3B Model Urban Runoff Ordinance

MODEL ORDINANCE

ORDINANCE NO. _____ C.S.
ORDINANCE ADDING NEW ARTICLE 2 TO CHAPTER 31.5
OF THE [Municipality] CITY CODE REGARDING
URBAN STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL

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THE COUNCIL OF THE CITY OF **[Municipality]** DOES ORDAIN AS FOLLOWS:

SECTION 1. A new Article 2 is hereby added to Chapter 31.5 of the **[Municipality]** City Code regarding Urban Storm Water Quality Management and Discharge Control, which shall read in its entirety as follows:

"ARTICLE 2.

URBAN STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL.

Division I.

Title, Purpose and General Provisions.

Section 31.5-4. Title.

This Article shall be known as the "Urban Storm Water Quality Management and Discharge Control Ordinance" of the City of **[Municipality]** and may be so cited.

Section 31.5-5. Purpose and Intent.

The purpose and intent of this Article is to ensure the health, safety, and general welfare of citizens, and protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. §1251 et seq.) by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges to the storm drain system.

Section 31.5-6. Definitions.

The terms used in this Article shall have the following meanings:

(a) Best Management Practices. Activities, practices, and procedures to prevent or reduce the discharge of pollutants directly or indirectly to the municipal storm drain system and

waters of the United States. Best Management Practices include but are not limited to: treatment facilities to remove pollutants from storm water; operating and maintenance procedures; facility management practices to control runoff, spillage or leaks of non-storm water, waste disposal, and drainage from materials storage; erosion and sediment control practices; and the prohibition of specific activities, practices, and procedures and such other provisions as the City determines appropriate for the control of pollutants. Please refer to the City of **[Municipality]** *BMP Guidance Series*, as discussed further in Section 31.5-16(c) herein, for specific requirements.

(b) City. The City of **[Municipality]**.

(c) Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

(d) Construction Activity. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 5 acres or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

(e) Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (California Health and Safety Code §25117).

(f) Illegal Discharge. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Division II, Section 31.5-12 of this chapter.

(g) Illicit Connections. An illicit connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or

2. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the City.

(h) Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

(i) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits. General, group, and individual storm water discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act. The California Regional

Water Quality Control Board, Central Coast Region (hereinafter, Regional Board) and the State Water Resources Control Board have adopted general storm water discharge permits, including but not limited to the General Construction Activity and General Industrial Activity permits.

(j) Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

(k) Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

(l) Pollution. The human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses (California Water Code §13050).

(m) Porter-Cologne Act. The Porter-Cologne Water Quality Control Act and as amended (California Water Code §13000 et seq.).

(n) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(o) Storm Drain System. Publicly-owned facilities operated by the City by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures which are within the City and are not part of a publicly owned treatment works as defined at 40 CFR Section 122.2.

(p) Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from rain storm events.

(q) Waters of the United States. Surface watercourses and water bodies as defined at 40 CFR § 122.2. including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

Section 31.5-7. Applicability.

This Article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands lying within the City of [**Municipality**] including any amendments or revisions thereto.

Section 31.5-8. Responsibility for Administration.

The Public Works Director of the City shall administer, implement, and enforce the provisions of this Article. Any powers granted or duties imposed upon the Public Works Director may be delegated in writing by the Public Works Director to persons or entities acting in the beneficial interest of or in the employ of the City.

Section 31.5-9. Severability.

The provisions of this Article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Article.

Section 31.5-10. Regulatory Consistency.

This Article shall be construed to assure consistency with the requirements of the Clean Water Act and Porter-Cologne Act and acts amendatory thereof or supplementary thereto, or any applicable implementing regulations.

Section 31.5-11. Ultimate Responsibility of Discharger.

The standards set forth herein and promulgated pursuant to this Article are minimum standards; therefore this Article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This Article shall not create liability on the part of the City of [**Municipality**], or any agent or employee thereof for any damages that result from any discharger's reliance on this Article or any administrative decision lawfully made thereunder.

Division II.

Discharge Prohibitions.

Section 31.5-12. Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(a) Discharges from the following activities will not be considered a source of pollutants to the storm drain system and to waters of the U.S. when properly managed to ensure that no potential pollutants are present, and therefore they shall not be considered illegal discharges unless determined to cause a violation of the provisions of the Porter-Cologne Act, Clean Water Act, or this ordinance: potable water line flushing; uncontaminated pumped groundwater and other discharges from potable water sources; landscape irrigation and lawn watering; diverted stream flows; rising groundwater; groundwater infiltration to the storm drain system; uncontaminated foundation and footing drains; uncontaminated water from crawl space pumps; air conditioning condensation; uncontaminated non-industrial roof drains; springs; individual residential and occasional non-commercial car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash waters; and flows from fire fighting.

(b) The prohibition shall not apply to any non-storm water 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, and provided that written approval has been granted by the City of **[Municipality]** for any discharge to the storm drain system.

(c) With written concurrence of the Regional Board, the City of **[Municipality]** may exempt in writing other non-storm water discharges which are not a source of pollutants to the storm drain system nor waters of the U.S.

Section 31.5-13. Prohibition of Illicit Connections.

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

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

Section 31.5-14. Waste Disposal Prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or water of the U.S., any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

Section 31.5-15. Discharges in Violation of Industrial or Construction Activity NPDES Storm Water Discharge Permit.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Public Works Director prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

Division III.

Regulations and Requirements.

Section 31.5-16. Requirement to Prevent, Control, and Reduce Storm Water Pollutants.

(a) Authorization to Adopt and Impose Best Management Practices. The City will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. as a separate *BMP Guidance Series*. Where Best Management Practices requirements are promulgated by the City or any federal, State of California, or regional agency for any activity, operation, or facility which would otherwise cause the discharge of pollutants to the storm drain system or water of the U.S., every person undertaking such activity or operation, or owning or operating such facility shall comply with such requirements.

The Public Works Director will report to the City Council annually on the status of implementation of BMP's, the pollutants of concern to be addressed the next year, and any new BMPs to be developed. BMP's developed under this program will be included in the City of **[Municipality]** *BMP Guidance Series*.

(b) New Development and Redevelopment. The City may adopt requirements identifying appropriate Best Management Practices to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants. The City shall incorporate such requirements in any land use entitlement and construction or building-related permit to be issued relative to such development or redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required in this Article and the City Storm Water Utility Ordinance, Chapter 31.5, Article 1.

(c) Responsibility to Implement Best Management Practices. Notwithstanding the presence or absence of requirements promulgated pursuant to subsections (a) and (b), any person engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering storm water, the storm drain system, or waters of the U.S. shall implement Best Management Practices to the extent they are technologically achievable to prevent and

reduce such pollutants. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.

Best Management Practices required by the City can be obtained from the Public Works Department by requesting the BMP manual appropriate to a commercial or industrial activity from the *BMP Guidance Series*. BMP's are broken into three categories: "high priority" which are required to be implemented, "medium priority" which are desirable to implement, and "low priority."

Section 31.5-17. Requirement to Eliminate Illegal Discharges.

Notwithstanding the requirements of Division IV, Section 31.5-23 herein, the Public Works Director may require by written notice that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges.

Section 31.5-18. Requirement to Eliminate or Secure Approval for Illicit Connections.

(a) The Public Works Director may require by written notice that a person responsible for an illicit connection to the storm drain system comply with the requirements of this Article to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this Article.

(b) If, subsequent to eliminating a connection found to be in violation of this Article, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request City approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

Section 31.5-19. Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee 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. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within their property lines in

order to protect against erosion and degradation of the watercourse originating or contributed from their property.

Section 31.5-20. Requirement to Remediate.

Whenever the Public Works Director finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of storm water, the storm drain system, or water of the U.S., the Public Works Director may require by written notice to the owner of the property and/or the responsible person that the pollution be remediated and the affected property restored within a specified time pursuant to the provisions of sections 31.5-25 through 31.5-28 below.

Section 31.5-21. Requirement to Monitor and Analyze.

The Public Works Director may require by written notice of requirement that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, illegal discharges, and/or non-storm water discharges to the storm drain system or waters of the U.S., to undertake at said person's expense such monitoring and analyses and furnish such reports to the City of [**Municipality**] as deemed necessary to determine compliance with this Article.

Section 31.5-22. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. from said facility, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of a hazardous material said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of non-hazardous materials, said person shall notify the City's Public Works Department in person or by phone or facsimile no later than 5:00 p.m. of the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City's Public Works Department within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Division IV.

Inspection and Monitoring.

Section 31.5-23. Authority to Inspect.

Section 31.5-26 Appeal.

Notwithstanding the provisions of Section 31.5-29 below, any person receiving a Notice of Violation under Section 31.5-25 above may appeal the determination of the Public Works Director to the City Manager. The notice of appeal must be received by the City Manager within 5 days from the date of the Notice of Violation. Hearing on the appeal before the City Manager or his/her designee shall take place within 15 days from the date of City's receipt of the notice of appeal. The decision of the City Manager or designee shall be final.

Section 31.5-27 Abatement by City.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or , in the event of an appeal under section 31.5-26, within 10 days of the decision of the City Manager upholding the decision of the Public Works Director, then the City or a contractor designated by the Public Works Director shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City or designated contractor to enter upon the premises for the purposes set forth above.

Section 31.5-28 Charging Cost of Abatement/Liens.

Within 30 days after abatement of the nuisance by City, the Public Works Director shall notify the property owner of the property of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment with the City Clerk within 15 days. The City Clerk shall set the matter for public hearing by the City Council. The decision of the City Council shall be set forth by resolution and shall be final.

If the amount due is not paid within 10 days of the decision of the City Council or the expiration of the time in which to file an appeal under this Section, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Auditor so that the auditor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the tax collector shall include the amount of the assessment on the bill for taxes levied against the parcel of land.

Section 31.5-29 Urgency Abatement.

The Public Works Director is authorized to require immediate abatement of any violation of this Article that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the Public Works Director, the City of [**Municipality**] is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the City of **[Municipality]** shall be fully reimbursed by the property owner and/or

Whenever necessary to make an inspection to enforce any provision of this Article, or whenever the Public Works Director has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article, the Director may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. 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.

Section 31.5-24. Authority to Sample, Establish Sampling Devices, and Test.

During any inspection as provided herein, the Public Works Director may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

Division V.

Enforcement.

Section 31.5-25. Notice of Violation.

Whenever the Public Works Director finds that a person has violated a prohibition or failed to meet a requirement of this Article, the Director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

(a) The performance of monitoring, analyses, and reporting;

(b) The elimination of illicit connections or discharges;

(c) That violating discharges, practices, or operations shall cease and desist;

(d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and

(e) Payment of a fine to cover administrative and remediation costs; and

(f) The implementation or maintenance of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the City or a contractor designated by the Public Works Director and the expense thereof shall be charged to the violator pursuant to Section 31.5-27 below.

responsible party. Any relief obtained under this section shall not prevent City from seeking other and further relief authorized under this Article.

Section 31.5-30. Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. A violation of or failure to comply with any of the requirements of this Article shall constitute a misdemeanor and shall be punished as set forth in City Code Section 1.7.

Section 31.5-31. Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this Article, the Public Works Director may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Section 31.5-32. Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the City at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City.

Section 31.5-33. Acts Potentially Resulting in a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act.

Any person who violates any provision of this Article or any provision of any requirement issued pursuant to this chapter, may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this Article shall also include written notice to the violator of such potential liability."

SECTION 2. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. This ordinance shall be in full force and effect 30 days after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF [**Municipality**] this ____ day of _____, 19__, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

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APPROVED:

/s/ _____
Mayor of said City

ATTEST:

/s/ _____
City Clerk thereof

Date of Publication: