8

REGULAR

NUMBER: 239.5

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTIONS 16.10, 16.11, AND 16.14 CHAPTER 16, TITLE XI OF THE MILPITAS MUNICIPAL CODE, RELATING TO STORMWATER AND URBAN RUNOFF POLLUTION CONTROL.

HISTORY: This ordinance was introduced at a meeting of the City Council of the City of Milpitas on January 3, 2006, by motion of Councilmember _____, and was adopted at a meeting of said Council on _____, upon motion of Councilmember _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

_____
Mary Lavelle, City Clerk

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1. Amendment to Section XI-16-16.10. Title XI, Chapter 16, Section 16.10 of the Milpitas Municipal Code is hereby amended to read as follows:

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 Non-Compliance 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.

Section 2. Amendment to Section XI-16-16.11. Title XI, Chapter 16, Section 16.11 of the Milpitas Municipal Code is hereby amended to read as follows:

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. 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.

(b)The person deemed by the City responsible for the discharge shall, within ten (10) 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.

Section 3. Amendment to Section XI-16-16.14. Title XI, Chapter 16, Section 16.14 of the Milpitas Municipal Code is hereby amended to read as follows:

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 Non-Compliance. If the severity of the violation warrants immediate action, a Notice of Non-Compliance or Stop Work Notice shall be issued, permits may be suspended or revoked, Storm Water Pollution Prevention Plans may be found in non-compliance, and corrective actions may be implemented in accordance with Section 11. For all other cases, including those sites or projects where a storm water pollution prevention plan is not required, the City Manager or his or her designee shall issue a Notice of Non-Compliance 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 Non-Compliance, the site shall be deemed to be in non-compliance 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 Storm Water 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 resubmittal of any Plan, including but not limited to Storm Water 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 (1) presents, or may present, imminent and substantial danger to the environment or to the health or welfare of persons, or (2) presents, or may present, imminent and substantial danger to the storm drain system.
(f) For construction projects, when a combined total of three or more Stop Work Notices and Notices of Non-Compliance for urban runoff violations have been issued, the City Manager or his or her designee may require the contractor to hire a qualified licensed Civil Engineer within three business days. The Civil Engineer shall observe Best Management Practices, 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.

Section 4. EFFECTIVE DATE; PUBLICATION. This ordinance shall take effect 30 days following its passage, and prior to the expiration of 15 days of the passage thereof shall be published at least once in the Milpitas Post, a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.