

**AGENDA  
ITEM**

**11**



# AGENDA STAFF REPORT

DATE: September 20, 2017

TO: Mayor and City Council

APPROVED BY: Armando G. Villa, City Manager *Armando G. Villa*

PREPARED BY: David Dale, Public Works Director/City Engineer

SUBJECT: Second Reading and Adopt Ordinance No. 1179 – An Ordinance Amending Title 13 of the Calexico Municipal Code by Adding Chapter 13.50 Relating to Urban Storm Water Quality Management and Discharge Control.

=====

### Recommendation:

City Council approve Ordinance No. 1179 – An ordinance amending Title 13 of the Calexico Municipal Code by adding Chapter 13.50 relating to Urban Storm Water Quality Management and Discharge Control.

### Background:

The State Water Resource Control Board (SWRCB) elected to adopt a statewide general permit for Small MS4s in order to efficiently regulate numerous storm water discharges under a single permit. In certain situations a storm water discharge may be more appropriately and effectively regulated by an individual permit, a region-specific general permit, or by inclusion in an existing Phase I MS4 permit. On February 5, 2013, the proposed final draft of the Phase II Small MS4 General Permit was adopted and became effective on July 1, 2013.

### Discussion & Analysis:

It is the City of Calexico purpose to protect the public health, safety and general welfare; to protect water resources and to improve storm water quality within the MS4 and receiving waters. It is also the City of Calexico's legal authority to implement the requirements of Section 402(p)(3) of the Clean Water Act, 33 U.S.C. Section 1342, and the Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., as embodied in the city's current NPDES permit. For these reasons, Public Works staff recommends that the City Council of the City of Calexico adopt the attached ordinance amending Title 13 of

AGENDA ITEM //
----------------------

the Calexico Municipal Code by adding Chapter 13.50 relating to Urban Storm Water Quality Management and Discharge Control. This ordinance will allow the City to reduce the adverse effects of polluted runoff discharges on waters of the state; to secure benefits from the use of storm water as a resource; and to ensure the City is compliant with applicable state and federal law.

City Council introduced and waived first reading of Ordinance No. 1179 at the meeting of September 6, 2017.

**Fiscal Impact:**

None.

**Coordinated With:**

Best, Best & Krieger (BBK) and Public Works Department.

**Attachment(s):**

1. Ordinance No. 1179 - An Ordinance of the City Council of the City of Calexico, California Amending Title 13 of the Calexico Municipal Code by Adding Chapter 13.50 Relating to Urban Storm Water Quality Management and Discharge Control.

**ORDINANCE NO. 1179**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA AMENDING TITLE 13 OF THE CALEXICO MUNICIPAL CODE BY ADDING CHAPTER 13.50 RELATING TO URBAN STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL**

**WHEREAS**, the State Water Resource Control Board (SWRCB) elected to adopt a statewide general permit for Small MS4s in order to efficiently regulate numerous storm water discharges under a single permit; and

**WHEREAS**, it is the City of Calexico's legal authority to implement the requirements of Section 402(p)(3) of the Clean Water Act, 33 U.S.C. Section 1342, and the Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., as embodied in the city's current NPDES permit; and

**WHEREAS**, it is the City of Calexico purpose to protect the public health, safety and general welfare; to protect water resources and to improve storm water quality within the MS4 and receiving waters; to cause the use of management practices by the city (and its residents, businesses, and property owners) that will reduce the adverse effects of polluted runoff discharges on waters of the state; to secure benefits from the use of storm water as a resource; and to ensure the city is compliant with applicable state and federal law;

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Calexico as follows:

**SECTION 1.** That Title 13 of the Calexico Municipal Code is hereby amended by adding Chapter 13.50 entitled "URBAN STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL" to read as follows:

**13.05.10. Definitions**

The following words and phrases shall, for the purpose of this Chapter, be defined as follows:

- (a) "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or MS4. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (b) "CASQA" means the California Stormwater Quality Association.
- (c) "City" means the City of Calexico.
- (d) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, codified at Chapter 26 of Title 33 of the United States Code.

- (e) “Construction activity” means any soil disturbing activity that requires a building or grading permit from the city, including, but not limited to, demolition, clearing, grading, paving, stockpiling, and excavating.
- (f) “Construction General Permit” means the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities issued by the State Board, NPDES No. CAS000002, as it currently exists or may be amended and reissued from time to time. The Construction General Permit covers, in part, construction activity that results in a land disturbance of equal to or greater than one acre. The Construction General Permit is available from the State Board and may be reviewed on the internet at: [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/construction.shtml](http://www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml).
- (g) “Construction site” means the premises where any project that involves any construction activity is located, including projects requiring coverage under the Construction General Project.
- (h) “Development” means any land disturbing activity that falls under the city’s planning or permitting authority, including any construction activity, construction or installation of a building or structure, creation of impervious surfaces; or land subdivision. Development does not include trenching, excavation and resurfacing associated with linear underground/overhead projects; pavement grinding and resurfacing of existing roadways; construction of new sidewalks, pedestrian ramps, or bike lanes on existing roadways; or routine replacement of damaged pavement such as pothole repair or replacement of short, non-contiguous sections of roadway.
- (i) “Director” means the city Public Works Director, or designee of the Public Works Director or City Manager.
- (j) “Discharge” means the release, addition or deposit of any fluid, liquid, solid, flowing substance, or any other material or substance to the MS4 or to a location where it may enter the MS4 or a water of the United States or State.
- (k) “Enforcement official” means the Director or any “enforcement officer” designated pursuant to Section 1.26.020 of this code.
- (l) “EPA” means the United States Environmental Protection Agency.
- (m) “Hazardous substance” has that meaning set forth in Section 13050 of the California Water Code.
- (n) “Illicit connection” means a pipe, drain, open channel, or other conveyance facility, or device, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency.
- (o) “Illegal Discharge” means any discharge that is either: (1) non-storm water discharge that violates an NPDES permit; or (2) any discharge that causes or

contributes or threatens to cause or contribute to a violation of any city order, ordinance, standard or plan. Illicit discharges are further specified in Section 13.50.30 of this chapter.

- (p) “Incidental runoff” means an unintended, unanticipated, and infrequent amount (volume) of water discharge from landscape irrigation, such as unintended, minimal over-spray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, or if it is due to intentional or grossly negligent overflow or application.
- (q) “Larger common plan of development or sale” means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.
- (r) “Linear underground/overhead projects” include, but are not limited to, any conveyance, pipe, or pipeline for the transportation of any gaseous, liquid (including water and wastewater for domestic municipal services), liquescent, or slurry substance; any cable line or wire for the transmission of electrical energy; any cable line or wire for communications (e.g., telephone, telegraph, radio, or television messages); and associated ancillary facilities.
- (s) “MS4” or “municipal separate storm sewer system” means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that discharges into waters of the United States and which is owned or operated by the city and designed or used for collecting or conveying storm water.
- (t) “National Pollutant Discharge Elimination System permit” or “NPDES permit” means a permit issued by the U.S. EPA, State Water Resources Control Board, or the California Regional Water Quality Control Board pursuant to the Clean Water Act that authorizes discharges to waters of the United States and requires the reduction of pollutants in the discharge. The city’s NPDES permit is the State Board’s Water Quality Order No. 2013-0001-DWQ, NPDES General Permit No. CAS000004, as it currently exists or may be amended and reissued from time to time.
- (u) “Non-storm water discharge” means any discharge to the MS4, or to a watercourse, that is not entirely composed of storm water. “Non-Storm Water Discharge” means any discharge to the storm drain system that is not entirely composed of storm water.
- (v) “Person” means any natural person, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.
- (w) “Pollutant” means any “pollutant” defined in Section 502(6) of the Clean Water Act or incorporated into the California Water Code Section 13373. Pollutants may include, but are not limited to, the following:
  - (1) Artificial materials, chips or pieces of natural or man-made materials (such as

- floatable plastics, wood or metal shavings),
- (2) Household waste (such as trash, paper, plastics, lawn clippings and yard wastes; animal fecal materials; excessive pesticides, herbicides and fertilizers; used oil and fluids from vehicles, lawn mowers and other common household equipment).
  - (3) Commercial and industrial waste (such as trash, litter, fuels, solvents, detergents, plastic pellets, hazardous substances, fertilizers, pesticides, slag, ash, and sludge)
  - (4) Metals, such as cadmium, lead, zinc, copper, silver, nickel, chromium, and non-metals, such as phosphorus and arsenic.
  - (5) Petroleum hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease),
  - (6) Excessive and particulate materials, eroded soils, sediment
  - (7) Animal wastes (such as discharge from confinement facilities, kennels, pens and recreational facilities, including, stables, show facilities, or polo fields),
  - (8) Substances having characteristics with a pH less than 6.5 or greater than 8.5, or unusual turbidity, or excessive levels of fecal coliform, fecal streptococcus or enterococcus,
  - (9) Waste materials and wastewater generated on construction sites and by construction activities (such as painting, staining; use of sealants, glues, limes; excessive pesticides, fertilizers or herbicides; use of wood preservatives and solvents; disturbance of asbestos fibers, paint flakes or stucco fragments; application of oils, lubricants, hydraulic, radiator or battery fluids; construction equipment washing, concrete pouring and cleanup wash water or use of concrete detergents; steam cleaning or sand blasting residues; use of chemical degreasing or diluting agents; and super chlorinated water generated by potable water line flushing),
  - (10) Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon,
  - (11) Materials which contain base/neutral or acid extractable organic compounds,
  - (12) Those pollutants defined in Title 33 U.S. C. Section 1362(6) of the Federal Clean Water Act.
  - (13) Any other constituent or material that may adversely affect the beneficial uses of the receiving waters, flora or fauna of the State, as determined by the State Board or the Regional Board. The term "pollutant" shall not include uncontaminated storm water runoff, potable water or reclaimed water

generated by a lawfully permitted water treatment facility.

- (x) “Porter-Cologne Water Quality Control Act” means that act codified at Chapter 1 of Division 7 of the California Water Code.
- (y) “Premises” means any building, lot, parcel of land, land or portion of land whether improved or unimproved.
- (z) “Receiving waters” mean surface water that receives regulated and unregulated discharges from activities on land, including, but not limited to, creeks, streams, rivers, lakes, estuaries, groundwater formations, or other bodies of water into which surface water, treated waste, or untreated waste are discharged.
- (aa) “Regional Board” means the California Regional Water Quality Control Board, Colorado River Region.
- (bb) “Runoff” means water and substances carried in it that drains from the surface of an area of land, premises, a building or structure.
- (cc) “State Board” means the State Water Resources Control Board.
- (dd) “Storm Drain System” means any facility within the incorporated areas of the City by which storm water may be conveyed to waters of the United States. Storm drain system includes but is not limited to any roads with drainage systems, streets, curbs, gutters, catch basins, natural and artificial channels, ditches, aqueducts, storm drains, inlets, conduit or other drainage structure.
- (ee) “Storm water” or “Storm water Runoff” means surface runoff and drainage associated with rain storm or precipitation events.
- (ff) “Storm water pollution prevention plan” or “SWPPP” means a document which describes the best management practices to be implemented by the owner or operator of a premises, business, or construction site to eliminate illicit discharges and/or reduce to the maximum extent practicable pollutant discharges to the MS4.
- (gg) “Structural control measures” means any structural facility designed and constructed to mitigate the adverse impacts of storm water and runoff.
- (hh) “Watercourse” means any natural stream, whether flowing continuously or not, that is fed from permanent or natural sources, and includes, without limitation rivers, creeks, runs, and rivulets.

#### **13.05.20. Purpose and Intent**

This chapter documents the city’s legal authority to implement the requirements of Section 402(p)(3) of the Clean Water Act, 33 U.S.C. Section 1342, and the Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., as embodied in the city’s current NPDES permit.

The purposes of this chapter are to protect the public health, safety and general welfare; to protect water resources and to improve storm water quality within the MS4 and receiving waters; to cause the use of management practices by the city (and its residents, businesses, and property owners) that will reduce the adverse effects of polluted runoff discharges on waters of the state; to secure benefits from the use of storm water as a resource; and to ensure the city is compliant with applicable state and federal law. This chapter seeks to promote these purposes by:

- (a) Prohibiting illicit discharges and connections to the MS4;
- (b) Establishing authority to adopt minimum requirements for storm water management, including source control requirements, to prevent and reduce pollution;
- (c) Establishing authority to adopt requirements for development project site design, to reduce storm water pollution and erosion both during construction and after a project is complete; and
- (d) Establishing authority to adopt requirements for the management of storm water flows from development projects, both to prevent erosion and to protect and enhance existing water-dependent habitats.

#### **13.05.30. Discharge prohibitions**

- (a) No person shall:
  - (1) Cause, allow or facilitate any non-storm water discharge except in compliance with the requirements of this chapter and in compliance with any separate individual or general NPDES permit;
  - (2) Cause, allow or facilitate any illicit discharge;
  - (3) Discharge any material into the MS4, or any watercourse within the city's jurisdiction that may cause, or threaten to cause a condition of pollution, contamination, or nuisance within the meaning of California Water Code Section 13050 or that may cause or contribute to a violation of the city's NPDES permit, the Clean Water Act or the Porter-Cologne Water Quality Control Act;
  - (4) Discharge to areas of special biological significance except in compliance with all applicable NPDES permits, waivers, orders and other regulatory controls; or
  - (5) Discharge any water from a premises that is not storm water and that is not incidental runoff.
- (b) The following discharges shall be conditionally exempt from the discharge prohibitions under subsection (a) of this section, unless the Director determines that the discharge is otherwise prohibited under the requirements of subsection (c):
  - (1) Water line flushing;

- (2) Diverted streamflows;
- (3) Rising groundwater, where groundwater seepage is not otherwise regulated by a separate NPDES permit;
- (4) Uncontaminated groundwater infiltration to the MS4;
- (5) Uncontaminated pumped groundwater, provided such discharges are compliant with all applicable permit requirements, including enrollment in any applicable NPDES permit or waste discharge requirement;
- (6) Discharges from potable water sources;
- (7) Gravity flow from foundation drains, footing drains and crawl space pumps, when groundwater seepage is not otherwise regulated by a separate NPDES permit or waste discharge requirements, provided such discharges are compliant with all applicable permit requirements;
- (8) Air conditioning condensation, when not otherwise regulated by a separate NPDES permit;
- (9) Natural springs;
- (10) Flows from riparian habitats and wetlands;
- (11) Discharges composed entirely of storm water;
- (12) Discharges subject to regulation under current EPA, State Board, or Regional Board issued NPDES permits, or other waivers, permits or approvals granted by an appropriate government agency;
- (13) Discharges from emergency firefighting activities, unless identified as a significant source of pollutants to waters of the United States;
- (14) Discharges of dechlorinated water from swimming pools, when not otherwise regulated by a separate NPDES permit; and
- (15) Individual residential car washing.
- (16) Other discharges specifically authorized and permitted by the City or the Regional Board, as described in a permit issued by either the City or the Regional Board.

(c) Notwithstanding the conditional exemptions provided in subsection (b), if the Director, independently or at the direction of the Regional Board, determines that a conditionally exempt discharge is a significant source of pollutants, threatens water quality standards, causes or significantly contributes to a violation of any receiving water limitation, results in the conveyance of significant quantities of pollutants to surface waters, or is otherwise a danger to public health or safety, the Director may

determine that the discharge is a violation of this section and subject to any enforcement option available under this chapter.

**13.05.40. Prohibited Connections**

- (a) No person shall:
  - (1) Construct, maintain, operate, permit, or utilize any illicit connection to the MS4.
  - (2) Act, cause, permit or suffer any agent, employee, or independent contractor, to construct, maintain, operate or utilize any illicit connection.
- (b) This prohibition includes connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.

**13.05.50. Incidental Runoff**

Every person responsible for any premises within the city must control incidental runoff from the premises by taking the following actions:

- (a) Promptly detect and correct leaks, no later than 72 hours of learning of the leak;
- (b) Properly design and aim sprinkler heads;
- (c) Cease watering during precipitation events;
- (d) Properly manage ponds containing recycled water such that no discharge occurs in violation of any applicable permit, state or local law or regulation; and
- (e) Take any action necessary to prevent the discharge of non-storm water to the MS4 or to the waters of the state or United States.

**13.05.60. Notification of discharge.**

- (a) Notwithstanding any other requirement of law, the person in charge of a premises or responsible for a premises' emergency response must immediately report any known or suspected release of materials, pollutants, or waste, which may result in pollutants or non-storm water discharges entering storm water, the MS4, or waters of the state or United States, in the following manner:
  - (1) The release of a hazardous substance shall be immediately reported to emergency services by emergency dispatch services (911).
  - (2) The release of a non-hazardous substance shall be reported as follows:
    - (i) To the Director and to the 24-hour storm water hotline by phone no later than 5:00 p.m. on the same business day.
    - (ii) If the release occurs after 5:00 p.m. on a weekday, on a weekend or holiday,

to the storm water pollution line on the same day and to the Director by telephone on the next business day.

(iii) A written notification of the release shall also be made to the Director within five business days of the release. A copy of the written notice shall be retained at the premises for at least three years.

(b) In addition to the above requirements, release of any hazardous substances, sewage, oil, or petroleum to any waters of the state, or discharged or deposited where it is or probably will be discharged in or on any waters of the state, shall be reported to the State Office of Emergency Services, as required by Sections 13271 and 13272 of California Water Code.

#### **13.05.70. Best management practices required.**

Each person responsible for any premises, site, activity, operation, or facility that may discharge any pollutant to the MS4 shall implement those BMPs approved by the Director in accordance with this chapter, or with any local, state, or federal law, rule, regulation, or permit.

#### **13.05.80. Watercourse protection.**

(a) Every person responsible for any premises through which a watercourse passes, shall keep and maintain that part of the bed, bank, and channel of the watercourse within the premises free of pollutants. The responsible person for any such premises shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor perform vegetation management in such a manner as to increase the vulnerability of the watercourse to erosion.

(b) The person responsible for any premises through which a watercourse passes must maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. Maintenance must be conducted in a manner that does not adversely impact waterway species.

(c) To the extent that this chapter imposes prohibitions or requirements regarding non-storm water discharges to the MS4, those same prohibitions and requirements are imposed on non-storm water discharges to watercourses.

(d) The person responsible for any premises through which a watercourse passes must comply with all laws, rules, and regulations of State, Federal agencies who may have jurisdiction over the watercourse.

#### **13.05.90. Waste disposal.**

(a) Except when deposited into containers or in lawfully established dumping areas, no person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, placed, left or maintained any refuse, rubbish, garbage or other discarded or abandoned objects, articles and accumulations, including but not limited to dirt, green waste and animal waste, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit, or other drainage structures, business place or upon any public or private lot of

land in the city, so that the same may cause or contribute to pollution or an illicit discharge or cause or contribute to a violation of the requirements of any applicable water quality control plan.

- (b) Each person with maintenance responsibilities over any paved surface must maintain said surface free of dirt or litter. Sweepings from a paved surface shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on such premises as required for garbage disposal.
- (c) Each person responsible for a pet shall promptly pick up animal waste deposited in public areas and properly dispose of it in a trash receptacle.

**13.05.100. Construction activities.**

- (a) **Plan Review.** The applicant for any development permit and the owner of any premises which is the subject of such an application must comply with the terms, conditions, and requirements imposed by the city to ensure compliance with this chapter and any applicable permit. Such terms, conditions, and requirements may include, but are not limited to, requirements consistent with CASQA's Construction Best Management Practice Manual, in the version adopted by resolution of the City Council, and requirements for erosion and sediment controls, soil stabilization, dewatering, source controls, pollution prevention measures and illicit discharges. If the project will be approved without application for a grading permit or building permit, the owner of any premises subject to a discretionary land use approval or subdivision map must comply with all terms, conditions and requirements imposed by the city to ensure compliance with this chapter or any applicable permit.
- (b) **Compliance with Construction General Permit.** Every development project that disturbs one acre or more of soil or disturbs less than one acre but is part of a larger common plan of development or sale of one or more acres of disturbed surface land is subject to the Construction General Permit and shall comply with all provisions of such permit. Proof of compliance with the Construction General Permit satisfactory to the Director must be submitted prior to obtaining a grading or building permit.
- (c) **Erosion and Sediment Control Plan.** The person who possesses the title of the real property or the leasehold interest of the premises on which a construction activity will occur within the city shall prepare and submit an erosion and sediment control plan prior to and as a condition of issuing a grading or building permit. The erosion and sediment control plan shall contain, at a minimum, appropriate site-specific construction site BMPs, the rationale used for selecting or rejecting BMPs, a quantification of expected soil loss from the BMPs, a list of applicable permits, and evidence that permits have been obtained. No construction activity shall commence before the Director issues written approval of the erosion and sediment control plan. A SWPPP developed pursuant to the Construction General Permit may substitute for the erosion and sediment control plan for projects where a SWPPP is developed. In such cases, the SWPPP must comply with this chapter and must be submitted to the city for review and approval.

- (d) **Permit Coverage.** Prior to and as a condition of receiving a grading or building permit, the person who possesses the title of the real property or the leasehold interest of the premises on which a construction activity will occur within the city, shall demonstrate existing coverage under applicable permits, including but not limited to, the State Water Board's Construction General Permit, State Water Board 401 Water Quality Certification, United States Army Corps 404 permit, and California Department of Fish and Game 1600 agreement. The city may require documentation demonstrating coverage by and compliance with any applicable permit, including copies of any notice of intent, storm water pollution prevention plans, inspection reports, monitoring results, and other information deemed necessary to assess compliance with this chapter or any permit.
- (e) **BMPs.** The Director may require, as a condition of issuing a grading or building permit, the implementation of BMPs to ensure that the discharge of pollutants from a construction site will be effectively prohibited and will not cause or contribute to a condition of pollution or to an exceedance of water quality standards. The person who possesses the title of the real property or the leasehold interest of the premises on which a construction activity will occur within the city shall implement such BMPs approved by the Director to ensure that discharges of pollutants are effectively prohibited and will not cause or contribute to an exceedance of water quality standards. All construction and grading activities shall comply with applicable laws, including all applicable city ordinances and the city's NPDES permit regulating discharges into and from the MS4.
- (f) **Cost Recovery.** The applicant for a development project subject to the requirements of this chapter shall pay all costs and expenses incurred by the city in the review of project plans and inspection of construction sites for compliance with this chapter. The city 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.

**13.05.110. Development activities.**

- (a) All development projects must be planned, designed and constructed consistent with the post construction standards in the city's NPDES permit and in accordance with the post construction storm water management requirements established by the city, including but not limited to, the current version of the Bay Area Stormwater Management Agencies Association Post-Construction Manual or an updated version of that manual or other post-construction storm water management standards as adopted by Council resolution..
- (b) As a condition of approval of any development project, the owner of the real property that is the subject of the development project must provide a written document, deed, agreement or similar writing acceptable to the Director, obligating the project proponent, their successors in control of the project and successors in fee title to the underlying real property (or premises), to assume responsibility for the operation and maintenance of all installed treatment systems and hydromodification controls, if any, for the project.
- (c) The owner or operator of any installed treatment system or hydromodification control

shall provide the Director with information and physical access necessary to assess compliance with this chapter, with the city's NPDES permit, and with any writing establishing operation and maintenance responsibilities and shall pay the city an annual fee for inspection and maintenance services in accordance with the latest Master Fee Schedule adopted by the City Council.

**13.05.120. Industrial and commercial facilities.**

- (a) No person shall operate or cause to be operated any industrial or commercial facility without first obtaining and complying with any required NPDES permit or waste discharge requirements. The city may require documentation demonstrating coverage by and compliance with any applicable permit, including copies of any notice of intent, storm water pollution prevention plans, inspection reports, monitoring results, and other information deemed necessary to assess compliance with this chapter or any permit.
- (b) On receipt of written notice from the city, the owner or operator of any industrial or commercial facility or source of storm water shall select, install, and after approval from the Director, implement and maintain BMPs consistent with the CASQA Industrial/Commercial BMP Handbook, 2003 version, or an updated version adopted by Council resolution. BMPs must be designed to implement the requirements of this chapter and any applicable permit.
- (c) The Director may require the person responsible for any industrial or commercial facility to enter into an agreement for the operation and maintenance of any structural control measures and to record such agreement with the County Recorder's office. The signature of the owner of the real property 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.

**13.05.130. Authority to sample, investigate, review records, and collect information.**

- (a) Right to Enter and Inspect. Enforcement Officials are authorized to enter upon and inspect any property or premises within the city during reasonable hours in order to enforce any of the provisions of this chapter.
- (b) Sampling Authority. The Director may inspect, sample and test any facilities, equipment, practices, or operations, area runoff, soils area (including groundwater testing), process discharge, materials within any waste storage area (including any contained contents) and/or treatment system discharge for the purpose of determining the potential for the discharge of pollutants to the MS4. The Director may investigate the integrity of all storm drain and sanitary sewer systems, any connection or other pipelines on the private property using appropriate tests, including, but not limited to, smoke and dye tests or video surveys. The Director may take photographs or videotapes, make measurements or drawings and create any other record reasonably necessary to document conditions on the premises.
- (c) Records Review. The Director may inspect records of the owner or person in charge of the day to day activities of private property relating to chemicals or processes presently

or previously occurring on-site, including, but not limited to 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, illicit discharges, a connection or any other source of discharge or potential discharge of pollutants to the MS4. Such records must be kept on-site and remain available for inspection. Failure to keep records on site and available for inspection shall constitute a violation of this chapter.

- (d) **Monitoring, Analysis and Reporting Authority.** The Enforcement Official may erect and maintain or require any person discharging to the MS4 to erect and maintain monitoring devices for the purpose of measuring any discharge or potential source of discharge to the MS4. Upon service of written notice by the Enforcement Official, the burden, including cost, of these activities, analyses and reports, incurred in complying with the requirement shall, to the extent permitted by law, be borne by the premises owner, occupant or operator of the facility, activity, or premises for which testing and monitoring has been requested.
- (e) **Cost Recovery.** If an inspection pursuant to this section results in an enforcement action, the city may recover costs in accordance with the provisions of Chapter s1.26 and 1.27 of this code.

**13.05.140. Enforcement authority.**

- (a) The Enforcement Official is authorized to enforce the provisions of this chapter and to exercise any enforcement powers in accordance with the provisions of Chapter s1.26 and 1.27.
- (b) **Response Plans.** The Enforcement Official may develop and implement an Enforcement Response Plan setting forth enforcement procedures and actions to address repeat and continuing violations of this chapter, a Spill Response Plan setting forth the procedures, roles and responsibilities for investigating, cleaning up and reporting spills, and an Illicit Discharge Response Plan setting forth the procedures and responsibilities for investigating and abating illicit discharges. The Enforcement Official shall have the authority to establish elements of a Stormwater Pollution Prevention Plan, and to require any business or person to adopt and implement such a plan, as may be reasonably necessary to fulfill the purposes of this chapter. Any plans developed under this subsection shall be issued as compliance orders in accordance with the provisions of Chapter 1.26.
  - **Best Management Practices.** The Enforcement Official may establish and require any best management practices reasonably necessary to fulfill the purposes of this chapter for any premises within the city.
- (c) **Seasonal and Recurrent Nuisance.** If any violation of this chapter constitutes a seasonal and recurrent nuisance, the Enforcement Official may so declare in accordance with the provisions set forth in Chapter 8.44

### **13.05.150. Remedies**

Without limitation on the enforcement authority set forth elsewhere in this chapter, the Enforcement Official is authorized to exercise any and all of the remedies identified in Chapters 1.26 and 1.27.

### **13.05.160. Civil remedies**

- (a) Nuisance. Any 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 illicit 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. Any such nuisance may be abated and/or restored by the Enforcement Official pursuant to Article 6 of Chapter 10, of Part 2, of Division 3 of Title 4 of the Government Code and Chapter 8.44 of this code.
  - (1) Emergency Abatement. The City or Enforcement Official may order the abatement of any discharge from any source to the MS4 when, in the opinion of the Enforcement Official, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, or the environment. Any such emergency abatement shall be performed in accordance with the provisions of Section 38773 of the Government Code.
  - (2) 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 in accordance with Chapters 1.26 and 1.27 or Article 6 of Chapter 10, of Part 2, of Division 3 of Title 4 of the Government Code.
- (b) The City Attorney is authorized to file in a court of competent jurisdiction a civil action seeking an injunction against any violation or threatened or continuing violation of this Chapter. Any temporary, preliminary or permanent injunction issued pursuant hereto may include an order for reimbursement to the City for all costs incurred in enforcing this Chapter, including costs of inspection, investigation, monitoring, treatment, abatement, removal or remediation undertaken by or at the expense of the City, and may include all legal expenses and fees and any and all costs incurred relating to the restoration or remediation of the environment.
- (c) Monetary Penalty. In addition to any and all other costs and expenses, any person who or entity that violates any provision of this chapter shall be liable and responsible for, and shall pay to the city, a civil penalty of \$1,000.00 for each violation.

### **13.05.170. Criminal remedies.**

- (a) Any violation of this chapter may be punished in accordance with the provisions of Chapters 1.26 and 1.27.

- (b) As a part of any sentence or other penalty imposed or the award of any damage, the Court may also order that restitution be paid to the City or any injured person by any person violating this Chapter, or, in the case of a violator who is a minor, by the minor's parent or lawfully designated guardian or custodian. Restitution may include the amount of any reward.
- (c) Any person acting in violation of this Chapter may also be acting in violation of the Clean Water Act or the California Porter-Cologne Act (California Water Code Sections 13000 *et seq.*) and the regulations thereunder, and other laws and regulations, and may be subject to damages, fines and penalties, including civil liability under such other laws. The City Attorney is authorized to file a citizen's suit pursuant to the Clean Water Act, seeking penalties, damages and orders compelling compliance and appropriate relief.

**13.05.180. Appeal.**

Any person subject to an administrative enforcement action, who is required to perform monitoring, analyses, reporting and/or corrective activities by an authorized Enforcement Official, or who is otherwise aggrieved by any decision of the Enforcement Official, may appeal the decision in accordance with the administrative hearing procedures set forth in Chapters 1.26 and 1.27.

**13.05.190. Payment of fees and penalties – Costs and expenses of enforcement.**

The city may recover its costs related to enforcing compliance with this chapter, in addition to any applicable fines or penalties. Unless otherwise specified in this code, a responsible person upon whom a fee and/or fine is imposed pursuant to this code shall make payment to the city within 30 days after written notice from the city. Any such enforcement shall be governed by Chapters 1.26 and 1.27 of this code.

**13.05.200. Concealment and abetting.**

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of this chapter.

First Reading approved on the 6<sup>th</sup> of September, 2017 and adopted on this 20<sup>th</sup> day of September, 2017.

\_\_\_\_\_  
Maritza Hurtado, Mayor

Attest:

\_\_\_\_\_  
Gabriela T. Garcia, City Clerk

Approved as to Form:

\_\_\_\_\_  
Carlos L. Campos, Interim City Attorney

State of California     )  
County of Imperial    ) ss.  
City of Calexico       )

I, Gabriela T. Garcia, City Clerk of the City of Calexico, California, do hereby certify that the above and foregoing Ordinance No. 1179 was duly passed, approved and adopted by the City Council at its regular meeting held on the 20<sup>th</sup> day of September, 2017, by the following vote, to-wit:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Gabriela T. Garcia, City Clerk