Injunction or abatement. At the request of the City Manager, or designee, the Enforcing Attorney may seek a court order to enjoin and/or abate the nuisance.

B. Notice to owner and occupant. Prior to taking any abatement action pursuant to this Section, the City Manager, or designee, must 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.

1. Reimbursement of costs. All costs incurred by the City in responding to any nuisance, all administrative expenses and all other expenses recoverable under state law, including reasonable consulting fees and attorneys' fees, are recoverable from the person(s) creating, causing, committing, permitting or maintaining the nuisance.

2. Nuisance lien. All unpaid 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 § 38773.1 and § 38773.5. The owner of record of the property subject to any lien must be given notice of the lien prior to recording as required by Government Code § 38773.1.

C. At the direction of the City Manager, or 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 § 38773.5.

(Ord. No. 1530, § 1, 12-7-2010)

### **13.40.150 – Civil remedies**

A. Injunctions. At the request of the City Manager, or 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.

B. 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, legal expense, including litigation costs and consulting costs and attorney fees, and costs relating to restoration of the environment and all other expenses as authorized by law.

C. Damages. The City Manager, or designee, may cause the enforcing attorney to file an action for civil damages in a court of competent jurisdiction seeking recovery of (i) all costs incurred in enforcement of the chapter, including, but not limited to, costs relating to investigation, sampling, monitoring, inspection, administrative expenses, legal expenses, including litigation costs, consulting costs and attorney fees all other expenses as authorized by law, and consequential damages, (ii) all costs incurred in mitigating harm to the environment or reducing the threat to human health, (iii) damages for harm to the environment or public property, and (iv) restitution and injunctive, declaratory and such other equitable relief as may be allowed by law.

D. 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.

E. The remedies available to the City pursuant to the provisions of this chapter do not limit the right of the City to seek any other remedy that may be available by law. Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.160 - Citations.**

A. Pursuant to Penal Code § 836.5, authorized enforcement staff has the authority to cause the arrest of any Person committing a violation of this chapter. The person must be released and issued a citation to appear before a magistrate in accordance with Penal Code § 853.5, § 853.6, and § 853.9, unless the person demands to be taken before a magistrate. Following issuance of any citation, authorized enforcement staff refer the matter to the enforcing attorney.

B. Each citation to appear must state the name and address of the violator, the provisions of this chapter violated, and the time and place of appearance before the court, which must be at least ten (10) business days after the date of violation. The person cited must 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.

(Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.170 - Criminal sanctions.**

A. Prosecutor. The enforcing attorney may act on the request of the City Manager, or designee, to pursue enforcement actions in accordance with the provisions of this chapter.

B. Infractions. Any person who may otherwise be charged with a misdemeanor under this chapter may be charged, at the discretion of the enforcing 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.

C. 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 permit issued pursuant to this ordinance, 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 (6) months, or both.

D. Damages. The enforcing attorney may petition the court for any of the following damages:

1. The recovery of all costs incurred and/or to be incurred in the enforcement of this chapter, including but not limited to costs relating to investigation, sampling, monitoring, inspection, cleanup, administrative expenses, legal fees and costs, and all other expenses as authorized by law, as well as damages to public property and consequential damages;

2. All costs incurred in cleaning up and/or mitigating harm to the environment or public property, or to reduce the threat to human health;

3. Damages for harm to the environment or public property; and

4. Restitution and injunctive, declaratory and such other equitable relief as may be allowed by law.

(Ord. No. 1530, § 1, 12-7-2010)

**13.40.180 - 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, or a cease and desist order, constitutes a separate violation of this chapter punishable by fines or sentences issued in accordance herewith.

(Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.190 - Nonexclusive remedies.**

Each and every remedy available for the enforcement of this chapter is nonexclusive and it is within the discretion of Authorized enforcement staff or the enforcing attorney to seek cumulative remedies, except that multiple monetary fines or penalties are not be available for any single violation of this chapter.

(Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.200 - Violations of other laws.**

Any person acting in violation of this chapter also may be acting in violation of the Clean Water Act or Porter-Cologne 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 the Clean Water Act seeking penalties, damages, and orders compelling compliance, and other appropriate relief. The enforcing attorney may notify EPA, the San Diego Regional Water Quality Control Board, or any other appropriate state, regional or local agency, of any alleged violation of this chapter.

(Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.210 - Coordination with other agencies.**

A. The City intends to cooperate with other agencies with jurisdiction over surface water to ensure that the regulatory purposes underlying surface water runoff regulations promulgated pursuant to the Clean Water Act are met.

B. The City may, to the extent authorized by law, 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. No. 1530, § 1, 12-7-2010)

#### **13.40.220 - Compliance with chapter is not compliance with other laws.**

Compliance by any person or entity with the provisions of this chapter does not relieve any such person or entity from complying with other local, state or federal statutory or regulatory requirements.

(Ord. No. 1530, § 1, 12-7-2010)

#### **13.40.230 - Severability.**

The City hereby declares that should any section, paragraph, sentence, phrase, term or word of this chapter be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other provisions of this chapter independent of the elimination herefrom of any such portion as may be declared invalid.

(Ord. No. 1530, § 1, 12-7-2010)

**Section 3:** The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

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

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

STATE OF CALIFORNIA        )  
COUNTY OF ORANGE        ) ss.  
CITY OF SAN CLEMENTE     )

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. \_\_\_\_\_ having been regularly introduced at the meeting of \_\_\_\_\_, was again introduced, 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 \_\_\_\_\_, \_\_\_\_\_, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY