

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AMENDING CITY CODE 9.18 RELATING TO STORMWATER POLLUTION
PREVENTION AND WATERSHED PROTECTION**

The City Council of the City of Cupertino finds that:

1. Changes to the Municipal Regional National Pollutant Discharge Elimination System (NPDES) Permit that become effective July 1, 2023, require edits to the City's municipal code to ensure ongoing compliance and enforceability of requirements.
2. The City Council of the City of Cupertino held a duly noticed public hearing on May 16, 2023, and after considering all testimony and written materials provided in connection with that hearing introduced this ordinance and waived the reading thereof.

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

SECTION 1. Adoption.

The Cupertino Municipal Code is hereby amended as set forth in Attachment A.

SECTION 2: Severability and Continuity.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this Ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3: California Environmental Quality Act.

This Ordinance is not a project under the requirements of the California Environmental Quality Act, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the proposed ordinance amendments are exempt from CEQA under CEQA Guidelines section 15301 (operation of an existing program) and section 15308 (actions by regulatory agencies for the protection of the environment). The foregoing determination is made by the City Council in its independent judgment.

SECTION 4: Effective Date.

This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

SECTION 5: Publication.

The City Clerk shall give notice of adoption of this Ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on May 16, 2023, and **ENACTED** at a regular meeting of the Cupertino City Council on _____, 2023, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Hung Wei, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Christopher D. Jensen, City Attorney</p>	<p>_____</p> <p>Date</p>

Attachment A – Amendments to City Code 9.18 regarding stormwater pollution prevention and watershed protection

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

CHAPTER 9.18: STORMWATER POLLUTION PREVENTION AND WATERSHED PROTECTION*

Section

- 9.18.010 Purpose of chapter.
- 9.18.015 Administration.
- 9.18.020 Definitions.
- 9.18.030 Limitations on point of discharge.
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- 9.18.060 Protection of storm drain from accidental discharge.
- 9.18.070 Accidental discharge–Notification of discharge.
- 9.18.080 Permitted discharges pursuant to industrial and construction stormwater NPDES general permits.
- 9.18.090 Stormwater pollution prevention plan (SWPPP).
- 9.18.100 Permanent stormwater measures required for regulated projects.
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- 9.18.130 Low impact development (LID) requirements.
- 9.18.140 Reserved
- 9.18.150 Stormwater treatment measure operation and maintenance responsibility.
- 9.18.160 Agreement to maintain stormwater treatment systems and best management practices.
- 9.18.170 Stormwater treatment systems and BMP inspection and verification responsibility
- 9.18.180 Records of maintenance and inspection activities and submission of revised stormwater management plan.
- 9.18.190 Failure to maintain.

9.18.195 Inspections by City.

9.18.200 Inspection and maintenance easement.

9.18.210 Stormwater pollutant source controls and BMPs.

9.18.215 Litter prevention and enforcement.

9.18.220 Violation.

9.18.230 Civil penalty for violation–Payment of funds to account.

9.18.240 Civil penalty for illicit discharges–Payment of funds to account.

9.18.250 Notice of violation.

9.18.260 Administrative penalties–Payment of funds to account.

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* Prior ordinance history: Ord. 1571.

9.18.010 Purpose of Chapter.

The U.S. Environmental Protection Agency has identified urban stormwater runoff as the leading cause of water pollution in the United States. Section 402(p) of the federal Clean Water Act, as amended by the Water Quality Act of 1987, requires National Pollution Discharge Elimination System (NPDES) permits for stormwater discharges from municipal separate storm sewer systems (MS4s), stormwater discharges associated with industrial activity (including construction activities), and designated stormwater discharges, which are considered significant contributors of pollutants to waters of the United States. As a result, the California Regional Water Quality Control Board, San Francisco Bay Region has issued a Municipal Regional Stormwater Discharge NPDES permit to the City of Cupertino and to seventy-six other agencies and entities that discharge stormwater runoff to San Francisco Bay.

(https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/adopted_orders/2022/R2-2022-0018.pdf)

This Municipal Regional Stormwater NPDES Permit requires that the City of Cupertino implement a Stormwater Management Program to prevent exceedances of water quality objectives and ensure that discharges do not cause, threaten to cause, or contribute to water quality impairment of waters of the State, specifically local waterways and San Francisco Bay.

The purpose of this chapter is to provide regulations and give legal effect to certain requirements of the Municipal Regional Permit (MRP) initially issued to the City of Cupertino on October 14, 2009 (Effective December 1, 2009) and any subsequent amendments thereto, and to ensure ongoing compliance with the most recent version of the City of Cupertino's NPDES permit regarding municipal stormwater and urban runoff requirements. This chapter shall apply to all water entering the storm drain system generated on any private, public, 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. The MRP, as amended from time to time, is incorporated by reference into this chapter. The City Clerk shall update the link provided in this chapter as necessary to incorporate any amendments to the MRP. Any act or omission that causes or contributes to a violation of any condition of the MRP is a violation of the Municipal Code and is subject to the enforcement provisions of this Chapter.

Enactment of this chapter falls within the goals stated in the City's General Plan, sections 5-32 through 5-37 (Urban Runoff Pollution) and the scope of the City of Cupertino police powers to protect the health, safety, and welfare of its residents. Nothing in this chapter is intended to preclude more stringent federal or state regulation of any activity covered by this chapter.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.015 Administration.

This chapter shall be administered by the Director of Public Works. Any powers granted to or duties imposed upon this individual to administer, implement and enforce the provisions of this chapter may be delegated to other City personnel.

(Ord. 2088, § 1(part), 2012)

9.18.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise. Words and phrases not defined in this chapter shall have the definitions set forth in the Municipal Regional 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.

1. "Applicant." Any person, firm, or governmental agency who executes the necessary forms to procure official approval of a project or a permit to carry out construction of a project.

2. "Applicable site." Any site that could reasonably be considered to cause or contribute to pollution of stormwater runoff. This definition includes but it 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.

3. "Authorized enforcement official." The Director of Public Works or the Director's designees.

4. "Best management practice." ("BMP") A structural device, measure, facility, or activity that helps to achieve stormwater management control objectives at a Regulated Project or applicable site. BMPs include, but are not limited to the following: secondary containment for storage receptacles; rock entrances at construction site exits; timers on sprinklers and berms and filter fabrics protecting storm drain inlets. "Maintenance of a best management practice or stormwater treatment system." 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.

5. "CASQA." California Stormwater Quality Association.

6. "CASQA Stormwater Best Management Practice Handbook." 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.

7. "City." All the territory lying within the municipal boundaries of the City of Cupertino, as presently existing, plus all territory which may be added thereto during the effective term of the ordinance codified in this chapter.

8. "Conditionally Exempt Discharge." A categorization of non-stormwater discharges based on potential for pollutant content that may be discharged upon adequate assurance that the discharge contains no pollutants of concern at concentrations that will impact beneficial uses or cause exceedances of water quality standards.

9. "Construction." 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.

10. "Cooling system." The pipes, heat exchangers and other appurtenances used to convey cooling water in cooling towers, direct contact cooling systems and similar fixed cooling systems. Multiple units of a cooling water system serving a building or piece of equipment are considered as one system if the cooling water distribution system units are physically connected.

11. "Detention." The temporary storage of storm runoff in a manner that controls peak discharge rates and provides some gravity settling of pollutants.

12. "Development." Construction, rehabilitation, redevelopment, or reconstruction of any public or private residential project (whether single-family, multi-unit, or planned unit development); or industrial, commercial, retail or other nonresidential project, including public agency projects.

13. "Director of Public Works." The Director of Public Works and his or her duly authorized agents and representatives.

14. "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 are discharged.

15. "Discharger." 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.

16. "Easement." A grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

17. "Enforcement Notice." A notice provided to the responsible party and/or property owner to warn of impending or current enforcement actions imposed by the City for violations or threatened violations of the Municipal NPDES Stormwater Discharge permit or other provisions of this chapter. Enforcement notices include but are not limited to a notice of violation (NOV), a pre-citation warning notice, a pre-citation letter, or an administrative citation fine.

18. "Enforcement Response Plan." A plan established, maintained and revised as necessary by the Director of Public Works which contains guidelines and criteria for implementing consistent and escalating enforcement for repeated violations of the same type from the same source.

19. "Engineer-of-Record." The California Registered Professional Engineer who designs the stormwater treatment measures and develops the Stormwater Management Plan for a Regulated Project, as required by the Municipal Regional Permit.

20. "Existing conditions." Refers to the conditions that exist on a site before the commencement of a land development project and at the time the City of Cupertino approves plans for the land development of a site. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions are considered those at the time before the first item being approved or permitted.

21. "Food service facility." Any nonresidential establishment that uses or generates grease when preparing food.

22. "Full trash capture" or a "full capture system or device." 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.

23. "General permit." 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.

24. "Grease." Includes fats, oils, waxes, or other related constituents. Grease may be of vegetable or animal origin, including butter, lard, margarine, vegetable fats and oils, and fats in meats, cereals, seeds, nuts and certain fruits. Grease may also be of mineral origin, including kerosene, lubricating oil, and road oil.

25. "Grease removal device." An interceptor, trap or other mechanical device designed, constructed and intended to remove, hold or otherwise prevent the passage of grease to the sanitary sewer.

26. "Hazardous material." Any material, which because of its quantity, concentration, toxicity, corrosiveness, mutagenicity, flammability or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or serious, irreversible or incapacitating illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise mismanaged.

27. "Hydromodification." Changes to the storm water runoff characteristics of a watershed caused by changes in land use. Hydromodification can increase the velocity, volume, and duration of storm water runoff and intensify sediment transport. These changes increase the erosion potential of the receiving watercourse. Problems resulting from hydromodification include channel scouring, bank undercutting, and channel widening and deepening, all of which adversely impact downstream habitats.

28. "Hydromodification management" ("HM"). The requirements for Regulated Projects that create or replace one acre or more of impervious surface per Provision C.3.g. and Attachment F for the Santa Clara County permittees, as adopted in the Municipal Regional Permit. 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.

29. "Illegal connection." The connection of an unauthorized discharge conduit to a storm sewer or watercourse through or by which an illicit discharge may be discharged.

30. "Illicit discharge." 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 noted in Provision C.15 of the Municipal Regional Permit.

31. "Impervious surface." A surface composed of any material that significantly impedes or prevents the natural infiltration of water into soil. Impervious surfaces include, but are not limited to, rooftops, buildings, streets and roads, and concrete or asphalt surfaces.

32. "Impervious surface area." The ground area covered or sheltered by an impervious surface, measured as if from directly above.

33. "Infiltration." The process of percolating stormwater or non-stormwater into the subsoil.

34. "Irrigation or landscape irrigation." The artificial application of water to the land, landscaping or soil, used to assist in establishing vegetation, maintenance of landscape (e.g. watering of lawn), growing of agricultural crops and revegetation of disturbed soils in dry areas and during periods of inadequate rainfall.

35. "Land disturbance activity." 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.

36. "Land owner" or "Property Owner." 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.

37. "Landscape." As it is used in this chapter, landscape may be, but is not limited to, garden areas, lawn, turf, trees, hedges, vegetated areas, planting areas, rain gardens, native vegetation, existing wildland, and open spaces with permeable ground.

38. "Litter." As used in this chapter, litter may be, but is not limited to, plastic, paper, cigarette butts, floor sweepings, trash, rubbish, food, cloth, metal, recyclable material, or waste matter of whatever character.

39. "Low Impact Development" ("LID"). An approach to new and redevelopment designs to reduce runoff and mimic a site's predevelopment hydrology by minimizing disturbed areas and impervious cover, and promoting infiltration, storage, detainment, evapotranspiration, and/or the harvesting of stormwater runoff close to its source. LID techniques include both source control and site design measures and employ principles such as preserving and recreating natural landscape features and minimizing imperviousness. LID stormwater control measures include, but are not limited to, rain barrels, cisterns, green roofs, permeable pavement, and preserving undeveloped open space. LID principles treat stormwater as a resource, rather than a waste product that must be removed from the site.

40. "Maximum extent practicable." 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.

41. "Micro-detention." A series of multiple small stormwater detention areas that absorb or detain some or all of the stormwater runoff in a development site, by temporarily storing

stormwater near where it falls as precipitation. 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 and 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.

42. “Mobile Businesses.” Service providing businesses that operate by traveling to customers or customer’s sites, rather than operating from a permanently fixed facility. Examples of mobile businesses with a potential to discharge non-stormwater discharges are, but are not limited to, automobile washing, vehicle oil changing, power washing, steam cleaning, and carpet cleaning.

43. “Municipal National Pollutant Discharge Elimination System (NPDES) Permit.” The Municipal Regional Stormwater National Pollution Discharge Elimination System permit issued to the City of Cupertino by the Regional Water Quality Control Board, San Francisco Bay Region, also termed the Municipal Regional Permit (MRP).

44. “New development.” Construction, rehabilitation, redevelopment, or reconstruction of any public or private residential project (whether single-family, multi-unit, or planned unit development); or industrial, commercial, retail or other nonresidential project, including public agency projects.

45. “Non-stormwater.” Any discharge that is not composed entirely of stormwater.

46. “Notice of Violation” (“NOV”). An official written notice of noncompliance, issued to a discharger from the Director of Public Works, which provides notification that a violation of this chapter has occurred, consistent with an Enforcement Response Plan written in accordance with permit requirements.

47. “NPDES.” As authorized by the Clean Water Act (CWA), the National Pollutant Discharge Elimination System (NPDES) Permit Program which controls water pollution by regulating sources that discharge pollutants into waters of the United States. The State Water Board establishes policies and regulations that help protect and restore the water quality in California, coordinates with and supports Regional Water Board efforts, and reviews Regional Water Board actions. The Regional Water Boards monitor and enforce the plans, policies, and regulations and issue the vast majority of NPDES permits, typically for a five-year term.

48. “ Stormwater Management Facilities Operation, Maintenance and Easement Agreement.” A written agreement providing for the long-term operation and maintenance of stormwater treatment measures at a site or with respect to a land development project, which when recorded in the deed records constitutes a restriction on the title to a site or other land involved in a land development project.

49. “Owner.” The legal or beneficial owner of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.

50. “Permeable or Pervious surfaces.” Surfaces such as pervious concrete, porous asphalt, unit pavers, and/or granular materials that allow water to infiltrate into subsurface soil.

51. "Permit." The permit issued by the City of Cupertino to the applicant required for undertaking any land development activity.

52. "Person." Any person, firm, association, organization, partnership, business trust, joint venture, corporation or company, and includes the United States, the State of California, the County of Santa Clara, special purpose districts and any officer or agency thereof.

53. "Pollutant of Concern." As described in the Municipal Regional Permit, pollutants of concern are, but are not limited to, sewage, industrial wastes, heavy metals, sediments from active or inactive construction sites, vehicle fluids, chlorine and chlorine compounds (including pool and spa water), synthetic organics (pesticides, herbicides, and PCBs), paints, solvents, trash, litter, cardboard, debris, rubbish, refuse, bark, sawdust, or other solid wastes.

54. "Redevelopment." Land-disturbing activity that results in the creation, addition, or replacement of exterior impervious surface area on a site on which some past development has occurred.

55. "Regional project." 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 and must meet other Municipal Regional Permit conditions, such as requirements for the project completion date.

56. "Regulated Project." Any project fitting a category description listed in Provision C.3.b. of the Municipal Regional Permit.

57. "Riparian areas." 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.

58. "Runoff." The water from rain or irrigation that flows over the land surface and is not absorbed into the ground, instead flowing into streams or other surface waters or land depressions.

59. "Runon." Water entering a specific location from elsewhere on or off a site.

60. "Sanitary sewage or sewage." Water-carried wastes from residences, business property, institutions and industrial property excluding ground water, surface water, and storm waters.

61. "Santa Clara Valley Urban Runoff Pollution Prevention Program." ("SCVURPPP") The Santa Clara Valley Urban Runoff Pollution Prevention Program is an association of thirteen cities and towns in the Santa Clara Valley, together with Santa Clara County and the Santa Clara Valley Water District. Program participants, referred to as Co-permittees, share a common Municipal Regional Permit to discharge stormwater to South San Francisco Bay.

62. "Secondary containment." The level of containment external to and separate from the primary containment, designed as the first level of protection against accidental discharges or overflows from the primary containment.

63. "Sewer system or sanitary sewer system." All sewers and other facilities for carrying, collecting, treating, and disposing of sanitary sewage.

64. "Site." Any tract, lot or parcel of land or combination of tracts, lots, or parcels of land, which are in one ownership, or are contiguous and in diverse ownership where a development is to be performed as part of a unit, subdivision, or project.

65. "Site design measures." Techniques designed to reduce the amount of runoff by decreasing the amount of impervious surface, infiltrating runoff into the soil and/or temporary detention. Examples of site design measures include directing runoff to landscaped areas, limiting the amount of impervious surface, and using permeable pavement.

66. "Source control measure." 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. Structural measures or nonstructural practices used to eliminate contact between rainfall and potential source of contamination. Examples include covered materials handling and vehicle washing areas, parking lot sweeping, and sewer clean-outs installed adjacent to new swimming pools.

67. "Storm drain system." 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.

68. "Stormwater." Surface runoff and drainage associated with storm events.

69. "Stormwater discharge." Any discharge from land that results or probably will result in a discharge into watercourses. The discharges represent a process whereby pollutants, debris and chemicals generated from various land uses accumulate on streets, construction sites, parking lots and other exposed surfaces and are washed off and carried away by stormwater runoff into watercourses. The major pollutants of concern in these discharges are heavy metals, sediments, petroleum hydrocarbons, organochlorine, pesticides and toxics.

70. "Stormwater Management Plan." A document describing how existing runoff characteristics will be affected by a land development project and containing measures for preventing increased flood damage, streambank channel erosion and habitat and water quality degradation, while enhancing and promoting public health, safety and general welfare, in compliance with the provisions of this chapter.

71. "Stormwater Pollution Prevention Plan." ("SWPPP") A document identifying potential stormwater pollutant sources at a construction or industrial site, the best management practices to be used to reduce these pollutants during and after construction and a description of required BMP monitoring.

72. "Stormwater Treatment" or "Stormwater Treatment Measure." A constructed treatment system, or nonstructural practice designed to temporarily retain, infiltrate or otherwise store and/or treat stormwater runoff in order to remove pollutants, mitigate flooding, protect habitat, and provide other amenities. Stormwater treatment measures

include site design, source control, low impact development control measures and hydromodification management controls. Such processes include, but are not limited to filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and ultraviolet (UV) radiation.

73. “Threatened Discharge.” A condition creating a reasonable probability that a discharge would contact or would eventually be transported to the storm drain system, gutters or surface waters, including flood plain areas.

74. “Unpolluted water.” Water to which no constituent has been added, either intentionally, accidentally, or through erosion, that would render the water unacceptable for disposal to storm or natural drainages or directly to surface waters.

75. “Vehicle fluid.” A liquid used in or drained from a motor vehicle. Vehicle fluids include, but are not limited to, gasoline, diesel fuel, motor oil, brake fluid, radiator fluid, hydraulic fluid, transmission fluid, windshield wiper fluid, and coolant.

76. “Vehicle service facility.” A commercial or industrial facility that conducts one or more of the following operations with respect to vehicles or components of vehicles: vehicle repair, fuel dispensing, vehicle fluid replacement, engine and parts cleaning, body repair, vehicle salvaging and wrecking, or vehicle washing.

77. “Waste.” Sewage and soil from erosion and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing or processing operation of whatever nature, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

78. “Watercourse.” Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash, in and including any adjacent area that is subject to inundation from overflow or flood water.

79. “Water quality impact.” Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses that are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

80. “Water Waste.” Outdoor water intended for landscape irrigation or other beneficial uses, which due to overwatering, overspray, broken equipment, or any other inefficiency or malfunction, flows to adjacent impervious surfaces (walks, roadways, parking lots or other structures that prohibit ground infiltration) and is wasted as runoff.

81. “Wet Waste Business.” A business that produces food, organic and/or liquid wastes (collectively “wet waste”) which, if left out in the open as opposed to in a secured container, could create a public nuisance as well as a stormwater violation, is a wet waste business. Such businesses include, but are not limited to restaurants, grocery stores, produce markets and florists.

(Ord. 13-2103, § 1, 2013; Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.030 Limitations on Point of Discharge.

No person shall discharge any substance directly into a manhole or other opening in a City storm drain other than through a city approved storm drain connection.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.040 Discharge into the Storm Drain System Prohibited.

A. It is unlawful to cause, allow, or permit to be discharged to any public or private lands, any discharge not composed entirely of stormwater to the storm drain system or to surface waters or to any location where it would contact or eventually be transported to surface waters, including flood plain areas, unless specifically called out in the Municipal Regional Permit as an exempt or conditionally exempt discharge.

B. It is unlawful to cause or allow discharges to any public or private lands including, but not limited to pool water, carwash water, ongoing and large-volume landscape irrigation water, sediment, stockpiled material, rubbish, refuse, bark, sawdust, solid wastes or hazardous materials to be deposited in such a manner or location as to constitute a threatened discharge to the storm drain system.

C. 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 a “threatened discharge” or an illicit discharge.

D. Allowable discharges to the storm drain system shall not cause any impairment in the beneficial uses or quality of water of the state as defined in the California Water Code or any special requirements of the Regional Water Quality Control Board, San Francisco Bay Region or to injure or interfere with the operation of the State’s watercourses. City may, from time to time, by resolution of the City Council adopt supplementary policies, rules and regulations on discharge into any storm drain or watercourse which shall have the same force and effect as if set forth herein and for which the remedies herein for violation shall be applicable.

E. Separately Permitted 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.

F. Categorically Allowed Discharges. The following unpolluted discharges are exempt from prohibitions of non-stormwater discharges:

- (1) Flows from riparian habitats or wetlands;

- (2) Diverted stream flows;
- (3) Flows from natural springs;
- (4) Rising ground waters;
- (5) Uncontaminated and unpolluted groundwater infiltration;
- (6) Single family homes' pumped ground water; foundation drains, and water from crawl space pumps and footing drains;
- (7) Pumped groundwater from drinking water aquifers; and
- (8) NPDES permitted discharges (individual or general permits).

G. Conditionally Exempted Discharges. The discharges identified in the Municipal Regional Permit (Provision C.15.b, Conditionally Exempted Non-Stormwater Discharges) are conditionally exempt from the discharge prohibitions established by this chapter if dischargers develop and implement appropriate control measures to eliminate adverse impacts of such sources in accordance with the tasks and implementation levels of each category of Provision C.15.b.i-vi.

H. Exemptions Not Absolute. Any discharge category (exempt or conditionally exempt) 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. This 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. (Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.060 Protection of Storm Drain from Accidental Discharge.

Each person shall provide protection from accidental discharge of non-stormwater into any storm drain or watercourse. Measures to prevent accidental discharge of prohibited materials shall be provided and maintained at the user's or property owner's expense.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.070 Accidental Discharge–Notification of Discharge.

All persons shall notify the Director of Public Works, or their designee immediately upon accidentally discharging pollutants of concern to enable countermeasures to be taken by the City to minimize damage to storm drains and the receiving waters. Initial notification shall be followed, within five (5) business days of the date of occurrence, by a detailed written statement describing the causes of the accidental discharge and the measures being taken to prevent future occurrences. Such notification will not relieve persons of liability for violations of this chapter or for any fines imposed on the City on account thereof under Section 13350 of the California Water Code, or for violation of Section 5650 of the California Fish and Wildlife Code, or any other applicable provisions of State or Federal laws.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.080 Permitted Discharges Pursuant to Industrial and Construction Stormwater NPDES General Permits.

A. The provisions of this chapter shall not prohibit any discharge with a valid NPDES permit issued to the discharger, provided compliance with all relevant permit conditions is maintained to the satisfaction of the Regional Water Quality Control Board.

B. Any person subject to a State Industrial or Construction Stormwater NPDES General permit shall comply with all provisions of such permit. Proof of compliance shall 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 permit, grading permit or improvement plan, upon inspection of the facility and/or during any enforcement action.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.090 Stormwater Pollution Prevention Plan (SWPPP).

A stormwater pollution prevention plan (SWPPP) shall be prepared and made available at any construction project that is subject to the State Construction Stormwater NPDES General permit. The SWPPP shall be written by a Qualified SWPPP Developer, as defined in the current State NPDES Stormwater Construction General permit. At minimum, the SWPPP shall address the following six BMP categories to implement year-round, seasonally appropriate control measures: (1) erosion control, (2) run-on and runoff control, (3) sediment control, (4) active treatment systems, (5) good site management, and (6) non-stormwater management.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.100 Permanent Stormwater Measures Required for Regulated Projects.

A. All Regulated Projects as described in Provision C.3.b of the City's Municipal Regional Stormwater NPDES Permit shall design and incorporate treatment measures to minimize both soluble and insoluble stormwater runoff pollution and to prevent increases in runoff flows for the life of the project. Projects incorporating these permanent stormwater treatment measures shall utilize guidance and standards from the current SCVURPPP C.3. Stormwater Handbook. Permanent treatment measures shall be designed according to the numeric sizing criteria in Provision C.3.d of the City's Municipal Regional Stormwater NPDES Permit. Hydromodification Management (HM), if applicable, shall be designed according to Provision C.3.g of the City's Municipal Regional Stormwater NPDES Permit. Regulated projects are subject to the City's review and approval, and shall meet all requirements in Provision C.3. of the City's Municipal Regional Stormwater NPDES Permit. The Owner(s) of Regulated Projects are responsible for ongoing maintenance and compliance with applicable MRP requirements.

B. Site design measures for non-Regulated Projects. All new development and redevelopment projects subject to planning, building, development, or other comparable reviews by the City, but not meeting the definition of a Regulated Project, are required to use site design measures per Provision C.3.i of the City's Municipal Regional Stormwater NPDES Permit.

C. The Director of Public Works shall have the authority to establish reasonable rules and regulations consistent with provisions of this chapter for the purpose of its administration and enforcement.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.115 Trash Load Reductions to Storm Drain System.

A. All Regulated Projects and all building permitted projects with a permit valuation exceeding \$100,000 located in Moderate, High, and/or Very High Trash Generation Areas must install full trash capture devices or systems to collect litter and debris from their project site, prior to connecting to the City's storm drain system. This requirement applies to projects on private lands already connected to the City's storm drain system. This requirement also applies to bioretention overflow drains. Full trash capture devices and/or systems 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 can be obtained from the State of California Water Quality Control Board website. .

B. Installed full capture trash devices must be maintained by the property owner for the life of the project, following the manufacturer's recommendations for maintenance.

C. It is a violation of this chapter for property owner to fail to properly operate and maintain any full capture trash device installed on the owner's property.

(Ord. 2088, § 1 (part), 2012)

9.18.120 Stormwater Management Plan Required for Regulated Projects.

A. All Regulated Projects must be accompanied by a Stormwater Management Plan and a completed City of Cupertino Regulated Development Project Checklist, as required by this chapter. The Stormwater Management Plan shall detail how runoff and associated water quality impacts resulting from the activity will be controlled or managed.

B. City Permit Requirements. Building, grading, and encroachment permits for Regulated Projects shall not be issued until the required Stormwater Management Plan has been reviewed and approved by the Director of Public Works.

C. Stormwater Management Plan Contents. Stormwater Management Plans shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed development on water resources, and the effectiveness and acceptability of control measures proposed for managing stormwater runoff. The minimum information submitted to support a Stormwater Management Plan shall be in accordance with the Municipal Regional Permit and the current City of Cupertino Regulated Development Project Checklist.

D. Preparation of the Stormwater Management Plan. Stormwater Management Plans shall be prepared, stamped and signed by a professional civil engineer registered in the State of California. Depending on the specific project, the Director of Public Works may allow a stormwater management plan to be prepared by a Landscape Architect licensed by the State of California.

E. Certification of Adherence to Numeric Sizing Design Criteria. The developer shall provide a signed certification from an approved third party reviewer selected from the SCVURPPP List of Qualified Consultants for Design, Review and/or Certification of Stormwater Treatment Best Management Practices and Hydromodification Flow Control Facilities, to determine that the plan for proposed stormwater treatment measures, including hydromodification management controls (if applicable), meets the requirements of this chapter and established numeric sizing criteria in the Municipal Regional Permit. 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.

F. As-Built Certification. Upon completion of construction, the Engineer-of-Record for a Regulated Project shall provide the City with a stamped and signed certification that all constructed stormwater treatment measures have been installed according to the approved plans and specifications.

G. Revised Stormwater Management Plan Required. The City may require the owner of a Regulated Project who has previously received approval of a Stormwater Management Plan, to prepare and submit a revised Stormwater Management Plan for approval if the stormwater treatment measures are inadequate or are not being adequately maintained; or if the facility or activity at issue becomes a significant source of contaminants to the storm drain system or damages a downstream watercourse despite compliance with this chapter. Any owner required to submit and to obtain approval of a revised plan shall install, implement and maintain the stormwater treatment measures specified in the approved revised plan.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.130 Low Impact Development (LID) Requirements.

Regulated Projects shall comply with LID requirements in the SCVURPPP C.3. Stormwater Handbook and shall be designed according to the current Provision C.3.c. of the City's Municipal Regional Stormwater NPDES Permit. The Owner(s) of Regulated Projects are responsible for ongoing maintenance and compliance with applicable MRP requirements.

(Ord. 2088, § 1 (part), 2012)

9.18.140 [reserved]

9.18.150 Stormwater Treatment Measure Operation and Maintenance Responsibility.

A. For the life of the project, all on-site stormwater treatment measures shall be operated, conducted, and maintained in good condition and promptly repaired by the property owner(s), an Owners' or Homeowners' Association or other legal entity approved by the City.

B. Any repairs or restoration and maintenance shall be in accordance with City-approved plans.

C. The property owner(s) of Regulated Projects shall develop a maintenance schedule for the life of any stormwater control measures and shall describe the maintenance to be completed, the time period for completion, and the person who will perform the maintenance. The stormwater treatment measures maintenance schedules shall be included with the project's approved Stormwater Management Plan.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.160 Agreement to Maintain Stormwater Treatment Systems and Best Management Practices.

A. Prior to the issuance of any building permit for a Regulated Project, the owner(s) of the site shall enter into a formal written Stormwater Management Facilities Operation, Maintenance and Easement Agreement (Agreement) with the City. The City shall record the Agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the stormwater treatment systems and best management practices.

B. The Agreement shall require that the stormwater treatment system(s) or HM Control (if any) BMPs not be modified and that maintenance activities not alter the designed function of the facility treatment system or HM Control (if any) from its original design unless the Public Works Director has provided written certification that the requirements of this chapter have been satisfied prior to the commencement of the proposed modification or maintenance activity.

C. The Agreement shall provide that in the event that maintenance or repair is neglected, or the stormwater treatment facility becomes a danger to public health or safety, the City shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.

D. 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 and/or HM controls (if any).

E. Any property owner party to an Agreement shall, upon transferring ownership of such property, provide the new owner(s) with a current copy of this chapter, and shall inform the new owners in writing of their obligation to properly operate and maintain such facilities.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.170 Stormwater Treatment Systems and BMP Inspection and Verification Responsibility.

A. The property owner(s) of Regulated Projects shall be responsible for having all stormwater management treatment systems and HM control (if any) inspected for condition and function by a knowledgeable party. The property owner shall agree in writing to properly maintain any HM control, stormwater structural control, treatment measure, and/or best management practices according to the approved plans for the project.

B. Unless otherwise required by the City, the property owner's stormwater treatment system or HM control (if any) inspections shall be done within 45 days of the completed installation of any control or treatment systems; and after that at least once per year in preparation for the wet season. Upon City's request, the annual inspection report shall be submitted to the City. The City may also request inspections be performed and inspection reports be prepared by a third-party consultant. Written records shall be kept of all inspections and shall include, at a minimum, information per Provision C.3.h of the City's Municipal Regional Stormwater NPDES Permit.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.180 Records of Maintenance and Inspection Activities and Submission of Revised Stormwater Management Plan.

A. On or before June 30th of each year, the party responsible for the operation and maintenance of on-site stormwater treatment system(s) and HM Control(s) (if any) at Regulated Projects shall provide the City of Cupertino's Director of Public Works with documentation of the information required in Section 9.18.170. B. 1-7 regarding installation, location, inspections, maintenance and repairs:

B. The Director of Public Works 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. The site is a significant source of contaminants to the storm drain system.

C. 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.

D. 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.

E. 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, SCVURPPP C.3. Stormwater Handbook or the CASQA BMP Handbooks to assess the adequacy of the proposed plan.

Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.190 Failure to Maintain.

A. If the responsible party fails or refuses to meet the requirements of the Agreement, without an acceptable rationale, the City, after thirty (30) days written notice, may correct a violation of the design standards or maintenance requirements by performing the necessary work to place the facility or practice in proper working condition.

B. In the event the City determines that the violation constitutes an immediate danger to public health or public safety, 24 hours written notice from the City shall be sufficient.

C. The City may assess the owner(s) of the property for the cost of repair work and any penalties, in accordance with Chapters 1.10 and 1.12 of this Municipal Code. This may be accomplished by placing a lien on the property, which may be placed on the tax bill for such property and collected in the ordinary manner for such taxes.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.195 Inspections by City.

As required by the Municipal Regional Permit, City inspectors will inspect construction sites, industrial, and commercial businesses and respond to reports of discharges and threatened discharges to the stormwater system. Compliance with all provisions of a City-issued enforcement notice will be required within the amount of time given by the inspector and before the next anticipated rain, but not more than ten (10) business days after a violation is first noted.

(Ord. 2088, § 1 (part), 2012)

9.18.200 Inspection and Maintenance Easement.

A. The City shall have access to all on-site stormwater treatment systems for the purpose of inspection and repair. This includes the right to enter a property when the City has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this ordinance.

B. Prior to the issuance of a building or grading permit for a Regulated Project, the applicant/owner shall secure the necessary inspection and maintenance easement(s) on a permanent basis. The terms of the inspection and maintenance easement shall allow the City to enter the property at reasonable times and in a reasonable manner for the purpose of inspection and repair.

C. The inspection and maintenance easement will be recorded by the City with the Agreement and will remain in effect even with transfer of title to the property.

D. The owner shall provide the City with three signed copies of the recorded inspection and maintenance easement.

E. 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.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

9.18.210 Stormwater Pollutant Source Controls and BMPs.

A. Best management practices at all facilities, whether staffed or unstaffed, 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.

B. All construction sites must 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.

C. All Regulated Project sites are encouraged to include adequate source control measures to limit pollutant generation, discharge and runoff. These source control measures are identified in Section 9.18.130.

D. All dischargers must implement and maintain minimum best management practices. The Director of Public Works may require submission of information to evaluate the implementation and/or require the implementation of BMPs to prevent pollutant sources from entering the City's storm drain system 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 of Public Works to have a reasonable potential to contribute to pollution of stormwater runoff. Minimum BMPs and source control measures for all dischargers include, but are not limited to the following:

1. Storm Drain Inlet Labeling. Storm drain inlets shall be clearly marked with the words "No Dumping - Flows to Bay," or equivalent, as approved by the Director of Public Works or their designee.

2. Landscaping shall be designed to minimize irrigation and water runoff, promote surface infiltration, minimize the use of pesticides and fertilizers, incorporate native plants, grasses and trees (which are resistant to local pests and diseases), employ appropriate sustainable landscaping practices such as designs with hydrozones to prevent over-irrigation, follow the Bay-Friendly Landscaping Guidelines or other landscaping guidelines with similar goals and practices.

3. Water Waste Prevention. Water waste resulting from inefficient landscape irrigation shall be prevented. Runoff from irrigation shall be prohibited from leaving the targeted landscape due to low head drainage, overspray, or other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways, parking lots, or structures. Repeat violations or uncorrected violations will result in an administrative citation fine according to chapter 1.10 of the Municipal Code. Pursuant to Government Code Section 65596, restrictions regarding overspray and runoff may be modified if:

- a. The landscape area is adjacent to permeable surfacing and no runoff occurs; or
- b. The adjacent non-permeable surfaces are designed and constructed to drain entirely to landscaping.

4. Drains and Drain Lines.

- a. Interior floor drains must not be connected to the storm drain system.
- b. Exterior drains within the following areas must not be connected to the storm drain:
 - i. Equipment or vehicle washing areas;
 - ii. Areas where chemicals, hazardous materials, or other uncontained materials are used and/or stored unless secondary containment is provided;
 - iii. Equipment or vehicle fueling areas or fluid changing areas; and
 - iv. Loading docks where chemicals, hazardous materials, grease, oil, or waste products are handled.
- v. Trash enclosures or approved covered areas where waste bins and used cooking oils are stored.

4. Roof runoff shall be directed to rain barrels, cisterns, or similar rainwater collection system, or to landscaped areas unless deemed infeasible by the Director of Public Works. Upon approval of the Director of Public Works, projects located in hillside areas may be exempt from these requirements.

5. Nonresidential facilities shall provide secondary containment for all roof-mounted equipment, tanks, and piping containing liquids. Roof drains and equipment discharge lines must not be connected to the sanitary sewer unless reviewed and permitted by the Cupertino Sanitary District.

6. Fire Sprinkler Tests and Water Pipe Flushing: Discharges from fire sprinkler tests and water pipe flushing may not be discharged in a manner to create a threatened discharge or actual discharge to the storm water system. Discharges from these activities must be directed to landscaping capable of containing and absorbing all discharge water. Discharge to landscaping within a bioretention or similar stormwater pretreatment landscape feature is prohibited. Discharges to the sanitary system may only be conducted after a permit has been issued by the Cupertino Sanitary District.

a. Discharges which are listed as conditionally allowed in the current municipal NPDES permit are to be directed to onsite vegetated areas which do not serve as a bioretention pretreatment system, or discharged to the sanitary sewer with the permission of Cupertino Sanitary District, or if this is not a feasible option, with BMPs that will ensure compliance with the municipal NPDES permit.

b. For new or remodeled facilities where it is infeasible to direct fire sprinkler safety test water discharges to landscaped areas, a sewer clean out shall be installed, in a readily accessible area to capture potable water discharged during fire safety sprinkler tests. The installation must first be approved by the Cupertino Sanitary District.

7. Cooling systems shall not be connected or allowed to drain to the storm drain system.

8. Condensate lines shall not be connected or allowed to drain to the storm drain system.

E. Pool and Spa Discharges.

1. It is unlawful to discharge water from pools and spas to the storm drain system.

2. De-chlorinated pool spa discharges shall be directed to landscaped areas, providing this does not generate runoff to the storm drain system. If the landscaped area cannot accommodate the discharge, pool and spa water shall be disposed to the sanitary sewer. The discharger shall contact the Cupertino Sanitary District for permitting prior to any discharges.

3. For new or remodeled swimming pools where it is infeasible to direct discharges to landscaped areas, a sewer clean out shall be installed in a readily accessible area, within ten (10) feet of the pool edge, if possible.

F. Vehicle and Equipment Fueling Facilities. Vehicle or equipment fueling facilities shall be designed in accordance with the California Stormwater Quality Association (CASQA) Industrial Stormwater Best Management Practices Handbooks to prevent the runoff of stormwater and runoff of spills. At minimum this shall be accomplished by:

1. Paving the fueling area with concrete or other impervious surface;

2. Covering the fueling area and extending the cover a minimum of ten (10) feet beyond the fuel pumps in the directions of vehicle or equipment access and egress; and

3. Grading the area (sloped inward) or installing a berm or curb around the perimeter of the fueling area. Storm drains shall be prohibited in these fueling areas.

4. All storm drain inlets and bioretention overflow inlets, if required to have full trash capture devices or systems, must include a media filter designed to collect hydrocarbons from runoff. Media filters must be serviced and maintained in accordance with the manufacturer specifications.

G. Vehicle Service Facilities.

1. It is unlawful for any person to dispose of, or permit the disposal or runoff, directly or indirectly, of vehicle fluids, hazardous materials, or rinsewater from parts cleaning operations into storm drains.

2. All owners and operators of vehicle service facilities shall ensure that any vehicle fluid, hazardous material, or rinsewater from parts cleaning operations that comes into contact with any floor, pavement or ground surface is cleaned up immediately from such surface.

3. It is unlawful to use tanks, containers or sinks for parts cleaning or rinsing which are connected to the storm drain system.

4. It is unlawful for any person to perform vehicle fluid removal outside a building, or on asphalt or ground surfaces, whether inside or outside a building, except in such a manner as to ensure that any spilled fluid will be in an area of secondary containment.

5. Leaking vehicle fluids shall be contained or drained from the vehicle immediately to protect the storm drain system.

6. It is unlawful for any person to leave unattended drip parts or other open containers containing vehicle fluid, unless such containers are in use or in secondary containment.

7. It is unlawful for any person to discharge washwater from vehicle washing operations or wash racks to a storm drain, or onto impervious ground surface.

8. Vehicle service facilities shall be cleaned using only those methods of cleaning that ensure that no materials are discharged to the storm drain.

9. All owners and operators of vehicle service and fueling facilities shall ensure that spill prevention and clean-up equipment and absorbent materials are kept in stock at all times and are readily available for use in a marked and accessible area.

10. It is unlawful to store acid-containing batteries or any material that is deemed by an enforcement official as a threat to the storm drain system, except within secondary containment.

11. All owners and operators of vehicle service facilities shall label all storm drains located on the property with the words "No Dumping - Flows to Bay," or equivalent, as approved by the Director of Public Works or their designee.

12. All storm drain inlets and bioretention overflow inlets, if required to have full trash capture devices or systems, must include a media filter designed to collect hydrocarbons from runoff. Media filters must be serviced and maintained in accordance with the manufacturer specifications.

H. Food Service Facilities.

1. Food service facilities shall have a sink or other area for cleaning floor mats, containers, and equipment, which is connected to a grease removal device and the sanitary sewer. The sink or cleaning area shall be large enough to clean the largest mat or piece of equipment that requires cleaning at the facility.

2. All new buildings constructed to house food service facilities and all existing buildings constructed to house food service facilities which are subject to City review and approval for changes or modifications shall include a covered area for dumpsters to prevent water runoff to the area and runoff from the area. Dumpster storage areas shall be designed in accordance with the City's Public Works Guidelines for Non-Residential Building Trash & Recycling Enclosures. Retrofits to existing facilities shall be revamped to the maximum extent practicable and shall be subject to the approval of the Director of Public Works or their designee.

3. Drains that are installed beneath dumpsters serving food service facilities shall be connected to a grease removal device upstream of the connection to the sanitary sewer.

4. All used cooking oil/grease containers must have secondary containment and the containment device must be kept free from excessive buildup of spilled materials.

I. Parking Garages.

1. If installed, parking garage floor drains on interior levels shall not be connected to the storm drain, but to an oil/water separator prior to discharging to the sanitary sewer system.

2. Parking garage oil/water separators shall have a minimum capacity of 100 gallons.

3. The parking garage oil/water separator shall be cleaned at a frequency of at least once every twelve months or more frequently if recommended by the manufacturer or as required by the City or other regulatory agency.

J. Root control chemicals. It is unlawful for any person to discharge, dispose or add to the storm drain system any substance to control roots.

K. Dumpsters.

1. All new buildings, except for single-family and duplex residences, all new "wet waste" businesses and all existing "wet waste" businesses which are subject to City review and approval for changes or modifications, shall provide a covered area for a dumpster(s) designed in accordance with the City's Public Works Guidelines for Non-Residential Building Trash & Recycling Enclosures. Retrofits to existing facilities shall be revamped to the maximum extent practicable and shall be subject to the approval of the Director of Public Works.

2. The area shall be designed to prevent water runoff to the area and runoff from the area.

3. Dumpsters serving food service facilities shall be designed in accordance with Section 9.18.210.

L. Multi-Family Residential Vehicle Washing Facilities.

1. New residential buildings with 25 or more units shall provide a covered, bermed area for occupants to wash their vehicles.

2. The vehicle washing area shall be designed to prevent water runoff to the area and runoff from the area.

3. A drain shall be installed to capture all vehicle wash waters and shall be connected to an oil/water separator prior to discharge to the sanitary sewer system. Discharge to the sanitary sewer must first be approved by Cupertino Sanitary District.

4. Vehicle washing area oil/water separators shall have a minimum capacity of 100 gallons.

5. The oil/water separator shall be cleaned at a frequency of at least once every six months or more frequently if recommended by the manufacturer or the superintendent.

M. Copper Roofing and Architectural Materials.

1. Copper metal roofing, copper granule-containing asphalt shingles and copper gutters shall not be permitted for use on any residential, commercial or industrial building for which a building permit is required.

2. Copper flashing for use under tiles or slates and small copper ornaments are exempt from this prohibition.

3. Discharges to the storm drain system of wastewater generated during the installation, cleaning, treating, and washing of copper architectural features, including copper roofs are prohibited. Discharges to landscaping or to the sanitary sewer system with advance approval from Cupertino Sanitary District are allowed.

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

N. Pesticide Storage at Commercial Facilities.

1. Pesticides shall be stored in labeled containers and shall not be stored where they can be exposed to rain or irrigation water and be allowed to runoff to storm drains or creeks.

2. Secondary containment shall be required for containment of pesticides, unless they are stored in an indoor storage unit. Storage of pesticides shall follow guidance from the local fire department and/or any other governmental regulatory agency.

3. Employees who use pesticides must be trained to clean up spills. Spill kits shall be provided and stored near pesticides.

O. Mobile Businesses.

1. Mobile businesses shall be required to use best management practices and source control measures that comply with Municipal Regional Permit.

P. Outdoor Recycling, Composting and Trash Receptacle Sets (Trios) Required for Public Use at New and Redeveloped Commercial and Retail Sites.

1. At least one set of outdoor waste receptacles consisting of three separate receptacles is referred to as a "Trio." The Trio shall consist of one receptacle each for recyclable,

compostable and garbage materials and must be provided by the property owner and placed together in collection areas for public use at all new and redeveloped commercial and retail sites. Unless approved by the Director of Public Works or their designee, the Trio should be located on private property adjacent to the City sidewalk. The receptacles must be a minimum of 20 gallons (each receptacle within the Trio), be permanently attached to the ground, be designed for exterior use, and include a cover to prevent rainwater or irrigation intrusion, and each be labeled Recycle, Compost, Trash. The receptacles shall be maintained by the property owner or the property owner's designee.

2. One Trio may satisfy the requirement for up to four adjacent businesses at one shopping center, and is at the discretion of the Director of Public Works or their designee. The number of receptacle sets that are required for large redevelopment projects will be determined by the Director of Public Works or their designee and are intended to be sufficient to contain the amount of litter and debris that is reasonably expected to be generated from the development project or the permitted project site.

3. The requirement for outdoor Trios shall be a condition of approval that will be reviewed within the permit application process. The condition may be amended if an alternative set of litter receptacles will provide equal containment of public litter, or waived by the Director of Public Works or their designee if the potential impact from litter in the vicinity of the business is negligible. (Ord. 13-2103, § 2, 2013; Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)

4. Covered cigarette urns are required to be installed adjacent to or attached to the Trio. Placement of the cigarette urn must conform to the Cupertino Municipal Code and any State laws limiting smoking in relation to buildings.

5. Removal of any required Trio or cigarette urn is prohibited unless approved by the Director of Public Works or their designee.

9.18.215 Litter Prevention and Enforcement.

A. Violations

1. It is unlawful for any person to sweep, throw, deposit, place, or drop without picking up, any litter into or upon any public street, way, sidewalk, parking lot or other public place, or in or upon private property in the City into or upon which the public is admitted by easement or license.

2. It is unlawful for any person to throw or deposit litter in any fountain, pond, creek, stream or other body of water in a park or elsewhere within the City.

3. It is unlawful for any person to collect any garbage, mixed recyclables, or other materials from public or privately authorized outdoor receptacles, kept or accumulated within the City, unless such person is an agent or employee of the City acting within the course and scope of his or her employment, or is acting pursuant to a franchise awarded by the City to act as garbage collector.

4. It is unlawful for any person to discard , deposit, or maintain litter on any occupied private property within the City, whether owned by such person or not.

5. It is unlawful for any person to discard, deposit, or maintain litter on any open or vacant private property within the City whether or not the property is owned by such person.

6. It is unlawful for any person to drive or move any open vehicle or trailer within the City unless there is a tarp over the contents or the material is constructed and loaded so as to ensure that all litter is prevented from being blown or deposited upon any street, alley or other public or private place.

B. Collection and Maintenance

1. Persons placing material intended for disposal or recycling in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being scattered, carried, or deposited by the elements or animal scavengers upon any street, sidewalk, parking lot, creek, park or other public or private place.

2. Persons placing material intended for disposal or recycling in any public or privately authorized outdoor receptacle shall ensure that the lid is maintained completely closed. The over-filling of any outdoor receptacle intended for, but not limited to, trash, compostable organics and recyclables, in a manner that does not allow the lid to be completely closed is prohibited. The lid of a residential yard waste bin may be left partially open so long as the greater part of the yard and tree trimmings are contained if it is necessary to leave the lid partially open due to the branches or limbs not fitting completely into the bin with the lid closed. Yard waste bins containing food waste must be left with lids completely closed when not being serviced.

3. Uncontained large items originating from single-family homes that will not fit into a receptacle may be placed at the curb for scheduled collection within 24 hours of such collection by an agent or employee of the City or by the awardee of a franchise by the City to act as garbage and recycling collector. Any such bulky item(s) may not be placed in the City right-of-way while awaiting collection.

4. Persons owning or occupying property shall maintain the premises, including the perimeter and the City sidewalk in front of their premises, free of loose litter.

5. Persons sharing Trios and cigarette urns placed outside of retail areas for public use, as required in section 9.18.210.4.P., must also share equally in the responsibility of emptying the receptacles so that they do not overflow and maintaining the area around the receptacles so that it is free of loose litter.

C. Exceptions

The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers of general circulation as defined by general law, nor any periodical or current magazine regularly published; provided, however, that no newspaper shall be thrown, deposited or distributed upon any premises where the owner or inhabitant thereof shall have previously advised, in writing, the publisher or distributor of such newspaper not to do so; and no newspaper shall be thrown, deposited or distributed upon any premises

where two (2) or more editions of the same newspaper remain unclaimed by the owner or occupant thereof. (Ord. 13-2103, § 3 (part), 2013)

9.18.220 Violation.

Any person who violates any provision of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in Chapter 1.12 of this Code. The City may also impose re-inspection fees to the property owner for verification of compliance as enumerated in the City's Public Works Fee Schedule.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.230 Civil Penalty for Violation–Payment of Funds to Account.

Any person who violates any provision of this Chapter or any provision of any permit issued pursuant to this Chapter shall be civilly liable to the City in a sum not to exceed the amounts provided for in Government Code §§ 54740 and/or 54740.5. The City may petition the Superior Court pursuant to Government Code § 54740 to impose, assess and recover such sums. The civil penalty provided in this section is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under State and Federal law and local ordinances. Funds collected pursuant to this Section shall be paid to City's Environmental Storm Management Account.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.240 Civil Penalty for Illicit Discharges–Payment of Funds to Account.

Any person who discharges pollutants, in violation of this Chapter, by the use of illicit connections shall be civilly liable to the City in a sum not to exceed Twenty-Five Thousand Dollars per day per violation for each day in which such violation occurs. The City may petition the Superior Court pursuant to Government Code § 54740 to impose, assess and recover such sums. The civil penalty provided in this section is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under State and Federal law and local ordinances. Funds collected pursuant to this section shall be paid to City's Environmental Storm Management Account.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.250 Notice of Violation.

Unless the Director of Public Works finds that the severity of the violation warrants immediate action under Sections 9.18.220, 9.18.230 or 9.18.240 above, or permit revocation or suspension, he/she shall issue a notice of violation which:

1. Enumerates the violations found; and
2. Orders compliance in any manner authorized by and consistent with the City's Enforcement Response Plan and the provisions of chapter 1.10 of this Code.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.260 Administrative Penalties–Payment of Funds to Account.

Whenever the Director of Public Works or their designee finds that any person has violated any provision of this chapter, or has violated any notice requiring compliance with any provision of this chapter, the Director of Public Works or their designee may issue an administrative citation pursuant to the procedures set forth in Chapter 1.10 of this code and assess an administrative penalty in a sum not to exceed the amounts provided in Government Code § 54740.5. The remedy provided in this section is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under state and federal law and local ordinances. Funds collected pursuant to this section shall be paid to City's Environmental Storm Management Account.

(Ord. 13-2103, § 3 (part), 2013; Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003; Ord. 1598, § 1 (part), 1992)

9.18.270 Severability.

If any section, subsection, subdivision, sentence, clause, or phrase of this Chapter is for any reason held to be unconstitutional or otherwise void or invalid, by any court of competent jurisdiction the validity of the remaining portion of this Chapter shall not be affected thereby.

(Ord. 2088, § 1 (part), 2012; Ord. 1982, § 1 (part), 2006; Ord. 1967, § 1 (part), 2005; Ord. 1922, § 1 (part), 2003)