

**CITY OF EMERYVILLE
M E M O R A N D U M**

DATE: November 20, 2007

TO: Patrick D. O'Keeffe, City Manager

FROM: Planning and Building Department

SUBJECT: **An Ordinance of the City Council of the City of Emeryville Amending Chapter 13 of Title 6 of the Emeryville Municipal Code Regarding Stormwater Management; and Amending Chapter 2 of Title 1 of the Emeryville Municipal Code Regarding Penalties**

RECOMMENDATION

Consideration of an ordinance amending Chapter 13 of Title 6 of the Emeryville Municipal Code (EMC) titled "Stormwater Management and Discharge Control Program" with a revised chapter titled "Stormwater Treatment Design, Management, and Discharge Control Program", and amending Chapter 2 of Title 1 of the EMC regarding penalties for violations.

These revisions will

- comply with the City's 2003 National Pollution Discharge Elimination System (NPDES) permit;
- reference the Stormwater Guidelines for Green, Dense Redevelopment and the requirement for vegetative treatment measures where feasible; and
- establish a stormwater permit to enable the Public Works Department to administer the NPDES permit requirements, Stormwater Guidelines for Green, Dense Redevelopment, and vegetative treatment requirement.

BACKGROUND/DISCUSSION/ANALYSIS

In 1987 Congress reauthorized the Clean Water Act and created the National Pollution Discharge Elimination System (NPDES) permit to reduce pollution entering waterways from non-point sources, including municipal stormwater runoff systems. The California Regional Water Quality Control Board - San Francisco Bay Region (Regional Board) issued its first joint municipal stormwater NPDES permit to the Santa Clara County municipalities in 1990. In 1991 it issued its second one, to the Alameda County Clean Water Program (ACCWP), a consortium of Alameda County and its cities.

The 1991 ACCWP NPDES permit required cities to require developers to design projects to control pollution sources, design sites to reduce polluted stormwater runoff, and treat stormwater (remove pollutants from stormwater runoff before releasing it to the public stormwater system),

to the maximum extent practicable. On February 20, 1992, the Emeryville City Council adopted a stormwater ordinance (Chapter 13 of Title 6) to comply with the 1991 NPDES permit. It addressed industrial discharges, inspections and enforcement.

In 2003 the NPDES permit was renewed. It requires projects that create or replace 10,000 square feet or more of impervious surface to include stormwater treatment measures that meet numeric sizing criteria. They have to treat a volume equal to 80% of the annual runoff (or a flow equal to 10% of peak flow or twice the 85th percentile intensity or at least 0.2 inches per hour) from the entire site. The permit also requires Operation and Maintenance agreements for stormwater treatment measures.

To help developers do this on urban sites, the City applied for and received an EPA grant to hire a consultant, Community Design + Architecture, to develop Stormwater Guidelines for Green, Dense Redevelopment (Stormwater Guidelines). The most effective and easily monitored treatment measures use plants and soil. The Regional Board prefers these methods to in-ground mechanical filters; therefore, with the Regional Board's support, the Emeryville Stormwater Guidelines were written to require vegetative treatment to be used where possible.

Vegetative treatments can be categorized as bio-retention, bio-filtration, and infiltration. Bio-retention means retaining rain water for a few hours in vegetation and soil. Bio-retention measures, such as flow-through planter boxes, rain gardens, and green roofs, are good options in Emeryville. Infiltration (such as pervious pavement) entails rain water soaking in to the ground. In much of Emeryville, infiltration requires subdrains to avoid sending stormwater through contaminated groundwater. Bio-filtration measures usually consist of grassy swales through which water flows. In Emeryville developers have been building hybrids that combine flow with infiltration to subdrains.

On December 6, 2005, The City Council adopted the Stormwater Design Guidelines for Green, Dense Redevelopment (Resolution 05-213) ("Guidelines"). The Guidelines require vegetative stormwater treatment measures (rather than mechanical filters) in projects subject to numeric requirements, unless an applicant's stormwater consultant concludes that vegetative measures are infeasible and the City concurs.

The City has been implementing the 2003 NPDES permit as required, but needs an updated stormwater ordinance to establish formal permitting, inspection, fees, and performance monitoring procedures in order to comply with the provisions of the 2003 NPDES Permit. Furthermore, the City's preference for vegetative stormwater treatment solutions, as described in the Stormwater Guidelines, needs to be referenced in the Emeryville Municipal Code. Currently, Public Works staff meets with applicants and reviews project plans at the planning stage, reviews building permit plans and calculations, and inspects projects during construction.

Charges for these costs are applied to a project's Planning Division Cost Recovery account, but most of the work is done by the Public Works Department at the Building Permit stage. In terms of monitoring performance of stormwater treatment measures, Public Works staff has also been executing Operation and Maintenance Agreements for new projects completed since the 2003 NPDES Permit was issued.

Staff from the Public Works and Planning and Building departments agree that the best mechanism for integrating this process into the entitlement process and accounting for its cost is to establish a Stormwater Treatment Permit. It is intended to work in a similar manner as the City's plan review and permit fees for fire suppression equipment, which ensures the City Fire Marshall's oversight of these items throughout the development process. The proposed stormwater ordinance also authorizes the City to require the Maintenance Agreement and a bond or deposit to ensure that maintenance continues for five years after construction is completed.

In July, The Alameda County Clean Water Program (ACCWP) suggested adding a section on site design and source control. This section has been added as section 6-13.204(c). In October, the ACCWP suggested correcting the name of the "Regional Board", referring to the NPDES stormwater permit, and codifying the requirement that applications include the amount of impervious surface to be created or replaced. These changes have been made in the second recital, Section 6-13.201(a) and Section 6-13.402. The comment e-mails are attached.

The Planning Commission reviewed the draft amendments to Chapter 13 of Title 6 of the EMC on September 27, 2007, and recommended that the City Council adopt the amendments. The amendment to Chapter 2 of Title 1 of the EMC regarding violations has been added since then, because it is not a Planning Commission issue.

After Ordinance adoption, a resolution will be proposed to amend the Emeryville Master Fee Schedule, adding Stormwater Treatment Permit application fees and formulas for calculating the required performance and maintenance bonds.

This project is exempt from environmental review under State CEQA Guidelines Section 15307, which applies to actions by regulatory agencies for protection of natural resources, and Section 15308, which applies to actions by regulatory agencies for protection of the environment.

FISCAL IMPACT

This action will not have a significant fiscal impact. It will simply change the way fees are

collected to cover the cost of staff and consultant time required to administer stormwater permits. The fees and deposits assessed are not intended as a revenue source.

CONCLUSIONS

In summary, the recommended amendments to the stormwater ordinance would:

- include the 2003 NPDES permit requirements for site design, source control and numerical sizing criteria for stormwater treatment measures;
- refer to the City's Stormwater Guidelines and codify the vegetative treatment requirement;
- set up a Stormwater Treatment Permit procedure to integrate the Public Works plan check and inspection into the planning and building permit process and link the expiration of a Stormwater Treatment Permit to a project's Building Permit;
- require stormwater treatment calculations by a California Licensed Civil Engineer;
- require Operations and Maintenance Agreements for stormwater treatment measures and authorize Public Works to require a bond or deposit; and
- establish violation of the stormwater treatment provisions as a misdemeanor.

SUBMITTED BY:

Diana Keena
Associate Planner

APPROVED BY:

Charles S. Bryant
Director of Planning and Building

APPROVED AND FORWARDED TO THE CITY COUNCIL BY:

Patrick D. O'Keeffe
City Manager

Attachments: Ordinance
ACCWP emails

ORDINANCE NO. 07-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE AMENDING CHAPTER 13 OF TITLE 6 OF THE EMERYVILLE MUNICIPAL CODE REGARDING STORMWATER MANAGEMENT; AND AMENDING CHAPTER 2 OF TITLE 1 OF THE EMERYVILLE MUNICIPAL CODE REGARDING PENALTIES.

WHEREAS, the health, safety, and welfare of the City depends, in part, on reducing untreated stormwater runoff from impermeable surfaces; and

WHEREAS, the City is committed to complying with the Alameda Countywide Clean Water Program's 2003 National Pollution Discharge Elimination System permit with the California Regional Water Quality Control Board, San Francisco Bay Region; and

WHEREAS, on December 6, 2005, the City Council adopted the Stormwater Design Guidelines for Green, Dense Redevelopment (Resolution 05-213) ("Guidelines"); and

WHEREAS, the current provisions in the Emeryville Municipal Code regarding stormwater management must be updated to fully implement the requirements of the 2003 NPDES Permit; and

WHEREAS, on September 27, 2007, the Planning Commission recommended adoption of the amendments to Chapter 13 of Title of the Emeryville Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:

SECTION ONE: PURPOSE AND INTENT

The purpose and intent of this ordinance is to amend Chapter 13 of Title 6 of the Emeryville Municipal Code and to amend Title 2 of Title 1 of the Emeryville Municipal Code.

SECTION TWO: AMENDING CHAPTER 13 OF TITLE 6 OF THE EMERYVILLE MUNICIPAL CODE

Chapter 13 of Title 6 of the Emeryville Municipal Code is hereby amended to read as follows, with additions underlined.

CHAPTER 13.
STORMWATER TREATMENT DESIGN, MANAGEMENT, AND DISCHARGE CONTROL PROGRAM

Sections:

ARTICLE 1. TITLE, PURPOSE AND GENERAL PROVISIONS

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6-13.102 Purpose and Intent

6-13.103 Definitions

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- 6-13.105 Construction and Application
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- 6-13.205 Watercourse Protection

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- 6-13.301 Site Design and Source Control Measures
- 6-13.302 Stormwater Management During Construction.
- 6-13.303 Permanent Stormwater Treatment Measures
- 6-13.304 Design of Permanent Stormwater Treatment Measures
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- 6-13.403 Application and Plan Check Fees
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- 6-13.405 Expiration and Renewal
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- 6-13.502 Maintenance Deposit

ARTICLE 6. INSPECTION AND ENFORCEMENT

- 6-13.601 Authority to Inspect
- 6-13.602 Authority to Sample and Establish Sampling Devices
- 6-13.603 Notification of Spills
- 6-13.604 Requirement to Test or Monitor
- 6-13.605 Violations Constituting Misdemeanors
- 6-13.606 Penalty for Violation
- 6-13.607 Continuing Violation
- 6-13.608 Concealment
- 6-13.609 Acts Potentially Resulting in Violation of Federal Clean Water Act and/or Porter-Cologne Act
- 6-13.610 Violations Deemed a Public Nuisance
- 6-13.611 California Code of Civil Procedure Section 1094.6
- 6-13.612 Civil Actions

6-13.613	Administrative Enforcement Powers
6-13.614	Authority to Arrest or Issue Citations
6-13.615	Remedies Not Exclusive
<u>6-13.616</u>	<u>Appeal</u>

ARTICLE 1. TITLE, PURPOSE AND GENERAL PROVISIONS

6-13.101. Title.

This chapter shall be known as the “City of Emeryville Stormwater Treatment Design, Management, and Discharge Control Program”, and may be so cited. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.102. Purpose and Intent.

The purpose of this chapter is to ensure the future health, safety, and general welfare of Emeryville citizens by:

- (a) Eliminating non-stormwater discharges to the municipal separate storm sewer;
- (b) Controlling the discharge to municipal separate storm sewers from spills, dumping or disposal of materials other than stormwater;
- (c) Reducing pollutants in stormwater discharges to the maximum extent practicable. The intent of this chapter is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Clean Water Act. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.103. Definitions.

(a) Any terms defined in the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency on November 16, 1990 (as may from time to time be amended) as used in this chapter shall have the same meaning as in that statute or regulations. Specifically, the definition of the following terms included in that statute or regulations are hereby incorporated by reference, as now applicable or as may hereafter be amended: discharge; illicit discharge; pollutant; and stormwater.

These terms presently are defined as follows:

- (i) “Discharge” means any addition of any pollutant to navigable waters from any point source, or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.
- (ii) “Illicit discharge” means any discharge to the City storm sewer system that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit and discharges resulting from fire-fighting activities.

(iii) "Pollutant" means dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive material, gasoline, petroleum (including without limitation crude oil or any fraction thereof), rock, sand, earth material and industrial, municipal, and agricultural waste discharge into water.

(iv) "Stormwater" means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

(b) When used in this chapter, the following words shall have the meanings ascribed to them in this section:

(i) "Authorized Enforcement Official" means the Public Works Director or his/her designee, so designated in writing.

(ii) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, general good-housekeeping practices, pollution prevention practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to "waters of the United States." BMPs also include treatment requirements, permanent site design and treatment measures, operating procedures, and practices to control plant-site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(iii) "City" means the City of Emeryville.

(iv) "City storm sewer system" means and includes but is not limited to those facilities within the City by which stormwater may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains, which are not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR Section 122.2.

(v) "Development" and "Redevelopment" means the creation or replacement of impervious surfaces, including, but not limited to buildings, rooftops, decks, patios, covered and uncovered walkways, parking and circulation areas.

(vi) "Impervious surface" means any material that prevents the infiltration of stormwater into the ground, including, but not limited to impermeable concrete, asphalt, brick, and pavers.

(vii) "Mechanical treatment measure" means a treatment facility that filters stormwater via an artificial medium, swirl separating, or settling; examples include, but are not limited to storm drain inlet filters, vault-based media filters, swirl separators, and oil-water separators. To satisfy the requirements of this chapter, mechanical treatment measures must remove fine sediments, dissolved metals, trash, and oil.

(viii) "Non-stormwater discharge" means any discharge that is not substantially composed of stormwater.

(ix) "Permanent stormwater treatment facility" means a system designed to remove or reduce stormwater pollutants and/or control the rate of flow or volume of stormwater runoff into the City storm drain system or the waters of the United States.

(x) "Premises" means any building, lot, parcel, real estate, or land, or portion of land, whether improved, or unimproved, including adjacent sidewalks and parking strips.

(Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

(xi) "Stormwater Treatment Permit" means a permit, issued in accordance with the provisions of Article 3 of this chapter, regulating the design, construction, and operation of permanent stormwater treatment facilities.

(xii) “Vegetative treatment measure” means a treatment facility that filters stormwater through plants and soil; examples include, but are not limited to flow-through planter boxes, rain gardens, bio-filtration swales, podium and roof plantings, and lowered landscape strips.

6-13.104. Responsibility for Administration.

This chapter shall be administered for the City by the Director of Public Works. Where storm drain facilities and/or watercourses have been accepted for maintenance by the Alameda County Flood Control and Water Conservation District (ACFCWCD) or other public agency legally responsible for certain watercourses, then the responsibility for enforcing the provisions of this chapter may be assigned to such agency (through contract or agreement executed by the City and such agency) with respect to those watercourses for which they have accepted maintenance. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.105. Construction and Application.

This chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or 6-13.106 supplementary thereto, applicable implementing regulations, and NPDES Permit No. CA 0029831 and any amendment, revision or reissuance thereof. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.106. Taking.

The provisions of this chapter shall not operate to deprive any landowner of substantially all of the market value of his/her property or otherwise constitute an unconstitutional taking without compensation. If application of this chapter to a specific project would create a taking, then the City Council may allow additional land uses, but only to the extent necessary to avoid a taking. Such uses shall be consistent with and carry out the purposes of this chapter as stated in Section 6-13.102 above. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

ARTICLE 2. DISCHARGE REGULATIONS AND REQUIREMENTS

6-13.201. Discharge of Pollutants.

The discharge of non-stormwater discharges to the City storm sewer system is prohibited. All discharges of material other than stormwater must be in compliance with a NPDES permit issued for the discharge (other than NPDES Permit No. CA 0029831).

(a) Exceptions to Discharge Prohibition.

The following discharges are exempt from the prohibition set forth in Section 16-13.201 above:

(i) The prohibition to discharges shall not apply to any discharge regulated under a National Pollutant Discharge Elimination System (NPDES) permit issued to the discharger and administered by the State of California under authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.

(ii) Discharges from the following activities will not be considered a source of pollutants to waters of the United States when properly managed in accordance with the requirements of the NPDES stormwater permit for the Alameda County Clean Water Program agencies: water line flushing and other discharges from potable water sources, diverted stream flows, rising groundwater, infiltration to separate storm drains, uncontaminated pumped groundwater, foundation and footing drains, water from crawl space pumps, air conditioning condensation, springs, individual residential car washing, flows from riparian habitats and wetlands, de-chlorinated swimming pool discharges, or flows from fire-fighting, and accordingly are not subject to the prohibition on discharges. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.202. Discharge in Violation of Permit.

Any discharge that would result in or contribute to a violation of NPDES Permit No. CA 0029831, a copy of which is on file with the City Clerk, or any amendment, revision or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such 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 in any administrative or judicial enforcement action relating to such discharge. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.203. Illicit Discharge and Illicit Connections.

It is prohibited to establish, use, maintain, or continue illicit drainage connections to the City storm sewer system, and to commence or continue any illicit discharges to the City storm sewer system. This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.204. Reduction of Pollutants in Stormwater.

Any person engaged in activities which will or may result in pollutants entering the City storm sewer system shall undertake all practicable measures to reduce such pollutants. Examples of such activities include ownership and use of facilities which may be a source of pollutants such as parking lots, gasoline stations, industrial facilities, commercial facilities, stores fronting city streets, etc. The following minimal requirements shall apply:

(a) Littering.

(i) No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private lot of land in the City, so that the same might be or become a pollutant, except in containers or in lawfully established dumping grounds.

(ii) The occupant or tenant, or in the absence of the occupant or tenant, the owner, lessor, or proprietor of any real property in the City of Emeryville in front of which there is a paved sidewalk, shall maintain said sidewalk free of dirt or litter to the maximum extent practicable.

Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the disposal of garbage.

(iii) No person shall throw or deposit litter in any fountain, pond, lake, stream or any other body of water in a park or elsewhere within the City.

(b) Standard for Parking Lots and Similar Structures.

Persons owning or operating a parking lot, gas station pavement or similar structure shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the City storm sewer system.

(c) Notification of Intent and Compliance with General Permits.

Each industrial discharger, discharger associated with construction activity, or other discharger, described in any general stormwater permit addressing such discharges, as may be adopted by the United States Environmental Protection Agency, the State Water resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, shall provide notice of intent, comply with, and undertake all other activities required by any general stormwater permit applicable to such discharges. Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by such permit.

(d) Compliance with Best Management Practices.

Where best management practices, guidelines or requirements have been adopted by any Federal, State of California, regional, and/or City agency, for any activity, operation, or facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of non-stormwater to the stormwater system, every person undertaking such activity or operation, or owning or operating such facility shall comply with such guidelines or requirements as may be identified by the Director of Public Works.

6-13.205. Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles which would pollute, contaminate, or significantly retard the flow of water through the watercourse; shall maintain existing privately owned structures within or adjacent to a watercourse so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse; and shall not remove healthy bank vegetation beyond that actually necessary for said maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the Director of Public Works:

(a) Discharge into or connect any pipe or channel to a watercourse;

(b) Modify the natural flow of water in a watercourse;

- (c) Carry out development within thirty feet (30) of the centerline of any creek or twenty feet (20) of the top of a bank;
- (d) Deposit in, plant in, or remove any material from a watercourse, including its banks, except as required for necessary maintenance;
- (e) Construct, alter, enlarge, connect to, change, or remove any structure in a watercourse; or
- (f) Place any loose or unconsolidated material along the side of or within a watercourse or so close to the side as to cause a diversion of the flow, or to cause a probability of such material being carried away by stormwaters passing through such watercourse. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

ARTICLE 3. REQUIREMENTS FOR NEW DEVELOPMENT

6-13.301. Site Design and Source Control Measures.

All works of grading, paving, construction reconstruction, or rehabilitation that create or replace impervious surface shall incorporate:

- (a) site planning that maximizes pervious surfaces and minimizes impervious surfaces, and
- (b) source control measures that prevent pollutant sources from contacting rainfall and stormwater, as specified by the City Engineer.

Facilities and activities that require source control measures include but are not limited to the following: recycling and trash areas; loading areas; food service equipment cleaning areas; vehicle service and cleaning areas; outdoor processing and equipment and materials storage areas; fuel storage and dispensing areas; parking garages; spas, fountains and pools; and fire sprinkler testing.

6-13.302. Stormwater Management During Construction.

Any person engaged in construction or grading work in the City shall install, maintain, and replace controls and best management practices in order to prevent non-stormwater discharges such as pollution, erosion and sediment runoff onto roadways or into the City storm drain system. The City Engineer shall require and approve a Construction Stormwater Pollution Prevention Plan for any works of construction and/or grading for which such a plan is deemed necessary by the City Engineer. The City Engineer and his or her designee shall have the authority to stop construction and/or grading work on a site where adequate controls and/or best management practices are not in place.

6-13.303. Permanent Stormwater Treatment Measures.

All works of grading, paving, construction, reconstruction, or rehabilitation that create or replace impervious surface shall be designed to incorporate permanent vegetative stormwater treatment measures that, to the maximum extent practicable, comply with the City's Stormwater

Guidelines for Green, Dense Redevelopment. Vegetative treatment measures include, but are not limited to, flow-through planter boxes, rain gardens, bio-filtration swales, podium and roof plantings, and lowered landscape strips.

6-13.304. Design of Permanent Stormwater Treatment Measures.

(a) To the maximum extent practicable, permanent stormwater treatment measures shall be designed and constructed to use vegetative, rather than mechanical measures. Preferred vegetative treatment measures include but are not limited to those defined in the City's Stormwater Guidelines for Green, Dense Redevelopment.

(b) Only if vegetative treatment measures are determined infeasible due to site characteristics, building uses, or other legitimate reasons, may the City Engineer allow the use of a combination of vegetative and mechanical treatment measures (preferred) or mechanical treatment measures.

6-13.305. Operation and Maintenance of Permanent Stormwater Treatment Measures.

(a) Any person engaged in work of development or redevelopment that requires a Stormwater Treatment Permit shall enter into the City of Emeryville's standard "Stormwater Treatment Measures Operations and Maintenance Agreement" assuring the continued operation and maintenance of such treatment measures and allowing access and inspection by the City, the local vector control agency and the Regional Water Quality Control Board. The Agreement shall be recorded in the office of the County Recorder and be binding upon all owners of the property.

(b) A Stormwater Treatment Measures Operations and Maintenance Agreement shall be accompanied by a stormwater treatment measures maintenance plan.

(1) A stormwater treatment measures maintenance plan shall include, but is not limited to

(i) A description of the general characteristics of the site, which may include soil types, groundwater levels, vegetation and natural runoff, impervious surfaces, propensity for erosion and sedimentation, etc.;

(ii) The location and nature of the City's storm drain system and creeks and/or waters of the United States to which the site drains;

(iii) Location and description of all permanent stormwater treatment measures;

(iv) A plan for routine inspection and maintenance of stormwater treatment measures, including items such as trimming, care and replacement of vegetation, replacement of mulch and compost; sweeping of pavement; and cleaning of screens and filters.

(2) The City Engineer shall have the authority to review and amend maintenance plans for stormwater treatment measures.

ARTICLE 4. STORMWATER TREATMENT PERMITS

6-13.401. Applicability.

The following works of development or redevelopment shall require a Stormwater Treatment Permit issued by the City Engineer or his or her designee:

(a) Works that create or replace impervious surfaces greater than or equal to the surface area subject to the hydraulic numerical treatment requirements of the City's NPDES permit (10,000 square feet or requirement in current NPDES permit, whichever is less) .

(b) Works that construct, modify, remove, or replace a permanent stormwater treatment facility.

6-13.402. Application.

The City Engineer shall determine the application requirements for a Stormwater Treatment Permit. Stormwater Treatment Permit application requirements shall include, but are not limited to, plans and specifications, amount of impervious surface created or replaced, stormwater treatment calculations by a licensed civil engineer, and a description of the total scope of work. The City Engineer shall have the authority to require additional information and/or supplementary submittals.

6-13.403. Application and Plan Check Fees.

A Stormwater Treatment Permit application shall include application and plan check fees as listed in the Master Fee Schedule.

6-13.404. Requirements for Stormwater Treatment Permit Approval.

(a) The City Engineer shall not issue a Stormwater Treatment Permit until he or she is satisfied that:

1) the project design complies with the City's Stormwater Guidelines for Green, Dense Redevelopment,

and

2) all stormwater treatment requirements are met with vegetative measures, to the maximum extent practicable.

(b) Approval of any Stormwater Treatment Permit shall be contingent upon the applicant submitting a proposed Stormwater Treatment Measures Operations and Maintenance Agreement ("Agreement") as described in Section 6-13.304(a), modified for the project and approved by the City Engineer or his or her designee. A finalized, fully executed Agreement, approved by the City Engineer or his or designee, shall be required before a Certificate of Occupancy is issued for the project.

6-13.405. Expiration and Renewal.

Stormwater Treatment Permits shall expire at the same time as the Building Permit for the associated project. Extension and renewal procedures shall be the same for a Building Permit, as

defined in the Building Code. In the event that a Stormwater Treatment Permit has expired, the City Engineer may require a new Stormwater Treatment Permit Application be submitted, including an application fee, inspection fee, and deposits, as defined by the Master Fee Schedule.

6-13.406. Inspections and Inspection Fees.

The Applicant shall arrange for the City Engineer or his or her designee to inspect stormwater treatment measures at the excavation and grading, plumbing, planting and completion stages of construction. The permittee shall pay inspection fees as listed in the Master Fee Schedule.

ARTICLE 5. SECURITY BONDS AND MAINTENANCE DEPOSIT

6-13.501. Security Bonds.

In order to ensure the faithful performance of work authorized by a Stormwater Treatment Permit, the City Engineer shall have the authority to require the deposit of a security bond prior to issuance of the Stormwater Treatment Permit.

(a) The minimum bond amount shall equal 150% of the estimated cost of the work authorized by the Stormwater Treatment Permit.

(b) The security bond will be released upon satisfactory completion of the work authorized by the Stormwater Treatment Permit, or, at the discretion of the City Engineer, the satisfactory operation of the stormwater treatment facility over the course of one full rainy season (October 1 through April 15).

(c) In the event that the work authorized by the Stormwater Treatment Permit is not completed, or the completed facility fails to perform satisfactorily, the City Engineer shall order the work completed or the premises restored, at the expense of the permittee or his or her surety.

6-13.502. Maintenance Deposit.

(a) In order to ensure the faithful maintenance of permanent stormwater treatment facilities authorized by a Stormwater Treatment Permit, the City Engineer shall have the authority to require a Maintenance Deposit, in cash, as a condition of approval.

(b) To ensure ongoing maintenance, a maintenance security may be held for up to 10 years from the date of deposit.

ARTICLE 6. INSPECTION AND ENFORCEMENT

6-13.601. Authority to Inspect.

Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, or if an authorized enforcement official has reasonable cause to believe that a violation of the

provisions of this chapter has or will occur, he or she may enter a premises or building at all reasonable times to inspect the same or perform any duty imposed by this chapter; provided that:

- (a) If such building or premises be occupied, he or she shall first present proper credentials and request entry; and
- (b) If such building or premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that, in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a duly authorized magistrate. In the event the owner and/or occupant refuses entry after such request has been made, the official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of stormwater contamination, illicit discharges, discharge of non-stormwater to the stormwater system, or similar factors. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.602. Authority to Sample and Establish Sampling Devices.

The City shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the official may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on-site. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.603. Notification of Spills.

As soon as any person in charge of a facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed release of materials, pollutants or waste which may result in pollutants or non-stormwater discharges entering the City storm sewer system, such person shall take all necessary steps to ensure the discovery, containment and cleanup of such release and shall notify the City of the occurrence by telephoning (510) 596-4330 and confirming the notification by correspondence to the Director of Public Works, 1333 Park Avenue, Emeryville, CA 94608. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.604. Requirement to Test or Monitor.

Any authorized enforcement official may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution or contamination, illicit discharges, and/or discharge of non-stormwater to the stormwater system, undertake such monitoring activities and/or analyses and furnish such reports as the official may specify. The burden, including costs, of these activities, analyses and reports shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be

obtained. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports requested. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.605. Violations Constituting Misdemeanors.

The violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter shall constitute a misdemeanor; except that, notwithstanding any other provisions of this chapter, any such violation constituting a misdemeanor under this chapter may, in the discretion of the enforcing authority, be charged and prosecuted as an infraction. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.606. Penalty for Violation.

Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section 36901. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section 36900. After a third conviction for a violation of the same provision, subsequent violations within a twelve (12) month period may be charged as a misdemeanor. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.607. Continuing Violation.

Unless otherwise provided, a person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm, corporation or organization, and shall be punishable accordingly as herein provided. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.608. Concealment.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of such provision. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.609. Acts Potentially Resulting in Violation of Federal Clean Water Act and/or Porter-Cologne Act.

Any person who violates any provision of this chapter or any provision of any permit issued pursuant to this chapter; or who discharges waste or wastewater which causes pollution; or who violates any cease and desist order, prohibition, or effluent limitation; may also be in violation of the Federal Clean Water Act and/or Porter-Cologne Act and may be subject to the sanctions of those Acts including civil and criminal penalty. Any enforcement action authorized under this article should also include notice to the violator of such potential liability. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.610. Violations Deemed a Public Nuisance.

In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and is declared and deemed a nuisance. Any authorized enforcement official may abate the violation, and the City Attorney may take civil action to abate, enjoin or otherwise compel

the cessation of such nuisance. The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be in a lien upon and against the property and such lien shall continue in existence until it is paid. If the lien is not satisfied by the owner of the property within three (3) months after the completion by the authorized enforcement official of the removal of the nuisance and the restoration of the property to its original condition, the property may be sold in satisfaction thereof in a like manner as other real property is sold under execution. If any violation of this chapter constitutes a seasonal and recurrent nuisance, the City Council shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.611. California Code of Civil Procedure Section 1094.6.

The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of City decisions pursuant to this chapter. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.612. Civil Actions.

In addition to any other remedies provided in this section, any violation of this chapter may be enforced by civil action brought by the City. In any such action, the City may seek, and the Court shall grant, as appropriate, any or all of the following remedies:

- (a) A temporary and/or permanent injunction;
- (b) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this chapter;
- (c) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
- (d) Compensatory damages for loss or destruction to water quality, wildlife, fish, and aquatic life. Assessments under this subsection shall be paid to the City to be used exclusively for costs associated with monitoring and establishing stormwater discharge pollution control systems and/or implementing or enforcing the provisions of this chapter.
(Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.613. Administrative Enforcement Powers.

In addition to the other enforcement powers and remedies established by this chapter, any authorized enforcement official has the authority to utilize the following administrative remedies:

- (a) Cease and Desist Orders.

When an authorized enforcement official finds that a discharge has taken place or is likely to take place in violation of this chapter, the official may issue an order to cease and desist such

discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall:

- (i) Comply with the requirement;
- (ii) Comply with a time schedule for compliance; and/or
- (iii) Take appropriate remedial or preventive action to prevent the violation from recurring.

(b) Notice to Clean.

Whenever an authorized enforcement official finds any oil, earth, dirt, grass, weeds, dead trees, cans, bottles, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the City storm sewer system or a non-stormwater discharge to the City storm sewer system, he or she may give notice to remove such material in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.614. Authority to Arrest or Issue Citations.

Authorized enforcement officials shall have and are hereby vested with the authority to arrest or cite any person who violates any section of this chapter in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanor infractions as prescribed by Chapter 5, 5c, and 5d of Title 3, Part 2 of the Penal Code (or as the same may hereafter be amended). Such authorized enforcement officials or employees may issue a citation and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this chapter. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.615. Remedies Not Exclusive.

Remedies under this article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Sec. 2 (part), Ord. 92-01, eff. Feb. 20, 1992)

6-13.616. Appeal.

Any person aggrieved by a decision of the City Engineer regarding this article may appeal to the Planning Commission within fifteen (15) days after final action by the City Engineer. The appeal procedures set forth in Article 88 of Title 9 of the Emeryville Municipal Code shall apply.

SECTION THREE: AMENDING CHAPTER 2 OF TITLE 1 OF THE EMERYVILLE MUNICIPAL CODE

Section 1-2.01(e) of Chapter 2 of Title 1 of the Emeryville Municipal Code is hereby amended to read as follows, with additions underlined.

(e) Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code, except the provisions and requirements set forth in subsection (f), shall be guilty of a misdemeanor, as designated by, and provided for, in Section 16, 17, 19c, and 19d of the Penal Code of the State and as expressly specified in Section 4000 of the Vehicle Code of the State. The following provisions on any violation shall be deemed a misdemeanor:

Title	Chapter	Article	Section
4	2	Entire	
	4	Entire	
	7		.09 and .10
	8		.25 and .26
5	5	Entire	
	6	Entire	
	9		.03
	12	Entire	
	14		.05
	16	2	.220 and .221
6	1	1	1.107
	2		.02 and .03
	7	Entire	
	<u>13</u>	<u>Entire</u>	
7	5		.13

SECTION FOUR: CEQA DETERMINATION

This Ordinance is exempt from environmental review under State CEQA Guidelines Section 15307, which applies to actions by regulatory agencies for protection of natural resources, and Section 15308, which applies to actions by regulatory agencies for protection of the environment.

SECTION FIVE: SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses, or phrases.

SECTION SIX. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

SECTION SEVEN. CODIFICATION

Sections Two and Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Four, Five, Six, and Seven shall NOT be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting on Tuesday, November 20, 2007 and **PASSED AND ADOPTED** by the City Council at a regular meeting on Tuesday, December 4, 2007 by the following vote:

AYES: _____

NOES: _____ **ABSENT:** _____

EXCUSED: _____ **ABSTAINED:** _____

MAYOR

ATTEST: _____

APPROVED AS TO FORM: _____

CITY CLERK

CITY ATTORNEY

From: gary grimm [mailto:gjgrimm@mindspring.com]
Sent: Monday, July 16, 2007 1:57 PM
To: Peter Schultze-Allen; Scanlin, Jim; Fred
Subject: Alameda County Clean Water Program comments on Stormwater Ordinance

Peter,

I have briefly reviewed the proposed Emeryville stormwater ordinance. While I have not looked in detail at the provisions so as to make detailed editorial suggestions, the ordinance generally appears (you should also consider my other comments below) to provide the local authority required, along with other City ordinances and guidelines, to enable the City to implement and comply with the provisions of the NPDES Municipal Stormwater Permit (Order R2-2003-0021). Your proposed revised ordinance appears to be an improvement over the existing ordinance. Good work!

However, I would also note that as the NPDES permit will be reissued sometime within the next year by the Regional Water Board in the form of the Municipal Regional Stormwater Permit (MRP), it may be necessary at that time for all co-permittees, including the City of Emeryville, to review and/or revise their ordinances/guidelines for any new MRP provisions where municipal ordinances/guidance are insufficient.

A few more specific observations: The ordinance in large part addresses revised measures to deal with construction activity in the City – stormwater management (6-13.204(c)) and treatment measures (6-13.204(d)). Cross references to other City ordinances and guidelines is good. The proposed ordinance goes on to establish a stormwater treatment permit system (Article 3). However, I find 6.13-301(b) confusing. It's not clear to me what it really means, what's being dropped out or what is the intention? Is there a simpler way to state the intention? Provision C.3 of the NPDES permit requires coverage for all projects that create or replace 10,000 sq.ft. or more of impervious surface – the ordinance should be clear that such projects are covered and require the City permit. Stated differently, (a) and (b) may be more stringent than the NPDES permit, but it cannot be less stringent.

Provision C.3 of the NPDES permit, in addition to requiring the design and implementation of stormwater treatment measures – which your proposed permit system primarily addresses, also requires covered projects to implement appropriate source control (Provision C.3.k) and site design measures (C.3.j). Make sure that your ordinances/guidelines cover these areas as well.

Your incorporation of the O&M requirements and agreement are very good. This is a step forward. I hope that other municipalities make this inclusion in their ordinances. Inspection and Enforcement looks good as well.

Gary

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