



Meeting Date: 03/10/2009

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input checked="" type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Anthony Emmert

Agenda Item No. K-1

Reviewed By: City Manager [Signature]

City Attorney SMF

Finance [Signature]

Public Works [Signature]

DATE: March 3, 2009

TO: City Council

FROM: Mark S. Norris, Assistant Public Works Director
Public Works Department, Utilities Services Branch [Signature]

SUBJECT: **An Ordinance of the City Council of the City of Oxnard Repealing and Adopting Sections 22-218 and 22-226 In Chapter 22, Article XII of the City Code Concerning Reduction of Pollutants In Storm Water and Remedies For Violation**

RECOMMENDATION

That City Council approve the first reading by title only and subsequent adoption of an ordinance and proposed changes to the City Code to establish minimum measures for mobile car washes, pressure washing of buildings and sidewalks, and landscape irrigation, and to provide language for Administrative Fines for violations of Chapter 22, Article XII of the City Code.

SUMMARY

The California Regional Water Quality Control Board – Los Angeles Region is scheduled to adopt a new National Pollutant Discharge Elimination System (NPDES) permit regulating discharges from the cities of Ventura County to stormwater drainage systems. The new NPDES permit requires the City of Oxnard to bring its Code into compliance with the terms of the new permit and to enforce those terms. The proposed Ordinance brings the City into compliance with the terms of the new NPDES permit, sets minimum measures for mobile car washing, pressure washing of buildings and sidewalks, and landscape irrigation, and updates the administrative fines provisions of the Code. City staff have worked with interested parties through the Utilities Task Force on the need for minimum measures, and will continue to provide outreach and training for affected businesses.

DISCUSSION

The Water Quality Act of 1987 added §402(p) to the Clean Water Act (CWA), requiring the U.S. Environmental Protection Agency (EPA) to establish regulations setting forth NPDES requirements for stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s). The City of Oxnard is copermittee to an NPDES Municipal Stormwater Permit that was first issued in 1994, and is now entering its third permit term. The Stormwater Quality Management Plan, developed under the permit,

implements program elements for Management, Residents, Industrial and Commercial Businesses, Planning and Land Development, Construction Sites, Public Agency Activities, Illicit Connections/Illegal Discharges, and Monitoring. These elements are generally implemented by Best Management Practices (BMPs) implemented to the Maximum Extent Practicable (MEP).

Under the Illicit Connections/Illegal Discharges requirements of the municipal stormwater permit, copermittees are required to “effectively prohibit non-storm discharges (discharges not composed entirely of stormwater) into the MS4 and watercourses, except where such discharges either:

- (a) Originate from a State, Federal, or other source which they are pre-empted by State or Federal law from regulating.
- (b) Fall within one of the categories below and in Table 1 (Required Conditions for Non-Storm Water Discharges), are not a source of pollutants, and meet all conditions where specified by the Regional Water Board Executive Officer:
 - (1) Stream diversions authorized by the State Water Board
 - (2) Natural springs and rising ground water
 - (3) Uncontaminated ground water infiltration
 - (4) Flows from riparian habitats or wetlands
 - (5) Flows from emergency fire fighting activity
 - (6) Discharges from potable water sources
 - (7) Gravity flow from foundation, footing and crawl space drains.
 - (8) Air conditioning condensate
 - (9) Reclaimed and potable landscape irrigation runoff
 - (10) Dechlorinated/debrominated swimming pool discharges
 - (11) Non-commercial car washing by residents or non-profit organizations
 - (12) Sidewalk rinsing
 - (13) Pooled storm water from treatment BMPs”

Municipal stormwater (wet weather) and non-stormwater (dry weather) discharges may contain pollutants that cause or threaten to cause an exceedance of the water quality standards, as outlined in the Los Angeles Regional Water Quality Control Board’s Basin Plan (Basin Plan). Municipal stormwater discharges flow to a number of waterbodies defined in the Basin Plan, including the Santa Clara River, Revolon Slough and Beardsley Wash reaches of Calleguas Creek, Channel Islands Harbor, and the Pacific Ocean. Under §303(d) of the CWA, states are required to identify a list of impaired waterbodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies. The most recent 303(d) list was approved by the U.S. EPA on June 28, 2007. TMDLs have subsequently been developed for these impaired waterbodies, and the latest draft municipal stormwater permit incorporates provisions of the TMDLs, including Wasteload Allocations (WLAs) for municipal stormwater discharges. Where a TMDL has been approved, NPDES permits must contain effluent limits and conditions consistent with the assumptions and requirements of the available WLAs in TMDLs. Cities then prepare implementation plans to reduce pollutants to their wasteload allocation.

Section 22-218 of the City Code is being modified to provide enhanced minimum measures to reduce pollutant loading. The City of Oxnard proposes to reduce metal pollutant loading to waterbodies by addressing their sources. This includes inspections of businesses and industries that are possible

contributors of these pollutants. For stationary businesses this has been relatively straightforward; however, with mobile car washes, determinations of compliance were often difficult and time consuming. The City allowed mobile car washes to capture wash water in the curb-and-gutter system, remove the wash water and recycle the waste or haul it to a legal point of disposal. The Regional Water Quality Control Board – Los Angeles Region has determined that this could still be construed as a non-stormwater discharge to a storm drain system. Additionally, the metals and other pollutants are often not removed when the wash water is vacuumed, leading to transport of the pollutants to the waterbodies in the next rain event. Similarly, wash water from building or sidewalk cleaning and irrigation runoff must not be allowed to transport pollutants to waterbodies, and are also addressed in these changes to the City Code. Staff is working with affected businesses to establish Best Management Practices that comply with the new Permit. In the case of mobile car washes, the Best Management Practice would be a full containment system that would prevent any runoff of wash water.

The current NPDES permit for municipal stormwater requires that:

“Within its own jurisdiction, each Co-permittee is responsible for adoption and enforcement of storm water pollution prevention ordinances, implementation of self-monitoring programs and Best Management Practices (BMPs), and conducting applicable inspections.”

The permit also requires the City to have the legal authority to enforce against non-stormwater discharge:

1. Co-permittees shall possess the necessary legal authority to prohibit non-storm water discharges and control the contribution of pollutants to the storm drain system from storm water discharges, including, but not limited to:
 - a. A prohibition on illicit discharges and illicit connections and a requirement for removal of illicit connections;
 - i. Prohibit the discharge of wash waters to the MS4 when gas stations, auto repair garages, or other types of automotive service facilities are cleaned;
 - ii. Prohibit the discharge of runoff to the MS4 from mobile auto washing, steam cleaning, mobile carpet cleaning, and other such mobile commercial and industrial operations;
 - iii. Prohibit the discharges of runoff to the MS4 from areas where, repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken;
 - iv. Prohibit the discharge of runoff to the MS4 from storage areas of materials, containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials;
 - v. Prohibit the discharge of chlorinated swimming pool water and filter backwash to the MS4;
 - vi. Prohibit the discharge of untreated runoff from the washing of toxic materials from paved or unpaved areas to the MS4;

- vii. Prohibit washing impervious surfaces in industrial/commercial areas which results in a discharge of untreated runoff to the MS4, unless specifically required by State or local health and safety codes; and
- viii. Prohibit the discharge from washing out of concrete trucks, pumps, tools, and equipment to the MS4.”

From the draft of the permit renewal:

- “2. The permittees shall possess adequate legal authority to:
- (a) Control through interagency agreement, the contribution of pollutants from one portion of the MS4 to another portion of the MS4.
 - (b) Require persons within their jurisdiction to comply with conditions in the permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows).
 - (c) Utilize enforcement measures (e.g., stop work orders, notice of violations, fines, referral to City, County, and/ or District Attorneys, referral to strikeforces, etc.) by ordinances, permits, contracts, orders, administrative authority, and civil and criminal prosecution.1
 - (d) Control pollutants, including potential contributions in discharges of storm water runoff associated with industrial activities, including construction activities to its MS4, and control the quality of storm water runoff from industrial sites, including construction sites.
 - (e) Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the MS4.
 - (f) Require the use of control measures to prevent or reduce the discharge of pollutants to achieve water quality objectives.
 - (g) Require that Treatment Control BMPs be properly operated and maintained.
3. Each permittee has adopted a Storm Water Quality Ordinance based upon a countywide model. Each permittee shall ensure, no later than (365 days after Order adoption date), that its Storm Water Quality Ordinance authorized the permittee to enforce all requirements of this Order.”

Section 22-226 of the City Code is being modified to provide sufficient legal authority and enforcement capabilities to implement the minimum measures for the reduction of pollutants of concern to local waterbodies.

FINANCIAL IMPACT

None.

AE: MP

Attachment #1 – Ordinance Concerning Reduction of Pollutants in Storm Water and Remedies For Violation

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD
REPEALING AND ADOPTING SECTIONS 22-218 AND 22-226
IN CHAPTER 22, ARTICLE XII OF THE CITY CODE
CONCERNING REDUCTION OF POLLUTANT IN STORM WATER AND
REMEDIES FOR VIOLATION

The City Council of the City of Oxnard does ordain as follows:

Part 1. Sections 22-218 and 22-226 of Chapter 22, Article XII of the City Code are repealed.

Part 2. Sections 22-218 and 22-226 of Chapter 22, Article XII of the City Code are adopted, to read:

SEC. 22-218. REDUCTION OF POLLUTANTS IN STORM WATER.

- (A) Discharges of storm water containing pollutants which have not been reduced to the maximum extent practicable are prohibited.
- (B) Any person engaged in activities that will or may result in pollutants entering the MS4 or watercourses shall undertake all practicable measures to reduce such pollutants.
 - (1) Minimum measures for mobile car washes are full containment under and around the vehicle being washed, capture of all water used in the washing operation, and hauling of the captured wash water to a legal point of disposal.
 - (2) Minimum measures for building or sidewalk pressure washing are to capture all water used in the washing operation, and hauling of the captured wash water to a legal point of disposal.
 - (3) Minimum measures for landscape irrigation are inspection of irrigation systems to minimize contact with impervious surfaces, and elimination of runoff from the irrigated area following treatment (pesticide or fertilizer application).
- (C) With written concurrence of the RWQCB-LA, the city may exempt in writing other non-storm water discharges which are not a source of pollutants to the MS4 or watercourses.

(Ord. No. 2459)

SEC. 22-226. REMEDIES FOR VIOLATION.

- (A) The superintendent shall serve on the property owner, and/or the person in charge of day-to-day operations of the property, a notice of violation that an illicit connection or illicit discharge exists at the property. The notice of violation shall include:

- (1) The provision(s) of this article, the applicable storm water pollution prevention plan, storm water pollution control plan or permit alleged to have been violated;
 - (2) A statement that continued noncompliance may result in civil, criminal or administrative enforcement actions against the property owner and/or person in charge of day-to-day operations of the property;
 - (3) A compliance date that must be met by the property owner and/or person in charge of day- to-day operations of the property;
 - (4) The manner of abatement required; and
 - (5) Any remediation required.
- (B) The notice of violation may include, where deemed applicable by the superintendent, the following terms and requirements:
- (1) Specific steps and time schedules for compliance as reasonably necessary to prevent continued or threatened illicit discharges;
 - (2) Specific steps and time schedules for compliance as reasonably necessary to discontinue any illicit connection;
 - (3) Requirements for containment, cleanup, removal, storage, installation of overhead covering or proper disposal of any pollutant having the potential to contact storm water runoff;
 - (4) Any other terms or requirements reasonably necessary to prevent continued or threatened violations of this article including, but not limited to, requirements for compliance with BMPs guidance documents promulgated by any federal, State or local agency; and
 - (5) Any other terms or requirements reasonably calculated to achieve full compliance with the terms, conditions and requirements of the storm water quality management plan, a storm water pollution prevention plan, storm water pollution control plan or permit issued pursuant to this article.
- (C) The superintendent shall issue a cease and desist order when the public health, safety or welfare is threatened by a violation of this article. The cease and desist order may direct the property owner and/or person in charge of day-to-day operations of the property and/or any other responsible person to:
- (1) Immediately discontinue any illicit connection or illicit discharge to the MS4.
 - (2) Immediately contain or divert any flow of non-storm water from the property where the flow is occurring in violation of any provision of this article.
 - (3) Immediately discontinue any other violation of this article.
 - (4) Clean up the area affected by the violation.

- (D) The superintendent may direct by cease and desist order that the property owner or other person in charge of day-to-day operations of the property or any permittee under any applicable NPDES permit, immediately cease any activity not in compliance with the terms, conditions and requirements of the storm water pollution control plan, storm water pollution prevention plan, storm water quality management plan, or permit issued pursuant to this article.
- (E) For any discharge or release not in compliance with the terms, conditions and requirements of the storm water pollution control plan, storm water pollution prevention plan, storm water quality management plan, or permit issued, and not mitigated by the discharger, the superintendent shall serve an invoice for costs upon the property owner and/or person in charge of day-to-day operations of the property, or any other responsible person who is subject to a notice of violation or a cease and desist order. The invoice for costs shall be immediately due and payable to the city. If any owner or person in charge of day-to-day operations of the property, permittee or responsible party, or any other person fails to pay the invoice for costs, the city may institute collection proceedings.
- (F) Any notice of violation, cease and desist order or invoice for costs (collectively, "order") issued pursuant to this article shall be served in compliance with the following:
- (1) Notify the recipient of the order that he or she has a right to a hearing as set forth in this article;
 - (2) Include the address of the affected property and mailed to the property owner's address as shown on the most recently issued equalized assessment roll or as may otherwise appear in the current records of the city; and
 - (3) If the property owner or person in charge of day-to-day operations of the property cannot be located after reasonable efforts of the superintendent, the notice shall be deemed served ten business days after posting on the property.
- (G) When the city manager finds that a property owner or individual has violated, or continues to violate, any provisions of the article, approved stormwater pollution prevention plan, or order issued hereunder, or any stormwater standard or requirement, the city manager may issue an administrative complaint alleging the act or failure to act that constitutes the violation, the provisions of law authorizing imposition of the administrative fine, and the proposed administrative fine, as follows:
- (1) The administrative complaint shall be served by personal delivery or certified mail on the property owner or individual and shall inform the property owner or individual that a hearing shall be conducted within 60 days after the individual or property owner has been served. The hearing officer shall be the public works director or designee. The individual or property owner may waive the right to a hearing, in which case the hearing officer shall not conduct the hearing and decide the matter based upon the administrative complaint. Any individual or property owner dissatisfied by the decision of the hearing officer may appeal the hearing officer's decision to the city council within 30 days of notice of the hearing officer's decision;

- (2) The city manager may recommend, and the hearing officer and city council may impose, administrative fines as follows:
 - a. In an amount not to exceed \$2,000 per day for failing or refusing to furnish a monitoring report or any other technical report required by this article;
 - b. In an amount not to exceed \$3,000 per day for failing or refusing to comply in a timely manner with any compliance schedule order by the city manager;
 - c. In an amount not to exceed \$5,000 per violation per day for discharges in violation of discharge standards or limits, development conditions, or prohibitions issued, reissued, or adopted by the city manager; and
 - d. In an amount not to exceed \$10 per gallon for discharges in violation of any suspension, cease-and-desist order or other orders, or prohibitions issued, reissued, or adopted by the city manager.
- (3) The amount of any administrative fine imposed under this section which remains delinquent for a period of 60 days or more shall accrue interest at a standard rate of ten percent. Further, the amount of any administrative fine and interest accrued that remains delinquent after 60 days shall constitute a lien against the real property of the property owner or individual from which the discharge originated.
- (4) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action, whether criminal or civil, against the property owner or individual.

(Ord. No. 2459)

Part 3. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the city. Ordinance No. _____ was first read on _____, 2009, and finally adopted on _____, 2009, to become effective thirty days thereafter.

AYES:

NOES:

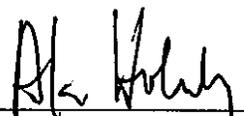
ABSENT:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:



Alan Holmberg, City Attorney