

ORDINANCE NO. 2944-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CERTAIN SECTIONS OF, AND ADD CERTAIN SECTIONS TO, CHAPTER 12.60 (STORMWATER MANAGEMENT) OF TITLE 12 (WATER AND SEWERS) OF THE SUNNYVALE MUNICIPAL CODE

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 12.60 AMENDED. Section 12.60 (Stormwater Management) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Title 12. WATER AND SEWERS

Chapter 12.60. STORMWATER MANAGEMENT

- 12.60.010. Purpose and intent.**
- 12.60.020. Scope and limits of chapter.**
- 12.60.030. Administration.**
- 12.60.040. Definitions.**
- 12.60.050. Ultimate responsibility of discharger.**
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- 12.60.070. Discharge prohibitions.**
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- 12.60.190. Infiltration treatment measures.**
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- 12.60.210. Submission of revised Stormwater Management Plan.**
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- 12.60.230. Minimum best management practices and source control measures for all dischargers.**
- 12.60.240. Authority to inspect.**
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- 12.60.260. Failure to properly operate and maintain stormwater treatment and hydromodification management facilities.**
- 12.60.270. [Repealed]**
- 12.60.280. [Repealed]**
- 12.60.290. [Repealed]**
- 12.60.300. Alternative compliance.**
- 12.60.305. Public nuisance.**
- 12.60.310. Manner of notification of a violation.**
- 12.60.315. Administrative process and civil penalties.**
- 12.60.320. Administrative hearing and appeals process.**
- 12.60.330. Emergency corrections.**
- 12.60.340. [Repealed]**
- 12.60.350. Judicial civil penalties.**
- 12.60.360. Remedies cumulative.**

12.60.010. Purpose and intent.

The purpose of this chapter is to provide regulations and give legal effect to certain requirements of the National Pollutant Discharge Elimination System (NPDES) permit (the “Permit”) issued to the City of Sunnyvale on December 1, 2009, regarding municipal stormwater and urban runoff requirements. This chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands lying within the city. This chapter shall be construed to assure consistency with the requirements of the Clean Water Act and Porter-Cologne Act and any applicable implementing regulations, as they exist at the time of enactment or as later amended.

12.60.020. Scope and limits of chapter.

This chapter shall apply to:

- (a) Ministerial as well as discretionary approvals of development located on applicable sites and regulated projects for new development or significant redevelopment projects, as those terms are defined in this chapter;
- (b) Dischargers at applicable sites which have been found to, or may be reasonably considered to, cause or contribute to pollution of stormwater runoff associated with commercial or industrial activity or illegal connections and other illicit discharges.

Nothing in this chapter shall be interpreted to:

- (1) Infringe any right or power guaranteed by the California Constitution, including any vested property right; or
- (2) Require any action inconsistent with any applicable and lawfully adopted general plan, specific plan, vesting tentative map or building code that conforms to the laws of California and the requirements of this chapter.

12.60.030. Administration.

This chapter shall be administered jointly by the director of community development and the director of public works. Any powers granted to or duties imposed upon these individuals to administer, implement and enforce the provisions of this chapter may be delegated to other city personnel.

12.60.040. Definitions.

For the purposes of this chapter the following words and phrases shall have the meanings given to them in this section. Words and phrases not defined in this chapter shall have the definitions set forth in the 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 site" means any site that could reasonably be considered to cause or contribute to pollution of stormwater runoff. This definition includes but is not limited to 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, contaminated and erodible surface areas, and other sources determined to have a reasonable potential to contribute to pollution of stormwater runoff.

(b) "Authorized enforcement official" means the director of public works or the director of community development and their designees.

(c) "Best management practices" (BMP) means a structural device, measure, facility, or activity that helps to achieve stormwater management control objectives at a regulated project or applicable site.

(1) "Maintenance of a best management practice or stormwater treatment system" means periodic action taken to maintain the as-designed performance of best management practice or stormwater treatment system, and includes, but is not limited to, repairs as necessary and replacement of the best management practice or stormwater treatment system by an equally effective or more effective best management practice or stormwater treatment system.

(2) "Source control best management practice" means any schedule of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent stormwater pollution by reducing the potential for contamination at the source of pollution.

(3) "Treatment best management practice" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

(d) "Bio-retention area" means landscaping features adapted to treat stormwater runoff on a development site. Surface runoff is directed into shallow, landscaped depressions. These depressions are designed with soil mixtures and vegetation that incorporate many of the pollutant removal systems that operate in a natural ecosystem. If the subsurface soils will not allow for natural infiltration (e.g., heavy clay soil), the filtered runoff may be collected in a perforated underdrain in the area and returned to the storm drain collection system.

(e) "BMP Guidance Manual" as revised means the manual approved by the City of Sunnyvale directors of the public works and community development departments, as amended from time to time, that sets forth guidance, design standards and best management practices for stormwater treatment measures, which shall be utilized by developers and property owners to comply with this chapter. A copy of the BMP Guidance Manual may be obtained from the city's planning division.

(f) "CASQA" means California Stormwater Quality Association.

(g) "CASQA Stormwater Best Management Practice Handbook" means the four-volume set of handbooks for New and Redevelopment, Construction, Industrial and Commercial, and Municipal operations produced by CASQA and available at www.casqa.org.

(h) "Construction" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction also includes structure demolition. Construction does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of a facility, nor does it include emergency construction activities required to immediately protect public health and safety, interior remodeling with no outside exposure of construction material or construction waste to stormwater or mechanical permit work.

(i) "Detached single-family home project" means the building of one single new house or addition and/or replacement of impervious surface to one single existing house, which is not part of a larger plan of development.

(j) "Detention" means the temporary storage of storm runoff in a manner that controls peak discharge rates and provides some gravity settling of pollutants.

(k) "Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private project, or mass grading for anticipated construction. Development does not include routine maintenance to maintain original line and grade, hydraulic capacity or original purpose of a facility, nor does it include emergency construction activities required to protect immediately public health and safety.

(l) "Diligently pursuing" or "diligent pursuance" means that a project applicant's submittal of supplemental information to the original project application, plans, or other documents required for any necessary approvals of the project by the city are provided in the time period between December 1, 2009 and December 1, 2011.

(m) "Director" means either the director of public works or community development departments.

(n) "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 or non-stormwater that is discharged.

(o) "Discharger" means any person or entity engaged in activities or operations or owning facilities, which will or may result in pollutants entering stormwater or the storm drain system. Discharger also means the owners of real property on which such activities, operations or facilities are located; provided, however, that a local government or public authority is not a discharger as to activities conducted by others in public rights-of-way.

(p) "Enforcement Response Plan" established by the director contains criteria and various guidelines for implementing consistent enforcement. These enforcement guidelines shall be maintained by the director and shall be available to the public. Additions to or deletions from the guidelines may be made by the director.

(q) "Full trash capture" or a "full capture system or device" means any single device or series of devices that traps all particles retained by a 5 mm mesh screen and has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour storm in the sub-drainage area and as approved by the San Francisco Bay Regional Water Quality Control Board, Region 2.

(r) "General permit" means an NPDES permit issued under Code of Federal Regulations Section 122.28 (40 CFR 122.28) authorizing a category of discharges under the Clean Water Act within a geographical area.

(s) "Hydromodification management" ("HM") means the requirements for regulated projects that create or replace one acre or more of impervious surface and are not specifically excluded in the requirements of Provision C.3.g.ii and Attachment F for the Santa Clara County permittees, as adopted in the NPDES Stormwater Permit. A project that does not increase impervious surface area over the pre-project condition does not qualify as an HM project. The HM is designed to manage increases in the magnitude, volume and duration of runoff from new development and significant redevelopment projects in order to protect streams from increased potential for erosion or other adverse impacts. The HM contains management standards and performance criteria for subject development which are incorporated into this chapter. A copy of the HM requirements in the city's permit listed above may be obtained from the city's planning division.

(t) "Illegal connection" means any device or artifice, excluding roof drains and other similar connections, connecting into the storm drain system without a permit, through or by which an illicit discharge may be discharged.

(u) "Illicit discharge" means any discharge to a storm drain system that is not composed entirely of stormwater except discharges pursuant to an NPDES permit, including categorically allowed discharges and conditionally exempted discharges permitted under Sections 12.60.070(f) and (g).

(v) "Impervious surface" means constructed or modified surface that cannot effectively infiltrate rainfall. Impervious surface includes but is not limited to building rooftops, pavement, sidewalks, and driveways where such surfaces are not constructed with pervious materials. "Impervious surface area" means the ground area covered or sheltered by an impervious surface, measured as if from directly above.

(w) "Infiltration" means the process of percolating stormwater or non-stormwater into the subsoil.

(x) "Infiltration device" means any structure that is deeper than wide, with no underdrain and is designed primarily to infiltrate (percolate) water into the subsurface and bypass the natural groundwater protection afforded by surface soil. The definition of stormwater infiltration device does not include any septic system or other waste water disposal system, any infiltration of water other than stormwater, Santa Clara Valley Water District percolation ponds, lined sumps and basins, or any naturally occurring body of surface water.

(1) Examples of best management practices that are stormwater infiltration devices include, but are not limited to:

- A. Infiltration basins and trenches (including French drains);
- B. Infiltration and exfiltration trenches;
- C. Unlined retention basins (i.e., basins with no outlets);
- D. Unlined or open-bottomed vaults or boxes installed below grade that store stormwater allowing infiltration into subsurface soils;
- E. Dry wells; and
- F. Injection wells.

(2) The definition of infiltration device does not apply to the following best management practices that treat stormwater and then release it into a storm drain system:

- A. Media filtration devices.
- B. Underground detention system;
- C. Hydrodynamic device;
- D. Water quality inlet filters;
- E. Contained and flow-through planter boxes;
- F. Roof gardens;
- G. Extended detention basin;
- H. Any device with an impermeable liner and underdrain/outfall to the storm drain.

(y) "In-lieu fees" means the monetary amount necessary to provide both hydraulically-sized treatment in accordance with numeric sizing (SMC 12.60.150) and LID treatment measures (SMC 12.60.155) of an equivalent quantity of stormwater runoff and pollutant loading and a proportional share of the operation and maintenance costs of the regulated project.

(z) "Land disturbance activity" means any activity that moves soils or substantially alters the pre-existing vegetated or man-made cover of any land including, but not limited to, grading, digging, cutting scraping, stockpiling or excavating of soil; placement of fill materials; paving, pavement removal, exterior construction; substantial removal of vegetation where soils are disturbed including, but not limited to, removal by clearing or grubbing or any activity which bares soil or rock or involves streambed alterations or diversion or piping of any watercourse. Land disturbance activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities required to protect public health and safety.

(aa) "Land owner" means the holder of legal title to the land, and other persons or entities who exercise control over a land development project pursuant to rights granted in a purchase agreement, joint venture agreement, development agreement, or long-term lease.

(bb) "Low impact development" ("LID") is an approach to new and redevelopment designs to reduce stormwater runoff and mimic a site's predevelopment hydrology by minimizing the amount of disturbed areas and impervious cover and then infiltrating, storing, detaining, evapotranspiring, and/or biotreating stormwater runoff close to its source. LID principles treat stormwater as a resource, rather than a waste product that must be removed from the site.

(cc) "Maximum extent practicable" means a standard for implementation of stormwater management programs to reduce pollutants in stormwater to the maximum extent possible, taking into account equitable considerations and competing facts including, but not limited to the seriousness of the problem, public health risks, environmental benefits, pollutant removal effectiveness, regulatory compliance, cost and technical feasibility.

(dd) "Micro-detention" means a series of multiple small stormwater detention areas that absorb or detain some or all of the stormwater runoff in a development site. It works by temporarily storing stormwater near where it falls as precipitation. Micro-detention can include common landscaping features such as small garden areas, tree grates, perimeter hedges, and bio-retention areas such as rain gardens. It may also include non-vegetated areas such as sub-surface storage areas with regulated out-flow. Micro-detention is one of several Best Management Practices that can be used to treat or infiltrate stormwater or collect it for reuse at a development site.

(ee) "Non-stormwater" means any discharge that is not composed entirely of stormwater.

(ff) "Notice of Violation" ("NV") means an official written notice of noncompliance, issued to a discharger from the director, which provides notification that a significant violation of this chapter has occurred, consistent with an Enforcement Response Plan.

(gg) "NPDES Stormwater Permit" means the California Regional Water Quality Control Board San Francisco Bay Regional Stormwater NPDES Permit Order R2-2009-0074, NPDES Permit No. CAS612008, October 14, 2009, Effective December 1, 2009.

(hh) "Permeable surfaces" means the pervious concrete, porous asphalt, unit pavers, and/or granular materials that allow water to infiltrate into subsurface soil.

(ii) "Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of impervious surface area on an already developed site. Redevelopment includes, but is not limited to the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces.

(jj) "Regional project" means a regional or municipal project with sufficient capacity or credit to protect or enhance water quality and/or beneficial uses in a manner equivalent to or greater than the stormwater benefits that would have been provided from the installation of the required treatment measures at the subject project site. A regional project must discharge to or address the same receiving waters as the subject project site.

(kk) "Regulated projects" are new development projects, redevelopment projects and/or road projects that create and/or replace 10,000 square feet or more of impervious surface, and included special land use categories defined below.

(ll) "Riparian areas" means an ecosystem that is the interface between dry land and a water body such as a creek, stream, river, lake, or marsh. Vegetation in riparian areas is characterized by a predominance of hydrophilic plants.

(mm) "Special land use categories" are regulated projects in the categories of (i) auto service facilities described in Standard Industrial Codes (SIC) 5013, 5014, 5541, 7532, 5734 and 7536 through 7539; (ii) retail gasoline outlets; (iii) restaurants (5812); or (iv) uncovered parking lots that stand alone or are part of any development project, including the top uncovered portion of parking structures, unless drainage from the uncovered portion is connected to the sanitary sewer.

(nn) "Storm drain system" means the conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains owned or operated by the city and used for the purpose of collecting, storing, transporting, or disposing of runoff.

(1) Examples of best management practices that are stormwater infiltration devices include, but are not limited to:

- (A) Infiltration basins;
- (B) Infiltration and exfiltration trenches;
- (C) Unlined retention basins (i.e., basins with no outlets);
- (D) Unlined or open-bottomed vaults or boxes installed below grade that store stormwater allowing infiltration into subsurface soils;
- (E) Dry wells.

(2) The definition of stormwater infiltration device does not apply to the following best management practices that treat stormwater and then release it into a storm drain system:

- (A) Media filtration devices;
- (B) Underground detention system;
- (C) Hydrodynamic device;
- (D) Water quality inlet filters;
- (E) Contained and flow-through planter boxes;
- (F) Roof gardens;
- (G) Extended detention basin;
- (H) Any device with an impermeable liner and underdrain/outfall to the storm drain.

(oo) "Stormwater" means surface runoff and drainage associated with storm events.

(pp) "Stormwater Management Plan" means a plan identifying the measures that will be used for stormwater and non-stormwater management during the permitted activity and/or during and after construction of any development or significant redevelopment project subject to the provisions of this chapter.

(qq) "Treatment" means the use of designed and/or engineered systems, which use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and ultraviolet (UV) radiation.

(rr) "Warning Notice" ("WN") means an official notice of noncompliance, either written or verbal, issued to a discharger from the director, which provides notification that a violation of this chapter has occurred. Warning Notices are typically given in instances of minor violations and/or if the corrective actions taken are immediate, consistent with an Enforcement Response Plan.

12.60.050. Ultimate responsibility of discharger.

The standards established by this chapter are minimum standards, and do not imply that compliance by any discharger will ensure that there will not be contamination, pollution, nor unauthorized discharge of pollutants. This chapter shall not create liability on the part of the city or any city employee for any damages that result from any discharger's reliance on this chapter or any lawful administrative decision.

12.60.060. Fees.

The amount of the fees for services and certifications provided under this chapter shall be established periodically by resolution of the city council.

12.60.070. Discharge prohibitions.

(a) General Prohibition. Any discharge to the storm drain system not composed entirely of stormwater is prohibited, except as set forth in this chapter.

(b) It is unlawful to throw, deposit, leave, abandon, maintain or keep materials or wastes on public or private lands in a manner and place where they may result in an illicit discharge.

(c) Separately Permitted Discharges. Discharges regulated under a valid facility-specific NPDES permit or facility-specific Regional Water Quality Control Board waste discharge requirements permit not including a state general permit, shall be regulated exclusively by the Regional Water Quality Control Board and are exempt from discharge prohibitions established by this chapter, provided compliance with all relevant permit conditions is maintained to the satisfaction of the Board. Stormwater discharges at a facility with a facility specific permit which only addresses process discharges or non-stormwater discharges are not exempted.

(d) State General Permit Discharges. Stormwater discharges regulated under the state general industrial storm water permit or state general construction stormwater permit are exempt from discharge prohibitions established by this chapter, provided compliance with all relevant general permit conditions is maintained to the satisfaction of the Regional Water Quality Control Board.

(e) Categorically Allowed Discharges. The following categories of non-stormwater discharges are exempt from discharge prohibitions established by this chapter.

- (1) Flows from riparian habitats or wetlands;
- (2) Diverted stream flows;
- (3) Flows from natural springs;
- (4) Rising ground waters;
- (5) Uncontaminated groundwater infiltration;
- (6) Pumped groundwater from drinking water aquifers; and
- (7) NPDES permitted discharges (individual or general permits).

(f) Conditionally Exempted Discharges. The following categories of non-stormwater discharges are conditionally exempt from discharge prohibitions established by this chapter. Dischargers must install, implement and maintain any specifically applicable minimum best management practices, as set out in the NPDES Stormwater Permit (Provision C.15.b, Conditionally Exempted Non-Stormwater Discharges), so as to prevent or eliminate adverse impacts of such discharges.

- (1) Uncontaminated pumped groundwater;
- (2) Pumped groundwater from non-drinking water aquifers;

- (3) Foundation drains;
- (4) Water from crawl space pumps;
- (5) Footing drains;
- (6) Air condition condensate;
- (7) Irrigation water;
- (8) Landscape irrigation;
- (9) Lawn or garden watering;
- (10) Planned and unplanned discharges from potable water sources;
- (11) Water line and hydrant flushing;
- (12) Individual residential car washing;
- (13) Swimming pool, not tub, spa and fountain water; and
- (14) Emergency discharges that are the result of firefighting, unauthorized hydrant openings, natural or man-made disasters (e.g., earthquakes, floods, wildfires, accidents, terrorist actions).

(g) On-site Wastewater Systems. Discharges to the subsurface from permitted properly functioning on-site wastewater systems are not prohibited by this chapter.

(h) Exemptions Not Absolute. Any discharge category described above that is a significant source of pollutant to waters of the United States shall be prohibited from entering the storm drain system, or shall be subjected to a requirement to implement additional best management practices to reduce pollutants in the discharge to the maximum extent practicable. Such prohibitions shall be effective on a schedule specified by an authorized enforcement official in a written notice to the discharger. The schedule may take into account the nature and severity of any effects caused by the discharge; and the time required to design, engineer, fund, procure, construct and make appropriate best management practices operational.

(i) Non-Stormwater Discharge. The prohibition shall not apply to any Non-Stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the state of California under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations. The authorized enforcement official may exempt in writing other Non-Stormwater discharges which are not a source of pollutants to the storm drain system upon approval by the Executive Officer of the San Francisco Bay Regional Water Quality Control Board.

12.60.075. Wastewater discharges containing copper or copper-based chemicals.

Discharges to the storm drain collection system from the following activities are prohibited. Discharges to landscaping or to the sanitary sewer system (with approvals from the Sunnyvale Water Pollution Control Plant) are allowed.

(a) Discharges of wastewater generated during the installation, cleaning, treating, and washing of copper architectural features, including copper roofs.

(b) Discharges of water from pools (including connection for filter backwash), spas, fountains and water features that contain copper based chemicals.

12.60.080. Prohibition of illegal connection.

(a) The construction, use, maintenance or continued existence of illegal connections to the storm drain system is prohibited.

(b) The authorized enforcement official may, by written notice, require a person responsible for an illegal connection to the storm drain system to eliminate or to secure approval for the connection within a specified time.

12.60.090. False statements.

It is unlawful knowingly to make or present to the city any false statement, representation, record, report, plan or other document, with regard to any requirements of this chapter.

12.60.100. Compliance with NPDES stormwater permit.

Any person subject to an industrial or construction activity General NPDES Stormwater Discharge Permit shall comply with all provisions of such permit. Proof of compliance may be required in a form acceptable to the authorized enforcement official prior to or as a condition of the approval of a subdivision map, site plan, building permit, development or improvement plan: upon inspection of the facility and/or during any enforcement action.

12.60.110. Stormwater pollution reduction.

All applicants for permits pertaining to the planning, design, and construction of all projects subject to this chapter shall design and implement stormwater best management practices so as to reduce stormwater pollution to the maximum extent practicable. Such projects shall utilize standards and guidelines set forth in the BMP Guidance Manual, as revised, and shall incorporate the numeric sizing criteria for best management practices set forth in this chapter.

12.60.120. Stormwater treatment requirements; applicability.

Specific stormwater treatment requirements or source control measures, as set forth in this chapter, are mandated for certain categories of new and redevelopment projects based upon the amount of impervious area created, added or replaced by a project. Stormwater treatment requirements shall apply to the following types of projects: development and redevelopment projects (SMC 12.60.121); special land use categories (SMC 12.60.122); road projects (SMC 12.60.123); and required site design measures for small projects and single-family homes (SMC 12.60.124).

12.60.121. Redevelopment and redevelopment projects—regulated projects.

(a) Development projects. All new development projects that create 10,000 square feet or more of impervious surface collectively over the entire project site, including commercial, industrial, residential housing subdivisions (e.g., detached single-family home subdivisions, multi-family attached subdivisions such as townhomes, condominiums and apartments), mixed-use, and public projects. This category includes development projects on public or private land that fall under the planning and building authority of the city. Construction of a detached single-family home project that is not part of a larger plan of development, with the incorporation of appropriate pollutant source control and design measures and using landscaping to treat runoff from roof and house associated impervious surfaces is specifically excluded from the requirements of this section.

(b) Redevelopment projects:

(1) Redevelopment projects that create and/or replace 10,000 square feet or more of impervious surface collectively over the entire project site, including commercial, industrial, residential housing subdivisions (e.g., detached single-family home subdivisions, multi-family attached subdivisions such as townhomes, condominiums and apartments), mixed-use, and public projects. Redevelopment is any land-disturbing activity that results in the creation, addition, or replacement of exterior impervious surface areas on a site on which some past development has occurred. This category includes redevelopment projects on public or private land that falls under the planning and building authority of the city. Redevelopment of a detached single-family home project that is not part of a larger plan of development, with the incorporation of appropriate pollutant source control and design measures and using landscaping to treat runoff from roof and house associated impervious surfaces is specifically excluded from the requirements of this section. Other exclusions: interior remodels and routine maintenance or repair (such as roof or exterior wall surface replacement or pavement resurfacing within the existing footprint).

(2) Alterations exceeding 50%. Where a development project results in an alteration of more than 50% of the impervious surface of a previously existing development that was not previously subject to the requirements of SMC 12.60 (prior NPDES Stormwater Permit effective from 2002-2009), the entire project consisting of all existing, new and/or replace impervious surfaces must be included in the treatment system design so that the stormwater treatment systems are designed and sized to treat stormwater from the entire redevelopment project.

(3) Alterations less than 50%. Where a development project results in an alteration of less than 50% of the impervious surface of a previously existing development that was not subject to the requirements of SMC 12.60 (prior NPDES Stormwater Permit effective from 2002-2009), only the new and/or replace impervious surface of the project must be included in the treatment design system so that the stormwater treatment systems are designed and sized to treat stormwater runoff from the new and/or replaced impervious surface of the project.

12.60.122. Special land use categories—regulated projects.

Effective December 1, 2011, all references to 10,000 square feet hereafter in SMC 12.60.122(a) change to 5,000 square feet for the following projects:

(a) Projects that fall into one of the categories below and that create and/or replace 10,000 square feet of impervious surface collectively over the entire project site. This applies to new and redevelopment projects on public and private land that fall under the jurisdiction of the planning and building authority of the City of Sunnyvale.

(1) Auto service facilities described by the following Standard Industrial Classification (SIC) Codes: 5013, 5014, 5541, 7532, 7534, and 7536-7529.

(2) Retail gasoline outlets;

(3) Restaurants (SIC Code 5812); or

(4) Uncovered parking lots that are stand alone or part of any other development project. This category includes the top, uncovered portion of parking structures, unless drainage from the uncovered portion is connected to the sanitary sewer with the covered portions of the parking structure.

(b) Exclusions:

(1) Interior remodels; or
(2) Routine maintenance or repair such as roof or exterior wall replacement or pavement resurfacing within the existing footprint of the structures.

(c) Alteration over 50%: where regulated project result in an alteration of more than 50% of the impervious surface of a previously existing development that was not previously subject to new and redevelopment that was not previously subject to the requirements of SMC 12.60 (prior NPDES Stormwater Permit effective from 2002-2009), the entire project, consisting of all existing, new and/or replace impervious surfaces, must be included in the treatment system to be designed and sized to treat stormwater runoff from the entire redevelopment project.

(d) Alteration under 50%: where a redevelopment project that is a special land use category results in an alteration of less than 50% of the impervious surface of a previously existing development that was not previously subject to the requirements of SMC 12.60 (prior NPDES Stormwater Permit effective from 2002-2009), only the new and/or replaced impervious surface of the project must be included in the treatment system design so that stormwater treatment systems are designed and sized to treat stormwater runoff from the new and/or replaced impervious surface of the project.

(e) Private project deemed complete before December 1, 2009. For any private development project in the categories described in SMC 12.60.122(a) for which a planning application has been deemed complete before December 1, 2009, the lower 5,000 square feet impervious surface threshold for classification as a regulated project shall not apply, so long as the applicant is diligently pursuing the project. Diligent pursuance may be demonstrated by the project applicant's submittal of information to the original application, plans, or other document required for any approvals of the project by the city. If, during the time period between December 1, 2009 and December 1, 2011, for the 5,000 square feet threshold implementation date, the project applicant has not taken the actions needed to obtain the necessary approvals from the city, then the project will be subject to the lower 5,000 square feet threshold.

(f) Private project application deemed complete after December 1, 2009, but before December 1, 2011. For any private project in the categories specified in 12.60.122(a) with an application deemed complete as of December 1, 2009, the lower 5,000 square feet impervious surface threshold for definition as a regulated project shall not apply if the project applicant has received final discretionary approval for the project before December 1, 2011.

(g) Public projects. For public projects for which funding has been committed and construction is scheduled to begin by December 1, 2012, the lower 5,000 square feet of impervious surface threshold for classification as a regulated project shall not apply.

12.60.123. Road projects—regulated project.

Any of the following types of road projects that create 10,000 square feet or more of newly constructed contiguous impervious surface and that fall under the building and planning authority for the city:

(a) Construction of new streets or roads, including sidewalks and bicycle lanes built as part of the new streets or roads.

(b) Widening of existing streets or roads with additional traffic lanes.

(1) Where the addition of traffic lanes results in an alteration of more than 50% of the existing street or road that was not subject to SMC 12.60, only the new and/or replaced impervious surface of the project must be included in the treatment system design so that the stormwater treatment systems are designed and sized to treat stormwater from only the new traffic lanes. However, if the stormwater runoff from the existing traffic lanes and the added traffic lanes cannot be separated, any onsite treatment system must be designed and sized to treat stormwater runoff from the entire street.

(c) Construction of impervious trails that are greater than 10 feet wide or are creekside (within 50 feet of the top of bank).

(d) Specific exclusions to SMC 12.60.123(a)-(c) are:

(1) Sidewalks built as part of new streets or roads and built to direct stormwater to adjacent vegetated areas.

(2) Bicycle lanes that are built as part of new streets or roads, but are not hydraulically connected to new streets or roads and that direct stormwater to adjacent vegetated areas.

(3) Impervious trails built to direct stormwater runoff to adjacent vegetated areas, or non-erodible permeable areas, preferably away from creeks or toward the outboard sides of levees.

(4) Sidewalks, bicycle lanes, or trails constructed with permeable surfaces such as pervious concrete, porous asphalt, unit pavers, and granular materials.

(5) Caltrans highway projects and associated facilities.

(e) For any private road or trail project described in SMC 12.60.123(b) or (c) for which a planning application has been deemed complete before December 1, 2009, the requirements of this section shall not apply so long as the project applicant is diligently pursuing the project. Diligent pursuance may be demonstrated by the project applicant's submittal of supplemental information to the original application, plans, or other documents required for any necessary approvals of the project by the city. If the project applicant has not taken any action to obtain the necessary approvals from the city in the time period between December 1, 2009 and December 1, 2011, the project will then be classified as a regulated project under this chapter.

(f) For any private road or trail project with an application deemed complete after December 1, 2009, the requirements of this section to classify the project as a regulated project under this chapter shall not apply if the project applicant has received final discretionary approval for the project before December 1, 2011.

(g) For any public road or trail project for which funding has been committed and construction is scheduled to begin by December 1, 2012, the requirements of this section to classify the project as a regulated project shall not apply.

12.60.124. Required site design measures for small projects and single-family homes.

As of December 1, 2012, all development projects subject to approvals and/or permits issued by the planning or building divisions which create or replace 2,500 square feet or more and less than 10,000 square feet of impervious surface and detached single-family home projects that creates and/or replaces 2,500 square feet or more of impervious surface will install one or more of the following site design measures:

- (a) Direct roof runoff into cisterns or rain barrels for reuse.
- (b) Direct roof runoff onto vegetated areas.
- (c) Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas.
- (d) Direct runoff from driveways or uncovered parking areas/lots onto vegetated areas.
- (e) Construct sidewalks, driveways, and/or patios with permeable surfaces.
- (f) Construct bike lanes, driveways, and/or uncovered parking lots or areas with permeable surfaces.

12.60.125. Site design measures for non-regulated project.

All new development and redevelopment projects subject to planning, building, development, or other comparable reviews by the city, but not meeting the definition of regulated project are encouraged to include adequate site design measures that include minimizing land disturbance and impervious surfaces. These may include clustering of structures and pavement; directing roof runoff to vegetated areas, use of micro-detention, including distributed landscape-based detention of stormwater, preservation of open space and/or restoration of riparian areas or wetland as project amenities.

12.60.130. Trash load reductions to storm drain collection system.

All regulated projects will install full trash capture devices to collect litter and debris from their project site, prior to connecting to the city's storm drain collection system.

- (a) Full trash capture devices that have been approved as meeting the standards set by the San Francisco Bay Regional Water Quality Control Board will be deemed as satisfactory for meeting this requirement. A list of approved devices and their manufacturers is available from the community development department or the city's BMP Guidance Manual.
- (b) Installed full capture trash devices will be maintained by the property owner for the life of the project, following the manufacturer's recommendations for maintenance.

12.60.140. Stormwater Management Plan required.

- (a) All applications for any city permit or approval required for land disturbance activities, construction, development or significant redevelopment for any regulated project subject to this chapter, including, but not limited to, use permits, specials development permits, grading permits, variances, landscape plans, design review, parcel maps or tentative maps, applicable building permits, or applicable encroachment permits, must include a Stormwater Management Plan.
- (b) The Stormwater Management Plan shall be accompanied by plans and related documentation demonstrating how the requirements of this chapter will be met, and the permit or approval shall not be granted unless the authorized enforcement official determines that the plan complies with the requirements of this chapter.
- (c) At the discretion of the authorized enforcement official, the Stormwater Management Plan shall include, but is not limited to the following:
 - (1) Name and address of regulated project;

- (2) Responsible operator(s) of each treatment system and hydromodification (HM) control (if any);
- (3) A description of activities and pollutant sources;
- (4) Specific descriptions of the locations (or a map showing locations) of the installed stormwater treatment system(s) and HM controls (if any);
- (5) Description of the type and size of the installed stormwater treatment systems and HM controls, if applicable;
- (6) Description of applicable operation and maintenance procedures, including recommended inspections, for all structural best management practices/installed stormwater treatment systems, as recommended by the manufacturer or as referenced in the CASQA Stormwater Best Management Practice Handbook;
- (7) Description of record keeping and internal procedures to ensure documentation and verification of applicable operational maintenance procedures. These records shall remain available for a period of at least three years;
- (8) A completed Stormwater Management Plan Data Form;
- (9) A copy of the required third party certification for the regulated projects adherence to the numeric sizing criteria for stormwater treatment systems; and
- (10) Property owners shall ensure that onsite, joint, or offsite stormwater treatment system(s) and HM controls installed to meet the requirements for regulated projects are properly operated and maintained for the life of the project pursuant to section 12.60.200 agreement to maintain best management practices.

(A) In cases where the property owner for a stormwater treatment system or HM control has worked diligently and in good faith with the appropriate State and federal agencies to obtain approvals necessary to complete maintenance activities for the treatment system or HM control, but the approvals are not granted, the property owner will be considered to be in compliance with (10) above.

(B) Constructed wetlands installed by regulated projects for urban runoff treatment shall abide by the San Francisco Bay Regional Water Quality Control Board's Resolution No. 94-102: Policy on the Use of Constructed Wetlands for Urban Runoff Pollution Control and the operations and maintenance requirements contained therein.

12.60.150. Numeric sizing criteria for treatment systems.

(a) Treatment best management practices for regulated projects shall incorporate the following hydraulic sizing design criteria to treat stormwater runoff.

(1) Volume Hydraulic Design Basis. Treatment best management practices whose primary mode of action depends on volume capacity shall be designed to treat stormwater runoff equal to:

(A) The maximized stormwater quality capture volume for the area, based on historical rainfall records, determined using the formula and volume capture coefficients set forth in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87 (1998), pages 175-178 (e.g. approximately the 85th percentile 24-hour storm runoff event); or

(B) The volume of annual runoff required to achieve 80% or more capture, determined in accordance with the methodology set forth Section 5 of the CASQA Stormwater Best Management Practices Handbook, New and Redevelopment (2003), or most recent edition, using local rainfall data.

(2) Flow Hydraulic Design Basis. Treatment best management practices whose primary mode of action depends on flow capacity shall be sized to treat:

(A) Ten percent (10%) of the 50-year peak flow rate; or

(B) The flow of runoff produced by rain equal to at least two times the 85th percentile hourly rainfall intensity for the applicable area, based on historical records of hourly rainfall depths (for Sunnyvale this is equivalent to 0.17 inches per hour); or

(C) The flow of runoff resulting from rain equal to at least two-tenths of an inch per hour intensity.

(3) Combination Flow and Volume Design Basis. Treatment systems that use a combination of flow and volume capacity shall be sized to treat at least 80% of the total runoff over the life of the project, using local rainfall data.

12.60.155. Low impact development (LID) requirements.

The goal of LID is to reduce runoff and mimic a site's predevelopment hydrology by implementing specific practices to control sources of potential pollution and site design strategies to treat stormwater. All regulated projects shall implement the following LID requirements:

(a) All regulated projects shall implement source control measures onsite that at a minimum, shall include the following:

(1) Implement source control measures on site to address the following potential discharges and minimize stormwater pollutants of concern. These control measures may include plumbing the following discharges to sanitary sewer lines, pending approval by the city;

(A) Discharges from floor mat, equipment, hood filter wash racks or covered outdoor wash racks for restaurants;

(B) Drips from covered trash dumpsters, food waste containers, and compactor enclosures;

(C) Discharges from covered outdoor wash areas for vehicles, equipment, and accessories;

(D) Swimming pool, spa, hot tub, or water feature discharges if discharge on site to vegetated areas is not a feasible option;

(E) Fire sprinkler test water, if on site discharge to vegetated areas is not a feasible option;

(2) Include properly designed covers, drains, and storage precautions for outdoor material storage areas, loading docks, repair or maintenance bays and fueling areas;

(3) Include properly designed trash storage areas that are covered with any drains in the area connected to the sanitary sewer lines, pending approval by the city;

(4) Include landscaping that minimizes irrigation and runoff, promotes surface infiltration, minimizes the use of pesticides and fertilizers and incorporates sustainable landscaping practices;

(5) Include efficient irrigation systems; and

- (6) Include storm drain stenciling or signage that includes the message “No Dumping, Flows to Bay” or equivalent.
- (b) Each regulated project shall, at a minimum, implement the following design strategies onsite:
 - (1) Limit disturbance of natural water bodies and drainage systems; minimize compaction of highly permeable soils, protect slopes and channels, minimize impacts from stormwater and urban runoff on the biological integrity of natural drainage systems and water bodies;
 - (2) Conserve natural areas, including existing trees, other vegetation, and soils;
 - (3) Minimize impervious surfaces;
 - (4) Minimize disturbances to natural drainages; and
 - (5) Minimize stormwater runoff by implementing one or more of the following site design measures:
 - (A) Direct roof runoff into cisterns or rain barrels for reuse.
 - (B) Direct roof runoff into vegetated areas.
 - (C) Direct roof runoff from sidewalks, walkways and/or patios onto vegetated areas.
 - (D) Direct runoff from driveways and/or uncovered parking lots onto vegetated areas.
 - (E) Construct sidewalks, walkways and/or patios with permeable surfaces.
 - (F) Construct driveways, bike lanes, and/or uncovered parking lots with permeable surfaces.
- (c) Effective December 1, 2011, all regulated projects are required to treat 100% of the amount of runoff using the criteria identified in SMC 12.60.150 for the regulated project’s drainage area with LID treatment measures onsite or with LID treatment measures at a joint stormwater treatment facility.
 - (1) LID treatment measures are defined as stormwater harvesting and re-use, infiltration, evapotranspiration, or biotreatment.
 - (2) A properly engineered and maintained biotreatment system may be considered only if it is infeasible to implement stormwater harvesting and re-use, infiltration, or evapotranspiration at a project site.
 - (3) Infeasibility to implement stormwater harvesting and re-use, infiltration, or evapotranspiration at a project site may result from conditions including the following:
 - (A) Locations where seasonal high groundwater would be within 10 feet of the base of the LID treatment measure.
 - (B) Locations within 100 feet of a groundwater well used for drinking water.
 - (C) Development sites where pollutant mobilization in the soil or groundwater is a documented concern.
 - (D) Locations with potential geotechnical hazards.
 - (E) Smart growth and infill or redevelopment sites where the density and/or nature of the project would create significant difficulty for compliance with the onsite volume retention requirement.
 - (F) Locations with tight clay soils that significantly limit the infiltration of stormwater.

(4) Criteria and procedures to determine when stormwater harvesting and re-use, infiltration, or evapotranspiration are feasible or infeasible at regulated project sites will be identified by May 1, 2011 and incorporated into the city's Stormwater BMP Guidance Manual, as revised.

(5) Biotreatment systems shall be designed to have a surface area no smaller than what is required to accommodate a 5 inches per hour stormwater runoff surface loading rate. The planting and soil media for biotreatment systems shall be designed to sustain plant growth and maximize stormwater runoff retention and pollutant removal. A set of model biotreatment and soil media specifications and soil infiltration testing methods to verify a long-term infiltration rate of 5 to 10 inches per hour will be identified by December 1, 2010, and submitted to the Regional Water Quality Control Board for approval. Once approved, these specifications will be incorporated into the city's Stormwater BMP Guidance Manual, as revised. Biotreatment systems approved after Regional Water Quality Control Board approval of the model specifications will need to comply with these minimum specifications and soil infiltration testing methods.

(6) Green roofs may be considered biotreatment systems if they meet certain minimum specifications. The minimum specifications will be submitted to the Regional Water Quality Control Board for approval on May 1, 2011. Once approved, these minimum specifications will be incorporated into the city's Stormwater BMP Guidance Manual, as revised. Green roof systems approved after Regional Water Quality Control Board approval of the minimum specifications will need to comply with these requirements.

(7) Due date for full implementation of the LID requirements in this chapter is December 1, 2011. For private development projects approved on or before December 1, 2009, the requirements of SMC 12.60.155 shall not apply so long as the project applicant is diligently pursuing the project.

(8) Private development projects with an application deemed complete after December 1, 2009 and which have received final discretionary approval (e.g., building permits) for the project before December 1, 2011, the requirements of SMC 12.60.155 shall not apply.

(9) Public projects for which funding has been committed and construction scheduled to begin before December 1, 2012, the requirements of SMC 12.60.155 shall not apply.

12.60.160. Hydromodification management (HM) requirements; applicability.

(a) Requirement. Stormwater discharges from any HM project shall be designed and maintained so they shall not cause an increase (over the pre-project existing condition) in the erosion potential of the stream into which they flow. Increases in runoff flow and volume shall be managed so that post-project runoff shall not exceed estimated pre-project rates and durations, where such increased flow and/or volume is likely to cause increased potential for erosion of creek beds and banks, silt pollutant generation, or other adverse impacts on beneficial uses due to increased erosive force. All applicants are required to comply with the standards and performance criteria and requirements set forth in the key elements (e.g., Range of Flows to Control, Goodness of Fit Criteria, Precipitation Data, and Calculations for Post-Project Runoff) of the HM requirements for Santa Clara County as described in Provision C.3.g Hydromodification Management and Attachment F as adopted in the NPDES Stormwater Permit. A copy of the HM

requirements may be obtained from the city's planning division and is available in the city's Stormwater BMP Guidance Manual.

(b) Applicability. All new and redevelopment project that create or replace 1 acre or more of impervious surface shall implement the hydromodification controls and standards as described in (a) above. The following projects are exempt from HM compliance:

(1) Projects that do not create an increase in impervious surface over pre-project conditions.

(2) Projects located within areas that drain to stream channels within the tidally influenced area. Such areas are shown in the HM zone map included in the city's BMP Guidance Manual.

(3) Projects located within areas that drain to non-earthen stream channels that are hardened on three sides and extend continuously upstream from the tidally influenced area. Such areas are depicted in the city's BMP Guidance Manual HM maps.

(4) Projects draining to Sunnyvale East or West Channels. Such areas are depicted in the city's BMP Guidance Manual HM maps.

(5) Projects draining to an underground storm drain that discharges directly to San Francisco Bay.

(6) Projects that demonstrate, upon completion of stream-specific and modeling studies that are consistent with the method identified in the HM requirements in provision C.3.g and Attachment F of the NPDES Stormwater Permit and its supporting technical documents, that there will be no increase in potential for erosion or other adverse impact to beneficial uses to any state waters.

(7) Projects less than 1 acre and that are located in the HM applicable areas as depicted in the City's HM maps in the BMP Guidance Manual are encouraged, but not required, to implement HM Requirements above.

12.60.170. Design standards concerning flooding.

Except as this chapter may specifically exempt, every best management practice required to be implemented in new development or redevelopment shall not, by its construction, operation, maintenance, or lack thereof, lead to or cause flooding.

12.60.180. Alternative certification of adherence to numeric sizing criteria for stormwater treatment systems.

The authorized enforcement official a signed certification from a civil engineer or a licensed architect or landscape architect registered in the state of California that the numeric sizing for stormwater treatment systems and/or hydromodification management (HM) facilities meet the hydraulic sizing design requirements of this chapter and the established criteria of the NPDES Stormwater Permit. Each certifying person shall establish to city's satisfaction that such person has been trained on best management practice design for water quality not more than three years prior to the signature date, and that each certifying person understands the groundwater protection principles applicable to the project site. Any consultant hired to design and/or construct a stormwater treatment system for a regulated project shall not be the certifying person for the project. Training conducted by an organization with stormwater treatment best management design expertise such as a university, the American Society of Civil Engineers, American Society of Landscape Architects, American Public Works Association, California Water Environment Association, Bay Area Stormwater

Management Agencies, National Association of Flood and Stormwater Management Agencies, California Stormwater Quality Association, or the equivalent, may be considered qualifying.

12.60.190. Infiltration treatment measures.

In order to protect groundwater from pollutants that may be present in urban runoff, treatment best management practices that function primarily as stormwater infiltration devices, with no underdrain, must meet, at a minimum, the following conditions:

(a) Pollution prevention and source control best management practices shall be implemented at a level appropriate to protect groundwater quality at sites where infiltration devices are to be used. This includes a minimum of 2 feet of suitable soil to achieve a maximum of 5 inches per hour infiltration rate for the infiltration system.

(b) Infiltration devices shall not be placed in the vicinity of known contamination sites unless it has been demonstrated that increased infiltration will not increase leaching of contaminants from soil, alter groundwater flow conditions affecting contaminant migration in groundwater or adversely affect remedial activities.

(c) Use of infiltration devices shall not cause or contribute to degradation of groundwater quality at applicable sites or of groundwater quality objectives.

(d) Infiltration devices shall be adequately maintained to maximize pollutant removal capabilities.

(e) The vertical distance from the base of any infiltration device to the seasonal high groundwater mark shall be at least 10 feet, except that as to infiltration devices concerning land disturbance activities. A greater separation from the high groundwater mark may be required in accordance with the "Best Management Practices Guidelines". In locations which are characterized by highly porous soils and/or a high groundwater table, for such areas best management practices approvals will be subject to a higher level of analysis (e.g., considering the potential for pollutants such as on-site chemical use, the level of pretreatment to be achieved, and similar factors in the overall analysis of groundwater safety).

(f) Unless stormwater is first treated by a means other than infiltration, infiltration devices shall not be employed for areas of industrial or light industrial activity; are as subject to high vehicular traffic (25,000 or greater average daily traffic on main roadway or 15,000 or more average daily traffic on any intersecting roadway); automotive repair shops, car washes; fleet storage areas (e.g., bus, truck); nurseries; and other high threat to water quality land uses and activities as designated by city.

(g) Infiltration Devices shall be located a minimum of 250 horizontally from any water supply wells and 100 feet from any septic systems or underground storage tanks with hazardous materials. A greater separation may be required in accordance with the "Best Management Practice Guidelines." In locations which are characterized by highly porous soils and/or a high groundwater table, best management practice approvals will be subject to a higher level of analysis that considers the potential for pollutants such as on-site chemical use, the level of pretreatment to be achieved, and similar factors in the overall analysis of groundwater safety.

12.60.200. Agreement to maintain best management practices.

(a) Every person applying for a city planning, or building permit to construct any new development or redevelopment project subject to this chapter, shall agree in writing to properly maintain any HM control, stormwater structural control, treatment system, and/or best management practices to be implemented ~~in~~ at the project. Such agreement shall be through means such as a covenant running with the land, enforceable conditions of approval, or other legal agreement. The agreement shall provide access to the extent allowable by law for representatives of city, the local vector control district, and the Regional Water Quality Control Board, strictly for the purposes of performing operation and maintenance inspections of the installed stormwater treatment systems, best management practices, and/or HM controls (if any). The agreement shall be recorded in the office of the county recorder, shall remain in force, and upon transfer, shall be binding on the new owner(s).

(b) Any land owner of a property which has been required by this chapter to construct or install and maintain such best management practices shall, upon transferring ownership of such property, provide the new owners with a current copy of this chapter, and shall inform the new owners in writing of their obligation to properly operate and maintain such stormwater treatment and/or source control best management practice.

12.60.210. Submission of revised Stormwater Management Plan.

(a) An authorized enforcement official may require a discharger who has previously received approval of a Stormwater Management Plan, to prepare and submit a revised Stormwater Management Plan for approval if any of the following occurs:

- (1) the project was not constructed according to the approved plans; or
- (2) the plan as constructed is not adequate for the site; or
- (3) the site is not adequately maintained; or
- (4) is a significant source of contaminants to the storm drain system.

(b) The revised Stormwater Management Plan shall identify the stormwater treatment controls, best management practices, and/or HM controls that will be used by the discharger to prevent or control pollution of stormwater to the maximum extent practicable.

(c) If the activity at issue is a construction or land disturbance activity, the revised plan submitted to the city shall at a minimum meet the requirements of the Statewide NPDES Construction General Permit Order 2009-0009 DWQ.

(d) Whenever submission of a stormwater management plan or a revised stormwater management plan is required pursuant to this chapter, any authorized enforcement staff may use the City of Sunnyvale Stormwater Quality BMP Guidance Manual and/or the CASQA Stormwater BMP Handbooks to assess the adequacy of the proposed plan.

12.60.220. Best management practices and CASQA Stormwater Best Management Practice Handbook incorporated.

The BMP Guidance Manual and CASQA Stormwater Best Management Practice Handbook are incorporated by reference into this chapter. The authorized enforcement official may from time to time revise or add to such manual to comply with NPDES requirements and stay current with technology and best management practices.

12.60.230. Minimum best management practices and source control measures for all dischargers.

The director may require submission of information to evaluate the implementation and/or require the implementation of best management practices (BMPs), including but not limited to the following:

(a) Minimum Best Management Practices. All dischargers must implement and maintain at least the following minimum best management practices:

Appropriate BMPs will be implemented to prevent pollutant sources from entering the city's storm drain collection system that are 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 and access roads, outdoor wash areas, outdoor drainage from indoor areas, rooftop equipment, contaminated and erodible surfaces, or other sources determined by the director to have a reasonable potential to contribute to pollution of stormwater runoff.

(b) Inspection, Maintenance, Repair and Upgrading of Best Management Practices. Best management practices at staffed and unstaffed facilities must be inspected and maintained by the discharger according to manufacturer specifications and/or the CASQA Stormwater BMP Handbooks. These best management practices must be maintained so that they continue to function as designed. Best management practices which fail must be repaired as soon as it is safe to do so. If the failure of a best management practice indicates that the best management practices in use are inappropriate or inadequate to the circumstances, the practices must be modified or upgraded to prevent any further failure in the same or similar circumstances.

(c) Construction site stormwater pollution controls. All construction sites will implement effective erosion control, run-on and runoff control, sediment control, active treatment systems (as appropriate), good site management, and non-stormwater management through all phases of construction (including but not limited to site grading, building and finishing of lots) until the site is fully stabilized by landscaping or the installation of permanent erosion control measures.

(d) All applicable sites are encouraged to include adequate source control measures to limit pollutant generation, discharge and runoff. These source control measures are identified in 12.60.155.

12.60.240. Authority to inspect.

(a) Whenever necessary to make an inspection to enforce any provision of this chapter, or whenever the authorized enforcement official has cause to believe that there exists, or potentially exists, in or upon any applicable site 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 is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(b) Whenever necessary to perform Operations and Maintenance verification inspections of installed stormwater treatment system(s) and HM control(s) (if any), all regulated projects shall grant site access to all representatives of the authorized enforcement official, local mosquito and vector control agency staff, and Water Board staff.

12.60.250. Requirement to remediate.

Whenever the authorized enforcement official finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollutants discharged to stormwater or the storm drain system, the official may require by written notice to the owner or responsible person that the pollution be remediated and the affected property restored within a specified time.

12.60.260. Failure to properly operate and maintain stormwater treatment and hydromodification management facilities.

(a) It is a violation of this code for any land owner to fail to properly operate and maintain any approved stormwater treatment facilities, hydromodification management facilities and/or source control best management practices on the owner's property.

(b) It is a further violation for any land owner to fail to follow any stormwater management plan submitted and approved by city unless a modification to the plan is later approved in writing by the authorized enforcement official and such modification is thereafter recorded in the same manner as the original agreement.

12.60.270. [Repealed]

12.60.280. [Repealed]

12.60.290. [Repealed]

12.60.300. Alternative compliance.

A regulated project may be allowed to provide alternative or in-lieu compliance in accordance with one of the following two options:

(a) A portion of the amount of runoff from a regulated project's drainage area required to be treated per SMC 12.60.150 may be treated with LID measures on site or with LID treatment measures at a joint stormwater treatment facility, and any remaining portion of the stormwater runoff treated with LID treatment measures at an offsite project in the same watershed. The offsite LID treatment measures must provide hydraulically sized treatment in accordance with SMC 12.60.150 of an equivalent quantity of both stormwater runoff and pollutant loading and achieve a net environmental benefit.

(b) A portion of the amount of runoff from a regulated project's drainage area required to be treated per SMC 12.60.150 may be treated with LID treatment measures onsite or with LID treatment measures at a joint stormwater treatment facility, and an equivalent amount of in-lieu fees paid to treat the remaining portion of the runoff with LID treatment measures at a offsite project. The offsite project must achieve a net environmental benefit.

(c) For alternative compliance options described in (a) and (b) above, offsite projects must be constructed by the end of the construction of the regulated project. If more time is needed to construct an offsite project, the offsite project must provide an additional 10% of the calculated equivalent quantity of both stormwater runoff and pollutant loading for each additional year, up to 3 years.

(d) Regional projects must be completed within 3 years after the end of construction of the regulated project. The timeline for completion of a regulated project may be extended for up to 5 years after completion of the regulated project with prior approval of the Executive Officer of the San Francisco Bay Regional Water Quality Control Board.

12.60.305. Public nuisance.

Illicit discharge, threatened illicit discharge, or any condition or act in violation of any provision of this chapter or of any order or directive of the director authorized by the provisions of said chapter is hereby declared to be a public nuisance. Such nuisance may be abated, removed or enjoined, and damages assessed therefor, in any manner provided by law.

12.60.310. Manner of notification of a violation.

(a) Warning Notice or Notice of Violation. When the director finds that a user has violated, or continues to violate, any provision of this chapter, or order issued hereunder, or any other stormwater standard or requirement, the director may serve upon that user a verbal or written Warning Notice or Notice of Violation. The director will require corrections to occur within a reasonably short and expedient time frame commensurate with the threat to water quality. Violations that are observed by the director shall be corrected prior to the next rain event or within 10 business days after the violation is first noted. If more than 10 business days are required for a correction, a rationale must be provided. A rapid, temporary repair shall be required and a longer time for implementation of more permanent solutions may be allowed if significant capital expenditures or construction is required to resolve the discharge problem.

(b) Explanation of violation and plan for correction/prevention. The director may require the submission of an explanation of the violation and a plan for the satisfactory correction and prevention thereof, within the time specified in the notice, to include specific required actions. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(c) Notice to Comply.

(1) When the director finds that a discharge or threatened discharge of non-stormwater is taking place, has been taking place, or threatens to take place, in violation of prohibitions or limitations prescribed in this chapter, the director may, at the director's discretion, also require the user to submit for approval, with such modifications as the director deems necessary, a detailed compliance time schedule of specific actions which the user shall take in order to prevent or correct a violation of code provisions or of any permit, and to take such action in accordance with such schedule.

(2) Nothing provided in this section shall limit or prohibit the city from pursuing any other remedy, legal or equitable, otherwise available to city, or from seeking sanctions in any criminal or civil action related to such discharge or potential discharge.

(d) Issuance of cease and desist orders. When the authorized enforcement official finds that a discharge of stormwater has taken place or is likely to take place in violation of this chapter, the authorized enforcement official may include in the notice, an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct those persons not complying with such prohibitions, limits, requirements, or provisions to comply forthwith; comply in accordance with a time schedule set forth by the city; or take appropriate remedial or preventive action.

12.60.315. Administrative process and civil penalties.

(a) Complaint. The director may serve an administrative complaint on any person who has violated any applicable code provision. The complaint shall state:

- (1) The act or failure that constitutes the violation;
- (2) The provisions of law authorizing the civil liability to be imposed;

and

(3) The proposed civil penalty. The complaint shall be served by personal delivery or certified mail on the person subject to requirements that the director alleges were violated, and shall inform the person served that a hearing on the complaint shall be conducted within thirty days after service, unless the person charged with the violation waives his or her right to a hearing.

(b) Civil penalties. Civil penalties that may be imposed pursuant to Government Code Section 54740.5 are as follows:

- (1) An amount not to exceed \$2,000.00 for each day for failing or refusing to furnish technical or monitoring reports;
- (2) An amount not to exceed \$3,000.00 for each day for failing or refusing to timely comply with any compliance schedule established by the city;
- (3) An amount not to exceed \$5,000.00 per violation for each day of violation for illicit discharges in violation of any waste discharge limitation, permit condition or requirement issued, reissued or adopted by the city; and
- (4) An amount not to exceed \$10,000.00 per gallon for discharges in violation of any suspension, cease and desist order, or other orders, or prohibition issued, reissued or adopted by the city.

(c) Lien. The amount of any civil penalties imposed under this section which have remained delinquent for a period of sixty days shall constitute a lien against the real property of the discharger from which the violation occurred resulting in imposition of the penalty. The director shall cause the amount of uncollected penalty to be recorded with the county recorder, in accordance with Section 54740.5 of the California Government Code.

12.60.320. Administrative hearing and appeals process.

(a) Hearing. Unless the person charged with the violation(s) waives his or her right to a hearing, the director or designee (“hearing officer”) shall conduct a hearing within 30 days. If the hearing officer finds that the person has violated any reporting or discharge requirement of Chapters 12.04 through 12.18 herein, he or she may assess administrative penalties against the person. In determining the amount of the civil penalty, the hearing officer may take into

consideration all relevant circumstances, including but not limited to the extent of harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurs, and corrective action, if any, attempted or taken by the discharger.

(b) Appeal. Any person against whom penalties are assessed by the hearing officer may appeal the decision of the hearing officer within 15 days of notice of the decision to the city manager. The city manager may hear the appeal or deny review of the case. If the city manager decides to hear the appeal, it shall conduct the appeal in accordance with procedures established by the council. The decision of the city manager shall be in writing and shall be final. All civil penalties imposed in accordance with this section shall be payable within thirty days of the decision of the hearing officer; provided, that if the decision is appealed, all penalties shall be payable within 30 days after the city manager's decision on the appeal.

12.60.330. Emergency corrections.

In the event cleanup, repairs, construction, or other work is performed on any applicable site pursuant to any provision of law relating to an emergency or pursuant to any other provision of law authorizing public work on private property in order to correct, eliminate or abate a condition upon such premises which threatens to cause, or has caused, a violation of any provision of this chapter, the person responsible for the occurrence or condition giving rise to such work, the occupant and the owner of the premises shall be liable, jointly and severally, to the city for public expenditures.

12.60.340. [Repealed]

12.60.350. Judicial civil penalties.

Any person who intentionally or negligently violates any provision of this chapter shall be civilly liable to the city. The city may petition the superior court to impose, assess, and recover such sums.

12.60.360. Remedies cumulative.

The remedies provided for in this chapter shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the city.

SECTION 2. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Sections 15061(b)(3) and 15307, 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 is a regulatory action as authorized by state law.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on November 16, 2010, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk

Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney