

**REGULAR**

**NUMBER: 208.48**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE SEWER USE ORDINANCE**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of May 15, 2012, upon motion by Councilmember Polanski and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## RECITALS AND FINDINGS:

**WHEREAS**, revisions and updates to the City's ordinance for the general use of public sewers use are necessary; and

**WHEREAS**, the City of Milpitas contracts with the San Jose/Santa Clara Water Pollution Control Plant for wastewater treatment and disposal and is bound by the terms of the Master Agreement for this service; and

**WHEREAS**, the City of San Jose requires all dischargers to the San Jose/Santa Clara Water Pollution Control Plant to revise their sewer use ordinances to correct deficiencies in the City of San Jose Pretreatment Program identified by the U.S. Environmental Protection Agency; and

**WHEREAS**, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15061(b)(3) and 15308, that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment and also merely amends parts of a regulatory process for the protection of the environment.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

### SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

### SECTION 2. AMENDMENT OF SECTION 5.04 OF CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE

Section 5.04 (18) of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

- (18) **Diluting Waters.** "Diluting Waters" means non-contact cooling water, boiler blowdown, domestic sewage, groundwater, stormwater, surface drainage, reverse osmosis reject, water softener regeneration, potable waters, or any waters which are not part of an industrial process and which do not contain priority pollutants but are combined with industrial wastewater prior to the monitoring point for industrial wastewater discharge. Diluting Waters also includes excess water used in production processes, such as rinse tanks or rinse water running when in production in excess of operational or quality requirements.

Section 5.04 (52) of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

- (52) **Significant Change.** "Significant Change" means any change in an industrial user's operation that results in any of the following:
- (a) A flow that exceeds the expected peak flow as shown in the sewage treatment plant connection allocation for the property on which the industrial user is located.
  - (b) An increase or decrease in annual average process flow of twenty-five (25) percent over the Standard Discharger's average process flow for the dischargers' most immediate preceding twelve (12) months.
  - (c) An increase or decrease in annual average process flow that results in a change from Low Flow Discharger to Standard Discharger or from Standard Discharger to Low Flow Discharger.
  - (d) An increase or decrease in annual average process flow that results in a change from non-Significant Industrial User to Significant Industrial User or from Significant Industrial User to non-Significant Industrial User.
  - (e) An increase or decrease in annual production rate of twenty-five (25) percent for any industrial user subject to production-based limits over the industrial user's production rate for the most immediate preceding twelve (12) months.

- (f) Adding or deleting process discharge or sample points.

Section 5.04 (65) of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

- (65) **Zero Discharge Categorical User or ZDC.** “Zero discharge categorical user” or “ZDC” means an industrial facility that performs any categorical process subject to federal pretreatment standards, as described in 40 CFR 405-471, that has any connection to the sanitary sewer system, but does not discharge wastewater from the categorical process to the sanitary sewer.

**SECTION 3. AMENDMENT OF SECTION 5.12 OF CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE**

Section 5.12 of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

**VIII-2-5.12 - Stormwater and Other Waters**

- (a) No person shall discharge, cause, allow or permit any stormwater, surface water, groundwater, subsurface drainage or roof water to be discharged into the sanitary sewer system or any part thereof without a wastewater discharge permit.
- (b) A wastewater discharge permit for the discharge of groundwater, subsurface drainage, surface water, roof water, or stormwater shall only be issued if there is no reasonable alternative method for disposal of such water.
- (c) If permitted, discharge of groundwater, subsurface drainage, surface water, roof water, or stormwater shall be subject to all applicable requirements of this Chapter, including but not limited to the payment of applicable permit fees and such terms and conditions as the City Engineer and the San Jose Director of Environmental Services may impose on the wastewater discharge permit.

**SECTION 4. AMENDMENT OF SECTION 5.18 OF CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE**

Section 5.18 of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

**VIII-2-5.18 - Corrosive Matter**

No person shall discharge, cause, allow or permit to be discharged into the sanitary sewer system or any part thereof any liquid, solid, vapor, gas or thing having or causing a pH lower than six (6.0) or equal to or greater than twelve and one-half (12.5) or having any other corrosive property capable of causing damage or hazard to the sanitary sewer system or any part thereof, or to any personnel operating, maintaining, repairing, constructing said sanitary sewer system or any part thereof, or working in or about the sanitary sewer system.

**SECTION 5. AMENDMENT OF SECTION 5.21 OF CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE**

Section 5.21 of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

**VIII-2-5.21 - Prohibition on Use of Diluting Waters**

No Industrial User shall ever increase the use of process water, or in any way use diluting waters as a partial or complete substitute for adequate treatment, or to meet local limits or achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or Requirement.

**SECTION 6. AMENDMENT OF SECTION 5.46 OF CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE**

Section 5.46 of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

### **VIII-2-5.46 - Signature requirements**

- (a) Permit applications, discharge reports and any other reports required by the City or the San Jose Director of Environmental Services shall be signed by an executive officer of the business filling the application.
- (b) Such executive officer shall be at least of the level of vice president, general partner, president, or an individual responsible for the overall operation of the facility applying for said permit, or meet federal requirements for NPDES applications as contained in Title 40 of the CFR.
- (c) Reports subject to the requirements of Title 40 of the CFR shall include the certification statement as contained in Title 40 of the CFR.

## **SECTION 7. AMENDMENT OF SECTION 5.48 OF CHAPTER 2 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE**

Section 5.48 of Chapter 2 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

### **VIII-2-5.48 - Discharge Reports**

- (a) Dischargers are subject to the reporting requirements as contained in Title 40 of the Code of Federal Regulations. The City Engineer may require that any person connected to or discharging wastewater into the sanitary sewer system file additional periodic discharge reports or a zero discharge report.
- (b) The periodic discharge report may be required to include, but need not be limited to nature of process, volume, rates of flow, mass emission rate, hours of operation, number of employees, hauling records, potential for slug discharge or other information which relates to the generation of waste, including wastewater constituents and characteristics in the wastewater discharge and the ability of the discharger to meet applicable discharge limits.
- (c) The zero discharge report for a zero discharge user shall certify that the user does not discharge any process water to sanitary sewer. The zero discharge report for a zero discharge categorical user shall certify that the user does not discharge any categorical process water or ancillary process water to the designated zero discharge categorical sample point or into the sanitary sewer system. All zero discharge reports may be required to include, but need not be limited to, nature of process, hours of operation, number of employees, hauling records, or other information that relates to the generation of wastes.
- (d) The City Engineer may also require such periodic discharge reports and zero discharge reports to include information concerning the chemical constituents and quantity of chemicals stored on-site, including waste hauling records or other information, which relates to the generation of waste even though they may not normally be discharged.
- (e) In addition to discharge reports, the City Engineer may require dischargers to submit such additional reports as may be necessary to allow the City to evaluate the discharger's ability to comply with this Chapter, including but not limited to best management practice or self-monitoring reports.
- (f) It is unlawful for any person who has discharged wastewater into the sanitary sewer system to refuse to file any report requested by the City.
- (g) Sampling and analysis shall be performed in accordance with 40 CFR 136 and amendments thereto. Where 40 CFR 136 does not contain sampling or analytical methods for the pollutant in question, or where the San Jose Director of Environmental Services determines that 40 CFR 136 are inappropriate for the pollutant in question, sampling and analysis shall be performed by using analytical methods validated by the director.

## **SECTION 8. SEVERABILITY**

In the event any section or portion of this Ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

## **SECTION 9. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance

**REGULAR**

**NUMBER:** 239.7

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE STORMWATER AND URBAN RUNOFF POLLUTION CONTROL ORDINANCE

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of May 15, 2012, upon motion by Councilmember Polanski and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, revisions and updates to the City’s ordinance for the control of stormwater and urban runoff are needed; and

**WHEREAS**, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15061(b)(3) and 15308, that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment and also merely amends parts of a regulatory process for the protection of the environment.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF CHAPTER 16 OF TITLE XI OF THE MILPITAS MUNICIPAL CODE**

Chapter 16 of Title XI of the Milpitas Municipal Code is hereby amended to read as follows:

**Chapter 16 - STORMWATER AND URBAN RUNOFF POLLUTION CONTROL**

**XI-16-1 – Purpose**

The purpose of this Chapter is to provide regulations and give legal effect to certain requirements of the Waste Discharge Requirements and National Pollutant Discharge Elimination System permit for the discharge of stormwater runoff from the City’s municipal separate storm sewer (MS4), issued by the California Regional Water Quality Control Board, San Francisco Region to the City of Milpitas. This Chapter shall apply to all water entering the City of Milpitas storm drain system generated on any developed and undeveloped lands lying within the City. This Chapter shall be construed to ensure consistency with the requirements of federal and state law, and any applicable implementing regulations, as they exist at the time of enactment or as later amended.

**XI-16-2 - Definitions**

For the purposes of this Chapter, the following words and phrases shall have the meaning given to them in this section. Words and phrases not defined in this Chapter shall have the definitions set forth in the City’s MS4 permit or by the regulations implementing the National Pollutant Discharge Elimination System, Clean Water Act Section 402, and Division 7 of the California Water Code, as they currently exist or may be amended.

- (a) "Applicable Materials" means all materials used in industrial or commercial establishments that are stored outdoors, that may be exposed to stormwater, and that have the reasonable potential to degrade the quality of runoff from the site. These include, but are not limited to, grease, garbage, and all materials containing cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, and zinc, which are pollutants that have specifically been identified as known to contribute to impairment of applicable water quality standards.
- (b) “Best Management Practices or BMPs” are operating practices and structural controls implemented to reduce the amounts of pollutants discharged into storm water.
- (c) "City" means and includes all the territory lying within the municipal boundaries of the City of Milpitas as existing as of the date of adoption of the ordinance codified in this Chapter, plus all territory which may be added thereto during the effective term of this Chapter.

- (d) "Discharge," when used as a verb, means to allow pollutants to directly or indirectly enter stormwater, or to allow stormwater or non-stormwater to directly or indirectly enter the storm drain system from an activity or operation. When used as a noun, "discharge" means the pollutants, stormwater and/or non-stormwater that are discharged.
- (e) "Low Impact Development Measures" are source control measures, site design measures, and post-construction stormwater treatment measures incorporated into the design and construction of a development project. The intent of Low Impact Development is to reduce runoff to the predevelopment hydrology by minimizing disturbed areas and impervious cover and then infiltrating, storing, detaining, evapotranspiring and/or biotreating stormwater runoff close to its source for the purpose of reducing stormwater pollution from the development to the maximum extent practicable.
- (f) "Municipal Separate Storm Sewer System or MS4 permit" is the National Pollutant Discharge Elimination System permit issued by the California Regional Water Quality Control Board, San Francisco Region to the City to regulate discharges from the City's stormwater conveyance system. As defined by the Federal Clean Water Act (40 CFR 122.26(b)(8)), the City's MS4 is the stormwater conveyance system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains, owned or operated by the City for the purpose of conveying stormwater discharges into waters of the United States.
- (g) "Regulated Project" is a development or redevelopment project, subject to the City's planning, building, or development review, that has the same meaning as defined in Provision C3 of the City's MS4 permit.
- (h) "Small or Detached Single-Family Home Project" is a development project that either creates and/or replaces between 2,500 to 10,000 square feet of impervious surface or is one single new house or the replacement impervious surface at one single existing house, which is not part of a large plan of development.
- (i) "Storm Drain" means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.
- (j) "Storm Water" or "Stormwater" means water that originates from atmospheric moisture (rainfall or snowmelt) and that falls onto land, water or other surfaces. Without any change in meaning, this term may be spelled or written as one word or as two separate words.
- (k) "Urban Runoff" means surface water flow produced by storm and nonstorm events. Nonstorm events include flow from residential, commercial and/or industrial activities including the use of potable and nonpotable water.
- (l) "Water Board" refers to the California Regional Water Quality Control Board, San Francisco Region.

### **XI-16-3 - Administration**

This Chapter and the City's MS4 permit shall be implemented, administered, and enforced by the City Manager. The City Manager is hereby authorized to develop, implement, and enforce such policies, procedures, and regulations as may be necessary for compliance with the City's MS4 permit. Any powers granted to or duties imposed upon the City Manager to administer, implement, and enforce the provisions of this Chapter may be delegated to other City personnel.

### **XI-16-4 - Limitations on Point of Discharge**

No person shall discharge any substance directly into a manhole or other opening in a City-owned or City-maintained storm drain or watercourse other than through a City-approved storm drain connection.

### **XI-16-5 - Discharge into Storm Drains Prohibited**

It shall be unlawful to discharge nonstormwater or contaminated stormwater into any City storm drain or watercourse. Prohibited discharges include, but are not limited to refuse, solid waste, sewage, commercial and industrial wastes, petroleum products, chemicals, soaps and detergents, solvents, paints, contaminated or chlorinated water from pools, spas and fountains (including those treated with copper-based chemicals), swimming pool water, pesticides, herbicides, fertilizers, weeds, dirt, vegetables, grease, animal wastes, turbid fluids, and wastewater generated from the installation, cleaning, treating and washing of copper architectural features, unless permitted in Section XI-16-8.

Allowable discharges shall not cause impairment of the beneficial uses or quality of water of the state, including but not limited to floating, suspended, or deposited macroscopic particulate matter, foam, or petroleum; bottom deposits or aquatic growths; or alteration of temperature, turbidity, and apparent color; as defined in the California Water Code or any special requirements of the Water Board, or injure or interfere with the operation of any watercourses within the State.

### **XI-16-6 – Low Impact Development Measures for Regulated Projects Required**

- (a) All Regulated Projects not participating in an alternative or in lieu compliance program pursuant to Section XI-16-6(d) shall design and construct Low Impact Development source control, site design, and stormwater treatment measures in order to reduce water quality impacts of urban runoff from the entire project site for the life of the project.
- (b) Low Impact Development Measures must be incorporated into all applicable plan documents. All plan documents and construction activities are subject to inspection and approval by the City.
- (c) No final building or occupancy permit shall be issued without the written certification of the City Manager or his or her designee that the requirements of this Chapter have been satisfied. Such certification shall be in the form prescribed by the City and shall not be issued without payment of all applicable fees, if any, which may be imposed for administration of this Chapter.
- (d) Any applicant may request to participate in an alternative or in lieu compliance program in accordance the requirements and restrictions specified by the City’s MS4 permit and the policies, procedures and regulations adopted pursuant to the authority granted in Section XI-16-3.
- (e) Small and detached single-family home projects shall design and construct site design measures in accordance with the City’s MS4 permit requirements.
- (f) Nothing in this section shall prohibit the City from requiring source control, site design, or permanent stormwater treatment measures at private or public, commercial, industrial or residential projects that are subject to the City’s planning, building, or development authority, but that do not meet the definition of “Regulated Project.”

### **XI-16-7 - Inspection and Maintenance of Permanent Stormwater Treatment Measures**

- (a) The property owner(s), its administrators, successors, or any other persons, including any homeowners association, shall take all necessary actions to ensure that permanent stormwater treatment measures are properly maintained so that they continue to operate as originally designed and approved for the life of the development. The City Manager may require verification of proper maintenance be submitted to the City. Any property owner that has been required by this Chapter to construct, install, operate or maintain permanent stormwater treatment measures shall record against the property a document evidencing the permanent maintenance requirement and binding all successors in interest to the maintenance obligation.
- (b) Upon transferring ownership of the property, any property owner that has been required by this Chapter to construct, install, operate or maintain permanent stormwater treatment measures shall provide the new

owners with a current copy of this Chapter, and inform the new owners in writing of their obligation to properly operate and maintain the permanent stormwater treatment measures.

- (c) It shall be unlawful to alter, modify, change or remove any permanent stormwater treatment measures without first obtaining the written certification of the City Manager or his or her designee that the requirements of this Chapter have been satisfied.
- (d) Whenever necessary to make an inspection to enforce any provision of this Chapter, or whenever the City Manager or his or her designee has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Chapter, the official may enter such premises at all reasonable times to inspect the premises, to inspect and copy records related to stormwater compliance, and to collect samples and take measurements. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the City Attorney is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

#### **XI-16-8 - Discharges Exempt or Conditionally Exempt from Prohibition**

- (a) The following types of discharges are exempt from the provisions of this Chapter:
  - (1) Flows from riparian habitats or wetlands;
  - (2) Diverted stream flows;
  - (3) Flows from natural springs;
  - (4) Rising ground waters;
  - (5) Uncontaminated and unpolluted groundwater infiltration;
  - (6) Single family homes' pumped groundwater, foundation drains, and water from crawl space pumps and footing drains;
  - (7) Pumped groundwater from drinking water aquifers; and
  - (8) NPDES permitted discharges (individual or general permits).
- (b) The City may conditionally exempt the following additional types discharges from provisions of this Chapter if they have been identified by the City or the Water Board as not being sources of pollutants to receiving waters or if appropriate control measure to eliminate adverse impact of such source are developed and implemented as approved by the City in accordance with the provisions of the City's MS4 permit: The types of discharges that the City may conditionally exempt are as follows:
  - (1) Uncontaminated pumped groundwater, foundation drains, and water from crawl space pumps and footing drains at flow rates of less than 10,000 gallons per day;
  - (2) Uncontaminated pumped groundwater from monitoring wells installed in non-drinking water aquifers;
  - (3) Air conditioning condensate;
  - (4) Potable water;
  - (5) Individual residential car washing;
  - (6) Swimming pool, hot tub, spa, and fountain water;
  - (7) Irrigation water, landscape irrigation, and lawn or garden water.

Although not prohibited, the use of nickel and copper as roof materials is discouraged in favor of benign roof materials.

#### **XI-16-9 - Public Nuisance**

Any violation of this Chapter is hereby declared to be a public nuisance and the City may abate the violation in the manner provided for in Chapter 500 of Title V of this Code.

### **XI-16-10 - Protection From Accidental Discharge**

All persons shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this Chapter into any storm drain or watercourse. Contractors shall provide Best Management Practices sufficient to provide protection from accidental discharge of prohibited materials or other waste at all times. Facilities to prevent accidental discharge or prohibited materials shall be provided and maintained at the person's expense. In the event the City Manager or his or her designee determines that reasonable means of protection have not been taken, the City Manager or his or her designee may issue a Notice of Noncompliance and may arrange for corrective action by City staff or a third party. All expenses incurred by the City and third parties associated with an actual or potential discharge shall be reimbursed by the responsible party pursuant to the procedures in Section 11 of this Chapter.

### **XI-16-11 - Accidental Discharge—Notification of Discharge**

(a) All persons shall notify the City by telephone immediately by dialing 911 upon accidentally discharging any material other than an acceptable discharge into a storm drain or watercourse to enable countermeasures to be taken by the City to minimize damage to storm drains and the receiving waters. Prohibited discharges include but are not limited to:

- (1) Sewage;
- (2) Discharges of wash water resulting from the cleaning of exterior surfaces and pavement, or the equipment and other facilities of any commercial business, or any other public or private facility;
- (3) Discharges of runoff from material storage areas, including containing chemicals, fuels, or other potentially polluting or hazardous materials;
- (4) Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; discharges of pool or fountain filter backwash water;
- (5) Discharges of sediment, pet waste, vegetation clippings, or other landscape or construction-related wastes; and
- (6) Discharges of food-related wastes (e.g., grease, fish processing, and restaurant kitchen mat and trash bin wash water, etc.).

The City, at its sole option, may direct the person or persons responsible for the discharge to perform cleanup activities when it is deemed by the City that the person or persons have the capability to perform such activities. All violations shall be corrected in a timely manner before the next rain event, but no longer than ten (10) business days after the violations are discovered.

(b) The person deemed by the City responsible for the discharge shall, within five (5) days of the date of occurrence, provide a detailed written statement to the City Manager or his or her designee describing the causes of the accidental discharge and the measures being taken to prevent future occurrences. Such notification will not relieve persons of liability for violations of this Chapter or for any fines imposed on the City on account thereof under Section 13350 of the California Water Code, or for violation of Section 5650 of the California Fish and Wildlife Code, or any other applicable provisions of State or federal law.

(c) Persons deemed by the City responsible for the discharge are responsible for all expenses resulting from the discharge, including, but not limited to, damages, fines, and costs of clean-up, whether performed by their own efforts, City efforts, or the efforts of a third party. Reimbursement of City efforts shall be determined by the number of personnel required and amount of time necessary for the coordination of City efforts and actual clean-up. All personnel costs shall be charged at their current fully-burdened rate, including overtime, plus any and all other direct costs.

### **XI-16-12 - Watercourse Protection**

(a) Watercourse Protection Requirements. Every person owning, operating, or leasing property adjacent to a watercourse shall comply with the "Guidelines and Standards for Land Use Near Streams" prepared by the

Santa Clara Valley Water District Water Resources Collaborative for all development, construction and maintenance activities conducted on lands adjacent to the watercourse.

- (b) Acts Requiring a City Permit. No person shall commit or cause to be committed any of the following acts, unless an encroachment permit or an approved plan has been issued by the City Manager or his or her designee to the applicant:
  - (1) Construct, alter, enlarge, connect to, discharge to, change, or remove any structure in a City-owned or City-maintained watercourse;
  - (2) Modify the natural flow of water in a City-owned or City-maintained watercourse;
  - (3) Deposit in, plan in, or remove any material from, a City-owned or City-maintained watercourse, including its banks, except as required for necessary maintenance.
- (c) Suspension or Revocation of City Permit. The City Manager or his or her designee may suspend or revoke a permit issued under this title whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance, the terms of the permit, regulations, or any of the provisions of this Chapter.

#### **XI-16-13 - Industrial and Commercial Site Controls**

- (a) Proper Outdoor Process, Storage, Maintenance, Wash Area, and Drainage Required. All applicable materials stored outdoors at a commercial or industrial establishment shall be managed in a manner that minimizes the discharge of pollutants to stormwater and is required to meet water quality standards. Industrial and commercial businesses are prohibited from causing or contributing to pollution of stormwater runoff from:
  - (1) Outdoor process and manufacturing areas;
  - (2) Outdoor material storage areas;
  - (3) Outdoor waste storage and disposal areas;
  - (4) Outdoor vehicle and equipment storage and maintenance areas;
  - (5) Outdoor wash areas;
  - (6) Outdoor drainage from indoor areas;
  - (7) Rooftop equipment;
  - (8) Other sources determined by the City or the Water Board to have a reasonable potential to contribute to pollution of stormwater runoff.

Establishments covered by the Industrial Stormwater General NPDES Permit adopted by the California Water Resources Control Board shall address this requirement in applicable provisions of their Stormwater Pollution Prevention Plan (SWPPP).

- (b) Protection Against Accidental Discharge. Each property owner, its administrators, successors or any other persons who store applicable materials outdoors at a commercial or industrial establishment shall provide protection against the accidental discharge of prohibited materials to the City's storm drain system or Watercourse. Such protection may include, but is not limited to, secondary containment systems or any equivalent protective measures. Any system that includes the permanent modification of a building, site, or the addition of a building or structure, shall be submitted to the City's Planning Department and Building Division for approval in accordance with applicable codes. All facilities to prevent the accidental discharge of prohibited materials to the City's storm drain system or watercourse shall be provided and maintained at the owner or operator's expense.
- (c) Report of Accidental Discharge to the Storm Drain. The property owner, its administrators, successors, or any other persons shall notify the City of any accidental discharge to the City's storm drain system or watercourse as described in Section XI-16-11 of this Code. Each commercial or industrial establishment shall also retain an on-site written record of all accidental discharges of prohibited materials (whether or not such discharge actually entered the City's storm drain system or watercourse) and the actions taken to prevent their reoccurrence. Such records shall be retained for at least five years.

- (d) Posted Notice. Each commercial or industrial establishment shall permanently post in a conspicuous place on the premises of the establishment a notice advising employees of the requirements of Section XI-16-13 and the telephone number to call in case of such an accidental discharge.
- (e) The City shall have the authority to enter industrial and commercial properties for the purpose of inspecting site controls and enforcing corrective measures to obtain effective stormwater pollutant controls. The City shall have the authority to require the owners and/or operators of industrial and commercial facilities to implement BMPs to address pollutant sources associated with outdoor process and manufacturing areas, outdoor material storage areas, outdoor waste storage and disposal areas, outdoor vehicle and equipment storage and maintenance areas, outdoor parking areas and access roads, outdoor wash areas, outdoor drainage from indoor areas, rooftop equipment, and contaminated and erodible surface areas, and other sources determined by the Permittees or Water Board Executive Officer to have a reasonable potential to contribute to pollution of stormwater runoff.

#### **XI-16-14 - Enforcement and Penalties**

- (a) Criminal Penalties. Violations of the provisions of this Chapter shall be subject to criminal penalties as provided in Section I-1-4.09-1 of this Code.
- (b) Judicial Civil Penalties. Any person who intentionally or negligently violates any provision of this Chapter or any provision of any permit or certificate issued pursuant to this Chapter shall be civilly liable to the city in a sum not to exceed twenty-five thousand dollars per day for each day in which such violation occurs.
- (c) Administrative Citations. When the City Manager and/or his or her designee determines that one or more violations of this Chapter have occurred an administrative citation may be issued pursuant to the procedures set forth in Sections V-500-8.00 through V-500-8.06. The schedule of fines for administrative citations issued for violations of this Chapter shall be set forth in the schedule of fines established by resolution of the City Council.
- (d) Notice of Noncompliance. If the severity of the violation warrants immediate action, a Notice of Noncompliance or Stop Work Notice shall be issued, permits may be suspended or revoked, Stormwater Pollution Prevention Plans may be found in noncompliance, and corrective actions may be implemented in accordance with Section 11 of this Chapter. For all other cases, including those sites or projects where a stormwater pollution prevention plan is not required, the City Manager or his or her designee shall issue a Notice of Noncompliance that shall enumerate the violations found. The City Manager or his or her designee shall order compliance by a date or hour certain at his or her discretion. If the violations are not abated in the time period identified in the Notice of Noncompliance, the site shall be deemed to be in noncompliance with federal, State and local laws and the City Manager or his or her designee shall have the authority to issue a Stop Work Notice and/or deem the Stormwater Pollution Prevention Plan inadequate. If a Stop Work Notice is issued, corrective actions must be performed until the site has achieved compliance. Corrective actions may include revision and resubmission of any Plan, including, but not limited to, Stormwater Pollution Prevention Plan, Erosion Control Plan or Grading Plan. The City Manager or his or her designee may also require a discharger that has violated any discharge limits contained in this Chapter to install a temporary system for the capture, testing, and release of stormwater.
- (e) Suspension of Utility Service. The City may, without prior notice, suspend water service, sanitary sewer service, and/or storm drain discharge access to a person discharging to the storm drain system when such suspension is necessary to stop an actual or threatened discharge which presents, or may present, imminent and substantial danger to the environment or to the health or welfare of persons; or presents, or may present, imminent and substantial danger to the storm drain system.
- (f) For construction projects where a total of three or more Stop Work Notices and Notices of Noncompliance for urban runoff violations have been issued, the City Manager or his or her designee may require the contractor to hire a Qualified SWPPP Developer (QSD) or Qualified SWPPP Practitioner (QSP) within three

business days. The QSD/QSP shall establish effective BMPs, provide guidance for improvement for the duration of the project, and certify compliance. A Stop Work Notice shall be issued for failure to comply.

- (g) Remedies Cumulative. The remedies provided in this section are cumulative and not exclusive, and shall be in addition to any other penalty provided for in this Chapter and shall be in addition to all other remedies available to the City under State and federal law.

#### **XI-16-15 - Use of Proceeds of Fines and Penalties**

Funds collected pursuant to this Chapter shall be paid to the City's urban runoff violation account and may be used for any purpose related to this Chapter or the City's implementation, administration, or enforcement of the City's MS4 permit.

#### **XI-16-16 - Connection Fees**

Prior to connection or discharge to any storm drain facility from a new development or a redevelopment project (directly or indirectly), connectors shall pay City a fee for connection/discharge to the City's storm drain system as follows:

- (a) \$1,100 per parcel for single-family medium density with parcel size equal or smaller than 8,710 square feet (1/5 acre).
- (b) \$1,916 per parcel for single-family low density, with parcel size between 8,711 and 43,560 square feet (between 1/5 and 1 acre).
- (c) \$3,594 per parcel for single-family with parcel size between 43,561 and 174,240 square feet (between 1 acre and 4 acres).
- (d) \$4,792 per parcel for single-family with parcel size between 174,241 and 392,040 (between 4 and 9 acres).
- (e) \$6,469 per parcel for single-family with parcel size greater than 392,040 square feet (9 acres).
- (f) \$16,771 per acre for multi-family developments.
- (g) \$21,562 per acre for all others (such as commercial, industrial, institutional, or mixed use sites).
- (h) \$7,187 per acre for schools (with athletic fields), otherwise consider as institutional.
- (i) \$4,792 per acre for parks.

The purpose of the fee imposed by this section is to fund facilities (whether presently in existence or not) necessary to provide storm drain services, and revenues derived from the fee imposed by this section shall be used solely for that purpose.

### **SECTION 3. SEVERABILITY**

In the event any section or portion of this Ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

### **SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance