

ORDINANCE NO. 4206

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH REPEALING CHAPTER 14.24 AND AMENDING CHAPTER 14.25 OF THE HUNTINGTON BEACH MUNICIPAL CODE REGARDING STORM WATER AND URBAN RUNOFF MANAGEMENT

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Findings.

A. The Federal Clean Water Act (33 USC §1251 *et seq*), requires that municipal separate storm sewer systems, such as in Orange County, obtain permits to “effectively prohibit non-stormwater discharges into the storm sewers” and “require controls to reduce the discharge of pollutants to the maximum extent practicable.” This permitting authority has been delegated by the United States Environmental Protection Agency (“EPA”) to the State of California, which has authorized the State Water Resources Control Board and its local regulatory agencies, the Regional Water Quality Control Boards, to control non-point source discharges to California’s waterways.

B. Chapter 14.25 of the Huntington Beach Municipal Code (Code) was adopted in 1997 to comply with the Municipal Separate Storm Sewer System permit (“MS4 permit”) the Santa Ana California Water Quality Control Board-Santa Ana Region issued Orange County. The MS4 permit requires the City to demonstrate through its ordinances the necessary legal authority to enforce prohibited discharges to the storm drains that would have a negative impact on the water quality and aesthetic value of downstream receiving water bodies such as the Santa River and the Pacific Ocean.

C. The California Water Quality Control Board-Santa Ana Region revised the MS4 permit in 2009 pursuant to Order No. R8-2009-0030, and these amendments to Chapter 14.25 will allow the City to fully enforce the latest MS4 permit.

SECTION 2. Chapter 14.24 of the Huntington Beach Municipal Code is repealed.

SECTION 3. Subsection C of Section 14.25.010 of the Huntington Beach Municipal Code is amended to read as follows:

C. The City of Huntington Beach has adopted and amended this Chapter to comply with the Municipal Separate Storm Sewer System permit (“MS4 permit”) the California Water Quality Control Board-Santa Ana Region issued Orange County. The MS4 permit requires the City to demonstrate through ordinances the necessary legal authority to enforce prohibited discharges to the storm drain that would have a negative impact on the water quality and aesthetic value of downstream receiving water bodies such as the Santa River and the Pacific Ocean.

SECTION 4. The definition of “Authorized Inspector” at Section 14.25.020 of the Huntington Beach Municipal Code is amended to read as follows:

“**Authorized Inspector**” shall mean the Director of Public Works, the Fire Chief and the Director of Community Development, and persons designated by and under his or her instruction and supervision, who are assigned to investigate compliance with, detect violations of, and/or take actions pursuant to this Chapter.

SECTION 5. The definition of "Best Management practices is added in alphabetical order to Section 14.25.020 to read as follows:

"Best Management Practices ("BMPs")" shall mean schedules of activities, pollution treatment practices or devices, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or the stormwater drainage system. Best Management Practices also include, but are not limited to, treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. Best Management Practices may include any type of pollution prevention and pollution control measure that can help achieve compliance with this Chapter.

SECTION 6. The definition of "Discharge Exception" at Section 14.250.020 is amended to read as follows:

"Discharge Exception" shall mean the group of activities not restricted or prohibited by this Chapter, including only:

1. Discharges composed entirely of stormwater;
2. Discharges subject to regulation under current EPA or Regional Water Quality Control board issued NPDES permits, State General Permits, or other waivers, permits or approvals granted by an appropriate government agency;
3. Emergency firefighting flows (i.e., flows necessary for the protection of life and property). Where reasonably feasible, however, and without interfering with health and safety, the use of BMP's should be considered;
4. Diverted stream flows, flows from riparian habitats and wetlands, rising groundwater, and *de minimis* ground water infiltration to the stormwater drainage system (from leaks in joints or connections or cracks in water drainage pipes or conveyance systems);
5. Dechlorinated swimming pool discharges, dechlorinated to a concentration of 0.1 ppm or less, pH adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent causing hydrologic conditions of concern in receiving waters (cleaning wastewater and filter backlash discharges, however are prohibited).
6. Discharges to the stormwater drainage system from passive foundation drains, air conditioning condensation, water from crawl space pumps, passive footing drains, non-commercial vehicle washing;
7. Discharges of waters not otherwise containing waste as defined in California Water Code Section 13050(d);
8. Discharges from portable water sources, including water line flushing, super-chlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water: Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH adjusted if necessary, and volumetrically and velocity controlled to prevent causing hydrologic conditions of concern in receiving waters. pH must be no less than 6.5 and no greater than 8.6.

9. Other types of discharges identified and recommended by the permittees and approved by the Santa Ana Regional Water Quality Control Board.

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

SECTION 7. The definition of "Fugitive dust" is added in alphabetical order to Section 14.25.020 of the Huntington Beach Municipal Code to read as follows:

"Fugitive dust" shall mean very small particles suspended in the air, the source of which is primarily the earth's soil but can include dust generated from cutting stone and concrete.

SECTION 8. The definitions of "Imminent Danger" and "Nuisance" are added in alphabetical order to Section 14.25.020 of the Huntington Beach Municipal Code to read as follows:

"Imminent Danger" shall mean, but is not limited to, exigent circumstances created by the dispersal of pollutants, which present a significant and immediate threat to the public safety or the environment.

"Nuisance" shall mean any discharge permitted as a discharge exemption but identified by the Authorized Inspector as a nuisance and a threat to water quality, either due to the nature of the discharge, volume of the discharge, and/or potential negative impact to the receiving water body.

SECTION 9. The definition of "Pollutant" at Section 14.250.020 of the Huntington Beach Municipal Code is amended to read as follows:

"Pollutant" shall mean any liquid, solid or semi-solid substances, or combination thereof, including and not limited to:

1. Trash and debris, (such as, but not limited to, floatable plastics, wood products or metal shavings.)
2. Domestic Sewage.
3. Sediment due to construction or landscaping activities or due to lack of effective erosion and sediment controls.
4. Metals and non-metals, including compounds of metals and non-metals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic) with characteristics which cause an adverse effect on living organisms.
5. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease).
6. Animal waste and wash-water resulting from cleaning activities to areas affected by animal wastes (such as discharge from confinement facilities, kennels, pens and recreational facilities, including, stables, show facilities, or polo fields).
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; use of sealants and glues; use of lime; use of wood preservatives and solvents; disturbance of asbestos fibers, paint flakes

or stucco fragments; application of oils, lubricants, hydraulic, radiator or battery fluids; construction equipment washing; concrete pouring and cleanup; use of concrete detergents; steam cleaning or sand blasting; use of chemical degreasing or diluting agents; and use of super chlorinated water for portable 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 extractable organic compounds.
11. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act.
12. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial uses of the receiving waters, flora or fauna of the City and state.
13. Washwater resulting from cleaning activities of outdoor surfaces such as patios, sidewalks, walkways, building exteriors, balconies, roofs, windows and decks.
14. Discharge resulting from cleaning activities, repair, or maintenance of any type of equipment, machinery, or facility, including, but not limited to, motor vehicles, concrete mixing equipment, portable toilet servicing, etc.
15. Washwater from mobile auto detailing and washing, steam and pressure cleaning, carpet cleaning, and other such commercial and industrial mobile washing activities.
16. Water from cleaning of municipal, industrial, and commercial facilities, locations and area, including, but not limited to, parking lots, streets, sidewalks, driveways, patios, refuse enclosures, plazas, work yards, and outdoor eating or drinking areas, etc.
17. Runoff from material storage areas including, but not limited to, receptacles that contain chemicals, fuels, grease, oil, hazardous materials, food waste, and trash/debris.
18. Non-stormwater discharges defined as Discharge Exception but identified by the Authorized Inspector as a nuisance due to the nature of the discharge, volume of the discharge, and/or potential negative impact to quality.
19. Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; pool filter backwash containing debris and chlorine.
20. Food service establishment or food processing facility wastes including, but not limited to, food waste, grease oil, washwater from floor mat, equipment, and trash enclosure cleaning activities, etc.
21. Fugitive dust.

Any pollutant which is duplicative of another shall not be construed to exclude either item, as the same pollutant may be described more than one time.

SECTION 10. The definition of "Prohibited discharge" at Section 14.250.020 of the Huntington Beach Municipal Code is amended to read as follows:

“Prohibited discharge” shall mean any discharge which contains any pollutant, from public or private property:

1. The stormwater drainage system;
2. Any upstream flow, which is tributary to stormwater drainage systems;
3. Any groundwater, river, stream, creek, wash or dry weather arroyo, wetlands area, marsh, coastal slough; or
4. Any coastal harbor, bay or the Pacific Ocean.

The term “Prohibited discharge” shall not include discharges allowable under the Discharge Exception unless declared a nuisance by City staff.

SECTION 11. The definition of “Receiving waters” is added in alphabetical order to Section 14.25.020 to read as follows:

“Receiving waters” shall mean a “water of the United States” within the scope of the California Water Code, including, but not limited to, natural streams, creeks, rivers, reservoirs, lakes, ponds, water in vernal pools, lagoons, estuaries, bays, the Pacific Ocean and groundwater.

SECTION 12. The definition of “State General Permit” at Section 14.250.020 of the Huntington Beach Municipal Code is amended to read as follows:

“State General Permit” shall mean either the State Industrial General Permit or the State Construction General Permit and the terms and requirements of either or both. In the event the U.S. Environmental Protection Agency (“EPA”) revokes the in-lieu permitting authority of the State Water Resources Control Board, then the term “State General Permit” shall also refer to any EPA administered stormwater control program for industrial and construction activities.

SECTION 13. The definition of “Stormwater drainage system” at Section 14.250.020 shall be amended to read as follows:

“Stormwater drainage system” shall mean street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, which is a part of or tributary to the countywide storm water runoff system and owned, operated, maintained or controlled by the City, the County of Orange, the Orange County Flood Control District, or any co-permittee city, and used for the purpose of collecting, storing, transporting, or disposing of stormwater.

SECTION 14. Section 14.25.030 of the Huntington Beach Municipal Code is amended to read as follows:

14.25.030 Prohibition on Illicit Connections and Prohibited Discharges

A. No person shall:

1. Construct, maintain, operate and/or utilize any illicit connection.
2. Cause, allow or facilitate any Prohibited discharge.
3. Act, cause, permit or suffer any agent, employee, or independent contractor, to construct, maintain, operate or utilize any illicit connection, or cause, allow or facilitate any prohibited discharge.

B. No person shall cause, facilitate or contribute to a discharge into the stormwater drainage system, or into an area or in a manner that will result in a discharge into the stormwater drainage system of:

1. Any substance causing, or threatening to cause, a condition of pollution, contamination, or a nuisance, as that term is defined in Section 13050 of the California Water Code.
2. Any substance causing or contributing to an exceedance of any water quality standard for surface water or groundwater.

C. The prohibition against illicit connections shall apply irrespective of whether the illicit connection was established prior to the date of enactment of this Chapter; however, legal nonconforming connections shall not become illicit connections until the earlier of the following:

1. For all structural improvements to property installed for the purpose of discharge to the stormwater conveyance system, the expiration of five years from the adoption or amendment of this Chapter establishing the new standard.
2. For all nonstructural improvements to property existing for the purpose of discharge to the stormwater conveyance system, the expiration of six months following delivery of a notice to the owner or occupant of the property, which states a legal nonconforming connection has been identified. The notice of a legal nonconforming connection shall state the date of expiration of the use under this Chapter.

D. A civil or administrative violation of Section 14.25.030 shall occur irrespective of the negligence or intent of the violator to construct, maintain, operate or utilize an illicit connection or to cause, allow or facilitate any prohibited discharge.

E. If an Authorized Inspector reasonably determines that a discharge, which is otherwise within the Discharge Exception, may adversely affect the beneficial uses of receiving waters, then the Authorized Inspector may give written notice to the owner of the property or facility that the Discharge Exception shall not apply to the subject discharge following expiration of the 30-day period commencing upon delivery of the notice. Upon expiration of the 30-day period, any such discharge shall constitute a violation of Section 14.25.030.

F. The owner or occupant of property on which a legal nonconforming connection exists may request an administrative hearing, pursuant to the procedures set forth in Section 14.25.060 for an extension of the period allowed for continued use of the connection. A reasonable extension of use may be authorized by the Director of Public Works or City Engineer, upon consideration of the following factors:

1. The potential adverse effects of the continued use of the connection upon the beneficial uses of receiving waters;
2. The economic investment of the discharger in the legal nonconforming connection; and

3. The financial effect upon the discharger of a termination of the legal nonconforming connection.

SECTION 15. Section 14.25.040 of the Huntington Beach Municipal Code is amended to read as follows:

14.25.040 New Development and Significant Redevelopment

- A. All new development and significant redevelopment shall be undertaken in accordance with:
 1. The DAMP, including but not limited to the Orange County Technical Guidance Document;
 2. Any conditions and requirements established by the Community Development Department and/or the Public Works Department, which are reasonably related to the reduction or elimination of pollutants in stormwater runoff from the project site; and,
 3. Conformance with the Statewide Water Quality Control Plan for Ocean Waters of California to control trash, also known as the Trash Provisions.
- B. Prior to the issuance of a grading permit, building permit or nonresidential plumbing permit for any new development or significant redevelopment, the Community Development Department and/or Public Works Department shall review the project plans and impose terms, conditions and requirements on the project in accordance with this Section. If the new development or significant redevelopment will be approved without application for a grading permit, building permit or nonresidential plumbing permit, the Community Development Department and/or the Public Works Department 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.
- C. Notwithstanding the foregoing Subsections, compliance with the development project guidance shall not be required for construction of a (one) single family detached residence unless the Community Development Department and/or Public Works Department determines that the construction may result in the discharge of significant levels of a pollutant into a tributary to the stormwater drainage system.
- D. Compliance with the conditions and requirements of the DAMP shall not exempt any person from the requirement to independently comply with each provision of this Chapter.
- E. If the Community Development Department and/or Public Works Department determines that the project will have a *de minimis* impact on the quality of stormwater runoff, then it may issue a written waiver of the requirement for compliance with the provisions of the development project guidance.
- F. The owner of a new development or significant redevelopment project, or upon transfer of the property, its successors and assigns, shall implement and adhere to the terms, conditions and requirements imposed pursuant to this Section on a new development or significant redevelopment project.

Each 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 on a new development or significant redevelopment project shall constitute a violation of this Chapter.

G. The Community Development Department and/or Public Works Department may require that the terms, conditions and requirements imposed pursuant to this Section be recorded with the County Recorder's office by the property owner. The signature of the owner of the property or any successive owner shall be sufficient for the recording of these terms, conditions and requirements and a signature on behalf of the City shall not be required for recordation.

H. **Cost Recovery.** The City shall be reimbursed by the project applicant for all costs and expenses incurred by the Community Development Department and/or Public Works Department in the review of new development or significant development projects for compliance with the DAMP. The Community Development Department and/or Public Works Department may elect to require a deposit of estimated costs and expenses, and the actual costs and expenses shall be deducted from the deposit, and the balance, if any, refunded to the project applicant.

I. **Litter Control.**

1. No person shall discard any waste material, including but not limited to common household rubbish or garbage of any kind (whether generated or accumulated at a residence, business or other location) upon any public or private property, whether occupied, open or vacant, including but not limited to any street, sidewalk, alley, right-of-way, open area or point of entry to the stormwater drainage system.
2. Every person occupying or having charge and control of property on which a prohibited disposal of waste materials occurs shall cause the proper collection and disposal of same.
3. A prohibited disposal of waste materials creates a danger to public health, safety and welfare, and otherwise threatens the environment, surface waters and groundwater; therefore, any owner or occupant of property who fails to remove waste material within a reasonable time may be charged with creating a nuisance upon the property.

SECTION 16. Section 14.25.050 of the Huntington Beach Municipal Code is amended to read as follows:

14.25.050 Scope of Inspections

- A. **Right to Inspect.** Prior to commencing any inspection, the Authorized Inspector shall obtain either the consent of the owner or occupant of the property or shall obtain an administrative inspection warrant or criminal search warrant.
- B. **Entry to Inspect.** The Authorized Inspector may enter property to investigate the source of any discharge to any public street, inlet, gutter, storm drain or the stormwater drainage system located within the jurisdiction of the City.

C. **Compliance Assessments.** The Authorized Inspector may inspect property or business activity for the purpose of verifying compliance with this Chapter, including but not limited to:

1. Conducting inspections as mandated by an NPDES permit and/or other State or Federally mandated inspections;
2. Identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property;
3. Identifying point(s) of discharge of all wastewater, process water systems and pollutants;
4. Investigating the natural slope at the location, including drainage patterns and man-made conveyance systems;
5. Establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system;
6. Locating any illicit connection or the source of prohibited discharge;
7. Investigating the condition of any legal nonconforming connection.

D. **Portable Equipment.** For purposes of verifying compliance with this Chapter, the Authorized Inspector may inspect any vehicle, truck, trailer, tank truck or other mobile equipment.

E. **Records Review.** The Authorized Inspector may request and inspect all records of the owner or occupant of property relating to chemicals or processes presently or previously occurring on-site, including material and/or chemical inventories, facilities maps or schematics and diagrams, material safety data sheets, hazardous waste manifests, business plans, pollution prevention plans, state general permits, stormwater pollution prevention plans, monitoring program plans and any other record(s) relating to illicit connections, prohibited discharges, a legal nonconforming connection or any other source of contribution or potential contribution of pollutants to the stormwater drainage system.

F. **Sample and Test.** The Authorized Inspector may inspect, sample and test any area runoff, soils area (including groundwater testing), process discharge, materials within any waste storage area (including any container contents), and/or treatment system discharge for the purpose of determining the potential for contribution of pollutants to the stormwater drainage system. The Authorized Inspector may investigate the integrity of all storm drain and sanitary sewer systems, any legal nonconforming connection or other pipelines on the property using appropriate tests, including but not limited to smoke and dye tests or video surveys. The Authorized Inspector may take photographs or video tape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.

G. **Monitoring.** The Authorized Inspector may erect and maintain monitoring devices for the purpose of measuring any discharge or potential source of discharge to the stormwater drainage system.

H. **Test Results.** The owner or occupant of property subject to inspection shall, on submission of a written request, receive copies of all monitoring and test results conducted by the Authorized Inspector.

I. **Closed Circuit Television (CCTV) Footage.** In the event of a sanitary sewer overflow, the Authorized Inspector may request the owner to conduct a CCTV inspection of the sanitary sewer line and sewer laterals and provide the CCTV footage to the Inspector.

SECTION 17. Section 14.25.060 of the Huntington Beach Municipal Code is amended to read as follows:

14.25.060 Enforcement

A. Administrative Remedies.

1. **Notice and Service of Orders.** Orders for Noncompliance, Administrative Compliance, Cease and Desist and Cost Recovery may be issued to and served upon the property owner pursuant to the following procedure:

- a. The Notice shall be served and delivery shall be deemed complete upon the property owner or occupant by:
 - i. Personal service;
 - ii. Seven (7) days after deposit in the U.S. mail, postage pre-paid for first class delivery. Where the recipient of notice is the owner of the property, the address for notice shall be the mailing address from the most recently issued equalized assessment roll for the property, or the address as it appears in the current records of the City;
 - iii. Via electronic mail; or,
 - iv. Where the owner or occupant of any property cannot be located after the reasonable efforts of the Authorized Inspector, notice shall be deemed delivered after posting on the property for a period of ten (10) business days.
- b. Notice may be served upon any or all of the following parties:
 - i. The owner or occupant of any property requiring abatement of conditions on the property that cause or may cause a prohibited discharge or an illicit connection in violation of this Chapter.
 - ii. The owner of property subject to terms, conditions or requirements imposed on a project in accordance with Section 14.25.040 to ensure adherence to those terms, conditions and requirements.
 - iii. A permittee subject to the requirements of any permit issued pursuant to Section 14.25.070 to ensure compliance with the terms, conditions and requirements of the permit.

iv. Any person responsible for an illicit connection or prohibited discharge.

c. The Notice shall state that the property owner or occupant has a right to appeal the matter by filing a written request for an administrative hearing with the Office of the City Clerk, within thirty (30) days of the date of the Notice. The appeal shall be accompanied by an administrative hearing fee as established by separate Resolution of the City Council.

2. Notice of Noncompliance. The Authorized Inspector may deliver to the owner or occupant of any property, or to any person responsible for an illicit connection or prohibited discharge a Notice of Noncompliance. The Notice of Noncompliance shall:

a. Identify the provision(s) of this Chapter or the applicable permit which has been violated. The Notice of Noncompliance shall state that continued noncompliance may result in additional enforcement actions against the owner, occupant and/or person.

b. The Notice of Noncompliance shall state a compliance date that must be met by the owner, occupant and/or person; provided, however, that the compliance date may not exceed ninety (90) days unless the Authorized Inspector extends the compliance deadline an additional ninety (90) days where good cause exists for the extension.

3. Issuance and Terms of Administrative Compliance Orders. The Authorized Inspector may issue an Administrative Compliance Order. The Administrative Compliance Order may include the following terms and requirements:

a. Specific steps and time schedules for compliance as reasonably necessary 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;

b. Specific steps and time schedules for compliance as reasonably necessary to discontinue any illicit connection;

c. Specific requirements for containment, cleanup, removal, storage, installation of overhead covering, or proper disposal of any pollutant having the potential to contact stormwater runoff;

d. 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 best management practices guidance documents promulgated by any Federal, State of California or regional agency;

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

4. Issuance and Terms of Cease and Desist Orders. The Authorized Inspector may issue a Cease and Desist Order directing the noticed party responsible for a violation of this Chapter to:

- a. Immediately discontinue any illicit connection or prohibited discharge to the stormwater drainage system;
- b. Comply with the terms, conditions and requirements of, and immediately cease any activity in violation of any Discharge Permit issued pursuant to Section 14.25.070;
- c. Immediately contain or divert any flow of water off the property, where the flow is occurring in violation of any provision of this Chapter;
- d. Immediately discontinue any other violation of this Chapter; and/or
- e. Clean up the area affected by the violation.

5. Issuance of Order for Recovery of Costs. The Authorized Inspector may deliver an Order for Recovery of Costs to the owner or occupant of any property, any permittee or any other person who becomes subject to a Notice of Noncompliance or Administrative Compliance Order. An Order for Recovery of Costs shall be delivered in accordance with this Section. An Order for Recovery of Costs shall be immediately due and payable to the City for the actual costs incurred by the City in issuing and enforcing any notice or order.

If any owner or occupant, permittee or any other person subject to an Order for Recovery of Costs fails to either pay the Order for Recovery of Costs or successfully appeal the Order for Recovery of Costs in accordance with this Section, then the City Attorney may institute collection proceedings.

6. Administrative Hearing for Notices of Noncompliance, Administrative Compliance Orders, Invoices for Costs and Adverse Determinations. Except as set forth in Subsection 8 below, any person receiving a Notice of Noncompliance, Administrative Compliance Order, Order for Recovery of Costs, or any person who is subject to any adverse determination made pursuant to this Chapter, may appeal the matter by filing a written request for an administrative hearing with the Office of the City Clerk within thirty (30) days of the Notice. The appeal request shall be accompanied by an administrative hearing fee as established by separate City Council resolution, with a copy of the request for administrative hearing mailed on the date of filing to the City Manager. Thereafter, a hearing on the matter shall be held before the hearing officer within forty-five (45) days of the date of filing of the written request unless, at the reasonable discretion of the hearing officer and pursuant to a written request by the appealing party, a continuance of the hearing is granted.

7. Administrative Hearing for Cease and Desist Orders and Emergency Abatement Actions. A request for an administrative hearing shall not be required from the person subject to the Cease and Desist Order or an Emergency Abatement Action. An administrative hearing on the issuance of a Cease and Desist Order or following an Emergency Abatement Action shall be held within five (5) business days following the issuance of the Order or the Emergency

Abatement, unless the hearing (or the time requirement for the hearing) is waived in writing by the party subject to the cease and desist order or the emergency abatement.

8. Hearing Proceedings. The Authorized Inspector shall appear in support of the Notice of Noncompliance, Compliance Order, Cease and Desist Order, Order for Recovery of Costs or Emergency Abatement Action, and the appealing party shall appear in support of withdrawal of the same. The City shall have the burden of supporting any enforcement or other action by a preponderance of the evidence. Each party shall have the right to present testimony and other documentary evidence as necessary for explanation of the case.

9. Final Decision and Appeal. The final decision of the hearing officer shall be issued within ten (10) business days of the conclusion of the hearing and shall be delivered by first-class mail, postage prepaid, to the parties. The final decision shall include notice that any legal challenge to the final decision shall be made pursuant to the provisions of Code of Civil Procedure Sections 1094.5 and 1094.6 and shall be commenced within ninety (90) days following issuance of the final decision. The administrative hearing fee paid by a prevailing party in an appeal shall be refunded.

Notwithstanding this paragraph 10, the final decision of the hearing officer in any preceding determining the validity of a cease and desist order or following an emergency abatement action shall be mailed within five (5) business days following the conclusion of the hearing.

10. City Abatement. In the event of an illegal discharge of pollutants to the storm drain system, the responsible party (property owner, contractor, business owner, etc.) shall be responsible for the cleanup of affected areas including all downstream conveyance structures, affected public/private property, and receiving water bodies. However, the Authorized Inspector may assign responsibility of the cleanup/abatement to City staff or contract staff if the size, nature, and or complexity of the cleanup is beyond the capability of the responsible party. If in the event of an illegal discharge of pollutants, the operator of a facility, property owner or any other person fails to comply with any provision of a Compliance Order issued to such owner, operator, permittee or person pursuant to this Chapter, the Authorized Inspector may request the City 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 this Section.

B. Nuisance. Any condition in violation of the prohibitions of this Chapter, including, but not limited to, the maintenance or use of any illicit connection or the occurrence of any prohibited discharge, shall constitute a threat to the public health, safety and welfare, and is declared and deemed a nuisance pursuant to Government Code Section 38771. At the request of the City Manager, the City Attorney may seek a court order to enjoin and/or abate the nuisance pursuant to the following procedure:

1. Notice to Owner and Occupant. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the Authorized Inspector shall provide notice of the proposed injunction or abatement to the owner and occupant, if any, of the property where the nuisance or threatened nuisance is occurring.

2. Emergency Abatement. In the event the nuisance constitutes an Imminent Danger to public safety or the environment, the Authorized Inspector 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, informal notice shall 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, of and without judicial warrant, provided that an administrative hearing pursuant to this Section shall follow the abatement action.

3. 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, shall be recoverable from the person(s) creating, causing, committing, permitting or maintaining the nuisance.

4. Nuisance Lien. All costs shall become a lien against the property from which the nuisance emanated and a personal obligation against the owner in accordance with Government Code Sections 38773.1 and 38773.5. The owner of record of the property subject to any lien shall be given notice of the lien prior to recording as required by Government Code Section 38773.1.

At the direction of the Authorized Inspector, the City Attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the County Assessor of a special assessment against the property in accord with the conditions and requirements of Government Code Section 38773.5.

C. Criminal Sanctions.

1. Prosecutor. The City Attorney may act on the request of the Authorized Inspector to pursue enforcement actions in accordance with the provisions of this Chapter.

2. Infractions. Notwithstanding Chapter 1.16 of this Code, any person who may otherwise be charged with a misdemeanor under this Chapter may be charged, at the discretion of the City Attorney, with an infraction punishable by a fine of not more than one hundred dollars (\$100.00) for a first violation, two hundred dollars (\$200.00) for a second violation, and a fine not exceeding five hundred dollars (\$500.00) for each additional violation occurring within one year.

3. Misdemeanors. Any person who negligently or knowingly violates any provision of this Chapter, undertakes to conceal any violation of this Chapter, continues any violation of this Chapter after notice thereof, or violates the terms, conditions and requirements of any permit issued pursuant to this Chapter, shall be 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. Administrative Citations.

1. Violations of this Chapter are subject to the issuance of administrative citations under the provisions of Chapter 1.18 of this Code.

E. Consecutive Violations. Each instance in which a business, property owner, or other persons fails to comply with the correction due date(s) and time(s) established in a Notice of Noncompliance, an Administrative Citation, an Administrative Compliance Order, or a Cease and Desist Order, shall constitute a separate violation of this Chapter punishable by fines or sentences issued in accordance herewith.

F. Nonexclusive Remedies. Each and every remedy available for the enforcement of this Chapter, shall be nonexclusive and it is within the discretion of the Authorized Inspector or City Attorney to seek cumulative remedies, except that multiple monetary fines or penalties shall not be available for any single violation of this Chapter.

G. Citations. Pursuant to Penal Code Section 836.5, the Authorized Inspector shall have the authority to cause the arrest of any person committing a violation of this Chapter. The person shall be released and issued a citation to appear before a magistrate in accordance with Penal Code Sections 853.5, 853.6 and 853.9, unless the person demands to be taken before a magistrate. Following issuance of any citation the Authorized Inspector shall refer the matter to the City Attorney.

Each citation to appear shall 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 shall be at least ten (10) business days after the date of violation. The person cited shall sign the citation giving his or her written promise to appear as stated therein. If the person cited fails to appear, the City Attorney may request issuance of a warrant for the arrest of the person cited.

H. Violations of Other Laws. Any person acting in violation of this Chapter also may be acting in violation of the Federal Clean Water Act or the State Porter-Cologne Act and other laws and also may be subject to sanctions including civil liability. Accordingly, the City Attorney is authorized to file a citizen suit pursuant to Federal Clean Water Act Section 505(a), seeking penalties, damages, and orders compelling compliance and other appropriate relief. The City Attorney may notify EPA Region IX, the Santa Ana or San Diego Regional Water Quality Control Boards, or any other appropriate state or local agency, of any alleged violation of this Chapter.

I. Injunctions. At the request of the Authorized Inspector, the City 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.

J. 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, costs relating to restoration of the environment and all other expenses as authorized by law.

K. Civil Damages. The Authorized Inspector may request the City Attorney file:

1. An action for civil damages in a court of competent jurisdiction seeking recovery of (a) all costs incurred in enforcement of this Chapter, including but not limited to costs relating to investigation, sampling, monitoring, inspection, administrative expenses, all other expenses as authorized by law, and consequential damages; (b) all costs incurred in mitigating harm to the environment or reducing the threat to human health, and (c) damages for irreparable harm to the environment.
2. The City Attorney is authorized to file actions for civil damages resulting from any trespass or nuisance occurring on public land or to the stormwater drainage system from any violation of this Chapter where the same has caused damage, contamination or harm to the environment, public property or the stormwater drainage system.
3. The remedies available to the City pursuant to the provisions of this Chapter shall not limit the right of the City to seek any other remedy that may be available by law.

SECTION 18. Section 14.25.070 of the Huntington Beach Municipal Code is amended to read as follows:

14.25.070 Interagency Cooperation

- A. The City intends to cooperate with other agencies with jurisdiction over stormwater discharges to ensure that the regulatory purposes underlying stormwater regulations promulgated pursuant to the Clean Water Act (33 USC Section 1251 et seq.) 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, abatements, and enforcement authorized by this Chapter.

SECTION 19. Section 14.25.080 of the Huntington Beach Municipal Code is amended to read as follows:

14.25.080 Miscellaneous

- A. **Compliance Disclaimer.** Full compliance by any person or entity with the provisions of this Chapter shall not preclude the need to comply with other local, state or federal statutory or regulatory requirements, which may be required for the control of the discharge of pollutants into stormwater and/or the protection of stormwater quality.
- B. **Severability.** If any provision of this Chapter or its application to any circumstance is held invalid, the remainder of the Chapter shall not be affected.

SECTION 20. Section 14.25.090 of the Huntington Beach Municipal Code is amended to read as follows:

14.25.090 Judicial Review

The provisions of Sections 1094 and 1094.6 of the Code of Civil Procedure set forth the procedure for judicial review of any act taken pursuant to this Chapter. Parties seeking judicial

review of any action taken pursuant to this Chapter shall file such action within ninety (90) days of the occurrence of the event for which review is sought.

SECTION 21. Sections 14.25.100 and 14.25.110 of the Huntington Beach Municipal Code are deleted.

SECTION 22. The recitals provided in this Ordinance are true and correct and are incorporated into the substantive portion of this Ordinance.

SECTION 23. The City Council finds the introduction and adoption of this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 24. If any Section, Subsection, sentence, clause, phrase, part, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each Section, Subsection, sentence, clause, phrase, part, or portion thereof, irrespective of the fact that any one or more Section, Subsections, sentences, clauses, phrases, parts, or portions be declared invalid or unconstitutional.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the ____ day of _____, 2020.

ATTEST:


City Clerk

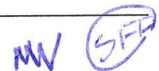
Mayor

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager



City Attorney 

INITIATED AND APPROVED:



Director of Public Works