

CHAPTER 6.40  
STORMWATER QUALITY

**§ 6.40.010. Purpose.**

- A. The United States Congress passed the Clean Water Act (33 USC Section 1251 et seq., as amended, including Section 402(p) therein) as a mandate, in part, 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. The Santa Ana and San Diego Regional Water Quality Control Boards have addressed the obligation to implement the Clean Water Act by issuing Waste Discharge Requirements governing stormwater runoff for the County of Orange, Orange County Flood Control District, and the incorporated cities of Orange County. These permits shall be referred to collectively in this chapter as the National Pollution Discharge Elimination System Permit (NPDES) permits.
- C. The City is participating as a "co-permittee" under the NPDES permits in the development and adoption of an ordinance to accomplish the requirements of the Clean Water Act.
- D. Stormwater runoff is one step in the natural cycle of water. However, human activities, such as agriculture, construction, and the operation and maintenance of an urban infrastructure may result in undesirable discharges of pollutants and certain sediments, which may accumulate in local drainage channels and waterways and eventually may be deposited in the waters of the United States.
- E. The purpose of the ordinance codified in this chapter is to participate in the improvement of water quality and comply with federal requirements for the control of urban pollutants to stormwater runoff that enters the network of storm drains throughout Orange County.  
( 2401 § 1, 1997; 2803 § 1, 2011)

**§ 6.40.020. Finding and Intent.**

- A. The City is authorized by Article XI, Section 5 and Section 7 of the State Constitution to exercise the police power of the state by adopting regulations promoting the public health, public safety and general prosperity.
- B. The City has determined that a legitimate local purpose is present in complying with the provisions of the NPDES permit.
- C. A reduction in stormwater-borne pollution will promote the public health and

protect the general welfare of the locality by reducing the level of artificial and naturally occurring constituents, which may improve the quality of the waters in this region.

- D. The land use authority exercised by the City, pursuant to California Government Code Section 65300 et seq., requires regional planning and the adoption of policies protecting the environment through the imposition of reasonable conditions on the use of land.
- E. This chapter conforms to the policies and goals of the General Plan adopted by the City, pursuant to California Planning and Zoning Law, for the protection of the portions of watersheds located within Orange County by implementing measures to control erosion and prevent the pollution of streams and other waters.
- F. Certain provisions of this chapter may be coordinated with the local coastal program for inclusion in coastal development permits, pursuant to California Public Resources Code Section 30607, as mitigation for the negative effects of grading, construction, reconstruction, and changes to the intensity of use of land or water resources within the coastal zone.
- G. The Subdivision Map Act, California Government Code Section 66411 authorizes the City to regulate and control the design and improvement of subdivided lands and mitigate the burdens of proposed development by imposing reasonable conditions on map approval.
- H. California Constitution Article XI, Section 7 and Government Code Section 38660 authorize the City to establish appropriate conditions for the issuance of building permits, which require the installation of improvements reasonably related to the proposed use of property.
- I. Government Code Section 38771 authorizes the City to declare as public nuisances undesirable acts that may injure health or cause interference with the comfortable enjoyment of life or property and to provide for the abatement of the same.
- J. The City may commence civil actions, pursuant to Federal Clean Water Act Section 505(a), against any person or any governmental agency acting in violation of any condition of the NPDES permit.
- K. All industrial dischargers subject to the provisions of the State General Industrial Storm Water Permit and General Construction Activity Storm Water Permit (referred to collectively in this chapter as the "state general permits") must comply with the lawful requirements of the City, which regulate discharges of stormwater to the storm drain system within its jurisdiction.
- L. All industrial dischargers subject to the provisions of the state general permits are required to maintain stormwater pollution prevention plans on-site and make them available to the City for inspection.
- M. All dischargers subject to the provisions of the State General Construction Activity Storm Water Permit may be required by the City, with the concurrence of the Santa

Ana Regional Water Board, to amend any stormwater pollution prevention plan.

- N. All industrial dischargers subject to the provisions of the State General Industrial Storm Water Permit are required to maintain a description of the required monitoring program on-site and make it available to the City for inspection.
- O. The City has jurisdiction over certain stormwater facilities and other watercourses within the City, and the water discharges into these facilities may be subject to the provisions of the State General Industrial Storm Water Permit; accordingly, the City may certify (but is not required to certify) in writing that regulated dischargers have developed and implemented effective stormwater pollution prevention plans and should not be required to collect and analyze stormwater samples for pollutants.
- P. The City has jurisdiction over certain stormwater facilities and other watercourses within the City, and these facilities may receive stormwater discharges from properties and activities regulated under the provisions of the state general permits, and the City may request that the regulated dischargers furnish information and records necessary to determine compliance with the state general permits.
- Q. The City has jurisdiction over certain stormwater facilities and other watercourses within the City, and these facilities may receive stormwater discharges from properties and activities regulated under the provisions of the state general permits, and the City may, upon presentation of credentials and other documents required by law:
  - 1. Enter upon the discharger's premises where a regulated facility is located or where records must be kept under the conditions of the state general permits;
  - 2. Access and copy, at reasonable times, any records that must be kept under the conditions of the state general permits;
  - 3. Inspect, at reasonable times, any facility or equipment related to or impacting stormwater discharge;
  - 4. Sample or monitor for the purpose of ensuring compliance with the state general permits.
- R. The enacting of this chapter is a condition of the NPDES permit, the requirements of which are exempt from the California Environmental Quality Act pursuant to Public Resources Code Section 21000, et seq. (CEQA); and
- S. This chapter is subject to CEQA categorical exemption Classes 1 through 4, 6 through 9, 21 and 22, pursuant to the CEQA Guidelines, respectively, Title 14, California Code of Regulations Sections 15301, 15302, 15303, 15304, 15306, 15307, 15308, 15309, 15321, and 15322.  
( 2401 § 1, 1997; 2803 § 1, 2011)

#### **§ 6.40.030. Definitions.**

For purposes of this chapter:

"Authorized inspector" means the City Manager 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.

"City" means the City of Garden Grove, Orange County, California.

"Co-permittee" means the County of Orange, the Orange County Flood Control District, and/or any one of the 31 municipalities, including the City of Garden Grove, which are responsible for compliance with the terms of the NPDES permit.

"DAMP" means the Orange County Drainage Area Management Plan, as the same may be amended from time to time.

"Development project guidance" means DAMP Chapter VII and the appendix thereto, entitled "Best Management Practices for New Development Including Non-residential Construction Projects," as the same may be amended from time to time.

"Discharge" means any release, spill, leak, pump, flow, escape, leaching (including subsurface migration or deposition to groundwater), dumping, or disposal of any liquid, semisolid, or solid substance.

"Discharge exception" means the group of activities not restricted or prohibited by this chapter, including only:

1. Discharges composed entirely of stormwater; 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; discharges from property for which best management practices set forth in the development project guidance are being implemented and followed; discharges to the stormwater drainage system from potable water line flushing, fire fighting activities, landscape irrigation systems, diverted stream flows, rising groundwater, and de minimis groundwater infiltration to the stormwater drainage system (from leaks in joints or connections or cracks in water drainage pipes or conveyance systems); discharges from potable water sources, passive foundation drains, air conditioning condensation and other building roof runoff; agricultural irrigation water runoff; water from crawl space pumps, passive footing drains, lawn watering, noncommercial vehicle washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; discharges of reclaimed water generated by a lawfully permitted water treatment facility; street wash waters when related to cleaning and maintenance by, or on behalf of, the City; discharges authorized pursuant to a permit issued under Section 6.40.080 hereof; discharges for which the discharger has reduced to the extent feasible the amount of pollutants in such discharge; and discharges authorized pursuant to federal or state laws or regulations.
2. 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.

"Enforcing attorney" means the City Attorney or District Attorney acting as counsel to the City of Garden Grove and his or her designee, which counsel is authorized to take

enforcement action as described in this chapter. For purposes of criminal prosecution, only the District Attorney (and/or City Attorney), or his or her designee, shall act as the enforcing attorney.

"EPA" means the Environmental Protection Agency of the United States.

"Hearing officer" means the City Manager or his or her designee who shall preside at the administrative hearings authorized by this chapter and issue final decisions on the matters raised therein.

"Illicit connection" means any man-made conveyance or drainage system, pipeline, conduit, inlet, or outlet through which the discharge of any pollutant to the stormwater drainage system occurs or may occur. The term "illicit connection" shall not include legal nonconforming connections or connections to the stormwater drainage system that are hereinafter authorized by the agency with jurisdiction over the system at the location at which the connection is made.

"Industrial discharger" means industries whose Standard Industrial Classification (SIC) codes are identified by the State Water Resources Control Board as requiring coverage under the State's general industrial NPDES stormwater permit.

"Invoice for costs" means the actual costs and expenses of the City, including but not limited to administrative overhead, salaries and other expenses recoverable under state law, incurred during any inspection conducted pursuant to Section 6.40.060 or where a notice of noncompliance, administrative compliance order, or other enforcement option under Section 6.40.070 is utilized to obtain compliance with this chapter.

"Legal nonconforming connection" means connections to the stormwater drainage system existing as of the adoption of this chapter that were in compliance with all federal, state, and local rules, regulations, statutes, and administrative requirements in effect at the time the connection was established, including but not limited to any discharge permitted pursuant to the terms and conditions of an individual discharge permit issued pursuant to the Industrial Waste Ordinance, County Ordinance No. 703.

"New development" means all public and private residential (whether single-family, multi-unit, or planned unit development), industrial, commercial, retail, and other nonresidential construction projects, or grading for future construction, for which either a discretionary land use approval, grading permit, building permit, or nonresidential plumbing permit is required.

"Nonresidential plumbing permit" means a plumbing permit authorizing the construction and/or installation of facilities for the conveyance of liquids other than stormwater, potable water, reclaimed water, or domestic sewage.

"NPDES permit" means the currently applicable municipal discharge permit issued by the Regional Water Quality Control Board, Santa Ana Region, which permit establishes waste discharge requirements applicable to stormwater runoff in the City;

"Person" means any natural person as well as any corporation, partnership, government entity or subdivision, trust, estate, cooperative association, joint venture, business entity, or other similar entity, or the agent, employee, or representative of any of the above.

"Pollutant" means any liquid, solid, or semisolid substances, or combination thereof,

including and not limited to:

1. Artificial materials (such as floatable plastics, wood products, or metal shavings).
2. Household waste (such as trash, paper, and plastics; cleaning chemicals; yard wastes; animal fecal materials; used oil and fluids from vehicles, lawn mowers, and other common household equipment).
3. Metals and nonmetals, including compounds of metals and nonmetals (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus, and arsenic), with characteristics that cause an adverse effect on living organisms.
4. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants, and grease).
5. Animal wastes (such as discharge from confinement facilities, kennels, pens, and recreational facilities, including stables, show facilities, or polo fields).
6. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity, or odor.
7. 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 potable water line flushing).
8. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand, or total organic carbon.
9. Materials that contain base/neutral or acid extractable organic compounds.
10. Those pollutants defined in Section 1362(6) of the Federal Clean Water Act.
11. 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 state.

"Prohibited discharge" means any discharge that contains any pollutant, from public or private property to:

1. The stormwater drainage system.
2. Any upstream flow that is tributary to the stormwater drainage system.
3. Any groundwater, river, stream, creek, wash, or dry weather arroyo, wetlands area, marsh, coastal slough.

4. Any coastal harbor, bay, or the Pacific Ocean.
5. The term "prohibited discharge" shall not include discharges allowable under the discharge exception.

"Significant reconstruction" means the rehabilitation or reconstruction of public or private residential (whether single-family, multi-unit, or planned unit development), industrial, commercial, retail, or other nonresidential structures, for which either a discretionary land use approval, grading permit, building permit, or nonresidential plumbing permit is required.

"State general permit" means the state general industrial stormwater permit, the state general construction permit, or any other state general permit that has been or will be adopted and the terms and requirements of any such permit. In the event the U.S. Environmental Protection Agency (EPA) revokes the inlieu 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.

"Stormwater drainage system" means street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet, or other facility that is a part of or tributary to the county-wide stormwater runoff system and owned, operated, maintained, or controlled by 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.

"Stormwater Pollution Prevention Plan (SWPPP)" means a plan to:

1. Help identify the sources of pollution that affect the quality of storm-water discharges and authorized non-stormwater discharges, and
2. To describe and ensure the implementation of BMPs to reduce or prevent pollutants in stormwater discharges and authorized non-stormwater discharges.

"Local implementation plan" means the City of Garden Grove National Pollutant Discharge Elimination System (NPDES) Stormwater Permit Local Implementation Plan as approved by the City Council on June 10, 2003, and as may be amended from time to time.

( 2401 § 1, 1997; 2603 § 1, 2003; 2803 § 1, 2011)

#### **§ 6.40.040. Prohibition on Illicit Connections and Prohibited Discharges.**

No person shall:

- A. Construct, maintain, operate, and/or utilize any illicit connection;
- B. Cause, allow, or facilitate any prohibited discharge;
- C. 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.

( 2401 § 1, 1997; 2803 § 1, 2011)

**§ 6.40.050. Controls for Water Quality Management.**

A. New development and significant reconstruction.

1. All new development and significant reconstruction within the City shall be undertaken in accordance with the DAMP, including but not limited to the development project guidance, the local development plan, and/or administrative rules and practices as may be adopted from time to time by the City Manager or his or her designee.
2. Prior to the issuance by the City of a grading permit, building permit, or nonresidential plumbing permit for any new development or significant reconstruction, the City shall review the project plans and impose terms, conditions and requirements on the project in accordance with Section 6.40.050(A)(1).
3. 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.
4. The owner of a new development or significant reconstruction project, or upon transfer of the property, its successors and assigns, shall implement and adhere to the terms, conditions, and requirements imposed pursuant to Section 6.40.050(A)(1) on a new development or significant reconstruction 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 Section 6.40.050(A)(1) on a new development or significant reconstruction project shall constitute a violation of this chapter.

B. Cost recovery. The City shall be reimbursed by the project applicant for all costs and expenses incurred by the City in the review of new development or significant development projects for compliance with the DAMP. 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.

C. Litter control. 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 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. ( 2401 § 1, 1997; 2603 § 2, 2003; 2803 § 1, 2011)

**§ 6.40.060. Inspections.**

A. Scope of inspections.

1. Right to inspect. Prior to commencing any inspection as authorized in this section, 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.

2. 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.
3. Compliance assessments. The authorized inspector may inspect property for the purpose of verifying compliance with this chapter, including but not limited to:
  - a. Identifying products produced, processes conducted, chemicals used, and materials stored on or contained within the property;
  - b. Identifying point(s) of discharge of all wastewater, process water systems, and pollutants;
  - c. Investigating the natural slope at the location, including drainage patterns and man-made conveyance systems;
  - d. Establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system;
  - e. Locating any illicit connection or the source of prohibited discharge;
  - f. Evaluating compliance with any permit issued pursuant to Section 6.40.080 hereof; and
  - g. Investigating the condition of any legal nonconforming connection.
4. 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.
5. Records review. The authorized inspector may 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.
6. 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 videotape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.

7. 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.

( 2401 § 1, 1997; 2803 § 1, 2011)

### **§ 6.40.070. Enforcement.**

#### **A. Administrative remedies.**

1. 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 be delivered in accordance with Section 6.40.070(A)(5).
  - a. The notice of noncompliance shall identify the provision(s) of this chapter or the applicable permit that 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 seven days unless the authorized inspector extends the compliance deadline where good cause exists for the extension.
2. Administrative compliance orders.
  - a. The authorized inspector may issue an administrative compliance order. The administrative compliance order shall be delivered in accordance with Section 6.40.070(A)(5). The administrative compliance order may be issued to:
    - 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 6.40.070(A)(1) to ensure adherence to those terms, conditions, and requirements.
    - iii. A permittee subject to the requirements of any permit issued pursuant to Section 6.40.080 hereof to ensure compliance with the terms, conditions, and requirements of the permit.

- iv. Any person responsible for an illicit connection or prohibited discharge.
    - b. The administrative compliance order may include the following terms and requirements:
      - i. Specific steps and time schedules for compliance as reasonably necessary to eliminate an existing prohibited discharge or to prevent the imminent threat of a prohibited discharge, including but not limited to a prohibited discharge from any pond, pit, well, surface impoundment, holding, or storage area.
      - ii. Specific steps and time schedules for compliance as reasonably necessary to discontinue any illicit connection.
      - iii. Specific requirements for containment, cleanup, removal, storage, installation of overhead covering, or proper disposal of any pollutant having the potential to contact stormwater runoff.
      - iv. 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.
      - v. Any other terms or requirements reasonably calculated to achieve full compliance with the terms, conditions, and requirements of any permit issued pursuant hereto.
  3. Cease and desist orders.
    - a. The authorized inspector may issue a cease and desist order. A cease and desist order shall be delivered in accordance with Section 6.40.070(A)(5). A cease and desist order may direct the owner or occupant of any property and/or other person responsible for a violation of this chapter to:
      - i. Immediately discontinue any illicit connection or prohibited discharge to the stormwater drainage system.
      - ii. Immediately contain or divert any flow of water off the property, where the flow is occurring in violation of any provision of this chapter.
      - iii. Immediately discontinue any other violation of this chapter.
      - iv. Clean up the area affected by the violation.
      - v. The authorized inspector may direct by cease and desist order that the owner of any property, or his or her successor-in-interest, whose property is subject to any conditions or requirements issued pursuant to Section 6.40.050(A)(1) or any permittee under any permit issued

pursuant to Section 6.40.080 hereof: Immediately cease any activity not in compliance with the conditions or requirements issued pursuant to Section 6.40.050(A)(1), or the terms, conditions, and requirements of the applicable permit.

4. Recovery of costs. The authorized inspector may deliver to the owner or occupant of any property, any permittee, or any other person who becomes subject to a notice of noncompliance or administrative order, an invoice for costs. An invoice for costs shall be delivered in accordance with Section 6.40.070(A)(5). An invoice for 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 invoice for costs fails to either pay the invoice for costs or appeal successfully the invoice for costs in accordance with Section 6.40.070(A)(6), then the enforcing attorney may institute collection proceedings.

5. Delivery of notice. Any notice of noncompliance, administrative compliance order, cease and desist order, or invoice of costs to be delivered pursuant to the requirements of this chapter shall be subject to the following:
  - a. The notice shall state that the recipient has a right to appeal the matter as set forth in Section 6.40.070(A)(6) through 6.40.070(A)(10).
  - b. Delivery shall be deemed complete upon:
    - i. Personal service to the recipient;
    - ii. Deposit in the U.S. mail, postage pre-paid for first class mail; or
    - iii. Facsimile service with confirmation of receipt.
  - c. Where the recipient of notice is the owner of the property, the address for notice shall be the address from the most recently issued equalized assessment roll for the property or as otherwise appears in the current records of the City.
  - d. Where the owner or occupant of any property cannot be located after the reasonable efforts of the authorized inspector, a notice of noncompliance or cease and desist order shall be deemed delivered after posting on the property for a period of 10 business days.
6. Administrative hearing for notices of noncompliance, administrative compliance orders, invoices for costs and adverse determinations. Except as set forth in subsection (A)(8) of this section, any person receiving a notice of noncompliance, administrative compliance order, a notice of legal nonconforming connection, an invoice for costs, or any person who is subject to any adverse determination made pursuant to this chapter, may appeal the matter by requesting an administrative hearing. Notwithstanding the

foregoing, these administrative appeal procedures shall not apply to criminal proceedings initiated to enforce this chapter.

7. Request for administrative hearing. Any person appealing a notice of noncompliance, an administrative compliance order, a notice of legal nonconforming connection, an invoice for costs or an adverse determination shall, within 30 days of receipt thereof, file a written request for an administrative hearing, accompanied by an administrative hearing fee as established by separate City Council resolution, with the office of the City Clerk, 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 45 business days of the date of filing of the written request unless, in the reasonable discretion of the hearing officer and pursuant to a written request by the appealing party, a continuance of the hearing is granted.
8. Administrative hearing for cease and desist orders and emergency abatement actions. An administrative hearing on the issuance of a cease and desist order or following an emergency abatement action shall be held within five business days following the issuance of the order or the action of 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. A request for an administrative hearing shall not be required from the person subject to the cease and desist order or the emergency abatement action.
9. Hearing proceedings. The authorized inspector shall appear in support of the notice, order, determination, invoice for costs, or emergency abatement action, and the appealing party shall appear in support of withdrawal of the notice, order, determination, invoice for costs, or in opposition to the emergency abatement action. Except as set forth in Section 6.40.030 (definition of "discharge exception"), 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.
10. Final decision and appeal. The final decision of the hearing officer shall issue within 10 business days of the conclusion of the hearing and shall be delivered by first-class mail, postage prepaid, to the appealing party. 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 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 section, the final decision of the hearing officer in any proceeding determining the validity of a cease and desist order or following an emergency abatement action shall be mailed within five business days following the conclusion of the hearing.

11. City abatement. In the event the owner of property, the operator of a facility, a permittee, or any other person fails to comply with any provision of a compliance schedule issued to such owner, operator, permittee, or person pursuant to this chapter, the authorized inspector may request the enforcing attorney to obtain an abatement warrant or other appropriate judicial authorization to enter the property, abate the condition, and restore the area. Any costs incurred by the City in obtaining and carrying out an abatement warrant or other judicial authorization may be recovered pursuant to Section 6.40.070(B)(4).
- 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.
1. Court order to enjoin or abate. At the request of the City Manager, the enforcing attorney may seek a court order to enjoin and/or abate the nuisance.
  2. Notice to owner and occupant. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the City Manager 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.
  3. Emergency abatement. In the event the nuisance constitutes an imminent danger to public safety or the environment, the City Manager 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 thereof and without judicial warrant.
    - a. An imminent danger shall include, but is not limited to, exigent circumstances created by the dispersal of pollutants, where the same presents a significant and immediate threat to the public safety or the environment.
    - b. Notwithstanding the authority of the City to conduct an emergency abatement action, an administrative hearing pursuant to Section 6.40.070(A)(8) hereinabove shall follow the abatement action.
  4. 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.
  5. Nuisance lien. All costs shall become a lien against the property from which the nuisance emanated and a personal obligation against the owner thereof 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 City Manager, the enforcing attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the County Assessor of a special assessment against the property in accord with the conditions and requirements of Government Code §38773.5.

C. Criminal sanctions.

1. Prosecutor. The enforcing attorney may act on the request of the City Manager to pursue enforcement actions in accordance with the provisions of this chapter.
2. Infractions. Any person who may otherwise be charged with a misdemeanor under this chapter may be charged, at the discretion of the enforcing attorney, with an infraction punishable by a fine of not more than \$250.00 for a first violation, \$500.00 for a second violation, and a fine not exceeding \$1,000.00 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 \$1,000.00 or by imprisonment for a period of not more than six months, or both.

D. Consecutive violations. Each day in which a violation occurs and each separate failure to comply with either a separate provision of this chapter, an administrative compliance order, a cease and desist order, or a permit issued pursuant to this chapter, shall constitute a separate violation of this chapter punishable by fines or sentences issued in accordance with this chapter.

E. 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 enforcing attorney to seek cumulative remedies, except that multiple monetary fines or penalties shall not be available for any single violation of this chapter.

F. Citations.

1. 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 enforcing

attorney.

2. 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 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 enforcing attorney may request issuance of a warrant for the arrest of the person cited.
- G. 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 enforcing attorney is authorized to file a citizen suit pursuant to the Federal Clean Water Act Section 505(a), seeking penalties, damages, and orders compelling compliance, and other appropriate relief. The enforcing attorney may notify EPA Region IX, the Santa Ana Regional Water Quality Control Board, or any other appropriate state or local agency, of any alleged violation of this chapter.
- H. Injunctions. At the request of the City Manager, the enforcing attorney may cause the filing in a court of competent jurisdiction of a civil action seeking an injunction against any threatened or continuing noncompliance with the provisions of this chapter.

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.

- I. Other civil remedies.
1. The City Manager may cause the enforcing attorney to file 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 enforcing attorney is authorized to file actions for civil damages resulting from any trespass or nuisance occurring on public land or to the stormwater drainage system from any violation of this chapter where the same has caused damage, contamination or harm to the environment, public property, or the stormwater drainage system.



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.  
( 2401 § 1, 1997; 2803 § 1, 2011)

**§ 6.40.080. Permits.**

**A. Discharge permit procedure.**

1. Permit. On application of the owner of property or the operator of any facility, which property or facility is not otherwise subject to the requirements of a state general permit or a national pollution discharge elimination system permit regulating stormwater discharges, the City Manager may issue a permit authorizing the release of non-stormwater discharges to the stormwater drainage system if:
  - a. The discharge of material or constituents is reasonably necessary for the conduct of otherwise legal activities on the property; and
  - b. The discharge will not cause a nuisance, impair the beneficial uses of receiving waters, or cause any reduction in established water quality standards.
2. Application. The applicant shall provide all information requested by the City Manager for review and consideration of the application, including but not limited to specific detail as to the activities to be conducted on the property, plans and specifications for facilities located on the property, identification of equipment or processes to be used on-site and other information as may be requested in order to determine the constituents, and quantities thereof, which may be discharged if permission is granted.
3. Permit issuance. The permit shall be granted or denied by the City Manager or his or her designated representative, no later than 60 business days following the completion and acceptance of the application as determined by the City Manager.

The applicant shall be notified in person or by first-class mail, postage prepaid, of the action taken.

4. Permit conditions. The permit may include terms, conditions, and requirements to ensure compliance with the objectives of this chapter and as necessary to protect the receiving waters, including but not limited to:
  - a. Identification of the discharge location on the property and the location at which the discharge will enter the stormwater drainage system;
  - b. Identification of the constituents and quantities thereof to be discharged into the stormwater drainage system;
  - c. Specification of pollution prevention techniques and structural or

nonstructural control requirements as reasonably necessary to prevent the occurrence of potential discharges in violation of this chapter;

- d. Requirements for self-monitoring of any discharge;
  - e. Requirements for submission of documents or data, such as technical reports, production data, discharge reports, self-monitoring reports, and waste manifests; and
  - f. Other terms and conditions appropriate to ensure compliance with the provisions of this chapter and the protection of receiving waters, including requirements for compliance with best management practices guidance documents approved by any federal, State of California or regional agency.
5. General permit. In the discretion of the City Manager, the permit may, in accordance with the conditions identified in Section 6.40.080(A)(4), be prepared as a general permit applicable to a specific category of activities. If a general permit is issued, any person intending to discharge within the scope of the authorization provided by the general permit may do so by filing an application to discharge with the City Manager. No discharge within the scope of the general permit shall occur until such application is so filed.

Notwithstanding the foregoing in Section 6.40.080(A)(5), the City Manager, in his or her discretion, may eliminate the requirement that an application for a general permit be filed for any specific activity for which a general permit has been issued.

6. Permit fees. The permission to discharge shall be conditioned upon the applicant's payment of the City's costs, in accordance with a fee schedule adopted by separate resolution, as follows:
- a. For individually issued permits, the costs of reviewing the permit application, preparing and issuing the permit, and the costs reasonably related to administering this permit program; and
  - b. For general permits, the costs of reviewing the permit application, that portion of the costs of preparing the general permit that is reasonably attributable to the permittee's application for the general permit, and the costs reasonably related to administering the general permit program. Notwithstanding the foregoing, no permit fee shall be charged for a general permit issued pursuant to Section 6.40.080(A)(5)(a).
- B. Permit suspension, revocation, or modification.
1. The City Manager may suspend or revoke any permit when it is determined that:
    - a. The permittee has violated any term, condition or requirement of the permit or any applicable provision of this chapter;

- b. The permittee's discharge or the circumstances under which the discharge occurs have changed so that it is no longer appropriate to except the discharge from the prohibitions on prohibited discharge contained within this chapter; or
  - c. The permittee fails to comply with any schedule for compliance issued pursuant to this chapter; or
  - d. Any regulatory agency, including the EPA or a Regional Water Quality Control Board having jurisdiction over the discharge, notifies the City that the discharge should be terminated.
2. The City Manager may modify any permit when it is determined that:
    - a. Federal or state law requirements have changed in a manner that necessitates a change in the permit; or
    - b. The permittee's discharge or the circumstances under which the discharge occurs have changed so that it is appropriate to modify the permit's terms, conditions, or requirements; or
    - c. A change to the permit is necessary to ensure compliance with the objectives of this chapter or to protect the quality of receiving waters.
  3. The permittee, or in the case of a general permit, each person who has filed an application pursuant to Section 6.40.080(A)(5), shall be informed of any change in the permit terms and conditions at least 60 days prior to the effective date of the modified permit. In the case of a general permit issued pursuant to Section 6.40.080(A)(5)(a), any change in the permit terms and conditions shall be published in newspaper of general circulation within the City at least 60 days prior to the effective date of the modified permit.
  4. The determination that a permit shall be denied, suspended, revoked, or modified may be appealed by a permittee pursuant to the same procedures applicable to appeal of an administrative compliance order in this chapter. In the absence of a judicial order to the contrary, the permittee may continue to discharge pending issuance of the final administrative decision by the hearing officer.
- C. Permit enforcement — penalties. Any violation of the terms, conditions, and requirements of any permit issued by the City Manager shall constitute a violation of this chapter and subject the violator to the administrative, civil, and criminal remedies available under this chapter.
- D. Compliance with the terms, conditions, and requirements of a permit issued pursuant to this chapter shall not relieve the permittee from compliance with all federal, state, and local laws, regulations and permit requirements, applicable to the activity for which the permit is issued.
1. Limited permittee rights. Permits issued under this chapter are for the person

or entity identified therein as the "permittee" only, and authorize the specific operation at the specific location identified in the permit. The issuance of a permit does not vest the permittee with a continuing right to discharge.

2. Transfer of permits. No permit issued to any person may be transferred to allow:
  - a. A discharge to the stormwater drainage system at a location other than the location stated in the original permit; or
  - b. A discharge by a person other than the person named in the permit, provided however, that the City may approve a transfer if written approval is obtained, in advance, from the City Manager.

( 2401 § 1, 1997; 2803 § 1, 2011)

#### **§ 6.40.090. 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, and enforcement authorized by this chapter.

( 2401 § 1, 1997; 2803 § 1, 2011)

#### **§ 6.40.100. 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 the application of the chapter to any circumstance is held invalid, the remainder of the chapter or the application of the chapter to other persons or circumstances shall not be affected.

( 2401 § 1, 1997; 2803 § 1, 2011)

#### **§ 6.40.110. Judicial Review.**

The provisions of Sections 1094.5 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 90 days of the occurrence of the event for which review is sought.

( 2401 § 1, 1997; 2803 § 1, 2011)