

ORDINANCE 10-285

AN ORDINANCE OF THE CITY OF MISSION VIEJO  
AMENDING THE MUNICIPAL CODE BY AMENDING  
CHAPTER 6.65 OF TITLE 6 RELATING TO WATER  
QUALITY

THE CITY COUNCIL OF THE CITY OF MISSION VIEJO DOES ORDAIN AS  
FOLLOWS:

SECTION 1. Ordinance Amending Title 6 of the Municipal Code.

Chapter 6.65 of Title 6 of the Mission Viejo Municipal Code is hereby amended in its  
entirety to read as follows:

CHAPTER 6.65. WATER QUALITY

DIVISION 1. PURPOSE, FINDINGS, AND DEFINITIONS

Section 6.65.010 Title reference to code.

This chapter shall be known as and may be cited as the "City of Mission Viejo Water  
Quality Code."

Section 6.65.100 Purpose and findings.

- (a) The United States Congress passed the Clean Water Act [33 USC §1251 et seq., as amended, including §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 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 herein as the National Pollution Discharge Elimination System Permit or "NPDES Permits."

- (c) The City of Mission Viejo 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) Runoff is one step in the 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 City of Mission Viejo is authorized by Article XI, §5 and §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.
- (f) The City has determined that a legitimate local purpose is present in complying with the provisions of its NPDES Permit issued by the San Diego Regional Water Quality Control Board for waste discharge requirements for discharges of runoff from the City's municipal separate storm sewer system.
- (g) 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.
- (h) The land use authority exercised by the City pursuant to California Government Code §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.
- (i) 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.
- (j) The Subdivision Map Act, California Government Code §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.
- (k) California Constitution Article XI, §7 and Government Code §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.
- (l) Government Code §38771 authorizes the City to declare as public nuisances undesirable acts which may injure health or cause interference with the comfortable enjoyment of life or property and to provide for the abatement of the same.
- (m) The City may commence civil actions, pursuant to Federal Clean Water Act §505(a), against any Person or any governmental agency acting in violation of any condition of the NPDES Permit.
- (n) All industrial dischargers subject to the provisions of the Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities Permit (State Industrial General

Permit) and the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities (State Construction General Permit) (referred to collectively herein 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.

- (o) 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.
- (p) All dischargers subject to the provisions of the State Construction General Permit may be required by the City, with the concurrence of the San Diego Regional Water Board, to amend any Stormwater Pollution Prevention Plan.
- (q) All industrial dischargers subject to the provisions of the State Industrial General Permit are required to maintain a description of the required monitoring program on-site and make it available to the City for inspection.
- (r) 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 Industrial General 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.
- (s) The City has jurisdiction over certain stormwater facilities and other watercourses within the City, and these facilities may receive discharges from properties and activities regulated under the provisions of the state general permits, and City may request that the regulated dischargers furnish information and records necessary to determine compliance with the state general permits.
- (t) The City has jurisdiction over certain stormwater facilities and other watercourses within the City, and these facilities may receive discharges from properties and activities regulated under the provisions of the state general permits, and City may, upon presentation of credentials and other documents required by law, (i) 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, (ii) access and copy, at reasonable times, any records that must be kept under the conditions of the state general permits, (iii) inspect, at reasonable times, any facility or equipment related to or impacting stormwater discharge, and (iv) sample or monitor for the purpose of ensuring compliance with the state general permits.
- (u) 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 §21000, including but not limited to 21083 and 21084, et seq. ("CEQA"); and
- (v) 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.

(w) The purpose of this Ordinance is to participate in the improvement of water quality and comply with federal requirements for the control of urban pollutants to runoff, which enters the network of storm drains throughout Orange County.

(Ord. No. 97-171, §1, 7-7-97)

## DIVISION 2. DEFINITIONS

### Section 6.65.110 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates otherwise:

"Authorized inspector" shall mean the Director of Public Works and persons designated by and under his/her instruction and supervision, who are assigned to investigate compliance with, detect violations of and/or take actions pursuant to this chapter.

"City" shall mean the City of Mission Viejo, Orange County, California.

"City manager" shall mean the city manager of the City of Mission Viejo or his or her designee.

"Co-permittee" shall mean the County of Orange, the Orange County Flood Control District, and/or any one of the thirty-four (34) municipalities, including the City of Mission Viejo, which are responsible for compliance with the terms of the NPDES Permit.

"DAMP" shall mean the Orange County Drainage Area Management Plan, including the cities' adopted Local Implementation Plans (LIPs), as the same may be amended from time to time.

"Development project guidance" shall mean DAMP Chapter 7 and the Appendix thereto, entitled Model Water Quality Management Plan, as the same may be amended from time to time.

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

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

- (1) Discharges composed entirely of stormwater;

- (2) Discharges authorized by current EPA or Regional Water Quality Control Board-issued NPDES permits, state general permits, or other waivers, permits or approvals granted by a government agency with jurisdiction over such discharges;
- (3) Stormwater discharges from property for which best management practices set forth in the development project guidance and LIPs are being implemented and followed;
- (4) Discharges to the stormwater drainage system from:
  - a. Diverted stream flows;
  - b. Rising ground waters;
  - c. Infiltration to MS4s of groundwater uncontaminated by sewage;
  - d. Uncontaminated pumped groundwater<sup>1</sup>;
  - e. Foundation drains<sup>1</sup>;
  - f. Springs;
  - g. Water from crawl space pumps<sup>1</sup>;
  - h. Footing drains<sup>1</sup>;
  - i. Air conditioning condensation;
  - j. Flows from riparian habitats and wetlands;
  - k. Water line flushing, except for fire suppression sprinkler system maintenance and testing discharges. If any discharges that fall within this exception are subject to State or Regional Water Quality Control Board permits or local ordinances, they are exempt only if the discharger is in compliance with said permits or local ordinances.
  - l. Potable water sources, except to the extent such discharges are subject to but not in compliance with general permits issued by the State or Regional Water Quality Control Board or other local ordinances;
  - m. Individual residential car washing;
  - n. Dechlorinated swimming pools;
  - o. Emergency fire fighting activities;
- (5) Discharges authorized pursuant to a permit issued under Section VIII hereof;
- (6) Stormwater discharges for which the discharger has reduced to the maximum extent practicable the amount of pollutants in such discharge; and
- (7) Discharges authorized pursuant to federal or state laws or regulations.

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.

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<sup>1</sup> These discharges may be covered by a state or Regional Water Quality Control Board permit for groundwater extraction or similar discharges to surface waters. The city authorizes these discharges in compliance with such permit unless the authorized inspector determines the discharge potentially causes, or threatens to cause, a condition of pollution, contamination or nuisance.

"Director" shall mean the director of public works, city engineer, or the director's duly delegated designee.

"Enforcing attorney" shall mean the city attorney or district attorney acting as counsel to the City and his/her designee, which counsel is authorized to take enforcement action as described herein. For purposes of criminal prosecution, only the district attorney and/or city attorney, or his/her designee, shall act as the enforcing attorney.

"EPA" shall mean the Environmental Protection Agency of the United States.

"Hearing officer" shall mean the city manager or his/her designee, who shall preside at the administrative hearings authorized by this chapter and issue final decisions on the matters raised therein.

"Invoice for costs" shall mean 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 division IV of this chapter or where a notice of noncompliance, administrative compliance order or other enforcement option under division V of this chapter is utilized to obtain compliance with this chapter.

"Illicit connection" shall mean 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 and otherwise authorized under applicable state and federal law.

"Legal nonconforming connection" shall mean 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 by the city.

"Local Implementation Plan (LIP)" shall mean the City's adopted plan for implementation of the NPDES permit, as may be amended from time to time.

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

"Non-residential plumbing permit" shall mean 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" shall mean the currently applicable municipal discharge permit, issued by the Regional Water Quality Control Board, San Diego Region, which establishes waste discharge requirements applicable to stormwater runoff in the City;

"Person" shall mean 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" shall mean any liquid, solid or semi-solid 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 food waste, human consumable liquids excepting potable water, 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 non-metals, including compounds of metals and non-metals, (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic), with characteristics which cause an adverse effect on living organisms;
- (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 which contain base/neutral or acid extractible organic compounds;
- (10) Those pollutants defined in §1362(6) of the Federal Clean Water Act; and
- (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" shall mean any discharge which contains any pollutant, from public or private property to (i) the stormwater drainage system; (ii) any upstream flow, which is tributary to the stormwater drainage system; (iii) any groundwater, river, stream, creek, wash or dry weather arroyo, wetlands area, marsh, coastal slough, or (iv) any coastal harbor, bay, or the Pacific Ocean. The term prohibited discharge shall not include discharges allowable under the discharge exception.

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

"State general permit" shall mean either the Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities Permit (State Industrial General Permit) or the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities (State Construction General Permit) and the terms and requirements of either or both. In the event the U.S. Environmental Protection Agency (EPA) revokes the in-lieu permitting authority of the State Water Resources Control Board, then the term state general permit shall also refer to any EPA administered stormwater control program for industrial and construction activities.

"Stormwater drainage system" shall mean street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, which is a part of or tributary to the 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.

(Ord. No. 97-171, §1, 7-7-97)

## DIVISION 2. ILLICIT CONNECTIONS AND PROHIBITED DISCHARGES

Section 6.65.200. Prohibition on illicit connections and prohibited discharges.

(a) No person shall:

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



- (b) The prohibition against illicit connections shall apply irrespective of whether the illicit connection was established prior to the date of enactment of this chapter; however, legal nonconforming connections shall not become illicit connections until the earlier of the following:
  - (1) For all structural improvements to property installed for the purpose of discharge to the stormwater conveyance system, the expiration of five (5) years from the adoption of this chapter.
  - (2) For all nonstructural improvements to property existing for the purpose of discharge to the stormwater conveyance system, the expiration of six (6) months following delivery of a notice to the owner or occupant of the property, which states a legal nonconforming connection has been identified. The notice of a legal nonconforming connection shall state the date of expiration of use under this chapter.
- (c) A civil or administrative violation of Section 6.65.200(a) shall occur irrespective of the negligence or intent of the violator to construct, maintain, operate or utilize an illicit connection or to cause, allow or facilitate any prohibited discharge.
- (d) If an authorized inspector reasonably determines that a discharge, which is otherwise within the discharge exception, may adversely affect the beneficial uses of receiving waters, then the authorized inspector may give written notice to the owner of the property or facility that the discharge exception shall not apply to the subject discharge following expiration of the thirty (30) day period commencing upon delivery of the notice. Upon expiration of the thirty (30) day period any such discharge shall constitute a violation of 6.65.200(a).
- (e) The owner or occupant of property on which a legal nonconforming connection exists may request an administrative hearing, pursuant to the procedures set forth in Sections 6.65.505(f)-(j). A reasonable extension of use may be authorized by the director upon consideration of the following factors:
  - (1) The potential adverse effects of the continued use of the connection upon the beneficial uses of receiving waters;
  - (2) The economic investment of the discharger in the legal nonconforming connection; and
  - (3) The financial effect upon the discharger of a termination of the legal nonconforming connection.
- (f) Liability for any illicit connection or prohibited discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such person(s) shall defend, indemnify and hold harmless the city from all losses, liabilities, claims, or causes of actions in any administrative or judicial action relating to such discharge.

(Ord. No. 97-171, §1, 7-7-97)

### DIVISION 3. CONTROL OF URBAN RUNOFF

#### Section 6.65.310. New development and significant redevelopment.

- (a) All new development and significant redevelopment within the city shall be undertaken in accordance with:
  - (1) The DAMP, including but not limited to the development project guidance; and
  - (2) Any conditions and requirements established by the director which are reasonably related to the reduction or elimination of pollutants in stormwater runoff from the project site, including but not limited to:
    - a. Incorporating low-impact development best management practice techniques into the project design to prevent storm water runoff from leaving the project site, if required by any NPDES permit as determined by the director;
    - b. Incorporating hydro-modification management techniques into the project design to limit changes in the post-project stormwater discharge rates and durations from the pre-project condition, if required by any NPDES permit as determined by the director;
    - c. Incorporating treatment best management practices into the project design, if required by any NPDES permit as determined by the director;
    - d. Requiring all new or redeveloped commercial properties, whether part of a larger common development or a subpart, to construct or reconstruct trash bin enclosure(s) with a solid roof and a floor drain connected to the sanitary sewer system or discharging to a landscaped area, unless waived by the director or prohibited by the water district, to prevent pollutants from exiting the trash bin enclosure.
- (b) Prior to the issuance by the city of a grading permit, building permit or nonresidential plumbing permit for any new development or significant redevelopment, the director, shall review the project plans and impose terms, conditions and requirements on the project in accordance with section 6.65.310(a). If the new development or significant redevelopment will be approved without application for a grading permit, building permit or nonresidential plumbing permit, the director shall review the project plans and impose terms, conditions and requirements on the project in accordance with section 6.65.310(a) prior to the issuance of a discretionary land use approval or, at the city's discretion, prior to recordation of a subdivision map.
- (c) Notwithstanding the foregoing sections 6.65.310(a) and (b), compliance with the development project guidance shall not be required for construction of a (one) single-family detached residence unless the director, determines that the

construction may result in the discharge of significant levels of a pollutant into a tributary to the stormwater drainage system.

- (d) Compliance with the conditions and requirements of the DAMP shall not exempt any person from the requirement to independently comply with each provision of this chapter.
- (e) If the director determines that the project will have a de minimis impact on the quality of stormwater runoff, then it may issue a written waiver of the requirement for compliance with the provisions of the development project guidance.
- (f) The owner of a new development or significant redevelopment project, or upon transfer of the property, its successors and assigns, shall implement and adhere to the terms, conditions and requirements imposed pursuant to section 6.65.310(a) on a new development or significant redevelopment project.
  - (1) 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 6.65.310(a) on a new development or significant redevelopment project shall constitute a violation of this chapter.
- (g) The director may require that the terms, conditions and requirements imposed pursuant to section 6.65.310(a) be recorded with the county recorder's office by the property owner.

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.320. Cost recovery.

The city shall be reimbursed by the project applicant for all costs and expenses incurred by the city staff in the review of new development or significant development projects for compliance with the DAMP. The director 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.

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.330. Litter control.

- (a) No person shall discard any waste material, including but not limited to common household rubbish or garbage of any kind (whether generated or accumulated at a residence, business or other location), upon any public or private property, whether occupied, open or vacant, including but not limited to any street, sidewalk, alley, right-of-way, open area or point of entry to the stormwater drainage system, except in trash containers, or at a lawfully established waste disposal facility.
- (b) Every person occupying or having charge and control of property on which a prohibited disposal of waste materials occurs shall cause the proper collection and disposal of same.
- (c) A prohibited disposal of waste materials creates a danger to public health, safety and welfare, and otherwise threatens the environment, surface waters

and groundwater; therefore, any owner or occupant of property who fails to remove waste material within a reasonable time may be charged with creating a nuisance upon the property.

(Ord. No. 97-171, §1, 7-7-97)

#### DIVISION 4. INSPECTIONS

##### Section 6.65.410. Right to inspect.

Prior to commencing any inspection as hereinbelow authorized, 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.

(Ord. No. 97-171, §1, 7-7-97)

##### Section 6.65.420. 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.

(Ord. No. 97-171, §1, 7-7-97)

##### Section 6.65.430. Compliance assessments.

The authorized inspector may inspect property for the purpose of verifying compliance with this chapter, including but not limited to (i) identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property, (ii) identifying point(s) of discharge of all wastewater, process water systems and pollutants, (iii) investigating the natural slope at the location, including drainage patterns and manmade conveyance systems, (iv) establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system, (v) locating any illicit connection or the source of prohibited discharge, or (vi) evaluating compliance with any permit issued by the city relating to any discharge to the stormwater drainage system.

(Ord. No. 97-171, §1, 7-7-97)

##### Section 6.65.440. 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.

(Ord. No. 97-171, §1, 7-7-97)

##### Section 6.65.450. Record 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, or any other source of contribution or potential contribution of pollutants to the stormwater drainage system.  
(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.460. 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, or other pipelines on the property using appropriate tests, including but not limited to smoke and dye tests or video surveys. The authorized inspector may take photographs or video tape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.  
(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.470. 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.  
(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.480. Test results.

The owner or occupant of property subject to inspection shall, on submission of a written request, receive copies of all monitoring and test results conducted by the authorized inspector.  
(Ord. No. 97-171, §1, 7-7-97)

## DIVISION 5. ENFORCEMENT

Section 6.65.505. Administrative remedies.

The director may, in addition to any other remedies provided in this Code, including but not limited to chapter 1.03 of this Code, or available under applicable law, take enforcement action against violators of this chapter through one (1) or any combination of the administrative enforcement options set forth below:

- (a) 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 6.65.505(e) of this chapter.

- (1) The notice of noncompliance shall identify the provision(s) of this chapter or the applicable permit which has been violated. The notice of noncompliance shall state that continued noncompliance may result in additional enforcement actions against the owner, occupant and/or person.
- (2) 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 90 days unless the authorized inspector extends the compliance deadline an additional 90 days where good cause exists for the extension.

(b) Administrative compliance orders.

- (1) The authorized inspector may issue an administrative compliance order. The administrative compliance order shall be delivered in accordance with section 6.65.505(e) of this chapter. The administrative compliance order may be issued to:
  - a. 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;
  - b. The owner of property subject to terms, conditions or requirements imposed on a project in accordance with section 6.65.310(a) to ensure adherence to those terms, conditions and requirements.
  - c. Any person responsible for an illicit connection or prohibited discharge.
- (2) The administrative compliance order may include the following terms and requirements:
  - a. 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;
  - b. Specific steps and time schedules for compliance as reasonably necessary to discontinue any illicit connection;
  - c. Specific requirements for containment, cleanup, removal, storage, installation of overhead covering, or proper disposal of any pollutant having the potential to contact stormwater runoff;
  - d. Any other terms or requirements reasonably calculated to prevent the imminent threat of or continuing violations of this chapter, including, but not limited to requirements for compliance with best management practices guidance

documents promulgated by any federal, State of California or regional agency; and

- e. Any other terms or requirements reasonably calculated to achieve full compliance with the terms, conditions and requirements of any permit issued by the city or of this chapter.

(c) Cease and desist orders.

(1) The authorized inspector may issue a cease and desist order. A cease and desist order shall be delivered in accordance with section 6.65.505(e) of this chapter. 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:

- a. Immediately discontinue any illicit connection or prohibited discharge to the stormwater drainage system;
- b. Immediately contain or divert any flow of water off the property, where the flow is occurring in violation of any provision of this chapter;
- c. Immediately discontinue any other violation of this chapter;
- d. Clean up the area affected by the violation.

(2) The authorized inspector may direct by cease and desist order that the owner of any property, or his successor in interest, which property is subject to any conditions or requirements issued pursuant to section 6.65.310(a) hereof immediately cease any activity not in compliance with such conditions and requirements.

(d) 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 6.65.505(e) of this chapter. 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.

(1) 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 6.65.505(f) then the enforcing attorney may institute collection proceedings.

(e) 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:

(1) The notice shall state that the recipient has a right to appeal the matter as set forth in sections 6.65.505(f) through section 6.65.505(j) of this chapter.

(2) Delivery shall be deemed complete upon (a) personal service to the recipient; (b) deposit in the U.S. mail, postage prepaid for first class delivery; or (c) facsimile service with confirmation of receipt.

- (3) 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.
  - (4) 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 ten business days.
- (f) Administrative hearing for notices of noncompliance, administrative compliance orders, invoices for costs and adverse determinations. Except as set forth in section 6.65.505(h), any person receiving a notice of noncompliance, administrative compliance order, 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.
- (g) Request for administrative hearing. Any person appealing a notice of noncompliance, an administrative compliance order, 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 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.
- (h) 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.
- (i) 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 6.65.110(g) of this chapter (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.
- (j) Final decision and appeal. The final decision of the hearing officer shall issue within ten 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 §§1094.5 and 1094.6 and shall be commenced within 90 days following issuance of the final decision. Notwithstanding this subsection (j), the final decision of the hearing officer in any preceding determining the validity of a cease and desist order or following an emergency abatement action shall be mailed within five business days following the conclusion of the hearing.

- (k) 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 6.65.510(d).

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.510. 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 §38771.

- (a) Court order to enjoin or abatement. At the request of the city manager, the enforcing attorney may seek a court order to enjoin and/or abate the nuisance.
- (b) 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.
- (c) Emergency abatement. In the event the nuisance constitutes an imminent danger to public safety or the environment, the authorized inspector or director, 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.
  - (1) 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.

- (2) Notwithstanding the authority of the city to conduct an emergency abatement action, an administrative hearing pursuant to section 6.65.505(h) hereinabove shall follow the abatement action.
- (d) 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.
- (e) 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 §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 §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.

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.520. 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 by the city relating to any discharges to the stormwater drainage system, shall constitute a separate violation of this chapter punishable by fines or sentences issued in accordance herewith.

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.525. Nonexclusive remedies.

Each and every remedy available for the enforcement of this chapter shall be nonexclusive and it is within the discretion of the director 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.

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.530. Citations.

- (a) Pursuant to Penal Code §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 §§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.

- (b) Each citation to appear shall state the name and address of the violator, the provisions of this chapter violated, and the time and place of appearance before the court, which shall be at least ten 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.

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.535. 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 Federal Clean Water Act §505(a), seeking penalties, damages, and orders compelling compliance, and other appropriate relief. The enforcing attorney may notify USEPA Region IX, the Santa Ana or San Diego Regional Water Quality Control Boards, or any other appropriate state or local agency, of any alleged violation of this chapter.

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.540. 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. 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.

(Ord. No. 97-171, §1, 7-7-97)

Sec. 6.65.545. Other civil remedies.

- (a) The city manager may cause the enforcing attorney to file an action for civil damages in a court of competent jurisdiction seeking recovery of (i) all costs incurred in enforcement of the chapter, including but not limited to costs relating to investigation, sampling, monitoring, inspection, administrative expenses, all other expenses as authorized by law, and consequential damages, (ii) all costs incurred in mitigating harm to the environment or reducing the threat to human health, and (iii) damages for irreparable harm to the environment.
- (b) 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.

- (c) 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.

(Ord. No. 97-171, §1, 7-7-97)

## DIVISION 6. PERMITS

### Section 6.65.610. Discharge permit procedure.

- (a) 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 NPDES permit regulating stormwater discharges, the director may issue a permit authorizing the release of non-stormwater discharges to the stormwater drainage system if:
  - (1) The discharge of material or constituents is reasonably necessary for the conduct of otherwise legal activities on the property; and
  - (2) The discharge will not cause a nuisance, impair the beneficial uses of receiving waters, or cause any reduction in established water quality standards.
- (b) Application. The applicant shall provide all information requested by the director 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.
- (c) Permit issuance. The permit shall be granted or denied by the director no later than sixty (60) business days following the completion and acceptance of the application as determined by the director. The applicant shall be notified in person or by first-class mail, postage prepaid, of the action taken.
- (d) 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:
  - (1) Identification of the discharge location on the property and the location at which the discharge will enter the stormwater drainage system;
  - (2) Identification of the constituents and quantities thereof to be discharged into the stormwater drainage system;
  - (3) Specification of pollution prevention techniques and structural or non-structural control requirements as reasonably necessary to prevent the occurrence of potential discharges in violation of this chapter;
  - (4) Requirements for self-monitoring of any discharge;
  - (5) Requirements for submission of documents or data, such as technical reports, production data, discharge reports, self-monitoring reports and waste manifests; and

- (6) 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.
- (e) General Permit. In the discretion of the director, the permit may, in accordance with the conditions identified in Section 6.65.610(d) hereinabove, 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 director. No discharge within the scope of the general permit shall occur until such application is so filed.
  - (1) Notwithstanding the foregoing in this subsection (e), the director in his 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.
- (f) 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:
  - (1) For individually issued permits, the costs of reviewing the permit application, preparing and issuing the permit, and the costs reasonably related to administrating this permit program.
  - (2) For general permits, the costs of reviewing the permit application, that portion of the costs of preparing the general permit which is reasonably attributable to the permittee's application for the general permit, and the costs reasonably related to administering the general permit program.

Section 6.65.620. Permit suspension, revocation or modification.

- (a) The director may suspend or revoke any permit when it is determined that:
  - (1) The permittee has violated any term, condition or requirement of the permit or any applicable provision of this chapter; or
  - (2) 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
  - (3) The permittee fails to comply with any schedule for compliance issued pursuant to this chapter; or
  - (4) Any regulatory agency, including EPA or a Regional Water Quality Control Board having jurisdiction over the Discharge, notifies the city that the discharge should be terminated.
- (b) The director may modify any permit when it is determined that:
  - (1) Federal or state law requirements have changed in a manner that necessitates a change in the permit; or

- (2) 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
- (3) A change to the permit is necessary to ensure compliance with the objectives of this chapter or to protect the quality of receiving waters.

The permittee, or in the case of a general permit, each person who has filed an application pursuant to Section 6.65.610(e) shall be informed of any change in the permit terms and conditions at least forty-five (45) business days prior to the effective date of the modified permit.

- (c) 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 hereunder. 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.

Section 6.65.630. Penalties.

Any violation of the terms, conditions and requirements of any permit issued by the city shall constitute a violation of this chapter and subject the violator to the administrative, civil and criminal remedies available under this chapter.

(Ord. No. 97-171, §1, 7-7-97)

Section 6.65.640. Compliance with laws.

Compliance with the terms, conditions and requirements of a permit issued by the city 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.

- (a) 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.
- (b) Transfer of permits. No permit issued to any person may be transferred to allow:
  - (1) A discharge to the stormwater drainage system at a location other than the location stated in the original permit; or
  - (2) 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 director.

(Ord. No. 97-171, §1, 7-7-97)

## DIVISION 7. INTERAGENCY COOPERATION

### Section 6.65.710. City cooperation.

The city intends to cooperate with other agencies with jurisdiction over storm water discharges to ensure that the regulatory purposes underlying storm water regulations promulgated pursuant to the Clean Water Act (33 USC §1251 et seq.) are met.  
(Ord. No. 97-171, §1, 7-7-97)

### Section 6.65.720. Contracting for services.

The city may, to the extent authorized by law, elect to contract for the services of any public agency or private enterprise to carry out the planning approvals, inspections, permits and enforcement authorized by this chapter.  
(Ord. No. 97-171, §1, 7-7-97)

## DIVISION 8. MISCELLANEOUS

### Section 6.65.810. 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 storm water and/or the protection of storm water quality.  
(Ord. No. 97-171, §1, 7-7-97)


### Section 6.65.820. Judicial review.

The provisions of §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.  
(Ord. No. 97-171, §1, 7-7-97)


**SECTION 2. Severability.** If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

**SECTION 3.** The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

PASSED, APPROVED, and ADOPTED this 6th day of December, 2010.

  
Trish Kelley  
Mayor


ATTEST:

  
Karen Hamman  
City Clerk

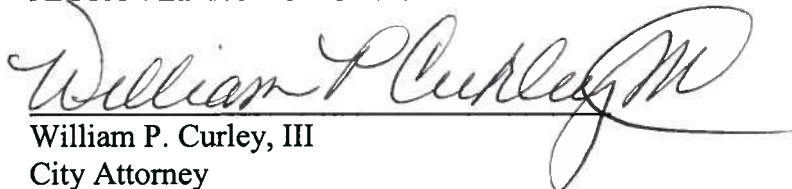
STATE OF CALIFORNIA }  
COUNTY OF ORANGE } ss.  
CITY OF MISSION VIEJO }

I, KAREN HAMMAN, City Clerk of the City of Mission Viejo, California, do hereby certify that the foregoing Ordinance 10-285 was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 15<sup>th</sup> day of November, 2010, and that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City Council on the 6th day of December, 2010, by the following vote, to wit:

AYES: Kelley, Leckness, Ledesma, Schlicht, and Ury  
NOES: None  
ABSENT: None

  
Karen Hamman  
City Clerk

APPROVED AS TO FORM:

  
William P. Curley, III  
City Attorney