

A-4.0 LEGAL AUTHORITY

A-4.1 INTRODUCTION

In 1993, the Orange County Permittees prepared a Model Water Quality Ordinance to provide a more uniform, countywide approach and a legal underpinning to the area-wide stormwater program. Subsequently, the City of Lake Forest adopted a largely similar version of the Water Quality Ordinance as Lake Forest Municipal Code (LFMC) Chapter 15.14 and provided certifications of their adoption to the Regional Board in 2003. A corresponding *Enforcement Consistency Guide (DAMP Exhibit 4.I)* was also developed and implemented by the Permittees in 1997 to accompany the ordinance, and is described in further detail in **Section A-4.4**.

The City has updated its existing Stormwater Quality Management Ordinance to ensure adequate legal authority within its corporate boundaries to comply with Order No. R9-2009-0002. The LFMC, Chapter 15.14, is the City's Stormwater Quality Management Ordinance which is the underpinning of the City's water quality/pollution prevention program. The updated ordinance is scheduled for the City Council consideration of final adoption in January 2011. The most current and up-to-date version of the Ordinance and the entire City of Lake Forest Municipal Code is available online at:

<http://library.municode.com/index.aspx?clientId=16439&stateId=5&stateName=California>.

A-4.2 REGULATORY REQUIREMENTS

The Fourth Term Permit, San Diego Regional Water Quality Control Board (SDRWQCB) Order No. R9-2009-0002 Directive E, requires the City to establish, maintain, and enforce adequate legal authority to control pollutant discharges into and from its MS4 through ordinance, statute, permit, contract or similar means.

The Fourth Term Permit, Santa Ana Regional Water Quality Control Board (SARWQCB) Order No. R8-2009-0030, Section VI, requires the City to maintain adequate legal authority to control the discharge of pollutants to the MS4s from urban runoff and enforce those authorities. This may be accomplished through ordinance, statute, permit, contract or similar means.

A-4.3 AUTHORITY TO CONTROL POLLUTANT DISCHARGES

The City's Water Quality Ordinance is the principal legal foundation of the City's water quality/pollution prevention program. This legal authority enables the city to:

- Control the contribution of pollutants in discharges of runoff associated with industrial and construction sites;
- Prohibit all identified illicit discharges not otherwise allowed;
- Prohibit and eliminate illicit connections to the MS4;
- Control the discharge of spills, dumping or disposal of materials other than stormwater into its MS4;
- Require compliance with conditions in City's ordinance, permits, contracts or orders;

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- Utilize enforcement mechanisms to require compliance with stormwater ordinances, permits, contracts, or orders;
- Control the contribution of pollutants from one portion of the MS4 to another portion of the MS4 through interagency agreements among other MS4 owners;
- Carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with local ordinance and permits and with this Order, including the prohibition on illicit discharges to the MS4;
- Require the use of BMPs to prevent or reduce the discharge of pollutants into the MS4s from stormwater to the maximum extent practicable (MEP); and
- Require documentation on the effectiveness of BMPs implemented to reduce the discharge of stormwater pollutants to the MS4 to the Maximum Extent Practicable (MEP).

A-4.3.1 Other City of Lake Forest Pollution Prevention Codes/Ordinances

In addition to the City’s water quality ordinance, other sections of the City’s municipal code also address water quality protection and pollution prevention and contribute to a comprehensive water quality/pollution prevention program. These complimentary codes include, but are not limited to the following examples summarized in **Table A-4.1**.

Title	Chapter	Name	Content
6: HEALTH AND SANITATION	6.14	Nuisances, General	Public Nuisance, litter, graffiti, Abandoned Vehicles
	6.16	Hazardous Materials	Hazardous Materials storage and handling requirements
		Unlawful Dumping	Prohibits dumping and dumping of tires
8: BUILDINGS AND CONSTRUCTION	8.30	Lake Forest Grading and Excavation Code	Grading, excavation, erosion control

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9: PLANNING AND ZONING	9.144		Land Development, Improvements, Zoning, Land Use, Specified Resource Protection, Waste Management and Hazardous Materials, Water Efficient Landscape Regulations
10: ANIMALS	10.12	Keeping and Restraint of Animals	Control and prohibitions for animal defecation and urination
12: VEHICLES AND TRAFFIC	12.16	Stopping, Standing, and Parking	Parking prohibitions, vehicle repair
13: PARKS AND RECREATIONAL FACILITIES	13.04	Parks & Recreational Facilities Regulations	Regulation of animals, water protection, waste liquids and refuse
14: STREETS AND SIDEWALKS	14.05	Standard Specifications	Plans and specifications, landscaping requirements
	14.20	Appurtenant Construction	Permits, standards of work,
	14.24	Obstructions	Prohibits depositing materials, tracking, unnecessary discharges of water
15: WATER AND SEWERS	15.14	Stormwater Quality Management	Stormwater urban runoff regulations

Water and Sewer Agency Pollution Prevention Ordinances/Programs

In addition to City ordinances, there are independent water and sewer agencies that govern residents and businesses. These agencies enforce regulations and implement programs that contribute to the overall effectiveness of the City's water quality/pollution prevention program. The City closely coordinates with these agencies on these programs.

Roles and Responsibilities Beyond City Jurisdiction

Although the City has a robust regulatory and enforceable framework in place, there are agencies, industries and programs that may have either complimentary and/or conflicting authority that may extend beyond the authority of the City. The City believes that collaboration with the following agencies, industries and programs will be necessary for a comprehensive and effective water quality program. The City is not responsible for discharges regulated under separate NPDES permits or where the City has no authority. The following list includes some agencies and programs that are beyond City authority that may affect receiving water quality:

- Pesticides used in the state are registered by the Department of Pesticide Regulation (DPR).*
- Air contaminants, including fugitive dust, are regulated by the Air Quality Management District (AQMD).
- Leaking Underground Storage Tanks (LUST), Landfills, regulations on water reuse, Restaurant Inspections, Ocean Water Protection - Beach Closures & Warnings Monitoring Program (per AB411), Used Oil Recycling, etc. are overseen by Orange County Health Care Agency.
- Hazardous Waste Inventory and Emergency Planning is regulated by the Orange County Fire Authority as the Administering Agency (AA).
- Hazardous Waste Transport, Treatment, Storage & Disposal are regulated by the Department of Toxic Substances Control (DTSC).
- Caltrans is regulated by State and Regional Board under Order 99-06-DWQ.
- Construction projects impacting one acre or greater are regulated by the General Construction Permit under Order 2009-0009-DWQ, which is administered by the State Resources Control Board.
- Industrial sites are regulated under the Industrial Permit under Order 97-03-DWQ, which is administered by the State Resources Control Board.
- Discharges from utility vaults and underground structures are regulated under Order 2006-0008-DWQ, which is administered by the State Resources Control Board.

Additionally,

- Reclaimed water use is regulated under separate permits
- Phase II MS4 entities, are regulated by State and Regional Boards under a separate order

- On-site disposal systems (OSDS), agricultural & nursery discharges, animal operations and aerially discharged wastes over land are each regulated under one of eleven (11) conditional “waivers” administered by SDRWQCB.

*In California, DPR, SWRCB and RWQCB have mandates and authorities bearing on pesticides and water quality. In order to promote cooperation to protect water quality from the adverse effects of pesticides, DPR and the SWRCB signed a Management Agency Agreement (MAA). The MAA, and its companion document, "The California Pesticide Management Plan for Water Quality," strive to coordinate interaction, facilitate communication, promote problem solving, and ultimately assure the protection of water quality. The City looks forward to seeing the outcomes of this MAA coordination and implementation, as pesticides have been noted as a pollutant of concern in water bodies within Orange County.

A-4.4 ENFORCEMENT

The City’s Stormwater Quality Management Ordinance includes adequate legal authority, to the extent permitted by California and Federal Law and subject to the limitations on municipal action under the constitutions of California and the United States, to enter, inspect and gather evidence (pictures, videos, samples, documents, etc.) from industrial, construction and commercial establishments. Sanctions are in place to allow the City to progressively and decisively take enforcement actions against any violators of the Stormwater Quality Management Ordinance. The City has adopted the Enforcement Consistency Guide for Water Quality Ordinance Implementation (**DAMP Exhibit 4.I**) and follows the guidelines and procedures included therein.

The detection, elimination and enforcement activities undertaken by the City are described further in **DAMP Section 10.0**. Authorized Inspector(s) (AI) are assigned to investigate compliance with and detect incidences of violations of the City’s Stormwater Quality Management Ordinance. In addition to prohibiting unpermitted discharges, the Ordinance also provides the legal authority for requiring BMPs in new development and significant redevelopment found in **DAMP Section 7.0**.

The City of Lake Forest has key departments and staff responsible for overseeing, implementing, and enforcing City ordinances. These departments and staff members are identified in **Exhibit A-4.I**.

A-4.5 ASSESSMENT

Upon adoption of the Fourth Term Permit, the City in conjunction with the Principal Permittee and other Permittees, collectively reviewed all applicable ordinances. The City has concluded that the City’s ordinances grant the City the adequate legal authority necessary to implement and enforce the requirements of the permits and a Statement of Legal Authority (Exhibit A-4.1) signed by legal counsel, was completed to certify that the City of Lake Forest has the legal authority to implement and enforce the requirements in 40 CFR 122.26(d)(2)(i)(A-F). See **Exhibit A-4.I**

Exhibit A-4.I

Statement of Legal Authority and Internal Implementation



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December 14, 2010

Mr. David Gibson
Executive Officer
Dan Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA. 92123-4340

Re: Statement of Legal Authority in Compliance with San Diego Regional
Water Quality Control Board (SDRWQCB) Order No. R9-2009-0002

Dear Mr. Gibson:

The City of Lake Forest ("City") hereby submits this statement in its capacity as a Co-Permittee in accordance with Section E.2 of San Diego Regional Water Quality Control Board Order R9-2009-0002, Waste Discharge Requirements for Discharges of Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District within the San Diego Region ("Permit").

I. STATEMENT OF LEGAL AUTHORITY

The undersigned City Attorney for the City does hereby state that the City has obtained adequate legal authority to comply with the legal requirements imposed upon the City under the Permit, consistent with the requirements set forth in the regulations to the Clean Water Act, 40 CFR [Code of Federal Regulations] 122.26(d)(2)(i)(A-F), and to the extent permitted by State and Federal law and subject to the limitations on municipal action under the California and United States Constitutions.¹ Subject to those limitations, this includes the authority to:

¹ A number of the Co-Permittees, including the City, are currently pursuing administrative remedies regarding the Permit, and nothing in this letter should be construed as a waiver of any rights the City may have to bring or maintain a legal challenge to the Permit or to raise any factual or legal issues as part of any such challenge.

Additionally, the Co-Permittees have agreed that the County of Orange is to serve as the Principal Permittee under the Permit. This statement of legal authority assumes the County also has adequate legal authority to comply with

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- Control the contribution of pollutants in discharges of runoff associated with industrial and construction activity to the City's MS4 and control the quality of runoff from industrial and construction sites;
- Prohibit all identified illicit discharges not otherwise allowed pursuant to section B.2 of the Permit;
- Prohibit and eliminate illicit connections to the City's MS4;
- Control the discharge of spills, dumping, or disposal of materials other than stormwater to the City's MS4;
- Require compliance with conditions in the City's ordinances, permits, contracts or orders;
- Utilize enforcement mechanisms to require compliance with the City's stormwater ordinances, permits, contracts, or orders;
- Control the contribution of pollutants from other MS4 systems through interagency agreements;
- Carry out all inspections, surveillance, and monitoring necessary to determine compliance and noncompliance with local ordinances and permits and with the Permit, including the authority to enter, monitor, inspect, take measurements, review and copy records, and require regular reports from industrial facilities and construction sites discharging into the City's MS4;
- Require the use of BMPs to prevent or reduce the discharge of pollutants into the City's MS4; and
- Require documentation on the effectiveness of BMPs implemented to reduce the discharge of stormwater pollutants to the City's MS4.

II STATUS OF IMPLEMENTATION

The City is in the process of implementing the requirements imposed by the Permit, and has updated its Local Implementation Plan, reviewed and updated the Water Quality and Land use Section of the City's General Plan, and reviewed and is in the process of adopting a new stormwater quality ordinance. City staff has also reviewed the City's grading ordinance and found it to be consistent with the requirements of the Permit.

the requirements imposed on it as the Principal Permittee, and that the Principal Permittee will exercise its legal authority as appropriate to comply with the Permit.

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Although the City's current ordinance is adequate to ensure compliance with the Permit, once adopted the City's new stormwater management ordinance will give the City additional legal authority to implement the Permit to the extent permitted by California and federal law and subject to the limitations on municipal action under the constitutions of California and the United States. The Lake Forest City Council will consider approval of the updated ordinance at its regularly scheduled meeting on December 21, 2010.

III. CITY DEPARTMENTS

Attached as Exhibit "1" you will find a list of the City departments, and a flow chart listing departments and specific positions involved with the regulation of runoff.

IV. ORDINANCES

The City's stormwater quality ordinance is codified at Lake Forest Municipal Code ("LFMC") Chapter 15.14. As stated above, the City is in the process of adopting a revised water quality ordinance that will give the City additional legal authority to implement the Permit to the extent permitted by California and federal law and subject to the limitations on municipal action under the constitutions of California and the United States. A copy of the new ordinance is attached to this letter as Exhibit "2."

V. ADMINISTRATIVE AND LEGAL PROCEDURES

The City's existing water quality ordinance includes the following legal and administrative procedures to assist in enforcing its various runoff related Ordinances:²

A. ADMINISTRATIVE REMEDIES – LFMC §§ 15.14.070; 15.14.090

- Administrative Compliance Orders
- Cease and Desist Orders
- Stop work orders (for work requiring a City permit)
- Administrative penalties
- Permit revocation or withdrawal

² References are to the City's updated water quality ordinance, to be adopted in final form in January, 2011.

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B. NUISANCE REMEDIES – LFMC § 15.14.110

- Public nuisance under State law
- City Nuisance abatement procedures

C. CRIMINAL REMEDIES – LFMC § 15.14.120

- Infraction citations / prosecution (City Code default)
- Misdemeanor citations / prosecution (explicitly authorized for grading violations and stormwater violations)
- Restitution

D. EQUITABLE REMEDIES

- Injunctive relief under State law
- Declaratory relief under State law

E. OTHER CIVIL REMEDIES

- Federal law claims, e.g. CWA and RCRA Citizen Suits

VI. ENFORCEABILITY, IMPLEMENTATION AND CHALLENGE

The City has the authority under the Constitution and statutes of the State of California to enact and enforce these ordinances. These ordinances contain specific enforcement provisions and/or are enforceable under the generally applicable enforcement provisions of the LFMC. Enforcement may be through misdemeanor prosecution (LFMC § 15.14.120), suspension or revocation of permits (LFMC § 15.14.070), and through administrative penalties. (LFMC § 15.14.090.)

Some of these ordinances are implemented through permit programs; some are implemented as regulatory programs and some are hybrid programs. Under each ordinance, one or more City departments or department directors are authorized and directed to take the actions contemplated by the ordinance, e.g., to consider evidence and make findings, to issue or deny permits, to impose conditions on projects, to inspect, to take enforcement action, etc.

The City Water Quality Ordinance is the principle City ordinance addressing runoff. This ordinance is both a regulatory and a permit program, and applies to all development projects and to all new and existing facilities in the City's jurisdiction, whether or not a City permit or

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approval is required. The Water Quality Ordinance contains discharge prohibitions and BMP requirements. This ordinance also authorizes the City to require the submission of stormwater water quality management plans.

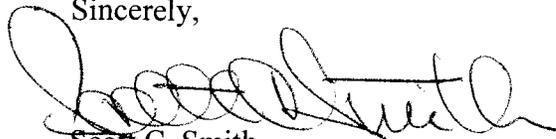
Other City ordinances require compliance with the Water Quality Ordinance as a condition for issuance of a City permit. For example, the Planning Department may impose specific conditions of approval consistent with the Water Quality Ordinance. Similarly, the City's Grading and Excavation Ordinance authorize the Building Official to implement the water quality requirements through the permits he or she issues. All City environmental ordinances, including the Water Quality Ordinance, are also implemented in part through the application of the CEQA process to proposed projects.

Although proposed City ordinances are not subject to appeals, they are subject to a public notice and comment process prior to enactment. Enacted City ordinances can be challenged by timely filing writs of mandate in Superior Court. The referendum and initiative process can also be used to challenge enacted ordinances. The imposition of administrative penalties and fines under these ordinances (where applicable) can be appealed to the City and following exhaustion of administrative remedies, to the courts. Trial court decisions to impose civil penalties or to grant injunctive or other relief can also be appealed.

CONCLUSION

Thank you for your attention to this matter, please do not hesitate to contact the undersigned should you have any questions or need any additional information

Sincerely,



Scott C. Smith
of BEST BEST & KRIEGER LLP
City Attorneys
City of Lake Forest

cc: Robert Dunek, City Manager, City of Lake Forest
Robert Woodings, P.E. Director of Public Works, City of Lake Forest
Devin Slaven, Water Quality Specialist, City of Lake Forest

The responsibilities of the City departments for the internal coordination of LIP activities are shown in Table A-2.2.

**Table A-2.2
City of Lake Forest Internal Implementation of the LIP**

Program Element	Department	Activity	Responsibility Under the Order/2003 DAMP
Section A-2 - Program Management	Public Works	Serves as City LIP manager	Prepares annual compliance reports
			Reviews shared budgets and prepared internal City budgets
			Coordinates with Principal Permittee and other Permittees for development and implementation of countywide program
			Coordinates/ensures implementation of LIP by City departments; administers program
			Responds to phone, e-mail, and other input to the City on water quality issues and dispatches appropriate personnel; records responses
			Follows up on problems with City compliance
Section A-3 - Plan Development	Public Works	Oversees development of new 2003 DAMP programs	Coordinates between City departments and the Principal Permittee in the development of new programs and BMP effectiveness studies
Section A-4 - Legal Authority	City Attorney	Certification of adequate legal authority	Reviews legal authority/modifications of ordinances/ legal certification
Section A-5 - Municipal Activities	Public Works	Manages storm drain inventory/atlas	Updates or provides Geographic Information System (GIS) with updates to storm drain atlas

	Public Works	Operates and maintains storm drains and flood control facilities	Implements applicable model BMPs, reports actions taken to LIP Management
			Reports to LIP Manager with changes in flood control maintenance program and facilities

	N/A	Operates and maintains corporate/municipal yards	Implements applicable model BMPs, reports actions taken to LIP Management
			Reports to LIP Manager with changes in corporate/municipal yards
	Public Works	Maintains catch basin stenciling program	Implements stenciling program, reports actions taken to LIP Management
			Reports to LIP Manager with changes in stenciling program
	OCFA (contracted)	Generates emergency and non-emergency fire fighting discharges	Implements applicable model BMPs, reports actions taken to LIP Management
	OCFA (contracted)	Operates and maintains fire stations	Implements applicable model BMPs, reports actions taken to LIP Management
			Reports to LIP Manager with changes in fire facilities operated
	Public Works	Operates parks, community centers, and recreational facilities	Implements applicable model BMPs, reports actions taken to LIP Management operated
			Reports to LIP Manager with changes in parks facilities
	OCSD (contracted)	Operates and maintains police facilities	Implements applicable model BMPs, reports actions taken to LIP Management
			Updates LIP Manager with changes in police facilities operated
	Public Works	Operates and maintains parking lots	Implements applicable model BMPs, reports actions taken to LIP Management
			Updates LIP Manager with changes in parking facilities operated
	Public Works	Maintains city facilities	Implements applicable model BMPs, reports actions taken to LIP Management
			Updates LIP Management with changes to City-owned facilities
	Public Works	Manages and implements street sweeping	Implements applicable model BMPs, reports actions taken to LIP Management
			Updates LIP Management with changes to street sweeping

	Public Works	Manages and implements IPM Policy	Implements IPM Policy, reports actions taken to LIP Management
			Updates LIP Management with changes to pesticide and fertilizer programs for conformance with IPM Policy
	Public Works	Manages and implements landscape maintenance programs including lakes	Implements applicable model BMPs, reports actions taken to LIP Management
			Updates LIP Management with changes to landscape maintenance programs
	Public Works/ Development Services	Manages and implements waste recycling and litter control programs	Implements applicable model BMPs, reports actions taken to LIP Management
			Updates LIP Management with changes to waste recycling and litter control programs
Section A-6 - Public Education	Public Works/ Development Services	Manages education/ outreach program	Attends public meetings
			Provides training and guidance materials to private developers, public, and City staff
			Disseminates information in the City
			Develops City versions of countywide education materials as appropriate
			Participates in one City event per year
	Public Works/ Development Services/ Redevelopment	Distribution of public education materials	Provides information to public at City counters
Section A-7 - New Development	Development Services	Manages General Plan	Reviews the General Plan for water quality protection
	Development Services	Manages environmental planning review	Implements use of CEQA checklist to review water quality issues on proposed projects

	Development Services/ Public Works		Reviews development for water quality issues
	Development Services	Processes building/grading permits	Advises applicants of water quality requirements
	Development Services/ Public Works		Verifies plan compliance with water quality requirements
	Development Services/ Public Works		Coordinates for project tracking and inspection of water quality requirements
	Development Services/ Public Works	Interacts with public	Provides information to permit applicants on water quality requirements
	Public Works	Manages public works projects	Verifies plan compliance with water quality requirements in public works projects
			Coordinates for project tracking and inspection of water quality requirements in public works projects
Section A-8 - Construction	Development Services	Processes building/grading permits	Advises applicants of water quality requirements
			Verifies plan and NOI compliance with water quality requirements, reports actions taken to LIP Management
	Development Services	Manages oversight of construction inspection inventory, prioritization and inspection program	Inventories, prioritizes and maps construction sites
			Implement inspections, requires corrective actions to be taken, reports actions taken to LIP Management
	Public Works	Manages Public works projects and Capital Improvement Project (CIP) projects	Verifies plan compliance with water quality requirements in public works projects and CIPs

			Coordinates for project tracking and inspection of water quality requirements in public works projects and CIPs, reports actions taken to LIP Management
Section A-9 - Existing Development	Public Works	Manages oversight of the commercial, industrial, residential inspection program	Inventories, prioritizes and maps facilities
			Implement inspections, require corrective actions to be taken, report actions taken to LIP management
	Public Works/ Development Services	Interacts with businesses and the public	Provides information to industrial and commercial businesses and the public
Section A-10 - ID/IC	Public Works/ Development Services		Reports dumped materials and/or undocumented connections
	Public Works	Manages education/ outreach program	Distributes public education materials to encourage the reporting of problems
	Development Services	Implements construction site inspections	Reports violations of and/or enforce the water quality ordinance
	Public Works	Implements the existing development inspections	Report violations of and/or enforces the water quality ordinance
	Public Works	Processes notifications/ response requests for water pollution problems	Detects and eliminates illegal discharges and illicit connections
	Public Works	Responds to water pollution complaints, assesses site, makes notifications, oversees clean-up operations and enforces water quality ordinance	Responds to water pollution complaints in a timely manner and enforces all applicable ordinances

	Public Works/ Development Services	Manage water quality data received from countywide program	Initiates source investigations through ID/IC program for problems identified through the water quality monitoring program
	City Attorney	Assists with the enforcement of violations of applicable ordinances	Enforces against violators of stormwater related ordinances
Section A-11 - Water Quality Monitoring	Public Works	Assesses water quality data received from countywide program	Assesses data to determine if Initiate follow up through ID/IC program for problems identified through the water quality monitoring program need to be followed up on
Section A-12 - Watersheds	Public Works	Participates in watershed management initiatives	Represents the city in IRWMP, TMDL, WMA etc. activities

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LAKE FOREST, CALIFORNIA, AMENDING TITLE 15, CHAPTER
15.14, REGARDING STORMWATER QUALITY MANAGEMENT**

WHEREAS, Title 15, Chapter 15.14 of the City of Lake Forest (“City”) Municipal Code regulates stormwater quality management and urban runoff; and

WHEREAS, the City is subject to regulation under Santa Ana Regional Water Quality Control Board Order No. R8-2009-030 NPDES No. CAS618030], Waste Discharge Requirements for the County of Orange, Orange County Flood Control District, and the Incorporated Cities of Orange County Within the Santa Ana Region, and San Diego Regional Water Quality Control Board Order No. R9-2009-0002 [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 (jointly defined as the "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 Permits; 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 control of 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 and non-stormwater discharges from properties and activities regulated under the provisions of Clean Water Act National Pollutant Discharge Elimination System ("NPDES") 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 LAKE FOREST DOES ORDAIN AS FOLLOWS:

SECTION 1. Sections 15.14.010 through 15.14.150 of the City Code are hereby amended in their entirety as follows:

15.14.010. Purpose and Intent.

This chapter implements the Federal Water Pollution Control Act (the "Clean Water Act" or "CWA"), 33 U.S.C. Sections 1251-1387, and the California Water Code by prohibiting the discharge of any pollutant to navigable waters of the United States from a point source unless the discharge is authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") required by CWA Section 402, 33 U.S.C. Sections 1342, and prohibits nonstormwater discharges into the municipal separate storm sewer system ("MS4").

15.14.020. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this chapter. Words and phrases not ascribed a meaning by this chapter shall have the meanings ascribed 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 may be amended from time to time, if defined therein, and if not, to the definitions in any applicable permit issued by the California Regional Water Quality Control Board — Santa Ana or San Diego Region, as appropriate, as such permits may be amended from time to time.

- (a) "Authorized Inspector" shall mean the Director of Public Works and persons designated by the Director of Public Works.
- (b) "Best management practices (BMPs)" shall mean schedules of activities, prohibitions of

practices, maintenance procedures, and other management and/or structural practices to prevent or reduce pollutants in discharges. BMPs include, but are not limited to, public education and outreach, proper planning of development projects, use of treatment control devices, proper clean-out of catch basins, and proper waste handling and disposal.

- (c) “City” shall mean the City of Lake Forest, Orange County, California.
- (d) "Co-Permittee" shall mean the County of Orange, the Orange County Flood Control District, and/or any one of the thirty-four (34) municipalities, including the City of Lake Forest, which are responsible for compliance with the terms of the NPDES Permit.
- (e) "DAMP" shall mean the Orange County Drainage Area Management Plan, including the cities’ adopted Local Implementation Plans (LIPs) as the same may be amended from time to time.
- (f) "Development Project Guidance" shall mean DAMP Chapter 7 and the Appendix thereto, 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 15.14.030(b).
- (i) “Enforcing Attorney” shall mean the City Attorney or the Orange County District Attorney.
- (j) “EPA” shall mean the Environmental Protection Agency of the United States.
- (k) "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.
- (l) “Invoice for Costs” shall mean the actual costs and expenses of the City, including but not limited to administrative overhead, salaries, reasonable attorneys’ fees, and other expenses recoverable under State law, incurred during any inspection conducted pursuant to article 2 of this division, or where a Notice of Violation, Administrative Compliance Order or other enforcement option under this division is utilized to obtain compliance with this division.
- (m) “Legal Nonconforming Connection” shall mean connections to the MS4 existing as of the adoption of this division 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.

- (n) "Local Implementation Plan (LIP)" shall mean the City's adopted plan for implementation of the NPDES Permit, as may be amended from time to time.
- (o) "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, or building permit or Non-residential Plumbing Permit is required.
- (p) "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.
- (q) "NPDES Permit" shall mean any discharge permit issued by the California Regional Water Quality Control Board, Santa Ana Region and/or the California Regional Water Quality Control Board, San Diego Region.
- (r) "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.
- (s) "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.
- (t) "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
- (u) "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 the handling of cement materials outside the building footprint, is required.
- (v) "State General Permit" shall mean either the Waste Discharge Requirements for Discharges Of Storm Water Associated With Industrial Activities Excluding Construction Activities Permit (State Industrial General Permit) or the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities (State Construction General Permit) and the terms and requirements of either or both. In the event the U.S. Environmental Protection Agency (EPA) 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.
- (w) "Municipal Separate Storm Sewer System" or "MS4" shall mean street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet or other facility, or any other conveyance which is a part of or tributary to the City owned stormwater conveyance system or that of the County of Orange, or the Orange County Flood Control District, and used for the purpose of collecting, storing, transporting, or

disposing of stormwater.

15.14.030 Prohibition of illicit connections and prohibited discharges.

- (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 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 following discharges shall not constitute Prohibited Discharges unless determined by the Authorized Inspector to be a source of pollutants in, or discharging from, the MS4, or a potential conveyance of pollutants into or 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 Santa Ana and/or 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 Santa Ana and/or 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 Santa Ana and/or 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 Santa Ana and/or 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 Santa Ana and/or San Diego Regional Water Quality Control Board.
 - (12) Discharges from potable water sources not including discharges from commercial irrigation, or residential irrigation, and provided any such discharge is compliant with all applicable permit requirements, including enrollment in any applicable NPDES Permit or Waste Discharge Requirement from the Santa Ana and/or 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, State Water Resources Control Board, 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 recycled water generated by a lawfully permitted water treatment facility that are compliant with all terms and conditions any applicable permits imposed on production and use of such water.
 - (18) Discharges of dechlorinated water from swimming pools.
- (c) A civil or administrative violation of Section 15.14.030(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.

15.14.040. Control of Urban Runoff from New Development and Significant Redevelopment.

- (a) 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, requirements and water quality management plans adopted by the City.

- (b) Prior to the issuance by the City of a grading permit, or building permit, the Department of Public Works and/or Development Services Department shall review the project plans and impose terms, conditions and requirements on the project in accordance with Section 15.14.040(a). If the project will be approved without application for a grading permit, or building permit, the Department of Public Works and/or Development Services Department shall review the project plans and impose terms, conditions and requirements on the project in accordance with Section 15.14.040(a) prior to the issuance of a discretionary land use approval or, at the City's discretion, prior to recordation of a subdivision map.
- (c) 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.
- (d) 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 15.14.040(a) 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 15.14.040(a) shall constitute a violation of this Ordinance.
- (e) The terms, conditions and requirements imposed pursuant to Section 15.14.040(a) shall 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.
- (f) 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.

15.14.050. Control of Urban Runoff at all Construction Projects

- (a) Construction and Grading Permits. In addition to the requirements set forth in Section 15.14.040, 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 effectively prohibited 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 effectively

prohibited 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.

- (b) **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 required by the Damp and the City's LIP. 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 are required by the DAMP and the City's LIP.

15.14.060. BMP Implementation.

Each owner, operator, or person in charge of day to day activities of any site that may discharge any pollutant to the City's MS4 shall implement those BMPs as may be designated by the Authorized Inspector, City Engineer or Director of Public Works. Properties with a high potential threat of discharge may be required to implement a monitoring program that meets standards as determined necessary by the City.

15.14.070. Permit Suspension, Revocation or Modification

- (a) The Director of Public Works may suspend or revoke any City-issued permit when it is determined that:
 - (1) The Permittee has violated any term, condition or requirement of the permit or any applicable provision of this Ordinance; or
 - (2) 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
 - (3) The Permittee fails to comply with any schedule for compliance issued pursuant to this Ordinance; or
 - (4) 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
 - (5) 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.
- (b) 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 when it is determined that:

- (1) Federal or state law requirements have changed in a manner that necessitates a change in the permit; or
 - (2) 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
 - (3) A change to the permit is necessary to ensure compliance with the objectives of this Ordinance or to protect the quality of receiving waters.
- (c) 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.

15.14.080. 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.
- (b) **Entry to Inspect.** The Authorized Inspector may enter both public and private property to investigate the source or potential 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.** Maintenance records must be kept on-site and remain available for inspection. Failure to keep records on site and available for inspection shall constitute a violation of this chapter. 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, 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.

15.14.090. Civil Enforcement.

- (a) The City Manager or the City Manager's designee may, in addition to any other remedies provided in this Code or available under applicable law, take enforcement action against violators of this Chapter through any combination of the administrative enforcement options set forth below.
- (b) **Administrative Remedies.**
 - (1) **Notice of Violation.** 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 Violation. The Notice of Violation shall be delivered in accordance with Section 15.14.110(b)(5) of this Ordinance.
 - a. The Notice of Violation shall identify the provision(s) of this Ordinance or the applicable permit which has been violated. The Notice of Violation shall state that continued noncompliance may result in additional enforcement actions against the owner, occupant and/or Person.
 - b. The Notice of Violation 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.** Separate from, in addition to, or in combination with a Notice of Violation or Cease and Desist Order, the Authorized Inspector may issue an Administrative Compliance Order against the owner and/or occupant of any public or private property and/or any other person responsible for a violation of this chapter who violates any provision of this chapter. Issuance of a Notice of Violation or Cease and Desist Order is not a prerequisite to the issuance of an Administrative Compliance Order.
 - (3) **Cease and Desist Orders.** The Authorized Inspector may issue a Cease and Desist Order directing the owner or occupant, or other person in charge of day-to-day

operations of any public or private property and/or any other person responsible for a violation of this chapter to:

- a. Immediately discontinue any illicit connection, or illicit discharge to the MS4;
 - b. Immediately contain or divert any flow of non-stormwater off the property, where the flow is occurring in violation of any provision of this chapter;
 - c. Immediately discontinue any other violation of this chapter;
 - d. Clean up the area affected by the violation.
- (4) In addition to, or in combination with a Notice of Violation, Cease and Desist Order, or Administrative Compliance Order the City Manager or City Manager's designee (including the Authorized Inspector) may issue a civil penalty for violations of this chapter. The Notice of Violation, Cease and Desist Order, or Administrative Compliance Order to which the penalty will attach shall allege the act(s) or failure(s) to act that constitute violations of this chapter and shall set forth the penalty for the violation. The City Manager or City Manager's designee (including the Authorized Inspector) may impose the following monetary penalties, in addition to other appropriate corrective action requirements:
- a. An amount that shall not exceed one hundred dollars (\$100.00) for each day a person fails or refuses to provide the City with any report or information required by this chapter.
 - b. An amount that shall not exceed two hundred dollars (\$200.00) for each day a person fails or refuses to timely comply with a notice of violation or cease and desist order or fails or refuses to implement BMPs required by the Director or this chapter.
 - c. An amount that shall not exceed one thousand dollars (\$1,000.00) per day for each day on which a person violates Section 15.14.030 of this chapter.
- (c) Unless timely appealed, an administrative compliance order shall be effective and final as of the date it is issued by the City Manager.
- (d) The amount of any penalties imposed under this section which have remained delinquent for a period of sixty (60) days shall constitute a lien against the real property of the person violating this chapter. The lien provided herein shall have no force and effect until recorded with the County Recorder and when recorded shall have the force and effect and priority of a judgment lien and continue for ten (10) years from the time of recording unless sooner released, and shall be renewable in accordance with the provisions of Sections 683.110 to 683.220, inclusive, of the California Code of Civil Procedure.
- (e) All moneys collected under this section shall be deposited in a special account of the City

and shall be made available for enforcement of this article.

- (f) The City may, at its option, elect to petition the Superior Court to confirm any order establishing administrative penalties and enter judgment in conformity therewith in accordance with the provisions of Sections 1285 to 1287.6, inclusive, of the California Code of Civil Procedure.
- (g) **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 Violation or other administrative order, an Invoice for Costs documenting any and all costs incurred by the City in cleaning up a site and issuing the Notice of Violation or other administrative order and directing payment to the City. An Invoice for Costs shall be delivered in accordance with Section 15.14.110(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 15.14.110(b)(6) then the Enforcing Attorney may institute collection proceedings.

15.14.100. Notice.

Delivery of Notice. Any Notice of Violation, 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 15.14.110(b)(6) through Section 15.14.110(b)(8) of this Ordinance.
- (b) Delivery shall be deemed complete upon personal service to the recipient; deposit in the U.S. mail, postage pre-paid for first class delivery; or 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 Violation or Cease and Desist Order shall be deemed delivered after posting on the property for a period of ten (10) business days.

15.14.110. Nuisance Abatement.

- (a) **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 15.14.110(c)(4).

- (b) 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 City Manager or the City Manager's designee, 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 City Manager or the City Manager's designee 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.
- (c) Emergency Abatement. In the event the nuisance constitutes an imminent danger to public safety or the environment, the Authorized Inspector 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.
- (d) 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.
- (e) 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 City Manager or the City Manager's designee, the Enforcing Attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgement 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.

15.14.120. 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.

15.14.130. 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.

15.14.140. Nonexclusive 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.

15.14.150. Injunctions and Other Civil Remedies

- (a) At the request of City Manager or the City Manager's designee, 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.
- (c) The City Manager or the City Manager's designee 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.
- (d) 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.
- (e) 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.

15.14.160. Judicial Review

- (a) 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.
- (b) If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

15.14.170. Appeals

Any person subject to a Notice of Violation, Administrative Compliance Order, or Cease and Desist Order aggrieved by the issuance of an order may appeal from the issuance thereof to a hearing officer in accordance with the appeal procedures set forth in Chapter 1.12 of this Code except that any such appeal shall be filed within fifteen (15) days of the date of service of the notice of violation, cease and desist order or administrative compliance order by the Authorized Inspector upon the appealing party. To the extent that any provision of this section conflicts with the provisions of Chapter 1.12, the provisions contained in Chapter 1.12 shall control.

15.14.180. 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.

SECTION 2. If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this resolution, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

SECTION 3. The City Clerk shall certify the adoption of this resolution and shall cause the same to be posted or published as required by law.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Lake Forest, California held the ____ day of _____, 2010.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2010.

Mayor, City of Lake Forest

Attest:

City Clerk, City of Lake Forest