

ORDINANCE NO. 617

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
ADDING NEW DIVISION VII - STORM WATER QUALITY REQUIREMENTS AND
COMPLIANCE AND NEW CHAPTER 13.52 - STORM WATER QUALITY, TO TITLE
13 -"PUBLIC SERVICES" OF THE SOLEDAD MUNICIPAL CODE**

WHEREAS, the City Council of the City of Soledad has adopted the statewide Storm Water General Permit and a Storm Water Management Plan; and

WHEREAS, the Storm Water Management Plan requires the adoption of a Storm Water Quality Ordinance; and

WHEREAS, the Storm Water Quality Ordinance provides the City with an enforcement mechanism for protecting storm water quality in the City of Soledad; and

WHEREAS, the Storm Water Quality Ordinance includes a fee system to finance City staff review of development Storm Water Pollution Prevention Plans and inspection/enforcement, to enforce the MS4 General Permit Requirements.

WHEREAS, the on March 16, 2005 the first Storm Water Quality Ordinance reading was done.

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

Section 1. The City Council hereby adds new Division VII- Storm Water Quality Requirements and Compliance and new Chapter 13.54- Storm Water Quality to Title 7 "Public Services" of the Soledad Municipal Code as follows:

Chapter 13.52 Storm Water Quality

Sections:

- 13.52.010 INTERPRETATION
- 13.52.020 INTENT AND OBJECTIVES
- 13.52.030 ADMINISTRATION
- 13.52.040 SEVERABILITY
- 13.52.050 ABBREVIATIONS
- 13.52.060 DEFINITIONS
- 13.52.070 ILLICIT DISCHARGES
- 13.52.080 CONSTRUCTION STORM WATER MANAGEMENT
- 13.52.090 NOTIFICATION OF SPILLS

- 13.52.100 CITIZEN REPORTS OF VIOLATIONS
- 13.52.110 ENFORCEMENT
- 13.52.120. RIGHTS TO RECONSIDERATION, HEARINGS AND APPEALS
- 13.52.130. CIVIL AND CRIMINAL PENALTIES
- 13.52.140 RIGHT OF ENTRY
- 13.52.150 VIOLATORS DEEMED PUBLIC NUISANCE
- 13.52.160 REMEDIES NOT EXCLUSIVE
- 13.52.170 FEES
- 13.52.180 ADOPTION OF ORDINANCE

13.52.010. Interpretation

A. This Chapter sets forth the administrative procedures, standards, and enforcement remedies which shall be used by the City in meeting the requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Separate Storm Sewer System (MS4) General Permit as promulgated by the California State Water Resources Control Board.

B. The provisions of this Chapter shall be regarded as the minimum requirements for the protection of the public health, safety, general welfare, and environment. This Chapter shall therefore be regarded as remedial and shall be liberally construed to further its underlying purpose.

C. This Chapter is not intended to interfere or conflict with, abrogate, or annul any other regulation, ordinance, statute, or provision of law.

D. Whenever a provision of this Chapter and a provision of any other law, ordinance, resolution, rule, or regulation of any kind, including any other provision of this Chapter, contains any restrictions covering the same subject matter, the more restrictive shall govern.

E. The foregoing principles notwithstanding, the City directs those city officials responsible for enforcement of this Chapter to utilize a reasonable common sense approach in the interpretation and application of the specific provisions of this Chapter. To this end, city officials charged with the responsibility for enforcement and administration of provisions of this Chapter shall be entitled to utilize discretion in waiving specific application requirements, provided that such discretion shall be exercised in a manner to preserve the purposes and intention of this Chapter and to not jeopardize the health, safety, or general welfare of the public or the environment. When exercising discretion to waive or modify any specific application requirements, said city official shall consider:

1. The scope and nature of the proposed project;
2. The impact of the project on the properties in the general vicinity of the project;
3. The impact of the project on municipal facilities and services, including without limitation, streets, water, sewer, drainage, police, and fire protection services; and

4. Whether the information contained in a requirement sought to be waived is reasonable and readily available from other materials submitted in conjunction with the application.

13.52.020 Intent and objectives

A. Intent

The intent of this Chapter is to prevent the pollution, impairment, or destruction of a natural resource or the public trust in the City unless (1) there is no feasible and prudent alternative and (2) the activity is consistent with the promotion of public health, safety, and welfare rather than the public's paramount concern for protection of its natural resources.

B. Objectives

The objectives of this Chapter are protecting the quality of water in the city's drainage ways and subsequent receiving waters in accordance with state and local regulations.

13.52.030 Administration

Except as otherwise provided herein, the City Manager, shall administer, implement, and enforce the provisions of this Chapter. Any powers granted to, or duties imposed upon the City Manager, may be delegated to an appointed representative.

13.52.040 Severability

If the provisions of any article, section, subsection, paragraph, subdivision, or clause of this Chapter shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision, or clause of this Chapter.

13.52.050 Abbreviations

The following abbreviations, when used in this Chapter, shall mean the following:

BMP	-	Best Management Practice
MS4	-	Municipal Separate Storm Sewer System
NOTC	-	Notice of Termination of Construction
NOV	-	Notice of Violation
SWO	-	Stop Work Order
SWP3	-	Storm Water Pollution Prevention Plan
SWRCB	-	California State Water Resources Control Board
NPDES	-	National Pollution Discharge Elimination System

13.52.060 Definitions

For the purposes of this Chapter, the following words and phrases shall have the meaning ascribed to them by this Section:

A. “Affidavit” - A sworn statement in writing, submitted by a person, or persons, to the City Manager, that is to be used as a legal document committing the said person to a long-term maintenance agreement with the City for maintenance of post-construction control measures.

B. “Applicant” - Any person that submits an application for a Storm Water Permit and is (1) the owner of the property upon which construction is proposed or is taking place; or (2) the lessee if the lessee undertakes development of the property under the terms of the lease.

C. “Best management practices (BMPs)” - Schedules of activities; prohibitions of practices; maintenance procedures; material storage shelters or covers; drainage management; runoff control devices or structures; retention or detention structures; trapping, separating, or settling devices; spill prevention or control devices and tools; waste treatment plants and devices; managed waste disposal devices and procedures; and other management practices to prevent or reduce the pollution of waters of the U.S.

D. “City Manager” - Person appointed to the position of City Manager, or his or her duly appointed representative.

E. “Closure activities” - Activities, or the process thereof, that result in the final stabilization of a construction site and leave the site in good repair.

F. “Commencement of construction” - The first disturbance of soils associated with or caused by move-in of equipment, installation of access roads or trails, storage of materials or equipment, clearing, grading, demolition, building, excavation or similar activities at a construction site.

G. “Compliance Order” - An order issued by the City Manager requiring a discharger to comply with this Chapter by means specified in the order.

H. “Consent Order” - An order issued by the City Manager to which a discharger agrees to bring the discharge into compliance to this Chapter.

I. “Construction activity” - Activities involving clearing, grading, demolition, excavation, filling, or building of above and below ground structures and buildings, support and auxiliary facilities, transportation facilities, container and containment structures, above and below ground utilities and associated auxiliary facilities, pipelines and conveyances, and similar activities undertaken for public purposes or needs; for preparation of land, structures, or facilities for commercial purposes, use, or sale; or for preparation of land, structures, or facilities for industrial

purposes, use, or sale.

J. “Construction site” - The entire location where any construction or construction related activities occur which are part of a common plan of development or project.

K. “Discharge” - Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the U.S.

L. “Discharger” - Any person who causes, allows, permits, or is otherwise responsible for a discharge, including, without limitation, any operator of a construction site.

M. “Emergency Cease and Desist Order” - An order issued by the City Manager requiring immediate cessation of a discharge because of imminent endangerment to the public or the environment.

N. “Final stabilization” - The condition, or the activities leading thereto, of a construction site wherein all soil disturbing activities at the site have been completed, and a uniform perennial vegetative cover, or equivalent permanent erosion prevention measures, has been established over all areas not paved or covered by permanent structures or impervious surfaces.

O. “Illicit connection” - Any connection to a storm water conveyance without permit or exemption from prohibition of such connection.

P. “Illicit discharge” - A discharge of liquid or solid wastes, or combination thereof, which is discharged to a storm water conveyance without permit or exemption from prohibition of such discharge.

Q. “MS4” - The municipal separate storm sewer system, incorporating the entire system of storm water conveyances, but not sanitary or industrial wastewater sewers, or a single conveyance in such entire system, natural or man-made, lying within the boundaries of the City.

R. “MS4 Permit” – The NPDES permit issued to the City for the discharge of storm waters from the MS4.

S. “Municipal Separate Storm Sewer System (MS4)”- Storm water conveyances lying within the corporate limits of the City, including but not limited to, storm water sewers, inlets, catch basins, traps, gutters, drains, ditches, culverts, canals, ponds, and other storm water conveyances, both natural and man-made, designed or used for collecting or conveying storm water, and which are not used for collecting or conveying sewage.

T. “National Pollution Discharge Elimination System (NPDES) permit” - National Pollution Discharge Elimination System permit issued by the EPA for the discharge of storm waters pursuant to authority delegated to the State by the EPA for issuance of NPDES permits.

U. “Notice of Termination of Construction (NOTC)” - A notice provided by a construction site operator to the City notifying the City of intended completion of construction activities.

V. “Notice of Violation (NOV)” - A legal notice issued by the City Manager indicating a discharge is in violation of this Ordinance and that the violator must eliminate such discharge.

W. “NPDES Permitting Authority” - The environmental agency that is responsible for the oversight and enforcement of the NPDES Phase II MS4 Storm Water Permit.

X. “Open space design” - A low impact site design technique that concentrates dwellings in a compact area in one portion of the development in exchange for open space and natural areas elsewhere on the site. Open space designs are used to reduce impervious surfaces, storm water pollutants, and the loss of natural areas on a site.

Y. “Operator of a construction site” - The person or persons who either individually or taken together, (1) have, by virtue of ownership or lease, operational control over the construction specifications (including the ability to make modifications in specifications); (2) have by virtue of ownership, lease, or contract, the day-to-day operational control over those activities at the construction site sufficient to ensure compliance with pollution prevention requirements and any permit conditions; or (3) have financial control of construction and authority to direct, either directly or indirectly, the construction activities to be undertaken at the site.

Z. “Outfall” - The outlet of a body of water, in particularly, the point where a storm conveyance reaches its receiving water.

AA. “Owner” - The person who owns a facility, property on which a facility occurs, part of a facility, or part of the property on which a facility occurs; in the case of a mortgaged facility or property, the person who has a mortgage on the property and who will obtain, upon proper payment to a financial institution, ownership of the property; in the case of a facility or property for which a person has an option to purchase and such person acts, in effect, as an owner. Also, the person who owns a site or facility and who has ultimate financial responsibility for activities conducted at the site or facility.

BB. “Performance Bond” - Bonds issued by commercial institution on behalf of contractors, such as construction companies, to protect project owners from the consequences the contractors' failure to complete contracts in accord with plans and specifications. Performance bonds can be particularly helpful in the case of especially environmentally risky or complex projects.

CC. “Person” - Any individual; group of people by virtue of contract or mutual consent acting as a single entity; group of people assigned joint responsibility under requirements of this Chapter; partnership; co-partnership; firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity; or the legal representatives, agents, or assigns of any person as defined in this paragraph. This definition includes all federal, state, and local governmental entities.

DD. “Petition for Reconsideration” - Written document submitted by a person to the City Manager requesting reconsideration of a previously issued SWO; Compliance Order;

Remediation, Abatement, and Restoration Order; or Emergency Cease and Desist Order.

EE. “Pollutant” - Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, sediment, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pasture land, and farm land.

FF. “Pollution” - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the U.S. that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

GG. “Receiving waters” - Any water of the U.S. that accepts storm water runoff as overland sheet flow, channelized flow from a man-made or natural drainage channel, or similar structure, and is considered to be the ultimate destination of the storm water.

HH. “Remediation, Abatement, and Restoration Order” - A legally issued order by the City Manager to correct or repair damage; stop, or otherwise control pollutant discharge; and/or to rehabilitate and return to original quality some condition in the environment.

II. “Runoff coefficient” - A measurement of the amount of the precipitation that falls on a specific surface actually ends up as storm water runoff.

JJ. “Scour velocity” - The velocity, measured in feet per second, at which water has the ability to cause erosion. Scour velocities depend on topography, soils, and runoff rates.

KK. “Show Cause Hearing” - A hearing for which a violator of this Chapter must provide reason why a proposed enforcement action by the City Manager should not be undertaken.

LL. “Stop Work Order (SWO)” - A legal order issued by the City Manager to stop construction because of non-compliance to this Chapter.

MM. “Storm water” - Water derived solely and directly from rainfall or snowmelt runoff and appearing as overland flow, flow in drainage conveyances, or flow in natural watercourses and man-made waterways.

NN. “Storm Water Permit “- Authorization issued by the City to conduct construction activities.

OO. “Storm Water Pollution Prevention Plan (SWPPP or SWP3)” - A plan that describes the practices, and the procedures for their implementation, that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity at a facility.

PP. “Storm Water Quality Plan” - A plan describing how construction is to be performed and how the site closure is to be accomplished, including post-construction control measures, at a construction site. A Storm Water Quality Plan is required to obtain a Storm Water Permit from the City.

QQ. “Urban forestry” - A low impact site design technique that utilizes environmentally sensitive practices and promotes the planting of trees and other vegetation to help control erosion and improve the quality of storm water runoff from construction sites within urbanized areas.

RR. “Warning Notice” - A notice issued by the City Manager stating that a discharge is in violation of this Chapter and requesting that the cause of discharge be investigated and that any violations be stopped.

SS. “Waters of the U.S.” - All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other waters in which the use, degradation, or destruction would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States" at 40 CFR 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

TT. “Wetland” - An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and which under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

UU. “Working day” - Any calendar day, 8 a.m. to 5 p.m., but not including Saturday, Sunday, any legal holiday recognized by the City or any day for which the City Manager's offices are closed for ordinary and general business.

13.52.070 Illicit discharges

A. Discharge Prohibitions

1. Prohibition of Illegal Discharges

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause and/or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct, or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- a. The following discharges are exempt from discharge prohibitions established by this Chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pool draining, fire fighting activities, and any other water source not containing pollutants.
- b. Discharges specified in writing by the City as being necessary to protect public health and safety.
- c. Dye testing is an allowable discharge, but requires a verbal notification to the City prior to the time of the test.
- d. The prohibition shall not apply to any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the NPDES Permitting Authority, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

2. Prohibition of Illicit Connections

- a. The construction, use, maintenance, or continued existence of illicit connections to the storm drain are prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

B. Suspension of MS4 Access

1. Suspension Due to Illicit Discharges in Emergency Situations

- a. The City Manager may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States.
- b. If the violator fails to comply with a suspension order issued in an emergency,

the City Manager may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to the public.

2. Suspension Due to the Detection of Illicit Discharge

- a. Any person discharging to the MS4 in violation of this Chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City Manager will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing pursuant to the provision of Section 13.57.120.
- b. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City Manager.

13.52.080 Construction storm water management

The following shall be considered construction related violations:

A. General Provisions

1. Construction Related Violations

- a. Construction not conducted in accord with the requirements of this Chapter shall be a deemed a violation of this Chapter.
- b. Construction not initiated or terminated within the time frame authorized by the City Manager by notice, permit or license when such authorization is required by this Chapter shall be a violation of this Chapter.
- c. It shall be a violation of this Chapter to not comply with requirements for timely application for a Storm Water Permit, requirements for a Storm Water Quality Plan, and a Notice of Termination of Construction (NOTC).

2. Pollution Prevention Requirements

- a. Any and all owners and/or operators of a construction site and any and all other persons undertaking construction activities as a contractor or subcontractor at a construction site shall use best management practices to control, reduce, and prevent, to the maximum extent practicable, the discharge of pollutants to the MS4 and/or waters of the U.S.
- b. The discharge of pollutants to the MS4 and/or waters of the U.S. from activities conducted by said operator, contractor, or subcontractor include but is not limited to: sediment, silt, earth, soil, dirt, sand and gravel; lime, liquids,

solids, and semi-solids used for soil treatment, preparation, or amendment; concrete, slurries, grout, tar, and asphalt; construction vehicle cleaning and wash waters; construction vehicle maintenance fluids such as hydraulic fluids, lubricants, fuels, brake fluids, and coolants; hazardous or extremely hazardous materials; materials resulting from repair, renovation, or demolition such as concrete, reinforcing bar, steel, wire, tar paper, roofing materials, sheet rock, plaster, wood, cellar dirt and carpeting; residual and surplus construction materials; paint, paint thinner, paint equipment cleaner and wastewater from the cleaning of painting equipment and supplies; waste construction material packaging and containers; and construction trash, debris, and waste.

3. Stop Work Order (SWO)

- a. Whenever the City Manager determines that the operation of a construction site has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, as it may pertain to the operation of the construction site, the City Manager may order that a SWO be issued.
- b. When a SWO is issued, it shall be issued to the operator of the construction site for which construction is to stop, be posted at the site, and distributed to all City departments and divisions whose decisions affect any activity at the site.
- c. Unless express written exception is made by the City Manager, the SWO shall prohibit any and all further construction activity at the site, and shall bar any further inspection or approval by the City of any work associated with a building permit, Storm Water Permit, or any other City approval necessary to commence construction or to assume occupancy at the site.
- d. Issuance of a SWO shall not be a bar against, or a prerequisite for, taking any other action against the construction site operator.

B. Construction Site

1. Site Limits

A construction site is the location and all the areas wherein construction activity, which is all or part of a common development or project, are occurring, proposed to occur, or have occurred, irrespective of whether that construction is in compliance with this Chapter, irrespective of whether that construction activity is ongoing or temporarily suspended for any purpose, and irrespective of whether the City Manager has granted authorization to undertake the construction activity. For purposes of this Chapter, a construction site shall encompass:

- a. all land and surface water areas where the construction activities of any type, including all areas of land surface disturbed by or as a consequence of the

construction activities or other activities in support of the construction activities, are undertaken as part of a common plan of development or project;

- b. all areas of land to be disturbed by construction of a common plan of development or project, irrespective of whether such construction is undertaken or planned to be undertaken in one phase or stage or different phases or stages and irrespective of whether such construction is undertaken or planned to be undertaken at different, separate, or simultaneous times;
- c. all areas of land where the land is to be disturbed by construction of a common plan of development or project, irrespective of whether undertaken at contiguous or separate locations within the general area encompassed by the common plan of development or project, provided such boundary lies on or is within the boundary of property collectively owned or leased by one or more parties undertaking any or all of the construction activities; and
- d. all areas of ongoing, temporarily suspended, yet-to-be undertaken, and completed construction encompassing the totality of the construction activities, irrespective of whether any or all the construction activities are within compliance with this Chapter.

2. Redefining of Construction Site Limits

The City Manager shall have the right to redefine, for purposes of compliance with this Chapter, the limits of a construction site in an extent and amount necessary and sufficient in the judgment of the City Manager to prevent the actual or potential discharge of pollutants from the construction site to the MS4 or waters of the U.S. to the maximum extent practicable, provided the limits so defined lies on or within the boundary of property collectively owned or leased by one or more operators undertaking any or all of the construction activities at the site.

3. Cessation of Construction Site

A construction site shall, for the purposes of this Chapter, cease to be a construction site only at such time that all requirements for closure of the construction site as specified by this Chapter have been met.

C. Operators, Owners and Applicants

1. Definition of Owner and/or Operator

A construction owner/operator, as defined by and for the purposes of this Chapter, is the person or persons who, individually or collectively, own or lease the property upon which the construction activity is proposed to, or does, take place; has legal, financial, and operational control over construction specifications (including the

ability to make modifications in specifications); has control over activities at the construction site sufficient to ensure compliance with applicable requirements of this Chapter either directly, by delegation, by authorized representative, or by contract;

and has the authority for undertaking or directing the undertaking of any or all construction activities at a construction site in accord with plans and specifications.

a. Owner and/or Operator Responsibility

A construction owner and/or operator shall be fully responsible for compliance with all requirements of this Chapter for construction activities, as may be applicable to the type of construction activities being conducted, proposed to be conducted, or that have been conducted by the owner and/or operator at a construction site, including but not limited to making application for a Storm Water Permit, preparing a Storm Water Quality Plan, performing closure of the construction site, and filing a Notice of Termination of Construction.

b. Change in Owner and/or Operator

In the event that the owner and/or operator of the construction site changes, all or in part, any and all Storm Water Permits, Storm Water Quality Plans, and Notices of Termination of Construction for construction yet to be completed must name the new and continuing owners' and/or operators' names. Any permits, plans, or notices that have been issued or approved by the City for the construction to the original owner(s) must be reissued or re-approved, as appropriate, with the name(s) of the new owner(s) and/or operator(s) in the same manner as the original owner and/or operator, such reissuance or re-approval being obtained no later than two (2) working days after such change.

2. Applicant

For the purpose of any applications for construction activities that may be required by this Chapter, an applicant is the person or persons making such application and is:

- a. An owner of the property upon which construction is proposed or is taking place; or
- b. A lessee if the lessee undertakes development of the property under the terms of the lease.

3. Division of Responsibility

In the event the owner and/or operator of a construction site is more than one legal entity, the City Manager may, but is not required to, define those areas or sub areas of a construction site or those construction activities at a construction site for which each

entity shall be considered responsible and held liable for complying to this Chapter.

D. Construction Activities

1. Types of Construction Activities

- a. Construction activities are those activities which result in exposure of raw soil on a temporary or permanent basis and may include, but are not necessarily limited to, one or more of the following activities or practices when such activities are done for the purpose(s) of: smoothing, clearing, removing trees and vegetation, configuring or shaping the land surface or subsurface; modifying drainage, drainage patterns, drainage conveyances, or drainage facilities removing, destroying, or demolishing existing structures, surfaces or facilities; preparing the land for construction of roads, highways, curbs, gutters, drainage devices, vehicle parking, buildings, structures, walls, roofs, floors, pads, foundations, tanks, basements, pipes, or utilities.
- b. For the purposes of this Chapter, the City Manager may define any activity or practice that is similar to, in support of, or associated with said activities as a construction activity.

2. Construction Conduct

- a. Any construction at a construction site shall be performed so as to reduce, to the maximum extent practicable, the discharge of sediments and other pollutants from the construction site.
- b. An owner and/or operator of a construction site shall maintain on-site and make available for inspection by the City Manager, or appointed representative thereof, any notice, permit or license for construction, and any pollution control plan that may be required by this Chapter or other state or federal regulation.
- c. Application for a Storm Water Permit shall be submitted to the City Manager at least two (2) working days prior to beginning construction activities of any type, including clearing and leveling activities, for any construction site for which construction activities at the site will disturb in total one (1) acre or more of land surface area.
- d. A Storm Water Permit, issued by the City Manager prior to commencement of construction activities, shall be obtained for any construction site for which construction activities at the site will disturb in total one (1) acre or more of land surface area.
- e. A Storm Water Quality Plan shall be submitted to, and approved by, the City

Manager prior to commencement of any construction activity at a construction site for which a Storm Water Permit is required.

- f. A Notice of Termination of Construction (NOTC) shall be submitted to the City Manager prior to final completion of construction activities for any construction site for which a Storm Water Permit was required.
- g. The City Manager may require that a construction site of any size conform to any and all conditions of this Ordinance for construction activities if the City Manager determines that such requirements are necessary to prevent a significant discharge of pollutants to the City's MS4 or waters of the U.S., or are necessary because of imminent harm to the public or the environment.

3. Closure and Final Stabilization of Construction Site

a. Closure Activities

Construction activities at a site, for the purposes of this Chapter, shall not be complete until proper closure of the site has been accomplished. Until such time proper closure has been achieved, the owner and/or operator of the site is subject to all applicable requirements for conduct and completion of construction activities at the construction site. Any owner and/or operator of a construction site shall complete all construction activities at a construction site in compliance with the requirements of this Chapter for proper closure.

b. Proper Closure

Proper closure includes, but is not limited to, the following:

- i. Final stabilization of the site;
- ii. Removal of all construction surplus and residual materials, supplies, packaging, drums, cans, and containers;
- iii. Removal of all surplus and residual soaps, cleaners, pastes mastics, solvents, materials for soil amendment or preparation and similar construction materials;
- iv. Removal of all excess, surplus, and unused construction vehicle maintenance fluids, including lubricants, fuels, brake fluids, and coolants;
- v. Removal of all wastes, trash, and debris
- vi. Removal of any waste bins, enclosures, drums, or similar containers which are not intended to serve as permanent waste storage containers at the site;

- vii. Removal of all temporary storm water pollution control devices, structures, and materials;
- vii. If not intended for removal in City approved plans or specifications for the site, and to the extent a construction owner and/or operator or their activities are responsible for the damage or loss of function or capacity of storm water conveyances and appurtenances:
 - 1) Repair or replacement of damaged storm water conveyances and appurtenances;
 - 2) Repair or replacement of damaged drainage works and facilities; and
 - 3) Restoration of proper function and capacity of storm water conveyances.

3. Inactive Construction Sites

A construction site for which active and ongoing on-site construction activities have halted for a period of fourteen (14) continuous calendar days and for which proper closure actions as required by this Chapter have not been conducted, shall be considered in violation of this Chapter, unless the construction site owner and/or operator has submitted a NOTC for the site, or it is demonstrated to the satisfaction of the City Manager that:

- i. Such lack of active and ongoing on-site construction activity is a result of only temporary suspension of activities; and
- ii. Site conditions are and will be maintained in a condition satisfactory to prevent the discharge of pollutants to the City's MS4 or waters of the U.S. to the maximum extent possible during the period of temporary suspension of construction activities or until a NOTC is submitted and approved.

4. Notice of Termination of Construction (NOTC)

A Notice of Termination of Construction (NOTC) shall be submitted by the owner and/or operator at the completion of construction for any site for which a Storm Water Permit is required or issued. No construction activities can take place at a construction site identified in a Storm Water Permit after a NOTC has been submitted to the City Manager, unless the Storm Water Permit has been amended, or another Storm Water Permit has been applied for.

a. Contents of NOTC

When a NOTC is submitted for a construction site, the following shall be

submitted with the NOTC:

- i. A description of the means, methods and extent of final stabilization of the construction site, including a summary of actions, procedures or practices that the construction owner and/or operator proposes to perform or be performed by agreement with others after issuance of the NOTC; any other information the City Manager may deem necessary, whether or not required of all construction owners and/or operators; and
- ii. Certification by the operator of the construction site that the site has been stabilized or that agreement for stabilization has been accomplished in accordance with a Storm Water Quality Plan approved by the City Manager.

b. Application Timeline

A NOTC must be submitted by the owner and/or operator of a construction no later than fourteen (14) calendar days after the date for termination of construction given in the Storm Water Permit.

c. Amendment to NOTC

- i. Amendment to a NOTC can be made without penalty by filing application of an amended NOTC at least two (2) working days prior to the date of termination of construction specified in the NOTC.
- ii. If amendment to a NOTC is filed less than two (2) working days prior to the date of termination of construction specified in the NOTC, such amendment may be rejected or require reasonable additional fee as may be established by the City Manager.

d. Acceptance, Conditional Acceptance, or Rejection of NOTC

i. Acceptance of NOTC

The City Manager shall issue an Acceptance of an NOTC by written communication or default (without written communication) when the City Manager is satisfied that:

- 1) Conditions for closure have been met;
- 2) The site has been adequately stabilized or provision for final stabilization of the site has been accomplished;
- 3) The person submitting the NOTC is not in violation of this

Chapter.

4) The submission of the NOTC has been made in a timely fashion and all other conditions that the City Manager may specify have been met.

ii. Conditional Acceptance

The City Manager may issue a conditional acceptance of the NOTC if the City Manager determines there is reasonable expectation that the applicant will meet the conditions specified for conditional acceptance and, by doing so, will meet all conditions for acceptance of the NOTC. Conditions for which the City Manager may issue a conditional acceptance include but are not limited to the following:

- 1) Final stabilization of the construction site is not complete, but is progressing satisfactorily and can be reasonably expected to reach a satisfactory level of complete stabilization without further action on the part of the owner and/or operator;
- 2) Adequate provision has been made by the owner and/or operator to ensure that satisfactory stabilization will be accomplished by others;
- 3) Deficiencies in meeting closure requirements will be remedied by others; or
- 4) Site conditions are such that as to not warrant further stabilization activities at the current time but would warrant further stabilization in the future if site conditions were to change.

iii. Final Acceptance to Conditional Acceptance

The owner and/or operator receiving the conditional acceptance shall make application to the City Manager in a manner specified by the City Manager to receive the final acceptance of the NOTC. Means by which the owner and/or operator can demonstrate satisfaction of the terms of the conditional acceptance include but are not limited to the following:

- 1) All mandatory deadlines for inspection by the City Manager of the areas of the construction site for which the conditions established in the conditional acceptance have passed;
- 2) The owner and/or operator submits a certification to the City

Manager that the conditions of the conditional acceptance have been met, the owner and/or operator requests in writing to the City Manager that such certification be accepted and the City notifies the owner and/or operator that the request for such acceptance of such certification is accepted; or

- 3) The owner and/or operator submits a certification to the City Manager that the conditions of the conditional acceptance have been met, the owner and/or operator requests in writing to the City Manager that such certification be accepted and the City does not notify the operator within thirty (30) calendar days of receipt of such written request that the request for such acceptance of such certification is accepted or denied.

iv. Rejection of NOTC

The City Manager may reject an application for issuance of a NOTC if the City Manager determines conditions for issuance of acceptance of the NOTC are not satisfied.

- 1) Any rejection of a NOTC shall include notice to the owner and/or operator receiving the rejection, with the reasons for the rejection.

v. Revocation of NOTC

The City Manager shall have the right to revoke a NOTC within three years of issuance if:

- 1) Acceptance is found to have been based upon false or misleading information submitted by the owner and/or operator; or
- 2) Conditions specified in the conditional acceptance were not met.

E. Storm Water Permit

1. General Provisions

- a. A Storm Water Permit authorizes a construction owner and/or operator to conduct construction activities. Obtaining a Storm Water Permit does not relieve an owner and/or operator of complying to any and all applicable requirements of this Chapter exclusive of those dealing with construction.
- b. A Storm Water Permit, when required, shall be obtained prior to the start of

any construction activity at a site by application to the City Manager by the owner and/or operator of the construction site at which construction occurs or is proposed, such application providing such information the City Manager may require.

- c. Application for a Storm Water Permit shall require the submission of a Storm Water Quality Plan to the City Manager for review, such plan providing the information the City Manager shall deem as necessary to judge the sufficiency of the plan, when implemented, to reduce the discharge of pollutants from the site to the maximum extent practicable.
- d. The Storm Water Permit must be obtained from the City Manager at least two (2) working days prior to commencement of construction. Only that construction activity which is described in the Storm Water Permit can be undertaken.
- e. The Storm Water Permit shall be posted at the construction site, and no construction activity can occur prior to the date of commencement, or after the date of termination, authorized by the Storm Water Permit.
- f. Construction must be started no later than thirty (30) calendar days after the date of commencement of constructions specified in the Storm Water Permit. Failure to begin construction within the specified time frame will render the Storm Water Permit void.
- g. Application for a change in the date of commencement of construction or the date of termination of construction specified in a Storm Water Permit, must be made at least two (2) working days prior to: (1) the date of the proposed change for commencement; and/or (2) the date of the originally specified termination date or latest previously approved date of extension.
- h. If for any reason the Storm Water Permit is suspended, revoked, terminated, or voided, construction activity at the site shall immediately cease.

2. Contents of a Storm Water Permit

- a. Address or other description of location of the construction site;
- b. Name and address of the construction site owner and/or operator, either property owner or lessee, and name and address of general construction contractor, if different from property owner or lessee;
- c. Name, address, and business telephone number of the construction site owner and/or operator's on-site representative;

- d. Earliest date of commencement of construction activity;
- e. Proposed dates of termination of construction activity, completion of final stabilization activities, and closure of the site;
- f. Practices to be employed for site stabilization during the course of the construction;
- g. A site plan identifying land areas to be disturbed and types of disturbance proposed, with identification of those areas which will, after completion of all construction activity, be pervious and impervious;
- h. Description of means by which the site is to be stabilized during suspension of construction activity for periods of fourteen (14) or more days and permanently stabilized by the time of completion of construction activities;
- i. Any other information the City Manager may deem necessary, whether or not required of any other owner and/or operator making application for a Storm Water Permit; and
- j. Certification by the applicant for the Storm Water Permit that the information provided on the Storm Water Permit application is true and accurate.

3. Amendment to Storm Water Permit

- a. Application for amendment to a Storm Water Permit can be made at any time two (2) or more working days prior to the time identified in the Storm Water Permit for completion of construction activities, provided the person(s) making application is not in violation of this Chapter.
- b. If the application for amendment to a Storm Water Permit requires a change in the Storm Water Quality Plan in order for the Storm Water Quality Plan to remain true and accurate should construction be undertaken in accordance with the amendment, an appropriately modified Storm Water Quality Plan shall also be provided at the time of application for amendment to the City Manager.

4. Late Filing of Amendment To a Storm Water Permit

- a. If application for amendment to a Storm Water Permit is made less than two (2) working days prior to the time for which the activities or conditions described by the amendment are to occur, exist or come about, and such activities or conditions are not authorized by the Storm Water Permit prior to application for amendment, the application shall be deemed to be a Late Filing of Storm Water Permit Amendment.

b. A Late Filing of Storm Water Permit Amendment shall meet all the same conditions and requirements as application submitted more than two (2) working days prior to the time for which the activities or conditions described by the amendment are to occur, exist or come about, and include other such information the City Manager may require.

c. Construction to be undertaken in accord with a Late Filing of Storm Water Permit Amendment shall not be undertaken until such amendment is approved by the City Manager.

d. Approval by the City Manager of a Late Filing of Storm Water Permit Amendment or payment of any fees for such filing shall not relieve the applicant from any or all administrative enforcement remedies, judicial enforcement remedies, enforcement actions, or other remedies allowed by this Chapter.

5. Exemptions

Exemptions from requirements for a Storm Water Permit and Storm Water Quality Plan shall apply for the following situations or conditions:

a. The construction activity is undertaken at a single or multiple family residential property site for the sole purpose of maintenance of the residential property site;

b. The City Manager determines the construction is necessary on an emergency basis because of imminent harm or endangerment to the public or environment, in which case the construction may be continued only so long as such imminent harm or endangerment or threat of harm or endangerment exists;

c. The City Manager may provide a waiver to the requirement for a Storm Water Permit upon the request of the owner and/or operator seeking such waiver. The waiver is to be provided only if the construction for which waiver is sought is demonstrated to the satisfaction of the City Manager to meet all of the following conditions:

i. Will not contribute to a violation of this Chapter or any permit or license the City may hold to discharge storm water;

ii. The construction activity is of such size, extent, magnitude, or location as to neither allow, cause, or have potential to cause a significant discharge of sediments or other pollutants to the City's MS4 or waters of the U.S.;

iii. There is a compelling public interest for issuance of a waiver;

iv. It is in the general interest of the health and safety of people in the

City or protection of the environment that such waiver be provided, such interest not to be based upon cost or economic considerations as they may apply to or affect the owner and/or operator seeking waiver of the permit; and

v. Other such conditions the City Manager may deem necessary to ensure that significant discharge of sediment and other pollutants does not occur.

F. Storm Water Quality Plan

A Storm Water Quality Plan is required for a City Storm Water Quality Permit. The Storm Water Quality Plan shall be prepared in accordance with good pollution control practices. The plan does not need to be prepared by a registered engineer.

The main objective of the plan is to identify potential sources of pollution, including sediment, which may reasonably be expected to affect the quality of storm water discharges associated with construction and development. The plan must describe the implementation of best management practices (BMPs), which will be used to reduce the pollutants in storm water discharges associated with construction and post-development runoff.

Storm Water Quality Plans shall be retained on site during the course of construction and shall be available for inspection by the City upon request.

1. Contents of Storm Water Quality Plan

a. Site Description

i. A description of the construction activity;

ii. A copy of any development plans;

iii. A proposed construction schedule;

iv. Total area of the site, and total disturbed area, including off-site staging/storage areas;

v. An estimate of the runoff coefficient before and after construction activities are completed, and existing data describing the soil and soil erosion potential.

vi. A description of the existing vegetation at the site, including coverage;

vii. The location of other sources of pollution, such as vehicle fueling,

storage of chemicals, concrete washout areas, etc.; and

viii. The name of the receiving water(s) and description of any outfalls (size, type, and location), if the discharge is to a MS4, the name of the system, the location of the storm sewer discharge, and the ultimate receiving water(s).

b. Best Management Practices (BMPs)

The plan should indicate locations for and descriptions of control measures that will be used. The plan should clearly describe the implementation of BMPs relevant to each phase of site development such as:

- i. before clearing and grading activities begin;
- ii. during all phases of construction; and
- iii. post-construction/post development.

c. Control Measures

i. Construction Phase

Construction phase control measures to be described in the Storm Water Quality Plan may include, but are not limited to, the following:

1) Temporary Sediment Control Measures

- a) silt fence
- b) sand bag berms
- c) hay bales
- d) check dams
- e) interceptor swales/dikes

2) Temporary Stabilization Measures

- a) temporary seeding
- b) erosion control blankets/matting
- c) mulch/compost

d) temporary sodding

3) Final Stabilization Measures

a) permanent seeding

b) permanent sodding

c) impervious surfaces

ii. Post-Construction Phase

Post-construction phase control measures should be incorporated into the Storm Water Quality Plan to preserve pre-development hydrologic regimes. Post-construction phase control measures to be described in the Storm Water Quality Plan may include, but are not limited to, the following:

1) Velocity Dissipation Measures

a) On-Site

i) vegetated swales

ii) check dams

iii) vegetated filter strips

b) Off-Site

i) surrounding local topography

ii) concrete-lined drainage channels

2) Pre-development Peak Flow Preservation

a) On-Site

i) detention basins/ponds

ii) constructed wetlands

iii) bio-retention

iv) wet basins

b) Off-Site

i) in-line detention

ii) outfall pump systems

3) Low Impact Development Standards

For construction sites located within watersheds that are considered to be impaired by the California State Water Resources Control Board, or in buffer zones designated by the City, the owner and/or operator of the site, may be required, at the discretion of the City Manager, to utilize Low Impact Development Standards that include, but are not limited to:

a) Minimization of the width or size of:

i) roads/streets

ii) sidewalks

iii) cul-de-sacs

iv) parking lots

b) Open-space design

c) Urban forestry

d) Roof drainage control

4) Guidance Documents for Developers

The City will make available, upon request, a Post-Construction Control Measures Guidance and Low-Impact Development Standards Guidance for owners and/or operators, i.e. developers, of new and re-development projects.

d. Certification of Non-Impact to Pre-development Peak Flow

The City Manager may relieve an owner and/or operator, i.e. developer, of a construction site from requirements to incorporate on-site post-construction control measures if the City Manager determines that post-construction runoff

from the said site will not impact the pre-development hydrologic regime.

i. Non-Impact Certification Form

A Non-Impact Certification Form (provided by the City) may be submitted to the City Manager, within fourteen (14) calendar days of the date of termination of construction, if the owner and/or operator, i.e. developer, of a construction site can prove to the City Manager that post-construction storm water runoff will have no impact to the pre-development hydrologic regime.

ii. A copy of any Non-Impact Certification Forms that are submitted to the City Manager shall be maintained as a part of the Storm Water Quality Plan.

iii. Non-Impact Certification Forms shall be submitted to the City Manager in accordance with the City's Post-Construction Control Measures Guidance (made available by the City).

d. Commitment of Long Term Maintenance of On-Site Post-Construction Control Measures

For new and significant redevelopment projects that are determined by the City to require on-site control post-construction control measures such as detention ponds, constructed wetlands, bio-retention systems, or the like, the developer shall be required to make a long term commitment to the City for maintenance of the said control measure(s).

i. An affidavit (supplied by the City), signed by the developer, or the person or persons who will be responsible for the maintenance of the control measure(s), must be submitted to the City Manager no later than two (2) calendar days after the date of termination of construction, and will serve as a legal commitment to the City.

ii. Once an affidavit has been submitted to the City Manager, the City Manager may require that a Performance Bond be issued to ensure the maintenance is performed according to the said legal commitment.

iii. A copy of any affidavits or performance bonds must be maintained as a part of the Storm Water Quality Plan

f. Good Housekeeping

The plan should include inspection and maintenance procedures during the entire construction phase to ensure that BMPs are in good and effective

operation condition.

i. Inspections

- 1) An inspection of the entire construction site should be performed every fourteen (14) calendar days, or following a rainfall of at least 0.5 inches.
- 2) Complete an inspection report (provided by the City) for each inspection performed.
- 3) Provide a copy of each inspection report to the City.
- 4) Inspection reports should be retained on site as part of the Storm Water Quality Plan.

ii. Maintenance

- 1) Maintenance shall be performed on applicable BMPs as soon as possible in areas identified in the inspection reports.
- 2) Maintenance shall be performed in accordance with manufacturer's specifications or other sources determined by the City Manager to be acceptable.
- 3) Maintenance records shall be retained on site as part of the Storm Water Quality Plan.

iii. Non-stormwater discharges

The Storm Water Quality Plan should include a location and description of non-stormwater discharges including but not limited to:

- 1) Return flows from landscape irrigation
- 2) Ground water
- 3) Water line flushing
- 4) Discharges from potable water sources

g. Revisions to Storm Water Quality Plan

- i. The Storm Water Quality Plan shall accurately reflect site conditions and the construction activities proposed to be undertaken. Revisions

necessary to maintain an accurate and up-to-date Storm Water Quality Plan shall be made in a timely fashion but in no case later than two (2)

working days after the occurrence of conditions or activities requiring such revisions.

- ii. If the conditions or activities described by a Storm Water Quality Plan revision could be reasonably expected to result in an increase in the actual or potential discharge of pollutants from the site, such revision must be approved by the City Manager prior to implementation of the proposed revision at least two (2) working days prior to the implementation of activities described by the revision.
- iii. The City Manager shall have two (2) working days to approve or reject a revision to a Storm Water Quality Plan after submittal of a proposed revision. If the City Manager does not issue an approval or rejection of the revision within the acceptable time frame, the revision(s) shall be assumed to be approved.

C. Storm Water Pollution Prevention Plan (SWP3)

1. For a construction site that is five (5) or more acres and that is required by state or federal regulation to have an SWP3, the SWP3 shall be prepared in accordance with applicable state and federal regulations.
2. For a construction site that is one (1) or more acres but less than five (5) acres and that is required by state or federal regulation to have an SWP3, the SWP3 shall be prepared in accordance with applicable state and federal regulations.
3. Any storm water pollution prevention plan required by federal or state regulation shall be retained on site during the all phases of construction and made available to inspection by the City upon request. Failure to produce such required SWP3s shall be grounds for issuance of a SWO.
4. The City Manager may request and receive in a timely fashion, at the time of, or after application for a Storm Water Permit, a copy of any SWP3 required by federal or state regulation for discharge of storm waters from a construction site. Failure to provide such requested pollution control plan within a timeframe specified by the City Manager shall be grounds for a SWO.
5. The City Manager may require additional information, plans, or specifications are provided in an SWP3 for a construction site if the City Manager determines such additional information, plans, or specifications are necessary to prevent the discharge of pollutants to the MS4 or waters of the U.S.

13.52.090 Notification of spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City Manager in person or by phone or facsimile no later than the next working day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City Manager within three (3) working days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the action taken to prevent its recurrence. Such records shall be retained for at least five (5) years.

13.52.100 Citizen reports of violations

A. Report by Any Person

Any person shall have the right to report to the City Manager or an office designated by the City Manager, any spill, release, illicit connection or other instance of anyone (as may be identified by name, title, employing company, legal identity, commonplace name, or other description) discharging into the MS4 or waters of the United States, and any other violation of this Chapter of which the person becomes aware.

B. Action Upon Report

The City Manager or a designated City office shall receive all such reports by telephone, electronic mail transmission, in writing or in person. A written or electronic record of each such report will be maintained and kept on file for a period of at least five (5) years by the City, and a copy of the City's record of the report will be furnished to the reporting person upon request at no charge. Also upon request, the City Manager will inform the person making such report of any action undertaken by the City in response to such report.

13.52.110 Enforcement

A. Warning Notices

1. When the City Manager finds that any person has violated, or continues to violate, any provision of this Chapter, or any other order issued hereunder, the City Manager may serve upon that person a written Warning Notice specifying the particular violation determined to have occurred and requesting the violator to immediately investigate the violation and initiate preventative or corrective actions to stop the conditions causing, contributing to or resulting in the violation.

2. Investigation or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice.

3. Nothing in this subsection shall limit the authority of the City Manager to take any action, including emergency action or any other enforcement action, prior to issuing a Warning Notice.

B. Notification of Violation (NOV)

1. When the City Manager finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the City Manager may serve upon that person a written NOV. Within ten (10) calendar days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention of recurrence thereof, including specific required actions, shall be submitted by the alleged violator to the City Manager. If the alleged violator denies that any violation occurred, or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the City Manager within ten (10) calendar days of receipt of the notice.

2. Submission of an explanation or plan in no way relieves the alleged violator of liability for any violations of this Chapter or any state or federal regulation occurring before or after receipt of the NOV.

3. Nothing in this section shall limit the authority of the City Manager to take any action, including emergency action or any other enforcement action, without first issuing a NOV.

C. Consent Orders

The City Manager may enter into Consent Orders, assurances of voluntary compliance, or other written agreements with any person for noncompliance with any provision in this Chapter or any order issued hereunder. Such agreements may include specific action to be taken by the person to correct the noncompliance within a time period specified by the agreement. Such agreements shall have the same force and effect as administrative orders issued pursuant to this Chapter and shall be judicially enforceable.

D. Show Cause Hearing

The City Manager may order any person who has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, to appear before the City Manager and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or

by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on any representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in this Chapter.

E. Compliance Order

1. When the City Manager finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the City Manager may issue a Compliance Order to the violator directing that the violator come into compliance with this Chapter within a specified time limit. Compliance Orders also may contain other requirements to address the noncompliance, including self-monitoring and implementation of best management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the U.S.
2. A Compliance Order may not extend the deadline for compliance established by a state or federal standard or requirement.
3. A Compliance Order does not relieve a person of liability for any violation, including any continuing violation.
4. Issuance of a Compliance Order shall not be a bar against, or a prerequisite for, any other action against the violator.

F. Remediation, Abatement and Restoration Orders

1. When the City Manager finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, and the City Manager has reasonable evidence to suspect that such a violation has adversely affected the MS4 or waters of the U.S., the City Manager may issue a Remediation, Abatement and Restoration Order to the violator directing said violator to undertake and implement any appropriate action the City Manager may designate to remediate or abate any adverse effects of the violation upon the MS4, and to restore any part of the MS4 within the City that has been harmed, provided such ordered actions are limited to actions lying within City boundaries. Such remediation, abatement, and restoration actions may include but shall not be limited to:
 - a. Monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, or restoration actions;
 - b. Confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination.
 - c. Prevention, minimization, or mitigation of any damage to the public health or the environment that may result from the violation; and
 - d. Restoration or replacement of City property or natural resources damaged by

the violation

2. The Remediation, Abatement, and Restoration Order may direct that the remediation, abatement, or restoration be accomplished on a specified compliance schedule and be completed within a specified period of time.
3. The cost for preparation, implementation, construction, and maintenance of any remediation, abatement, or restoration as may be ordered by the City Manager shall be borne by the person to whom the City Manager has issued such order.
4. An order issued under this subsection does not relieve the violator of liability for any violation, including any continuing violation.
5. Issuance of an order under this subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

G. Emergency Cease and Desist Orders

1. When the City Manager finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, or that the person's past violations are likely to recur, and that the violation(s) has caused or contributed to an actual or threatened discharge to the MS4 or waters of the U.S. which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the City Manager may issue an Emergency Cease and Desist Order to the violator directing said violator to immediately cease and desist all such violations and directing the violator to:
 - a. Immediately comply with all Chapter requirements;
 - b. Terminate any discharges which the City Manager determines to present an imminent or substantial endangerment to persons or to the environment; and
 - c. Take such appropriate preventative action as may be needed to properly address a continuing or threatened violation, including immediately halting operations, terminating the discharge or both.
2. Any person to which an Emergency Cease and Desist Order has been directed, shall, upon receipt of such Order, immediately take action to stop or eliminate the endangering discharge. In the event of said person's failure to immediately comply voluntarily with said Order, the City Manager may take such action(s) as deemed necessary to prevent or minimize harm to the MS4 or waters of the U.S. or endangerment to persons or to the environment. Such actions may include, but are not limited to, immediate termination of water supply, sewer connection or other municipal utility service provided to said person; any facility owned, leased or operated all or in part by said person; or any site for which said person is all or in part an owner or lessee.

3. The City Manager shall allow the person to whom an Emergency Cease and Desist Order has been issued to recommence discharges when the City Manager determines that the period of endangerment has passed, unless further termination proceedings are initiated against the person to whom the order was issued.

4. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a written statement, in a form as may be acceptable to the City Manager, describing the causes of the harmful discharge and measures taken or to be taken within a timely fashion to prevent any future occurrence, to the City Manager within fourteen (14) calendar days of receipt of the emergency order.

5. Issuance of an Emergency Cease and Desist Order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

13.52.120 Rights to reconsideration, hearing and appeals

A. Reconsideration of and Hearing of Petitions

1. Any person subject to a Stop Work Order; Compliance Order; a Remediation, Abatement and Restoration Order; or an Emergency Cease and Desist Order may petition in writing to the City Manager to reconsider the basis for the order within ten (10) calendar days of the affected person's notice of issuance of such an order.

2. Failure to submit a written Petition for Reconsideration within ten (10) calendar days of the affected person's notice of issuance of such an order shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.

3. In its Petition for Reconsideration, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.

4. The effect of any Compliance Order; and any Remediation, Abatement, and Restoration Order shall be stayed pending the City Manager's consideration of the Petition for Reconsideration, and any hearing thereon, unless the City Manager expressly makes a written determination to the contrary. The effectiveness of any Emergency Cease and Desist Order shall not be stayed pending the City Manager's reconsideration, or any hearing thereon, unless the City Manager expressly and in writing stays the Emergency Cease and Desist Order.

5. Within ten (10) calendar days of the submittal of a Petition for Reconsideration, the City Manager shall either: (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, schedule a

Show Cause Hearing on the petition.

6. Written notice of any hearing set by the City Manager as a result of a Petition for Reconsideration shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

7. The City Manager may conduct the hearing and take evidence, or may designate any employee of the City or any specially-designated attorney or engineer to:

- a. Issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;
- b. Take and gather evidence; and
- c. Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the City Manager for action thereon.

8. At any hearing held pursuant to a Petition for Reconsideration, testimony taken shall be under oath and recorded. Any party is entitled to legal representation and may present his or her case or defense by oral or documentary evidence and may conduct such cross-examination as may be required for a full and true disclosure of the facts. Notwithstanding, the parties thereto shall not be bound by the formal rules of evidence. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

9. After the City Manager has reviewed the evidence, the City Manager shall either: (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The City Manager may modify the order giving rise to the Petition for Reconsideration as may be the appropriate based upon the evidence and arguments presented at the hearing and the City Manager's action on the petition. Further orders and directives as are necessary and appropriate may be issued.

B. Appeal

1. If a discharger or operator is penalized as a result of a Stop Work Order; Compliance Order; a Remediation, Abatement and Restoration Order; or an Emergency Cease and Desist Order, such discharger or operator may file a written appeal to the City Manager. The appeal must include evidence proving that the discharger or operator did not violate this Chapter. The appeal must be filed within five (5) working days of the discharger or operator receiving the penalty.

2. Failure to submit an appeal within five (5) working days of the discharger or operator

receiving the penalty shall be deemed to be a waiver of further administrative review.

13.52.130 Civil and criminal penalties

A. Civil Remedies

City shall be entitled to seek any and all civil penalties available under applicable law in state or federal court for violation of the provisions of this chapter.

B. Criminal Penalties

1. Any person who has violated any provision of this Chapter, or any order issued hereunder, shall be strictly liable for such violation and shall, upon conviction, be subject to a fine of not more than \$2,000 per violation, per day.

2. Any person who has knowingly made any false statement, representation or certification in any application, record, report, plan, or other documentation filed or required to be maintained pursuant to this Chapter, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be subject to a fine of not more than \$4,000 per violation, per day.

C. Determination of Fines

In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

13.52.140 Right of entry

The City Manager and/or their appointed representative may, where reasonable cause exists, with or without a warrant issued by a court of competent jurisdiction enter upon any property for examination of the same to ascertain whether a violation of the requirements of this Chapter shall be exempt from any legal action or liability on account thereof.

13.52.150 Violations deemed a public nuisance

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisances may be taken.

13.52.160 Remedies not exclusive

The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the City Manager to seek cumulative remedies.

13.52.170. Fees

A. Implementation Fees

The City may adopt reasonable fees for reimbursement of costs of implementing this Chapter, which costs may include, but not limited to, the following:

1. Fees for monitoring, inspection, and surveillance procedures, including the cost of collecting and analyzing discharges and reviewing monitoring reports submitted by dischargers;
2. Fees for issuance of permits;
3. Fees for review of notices and plans for construction, termination of construction, and storm water pollution prevention control, irrespective of any acceptance or rejection of such notices or plans by the City Manager;
4. Fees for conduct of site inspections by the City when requested by an operator of a site or facility, irrespective of whether such inspection is required by this Chapter;
5. Fees for site inspection by the City pursuant to determination of compliance to conditions of a conditional notice of termination of construction;
6. Fees for responding to spills and releases of oil, hazardous and extremely hazardous substances, and other pollutants; and
7. Other fees as the City may deem necessary to carry out the requirements contained in this Chapter.

B. Separation of Fees

The fees described above relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by the City.

C. Fee Summary

The Fee Schedule shall be as determined from time to time by adoption of Resolutions by the City Council of the City of Soledad.

Section 2. This ordinance shall be in full force and effect commencing thirty (30) days after the date of its final passage and a summary hereof shall be published once within fifteen (15) days in the Soledad Bee, a newspaper of general circulation printed and published in the County of Monterey and circulated in the City of Soledad.

This Ordinance was introduced and read at a regularly held meeting of the City Council of the City of Soledad on the 16th day of March 2005 and was finally passed and adopted on the 6th day of April 2005.

AYES, and in favor there of, Councilmembers: Christopher Bourke, Patricia Stephens, Mayor Pro Tem Juan Saavedra, Mayor Richard Ortiz

NOES, Councilmembers: None

ABSENT, Councilmembers: Stefanie De La Rosa

ABSTAIN, Councilmembers: None

RICHARD V. ORTIZ, Mayor

ATTEST:

NOELIA F. CHAPA, City Clerk

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