

ORDINANCE NO. 2010-128

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AMENDING THE ALISO VIEJO MUNICIPAL CODE REGARDING STORMWATER QUALITY TO ENSURE COMPLIANCE WITH THE CITY'S RECENTLY RE-ISSUED CLEAN WATER ACT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR DISCHARGERS FROM THE CITY'S STORM DRAIN SYSTEM ("NEW PERMIT")

WHEREAS, on February 19, 2003, the City of Aliso Viejo ("City") adopted Ordinance No. 2003-044 regarding stormwater management and urban runoff to comply with San Diego Regional Water Quality Control Board Order No. R9-2002-0001 [NPDES No. CAS0108740], Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems ("MS4s") Draining the Watershed of the County of Orange, The Incorporated Cities of Orange County, and The Orange County Flood Control District Within the San Diego Region ("Permit"); and

WHEREAS, the City has determined that certain additional amendments to its stormwater management and urban runoff ordinance are necessary both to address issues related to the City's ability to impose Best Management Practices ("BMPs") on existing commercial, industrial and residential activities and to clarify the City's legal authority to implement the Permit; and

WHEREAS, the City is authorized by Article XI, §5 and §7 of the State Constitution to exercise the police power of the State by adopting regulations promoting the public health, public safety and general prosperity; and

WHEREAS, the City has determined that a reduction in stormwater borne pollution into and from the City's MS4 will promote the public health, protect water quality, and protect the general welfare of the City by reducing the level of artificial constituents, which may improve the quality of the waters in this region; and

WHEREAS, the land use authority exercised by the City, pursuant to California Government Code §65300 et seq, and the California Constitution requires regional planning and the adoption of policies protecting the environment through the imposition of reasonable conditions on the use of land; and

WHEREAS, the Subdivision Map Act, California Government Code §66411, authorizes the City to regulate and control the design and improvement of subdivided lands and mitigate the burdens of proposed development by imposing reasonable conditions on map approval; and

WHEREAS, California Constitution Article XI, §7 and Government Code §38660 authorize the City to establish appropriate conditions for the issuance of building permits, which require the installation of improvements reasonably related to the proposed use of property; and

WHEREAS, Government Code §38771 authorizes the City to declare as public nuisances undesirable acts which may injure health or cause interference with the comfortable enjoyment of life or property and to provide for the abatement of the same; and

WHEREAS, the City has jurisdiction over its MS4 and other watercourses within the City's jurisdiction, and these facilities may receive stormwater discharges from properties and activities regulated under the provisions of Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permits, and City may, upon presentation of credentials and other documents required by law, (i) enter upon the discharger's premises where a regulated facility is located or where records must be kept under the conditions of the NPDES Permits, (ii) access and copy, at reasonable times, any records that must be kept under the conditions of the NPDES Permits, (iii) inspect, at reasonable times, any facility or equipment related to or impacting stormwater discharge, and (iv) sample or monitor for the purpose of ensuring compliance with the State General Permits; and

WHEREAS, the enacting of this Ordinance is a condition of the City's NPDES Permit regulating discharges into and from the City's MS4, the requirements of which are exempt from the California Environmental Quality Act pursuant to Public Resources Code §21100, et seq ("CEQA"); and

WHEREAS, this Ordinance is subject to CEQA categorical exemption classes 1 through 4, 6 through 9, 21 and 22, pursuant to the CEQA Guidelines, respectively, Title 14, California Code of Regulations Sections 15301, 15302, 15303, 15304, 15306, 15307, 15308, 15309, 15321 and 15322;

THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 7.35 of the Aliso Viejo Municipal Code is hereby replaced in its entirety to read as follows:

**"Chapter 7.35
Storm Water Management**

- 7.35.010 Adoption of water quality ordinance.**
- 7.35.020 Purpose.**
- 7.35.030 Definitions.**
- 7.35.040 Prohibitions.**
- 7.35.050 Control of urban runoff.**
- 7.35.060 Inspections.**
- 7.35.070 Civil enforcement.**
- 7.35.080 Criminal enforcement.**
- 7.35.090 Consecutive Violations.**
- 7.35.100 Non-Exclusive Remedies.**
- 7.35.110 Citations.**
- 7.35.120 Injunctions.**
- 7.35.130 Other civil remedies.**
- 7.35.140 Discharge Permits.**

- 7.35.150 Interagency Coordination.**
- 7.35.160 Compliance Disclaimer.**
- 7.35.170 Severability.**
- 7.35.180 Judicial Review.**

7.35.010 Adoption of water quality ordinance.

Pursuant to Article XI, Sec. 7 of the State Constitution, which authorizes the City to exercise the police power of the State by adopting regulations promoting the public health, public safety and general prosperity, and in compliance with the conditions of the National Pollutant Discharge Elimination System Permit ("NPDES Permit"), there is hereby adopted a Water Quality Ordinance.

7.35.020 Purpose.

The purpose of the Water Quality Ordinance is to prescribe regulations as mandated by the Clean Water Act (33 USC § 1251 et seq., as amended) to effectively prohibit non-stormwater discharges into the storm sewers and to reduce the discharge of pollutants. Human activities, such as agriculture, construction and the operation and the maintenance of an urban infrastructure may result in undesirable discharges of pollutants and certain sediments, which may accumulate in local drainage channels and waterways and eventually may be deposited in the waters of the United States. This Ordinance will improve water quality by controlling the pollutants which enter the network of storm drains through the City of Aliso Viejo.

7.35.030 Definitions.

A. "Authorized Inspector" shall mean the Director of Public Works and persons designated by and under his/her instruction and supervision, who are assigned to investigate compliance with, detect violations of and/or take actions pursuant to this Ordinance.

B. "Car Washing Fundraisers" means an event where individuals wash cars in exchange for the payment of money or for a non-monetary donation to be used to fund or in connection with a not-for-profit activity or event, including, without limitation, youth sports, youth bands, boys and girl scouting, cheerleading or other activities. The term "car washing fundraisers" does not include individual residential car washing or for-profit car washing performed at a legal business that possesses all appropriate permits, licenses and registrations, and implement proper best management practices for pollution prevention.

C. "City" shall mean the City of Aliso Viejo, Orange County, California.

D. "Co-Permittee" shall mean the County of Orange, the Orange County Flood Control District, and/or any one of the eleven (11) South Orange County municipalities, including the City of Aliso Viejo, which are responsible for compliance with the terms of the NPDES Permit issued by the San Diego Regional Water Quality Control Board for South Orange County.

E. "DAMP" shall mean the Orange County Drainage Area Management Plan, as the same may be amended from time to time.

F. "Development Project Guidance" shall mean DAMP Chapter VII and the Appendix thereto, entitled Best Management Practices for New Development Including Non-Residential Construction Projects, as the same may be amended from time to time.

G. "Discharge" shall mean any release, spill, leak, pump, flow, escape, leaching (including subsurface migration or deposition to groundwater), dumping or disposal of any liquid, semi-solid or solid substance.

H. "Discharge Exception" shall mean the group of activities not restricted or prohibited by this Ordinance, as set forth in Section 7.35.040(C) of this Ordinance.

I. "Enforcing Attorney" shall mean the City Attorney or the Orange County District Attorney acting as counsel to the City and his/her designee, which counsel is authorized to take enforcement action as described herein.

J. "Environmentally Sensitive Areas or ESAs" shall mean Environmentally Sensitive Areas as defined in the City's NPDES Permit regulating discharges into and from the MS4.

K. "EPA" shall mean the Environmental Protection Agency of the United States.

L. "Illicit Connection" shall mean any man-made conveyance or drainage system, pipeline, conduit, inlet or outlet through which the Discharge of any Pollutant to the MS4 occurs or may occur, other than Discharges that comply with the requirements of this Ordinance.

M. "Invoice for Costs" shall mean the actual costs and expenses of the City, including but not limited to administrative overhead, salaries and other expenses recoverable under State law, incurred during any inspection conducted pursuant to this chapter, or where a notice of noncompliance, administrative compliance order or other enforcement option under this chapter is utilized to obtain compliance with this chapter.

N. "Legal Nonconforming Connection" shall mean connections to the MS4 existing as of the adoption of this chapter that were in compliance with all federal, state and local rules, regulations, statutes and administrative requirements in effect at the time the connection was established, including but not limited to any discharge permitted pursuant to the terms and conditions of an individual discharge permit issued pursuant to the Industrial Waste Ordinance.

O. "Municipal Separate Storm Sewer System or MS4" shall mean the City's system of pipes, drains, culverts, street gutters, channels, storm drains, constructed drains, lined diversion structures, wash areas, inlets, outlets and other conveyances designed to convey stormwater from the City's streets and into water ways within the City and used for the purpose of collecting, storing, transporting, or disposing of stormwater.

P. "New Development" shall mean all public and private residential (whether single family, multi-unit or planned unit development), industrial, commercial, retail, and

other non-residential construction projects, or grading for future construction, for which either a discretionary land use approval, grading permit, building permit or Non-residential Plumbing Permit is required.

Q. "Non-residential Plumbing Permit" shall mean a plumbing permit authorizing the construction and/or installation of facilities for the conveyance of liquids other than stormwater, potable water, reclaimed water or domestic sewage.

R. "NPDES Permit" shall mean the currently applicable National Pollutant Discharge Elimination System (NPDES) Permit and/or Waste Discharge Requirements issued by the Regional Water Quality Control Board, San Diego Region regulating the discharge of pollutants and/or waste to Water of the United States, and/or Waters of the State as those terms are defined in the Federal Clean Water Act and the California Water Code.

S. "Person" shall mean any natural person as well as any corporation, partnership, government entity or subdivision, trust, estate, cooperative association, joint venture, business entity, or other similar entity, or the agent, employee or representative of any of the above.

T. "Pollutant" shall mean any liquid, solid or semi-solid substances, or combination thereof, including and not limited to:

1. Artificial materials (such as floatable plastics, wood products or metal shavings);
2. Household waste (such as trash, paper, and plastics; cleaning chemicals and disinfectants; yard wastes; animal fecal materials; used oil and fluids from vehicles, lawn mowers and other common household equipment);
3. Metals and non-metals, including compounds of metals and non-metals, (such as cadmium, lead, zinc, copper, silver, nickel, chromium, cyanide, phosphorus and arsenic), with characteristics which cause an adverse effect on living organisms;
4. Petroleum and related hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
5. Animal wastes (such as discharges from mobile pet care services, confinement facilities, kennels, pens and recreational facilities, including, stables, show facilities, or polo fields);
6. Substances having a pH less than 6.5 or greater than 8.6, or unusual coloration, turbidity or odor;
7. Waste materials and wastewater generated on construction sites and by construction activities (such as painting and staining; use of sealants and glues; use of lime; use of wood preservatives and solvents; disturbance of asbestos fibers, paint flakes or stucco fragments; application of oils, lubricants, hydraulic, radiator or battery fluids; construction equipment washing; concrete pouring and cleanup; use of concrete

detergents; steam cleaning or sand blasting; use of chemical degreasing or diluting agents; use of super chlorinated water for potable water line flushing, and pressure washing);

8. Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;

9. Materials which contain base/neutral or acid extractible organic compounds;

10. Those Pollutants defined in §1362(6) of the Federal Clean Water Act; and

11. Any other constituent or material, including but not limited to pesticides, herbicides, fertilizers, fecal coliform, fecal streptococcus or enterococcus, or eroded soils, sediment and particulate materials, in quantities that will interfere with or adversely affect the beneficial uses of the receiving waters, flora or fauna of the State.

U. "Prohibited Discharge" shall mean any Discharge which contains any Pollutant, from public or private property to (i) any groundwater, river, stream, creek, wash or dry weather arroyo, wetlands area, marsh, coastal slough in a manner which causes or threatens to cause a condition of pollution or nuisance as those terms are defined California Water Code section 13050; (ii) the MS4; or (iii) any water body or conveyance which is tributary to the MS4.

V. "Significant Redevelopment" shall mean the rehabilitation or reconstruction of public or private residential (whether single family, multi-unit or planned unit development), industrial, commercial, retail, or other non-residential structures, for which either a discretionary land use approval, grading permit, or building permit involving cementitious material handling outside the building footprint is required.

W. "State General Permit" shall mean either the State General Industrial Stormwater Permit or the State Construction General Permit ("CGP") and the terms and requirements of either or both. In the event the U.S. Environmental Protection Agency revokes the in-lieu permitting authority of the State Water Resources Control Board, then the term State General Permit shall also refer to any EPA administered stormwater control program for industrial and construction activities.

X. "Water Quality Manual" shall mean the rules, procedures, and interpretations thereof formulated by the Director of Public Works or his designee to implement this chapter or the NPDES Permit. The term Water Quality Manual includes the City's Jurisdictional Urban Runoff Management Plan ("JURMP") or Local Implementation Plan ("LIP"), the DAMP and the City's NPDES Permit regulating discharges into and from its MS4.

7.35.040 Prohibitions.

A. No Person shall:

1. Discharge non-stormwater to the City's MS4 except in compliance with the requirements of this Ordinance.
2. Construct, maintain, operate and/or utilize any Illicit Connection to any storm drain system, including the City's MS4.
3. Cause, allow or facilitate any Prohibited Discharge.
4. Act, cause, permit or suffer any agent, employee, or independent contractor, to construct, maintain, operate or utilize any Illicit Connection, or cause, allow or facilitate any Prohibited Discharge.
5. Discharge any material into the MS4, or any water body within the City's jurisdiction that may cause, or threaten to cause a condition of pollution, contamination, or nuisance within the meaning of California Water Code section 13050.

B. The prohibition against Illicit Connections shall apply irrespective of whether the Illicit Connection was established prior to the date of enactment of this Ordinance; however, Legal Nonconforming Connections shall not become Illicit Connections until the earlier of the following:

1. For all structural improvements to property installed for the purpose of Discharge to the Stormwater Conveyance System, the expiration of five (5) years from the adoption of this Ordinance.
2. For all nonstructural improvements to property existing for the purpose of Discharge to the Stormwater Conveyance System, the expiration of six (6) months following delivery of a notice to the owner or occupant of the property, which states a Legal Nonconforming Connection has been identified. The notice of a Legal Nonconforming Connection shall state the date of expiration of use under this Ordinance.

C. The following discharges shall not constitute Illicit Discharges unless determined by the Authorized Inspector to be a source of pollutants in, or discharging from, the MS4:

1. Diverted Streamflows.
2. Rising groundwater.
3. Uncontaminated groundwater infiltration to the City's MS4.
4. Uncontaminated pumped groundwater provided such discharges are compliant with all applicable permit requirements, including enrollment in any applicable NPDES Permit or Waste Discharge Requirement from the San Diego Regional Water Quality Control Board.
5. Foundation drains provided such discharges are compliant with all applicable permit requirements, including enrollment in any applicable NPDES Permit or Waste Discharge Requirement from the San Diego Regional Water Quality Control Board.

6. Springs.

7. Water from crawl space pumps provided such discharges are compliant with all applicable permit requirements, including enrollment in any applicable NPDES Permit or Waste Discharge Requirement from the San Diego Regional Water Quality Control Board.

8. Footing drains provided such discharges are compliant with all applicable permit requirements, including enrollment in any applicable NPDES Permit or Waste Discharge Requirement from the San Diego Regional Water Quality Control Board.

9. Air conditioning condensation.

10. Flows from riparian habitats and wetlands.

11. Water line flushing, not including discharges from sprinkler system testing and maintenance, and provided such discharges are compliant with all applicable permit requirements, including enrollment in any applicable NPDES Permit or Waste Discharge Requirement from the San Diego Regional Water Quality Control Board.

12. Discharges from potable water sources not including water main breaks or discharges from residential or commercial irrigation, and provided such discharges are compliant with all applicable permit requirements, including enrollment in any applicable NPDES Permit or Waste Discharge Requirement from the San Diego Regional Water Quality Control Board.

13. Individual residential car washing.

14. Discharges composed entirely of stormwater.

15. Discharges subject to regulation under current EPA or Regional Water Quality Control Board issued NPDES permits, State General Permits, or other waivers, permits or approvals granted by an appropriate government agency.

16. Discharges from emergency fire fighting activities.

17. Discharges of reclaimed water generated by a lawfully permitted water treatment facility.

18. Discharges of dechlorinated water from swimming pools.

D. A civil or administrative violation of Section 7.35.040(A) shall occur irrespective of the negligence or intent of the violator to construct, maintain, operate or utilize an Illicit Connection or to cause, allow or facilitate any Prohibited Discharge.

7.35.050 Control of Urban Runoff.

A. New Development and Significant Redevelopment.

1. All construction projects, New Development and Significant Redevelopment within the City shall be undertaken in accordance with the best management practices for pollution prevention, the City's NPDES Permit for discharges into and from its MS4, the DAMP, and any other conditions and requirements established by the City's Planning Department, Engineering Department and Building Department.

2. Prior to the issuance by the City of a grading permit, building permit or Non-residential Plumbing Permit for any New Development or Significant Redevelopment, the Department of Public Works and/or Planning Department shall review the project plans and impose terms, conditions and requirements on the project in accordance with Section 7.35.050(A)(1). If the New Development or Significant Redevelopment will be approved without application for a grading permit, building permit or Non-residential Plumbing Permit, the Department of Public Works and/or Planning Department shall review the project plans and impose terms, conditions and requirements on the project in accordance with Section 7.35.050(A)(1) prior to the issuance of a discretionary land use approval or, at the City's discretion, prior to recordation of a subdivision map.

3. Compliance with the conditions and requirements of the DAMP shall not exempt any Person from the requirement to independently comply with each provision of this Ordinance.

4. If the Department of Public Works and/or Planning Department determines that the project will have a de minimis impact on the quality of stormwater runoff, then it may issue a written waiver of the requirement for compliance with the provisions of the Development Project Guidance.

5. The owner of a New Development or Significant Redevelopment project, or upon transfer of the property, its successors and assigns, shall implement and adhere to the terms, conditions and requirements imposed pursuant to Section 7.35.050(A)(1) on a New Development or Significant Redevelopment project. Failure by the owner of the property or its successors or assigns, to implement and adhere to the terms, conditions and requirements imposed pursuant to Section 7.35.050(A)(1) shall constitute a violation of this Ordinance.

6. The Department of Public Works and/or Planning Department may require that the terms, conditions and requirements imposed pursuant to Section 7.35.050(A)(1) be recorded with the County Recorder's office by the property owner. The signature of the owner of the property or any successive owner shall be sufficient for the recording of these terms, conditions and requirements and a signature on behalf of the City shall not be required for recordation.

B. All Construction Projects

1. Construction and Grading Permits. In addition to the requirements set forth in Section 7.35.050(A)(1), prior to issuance of any construction or grading permit, the Authorized Inspector may require, as a condition to such permit, the implementation of BMPs to ensure that the discharge of pollutants from the site will be reduced to the maximum extent practicable and will not cause or contribute to an exceedance of water quality standards. Each construction site shall implement such BMPs to ensure that

discharges of pollutants are reduced to the maximum extent practicable and will not cause or contribute to an exceedance of water quality standards. All construction and grading activities shall comply with applicable laws, including all applicable city ordinances and the City's NPDES permit regulating discharges into and from the MS4.

2. **BMP Implementation.** Each owner, operator, or person in charge of day to day activities of each construction and/or grading site in the City shall implement those minimum BMPs as may be designated by the Authorized inspector. For those construction sites that are tributary to impaired water bodies and/or that are within or directly adjacent to or discharging directly to receiving waters within Environmentally Sensitive Areas, such BMPs shall include such additional controls as the Authorized Inspector may require.

3. **Inspections.** Construction and grading sites, and discharges from such sites and operations, are identified under the NPDES permit as creating increased threats to water quality during the rainy season. The Authorized Inspector is authorized to inspect each high priority construction site at least once weekly during the rainy season, during normal business hours. The Authorized Inspector may further inspect each medium/low priority construction site, at least twice during the rainy season.

C. **BMP Implementation.** Each owner, operator, or person in charge of day to day activities of any site that may discharge to the City's MS4 shall implement those BMPs as may be designated by the Authorized Inspector, City Engineer or Program Manager. Properties with a high possibility of discharge may be required to implement a monitoring program that meets standards as determined necessary by the Authorized Inspector.

D. **Cost Recovery.** The City shall be reimbursed by the project applicant for all costs and expenses incurred by the City in the review of New Development or Significant Development projects for compliance with the DAMP. The City may elect to require a deposit of estimated costs and expenses, and the actual costs and expenses shall be deducted from the deposit, and the balance, if any, refunded to the project applicant.

E. **Litter Control.** No person shall discard any waste material including but not limited to common household rubbish or garbage of any kind (whether generated or accumulated at a residence, business or other location), upon any public property, whether occupied, open or vacant, including but not limited to any street, sidewalk, alley, right-of-way, open area or point of entry to the MS4.

7.35.060 Inspections.

A. **Right to Inspect.** The Authorized Inspector shall have the authority to make an inspection to enforce the provisions of this chapter, and to ascertain whether the purposes of this chapter are being met. Except for annual inspections of high priority industrial facilities, prior to commencing any inspection as described in this section, the Authorized Inspector shall obtain either the consent of the owner or person in charge of the day to day activities of the private property, or shall obtain an administrative inspection warrant or criminal search warrant.

B. Entry to Inspect. The Authorized Inspector may enter both public and private property to investigate the source of any discharge of a pollutant to any public street, inlet, gutter, storm drain or the MS4 located within the jurisdiction of the City.

C. Compliance Assessments. The Authorized Inspector may inspect property for the purpose of verifying compliance with this Ordinance.

D. Portable Equipment. For purposes of verifying compliance with this Ordinance, the Authorized Inspector may inspect any vehicle, truck, trailer, tank truck or other mobile equipment.

E. Records Review. The Authorized Inspector may inspect all records of the owner or person in charge of the day to day activities of private property relating to chemicals or processes presently or previously occurring on-site, including material and/or chemical inventories, facilities maps or schematics and diagrams, material safety data sheets, hazardous waste manifests, business plans, pollution prevention plans, state general permits, stormwater pollution prevention plans, monitoring program plans and any other record(s) relating to illicit connections, illicit discharges, prohibited discharges, a legal nonconforming connection or any other source of discharge or potential discharge of pollutants to the MS4.

F. Sample & Test. The Authorized Inspector may inspect, sample and test any area runoff, soils area (including groundwater testing), process discharge, materials within any waste storage area (including any contained contents) and/or treatment system discharge for the purpose of determining the potential for the discharge of pollutants to the stormwater drainage system. The Authorized Inspector may investigate the integrity of all storm drain and sanitary sewer systems, any legal nonconforming connection or other pipelines on the private property using appropriate tests, including but not limited to smoke and dye tests or video surveys. The Authorized Inspector may take photographs or videotapes, make measurements or drawings and create any other record reasonably necessary to document conditions on the property.

G. Monitoring. The Authorized Inspector may erect and maintain monitoring devices for the purpose of measuring any Discharge or potential source of Discharge to the MS4.

H. Cost Recovery. If an inspection pursuant to this section results in an enforcement action, the City may issue an invoice of costs and recover in an enforcement action its reasonable inspection costs.

7.35.070 Civil Enforcement.

A. Enforcement. This chapter shall be enforced pursuant to the procedures set forth in chapter 1.06 of this code, through the administrative procedures set forth in Sections 7.35.070 et. seq. of this chapter or by any other remedy, civil or criminal, as the Director of Public Works or City Attorney may select in a particular case.

B. Administrative Remedies.

1. Notice of Noncompliance. The Authorized Inspector may deliver to the owner or occupant of any property, or to any Person responsible for an Illicit Connection or Prohibited Discharge a Notice of Noncompliance. The Notice of Noncompliance shall be delivered in accordance with Section 7.35.070(B)(5) of this Ordinance.

a. The Notice of Noncompliance shall identify the provision(s) of this Ordinance or the applicable permit which has been violated. The Notice of Noncompliance shall state that continued noncompliance may result in additional enforcement actions against the owner, occupant and/or Person.

b. The Notice of Noncompliance shall state a compliance date that must be met by the owner, occupant and/or Person; provided, however, that the compliance date may not exceed ninety (90) days unless the Authorized Inspector extends the compliance deadline an additional ninety (90) days where good cause exists for the extension.

2. Administrative Compliance Orders.

a. The Authorized Inspector may issue an Administrative Compliance Order. The Administrative Compliance Order shall be delivered in accordance with Section 7.35.070(B)(5) of this Ordinance. The Administrative Compliance Order may be issued to:

i. The owner or occupant of any property requiring abatement of conditions on the property that cause or may cause a Prohibited Discharge or an Illicit Connection in violation of this Ordinance;

ii. The owner of property subject to terms, conditions or requirements imposed on a project in accordance with Section 7.35.050(A) or other provisions of this chapter to ensure adherence to those terms, conditions and requirements.

iii. A permittee subject to the requirements of any permit issued pursuant to this chapter to ensure compliance with the terms, conditions and requirements of the permit.

iv. Any Person responsible for an Illicit Connection or Prohibited Discharge.

b. The Administrative Compliance Order may include the following terms and requirements:

i. Specific steps and time schedules for compliance as reasonably necessary to prevent the imminent threat of a Prohibited Discharge;

ii. Specific steps and time schedules for compliance as reasonably necessary to discontinue any Illicit Connection;

iii. Specific requirements for containment, cleanup, removal, storage, installation of overhead covering, or proper disposal of any Pollutant having the potential to contact stormwater runoff;

iv. Any other terms or requirements reasonably calculated to prevent the imminent threat of or continuing violations of this Ordinance, including, but not limited to requirements for compliance with best management practices guidance documents promulgated by any federal, State of California or regional agency;

v. Any other terms or requirements reasonably calculated to achieve full compliance with the terms, conditions and requirements of any permit issued pursuant hereto.

3. Cease and Desist Orders. The Authorized Inspector may issue a Cease and Desist Order. A Cease and Desist Order shall be delivered in accordance with Section 7.35.070(B)(5) of this Ordinance. A Cease and Desist Order may direct the owner or occupant of any property and/or other Person responsible for a violation of this Ordinance to:

a. Immediately discontinue any Illicit Connection or Prohibited Discharge to the MS4;

b. Immediately contain or divert any flow of water off the property, where the flow is occurring in violation of any provision of this Ordinance;

c. Immediately discontinue any other violation of this Ordinance;

d. Clean up the area affected by the violation.

e. Direct the owner of any property or any permittee under any permit issued pursuant to this chapter to immediately cease any activity not in compliance with the terms, conditions and requirements of the applicable permit.

4. Recovery of Costs. The Authorized Inspector may deliver to the owner or occupant of any property, any permittee or any other Person who becomes subject to a Notice of Noncompliance or other administrative order, an Invoice for Costs documenting any and all costs incurred by the City in issuing the Notice of Noncompliance or other administrative order and directing payment to the City. An Invoice for Costs shall be delivered in accordance with Section 7.35.070(B)(5) of this Ordinance. An Invoice for Costs shall be immediately due and payable to the City for the actual costs incurred by the City in issuing and enforcing any notice or order. If any owner or occupant, Permittee or any other Person subject to an invoice for costs fails to either pay the Invoice for Costs or appeal successfully the Invoice for Costs in accordance with Section 7.35.070(B)(6) then the Enforcing Attorney may institute collection proceedings.

5. Delivery of Notice. Any Notice of Noncompliance, Administrative Compliance Order, Cease and Desist Order or Invoice of Costs to be delivered pursuant to the requirements of this Ordinance shall be subject to the following:

a. The notice shall state that the recipient has a right to appeal the matter as set forth in Sections 7.35.070(B)(6) through Section 7.35.070(B)(10) of this Ordinance.

b. Delivery shall be deemed complete upon (a) personal service to the recipient; (b) deposit in the U.S. mail, postage pre-paid for first class delivery; or (c) facsimile service with confirmation of receipt.

c. Where the recipient of notice is the owner of the property, the address for notice shall be the address from the most recently issued equalized assessment roll for the property or as otherwise appears in the current records of the City.

d. Where the owner or occupant of any property cannot be located after the reasonable efforts of the Authorized Inspector, a Notice of Noncompliance or Cease and Desist Order shall be deemed delivered after posting on the property for a period of ten (10) business days.

6. Administrative hearing for notices of noncompliance, administrative compliance orders, invoices for costs and adverse determinations. Except as set forth in Section 7.35.070(B)(8), any person receiving a Notice of Noncompliance, Administrative Compliance Order, a notice of Legal Nonconforming Connection, an Invoice for Costs, or any person who is subject to any adverse determination made pursuant to this chapter, may appeal the matter by requesting an administrative hearing. Notwithstanding the foregoing, these administrative appeal procedures shall not apply to criminal proceedings initiated to enforce this chapter.

7. Request for Administrative Hearing. Any person appealing a Notice of Noncompliance, Administrative Compliance Order, a notice of Legal Nonconforming Connection, an Invoice for Costs, or an adverse determination shall, within thirty (30) days of receipt thereof, file a written request for an administrative hearing, accompanied by an administrative hearing fee as established by separate resolution, with the City Clerk of the City of Aliso Viejo, with a copy of the request for administrative hearing mailed on the date of filing to the Director of Public Works. Thereafter, a hearing on the matter shall be held before the Hearing Officer within sixth (60) days of the date of filing of the written request unless, in the reasonable discretion of the Hearing Officer and pursuant to a written request by the appealing party, a continuance of the hearing is granted.

8. Administrative Hearing for Cease and Desist Orders and Emergency Abatement Actions. An administrative hearing on the issuance of a Cease and Desist Order or following an Emergency Abatement Action shall be held within five (5) business days following the issuance of the order or the action of abatement, unless the hearing (or the time requirement for the hearing) is waived in writing by the party subject to the cease and desist order or the emergency abatement. A requests for an administrative hearing shall not be required from the person subject to the cease and desist order or the emergency abatement action.

9. Hearing proceedings. The Authorized Inspector shall appear in support of the notice, order, determination, invoice for costs or emergency abatement actions, and the appealing party shall appear in support of withdrawal of the notice, order,

determination, invoice for costs, or in the opposition to the emergency abatement action. Each party shall have the right to present testimony and other documentary evidence as necessary for explanation of the case.

10. Final Decision and Appeal. The final decision of the Hearing Officer shall issue within ten (10) business days of the conclusion of the hearing and shall be delivered by first-class mail, postage prepaid, to the appealing party. The final decision shall include notice that any legal challenge to the final decision shall be made pursuant to the provisions of Code of Civil Procedure sections 1094.5 and 1094.6 and shall be commenced within ninety (90) days following issuance of the final decision. The administrative hearing fee paid by a prevailing party in an appeal shall be refunded. Notwithstanding this Section 7.35.070(B)(10), the final decision of the Hearing Officer in any proceeding determining the validity of a cease and desist order or following an emergency abatement action shall be mailed within five (5) business days following the conclusion of the hearing.

11. City Abatement. In the event the owner of property, the operator of a facility, a permittee or any other Person fails to comply with any provision of a compliance schedule issued to such owner, operator, permittee or Person pursuant to this Ordinance, the Authorized Inspector may request the Enforcing Attorney to obtain an abatement warrant or other appropriate judicial authorization to enter the property, abate the condition and restore the area. Any costs incurred by the City in obtaining and carrying out an abatement warrant or other judicial authorization may be recovered pursuant to Section 7.35.070(C)(4).

C. Nuisance. Any condition in violation of the prohibitions of this Ordinance, including but not limited to the maintenance or use of any Illicit Connection or the occurrence of any Prohibited Discharge, shall constitute a threat to the public health, safety and welfare, and is declared and deemed a nuisance pursuant to Government Code §38771.

1. Court Order to Enjoin or Abatement. At the request of the Director of Public Works, the Enforcing Attorney may seek a court order to enjoin and/or abate the nuisance.

2. Notice to Owner and Occupant. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the Director of Public Works shall provide notice of the proposed injunction or abatement to the owner and occupant, if any, of the property where the nuisance or threatened nuisance is occurring.

3. Emergency Abatement. In the event the nuisance constitutes an imminent danger to public safety or the environment, the Director of Public Works may enter the property from which the nuisance emanates, abate the nuisance and restore any property affected by the nuisance. To the extent reasonably practicable, informal notice shall be provided to the owner or occupant prior to abatement. If necessary to protect the public safety or the environment, abatement may proceed without prior notice to or consent from the owner or occupant thereof and without judicial warrant.

4. Reimbursement of Costs. All costs incurred by the City in responding to any nuisance, all administrative expenses and all other expenses recoverable under State law, shall be recoverable from the Person(s) creating, causing, committing, permitting or maintaining the nuisance.

5. Nuisance Lien. All costs shall become a lien against the property from which the nuisance emanated and a personal obligation against the owner thereof in accordance with Government Code §38773.1 and §38773.5. The owner of record of the property subject to any lien shall be given notice of the lien prior to recording as required by Government Code §38773.1. At the direction of the Director of Public Works, the Enforcing Attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the County Assessor of a special assessment against the property in accord with the conditions and requirements of Government Code §38773.5.

7.35.080 Criminal Enforcement.

A. Infractions. Any Person who may otherwise be charged with a misdemeanor under this Ordinance may be charged, at the discretion of the Enforcing Attorney, with an infraction punishable by a fine of not more than \$100 for a first violation, \$200 for a second violation, and a fine not exceeding \$500 for each additional violation occurring within one year.

B. Misdemeanors. Any Person who negligently or knowingly violates any provision of this Ordinance, undertakes to conceal any violation of this Ordinance, continues any violation of this Ordinance after notice thereof, or violates the terms, conditions and requirements of any permit issued pursuant to this Ordinance, shall be guilty of a misdemeanor punishable by a fine of not more than \$1000 or by imprisonment for a period of not more than six months, or both.

7.35.090 Consecutive Violations.

Each day in which a violation occurs and each separate failure to comply with either a separate provision of this Ordinance, an Administrative Compliance Order, a Cease and Desist Order or a permit issued pursuant to this Ordinance, shall constitute a separate violation of this Ordinance punishable by fines or sentences issued in accordance herewith.

7.35.100 Non-Exclusive Remedies.

Each and every remedy available for the enforcement of this Ordinance shall be non-exclusive and it is within the discretion of the Authorized Inspector or Enforcing Attorney to seek cumulative remedies, except that multiple monetary fines or penalties shall not be available for any single violation of this Ordinance.

7.35.110 Citations.

Pursuant to Penal Code §836.5, the Authorized Inspector shall have the authority to cause the arrest of any Person committing a violation of this Ordinance. The Person shall be released and issued a citation to appear before a magistrate in accordance with Penal

Code §853.5, §853.6, and §853.9, unless the Person demands to be taken before a magistrate. Following issuance of any citation the Authorized Inspector shall refer the matter to the Enforcing Attorney.

Each citation to appear shall state the name and address of the violator, the provisions of this Ordinance violated, and the time and place of appearance before the court, which shall be at least ten (10) business days after the date of violation. The Person cited shall sign the citation giving his or her written promise to appear as stated therein. If the Person cited fails to appear, the Enforcing Attorney may request issuance of a warrant for the arrest of the Person cited.

7.35.120 Injunctions.

A. At the request of Director of Public Works, the Enforcing Attorney may cause the filing in a court of competent jurisdiction, of a civil action seeking an injunction against any threatened or continuing noncompliance with the provisions of this Ordinance.

B. Order for Reimbursement. Any temporary, preliminary or permanent injunction issued pursuant hereto may include an order for reimbursement to the City of all costs incurred in enforcing this Ordinance, including costs of inspection, investigation and monitoring, the costs of abatement undertaken at the expense of the City, costs relating to restoration of the environment and all other expenses as authorized by law.

7.35.130 Other civil remedies.

A. The Director of Public Works may cause the Enforcing Attorney to file an action for civil damages in a court of competent jurisdiction seeking recovery of (i) all costs incurred in enforcement of the Ordinance, including but not limited to costs relating to investigation, sampling, monitoring, inspection, administrative expenses, all other expenses as authorized by law, and consequential damages, (ii) all costs incurred in mitigating harm to the environment or reducing the threat to human health, and (iii) damages for irreparable harm to the environment.

B. The Enforcing Attorney is authorized to file actions for civil damages resulting from any trespass or nuisance occurring on public land or to the MS4 from any violation of this Ordinance where the same has caused damage, contamination or harm to the environment, public property or the MS4.

C. The remedies available to the City pursuant to the provisions of this Ordinance shall not limit the right of the City to seek any other remedy that may be available by law.

7.35.140 Discharge Permits.

A. Discharge Permit Procedure.

1. Permit Required. A water quality discharge permit shall be required for all car washing fundraisers, construction, significant redevelopment, new construction projects that do not otherwise require a building, grading or other permit from the City, except for those projects for which the permit requirement is waived pursuant to Section

7.35.140(A)(7). A discharge permit shall not be issued for non-stormwater discharges, and the Director or Director's designee may only issue a permit if:

a. The Discharge of material or constituents is reasonably necessary for the conduct of otherwise legal activities on the property; and

b. The Discharge will not cause a nuisance, contamination, or pollution as those terms are defined in Section 13050 of the California Water Code, impair the beneficial uses of receiving waters, or cause any reduction in established water quality standards established in the Water Quality Control Plan for the San Diego Basin issued and adopted by the San Diego Regional Water Quality Control Board.

2. Application. The applicant shall provide all information requested by the Director of Public Works for review and consideration of the application, including but not limited to specific detail as to the activities to be conducted on the property, plans and specifications for facilities located on the property, identification of equipment or processes to be used on-site and other information as may be requested in order to determine the constituents, and quantities thereof, which may be discharged if permission is granted.

3. Permit Issuance. The permit shall be granted or denied by the Director of Public Works or his or her designated representative, no later than sixty (60) business days following the completion and acceptance of the application as determined by the Director of Public Works. The applicant shall be notified in Person or by first-class mail, postage prepaid, of the action taken.

4. Permit Conditions. The permit may include terms, conditions and requirements to ensure compliance with the objectives of this Ordinance and as necessary to protect the receiving waters.

5. Permit Fees. The permission to Discharge shall be conditioned upon the applicant's payment of the City's costs, in accordance with a fee schedule adopted by separate resolution.

6. General Permit. In the discretion of the Director of Public Works or his/her designee, a permit may, in accordance with the conditions identified in Section 7.35.140(A)(4), be prepared as a general permit applicable to a specific category of activities.

a. If a general permit is issued, any person intending to discharge within the scope of the authorization provided by the general permit may do so by filing an application to discharge with the Director of Public Works or his/her designee.

b. No discharge within the scope of the general permit shall occur until such application is so filed.

c. The Director of Public Works or his/her designee, shall retain the discretion to eliminate the requirement that an application for a general permit be filed for any specific activity for which a general permit has been issued.

7. Permit waiver and exceptions. If the Director of Public Works determines that a car washing fundraiser or construction, significant redevelopment or new construction project otherwise subject to this section will have a de minimis impact on the quality of stormwater runoff, the he or she may issue a written waiver of the requirement contained herein to obtain a stormwater permit.

B. Permit Suspension, Revocation or Modification.

1. The Director of Public Works may suspend or revoke any permit when it is determined that:

a. The Permittee has violated any term, condition or requirement of the permit or any applicable provision of this Ordinance; or

b. The Permittee's Discharge or the circumstances under which the Discharge occurs have changed so that it is no longer appropriate to except the Discharge from the prohibitions on Prohibited Discharge contained within this Ordinance; or

c. The Permittee fails to comply with any schedule for compliance issued pursuant to this Ordinance; or

d. Any regulatory agency, including EPA or a Regional Water Quality Control Board having jurisdiction over the Discharge, notifies the City that the Discharge should be terminated; or

e. Any other circumstances where the Director of Public Works determines in his or her sole discretion that continuation of the Discharge will result in substantial harm to public health or the environment.

2. The Director of Public Works may modify any permit provided that the Permittee shall be informed of any change in the permit terms and conditions at least forty-five (45) business days prior to the effective date of the modified permit, and in the case of a general permit, terms and conditions shall be published in a newspaper of general circulation with the City at least sixty (60) days prior to the effective date of the modified permit, when it is determined that:

a. Federal or state law requirements have changed in a manner that necessitates a change in the permit; or

b. The Permittee's Discharge or the circumstances under which the Discharge occurs have changed so that it is appropriate to modify the permit's terms, conditions or requirements; or

c. A change to the permit is necessary to ensure compliance with the objectives of this Ordinance or to protect the quality of receiving waters.

3. The determination that a permit shall be denied, suspended, revoked or modified may be appealed by a Permittee pursuant to the same procedures applicable to appeal of an Administrative Compliance Order hereunder.

C. Permit Enforcement. Any violation of the terms, conditions and requirements of any permit issued by the Director of Public Works shall constitute a violation of this Ordinance and subject the violator to the administrative, civil and criminal remedies available under this Ordinance.

D. Permit Terms and Conditions, Permittee Rights

1. Compliance with the terms, conditions and requirements of a permit issued pursuant to this Ordinance shall not relieve the Permittee from compliance with all federal, state and local laws, regulations and permit requirements, applicable to the activity for which the permit is issued.

2. Limited Permittee Rights. Permits issued under this Ordinance are for the Person or entity identified therein as the "Permittee" only, and authorize the specific operation at the specific location identified in the permit. The issuance of a Permit does not vest the Permittee with a continuing right to Discharge.

3. Transfer of Permits. No permit issued to any Person may be transferred.

7.35.150 Interagency Coordination.

The City intends to cooperate with other agencies with jurisdiction over stormwater discharges to ensure that the regulatory purposes underlying stormwater regulations promulgated pursuant to the Clean Water Act (33 U.S.C. § 1251 et seq.) are met. The City may, to the extent authorized by law, elect to contract for the services of any public agency or private enterprise to carry out the planning approvals, inspections, permits and enforcement authorized by this chapter.

7.35.160 Compliance Disclaimer.

Full compliance by any Person or entity with the provisions of this Ordinance shall not preclude the need to comply with other local, state or federal statutory or regulatory requirements, which may be required for the control of the Discharge of Pollutants into stormwater and/or the protection of stormwater quality.

7.35.170 Severability.

If any provision of this Ordinance or the application of the Ordinance to any circumstance is held invalid, the remainder of the Ordinance or the application of the Ordinance to other Persons or circumstances shall not be affected.

7.35.180 Judicial Review.

The provisions of §1094.5 and §1094.6 of the Code of Civil Procedure set forth the procedure for judicial review of any act taken pursuant to this Ordinance. Parties seeking judicial review of any action taken pursuant to this Ordinance shall file such action within ninety (90) days of the occurrence of the event for which review is sought."

SECTION 2. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 3. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

SECTION 4. This ordinance shall take effect thirty days after its adoption.

PASSED, APPROVED AND ADOPTED THIS 6TH DAY OF OCTOBER 2010.

Phillip B. Tsunoda
Mayor

ATTEST:

Susan A. Ramos
City Clerk

APPROVED AS TO FORM:

Scott C. Smith, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, SUSAN A. RAMOS, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Ordinance No. 2010-128 was duly passed and adopted at a regular meeting of the City Council held on the 6th day of October 2010 by the following vote, to wit:

AYES: COUNCIL MEMBERS: Mayor Tsunoda, Mayor Pro Tem Cave, Councilmembers Ficke, Garcia, Phillips

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None



SUSAN A. RAMOS
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2010-128 duly passed and adopted by the Aliso Viejo City Council at their regular meeting held October 6, 2010 and that Summary of the Ordinance was published on October 14, 2010, in the Aliso Viejo News.



SUSAN A. RAMOS
CITY CLERK

(SEAL)