

ORDINANCE NO. 2016-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CHARTERED CITY OF VISTA, CALIFORNIA, AMENDING CHAPTER 13.18 OF THE VISTA MUNICIPAL CODE REGARDING THE STORMWATER MANAGEMENT AND DISCHARGE CONTROL PROGRAM

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

1. Findings. The City Council hereby finds and declares that:

A. The Regional Water Quality Control Board for the San Diego region (RWQCB) has approved Order No. R9-2013-0001 and later amended as R9-2015-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0109266 (Permit).

B. The Permit requires certain changes be made to the Stormwater Management and Discharge Control Ordinance (Chapter 13.18 of the Vista Municipal Code).

C. The purpose of this Ordinance is to update the Stormwater Management and Discharge Control Ordinance to comply with the Permit.

D. Adoption of this ordinance and the associated Stormwater Standards Manual are exempt from review under the California Environmental Quality Act pursuant to section 21080.5 of the Public Resources Code and 14 CCR sections 15060(3)(1), 15060(c)(3), 15251(g), 15307 and 15308.

2. Code Amendment.

Section 13.18.045 (Watercourse Protection) of Chapter 13.18 (Stormwater Management and Discharge Control Program) is hereby amended to read as follows:

“Chapter 13.18

Stormwater Management and Discharge Control Program

Sections:

13.18.010	Title
13.18.020	Purpose
13.18.030	Definitions
13.18.040	General Provisions
13.18.045	Watercourse Protection
13.18.050	Discharge Prohibitions
13.18.060	Exemptions to Discharge Prohibitions
13.18.070	BMP Requirements for All Dischargers
13.18.080	BMP Requirements for Land Disturbance Activity
13.18.090	BMP Requirements for Land Development and Redevelopment Projects
13.18.100	Maintenance of BMPs
13.18.110	Inspection and Sampling

13.18.120	Enforcement Authority
13.18.130	Other Acts or Omissions
13.18.140	Penalties
13.18.150	Severability

Section 13.18.010 Title

This Chapter shall be known as the “Stormwater Management and Discharge Control Ordinance.”

Section 13.18.020 Purpose

The purposes of this Chapter are as follows:

- A. To establish requirements for discharges into the Municipal Separate Storm Sewer System (MS4), receiving waters, and the environment.
- B. To protect, to the maximum extent practicable (MEP), life, property, receiving waters, aquatic life, and the environment from loss, injury, degradation, or damage by discharges from within the City’s jurisdiction.
- C. To protect the MS4 from damage.
- D. To meet the requirements of state and federal law and the City of Vista’s (City’s) MS4 Permit.

Section 13.18.030 Definitions

When used in this Chapter and reference documents (including the Stormwater Standards Manual), the following definitions shall have the meanings given by this Section, whether or not these words or phrases are capitalized:

“**Advanced Treatment**” means using mechanical or chemical means to flocculate and remove suspended sediment from runoff from construction sites prior to discharge.

“**Authorized Enforcement Staff**” means any City employee or contractor hired by the City who is assigned to duties involving permits and other City approvals, inspections, or enforcement related to this Chapter.

“**Authorized Enforcement Official**” means the City Manager or his/her designee who is responsible for enforcing the provisions of this Chapter.

“**Best Management Practices**” or “**BMPs**” are the schedules of activities, pollution treatment practices or devices, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices or devices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or the “**MS4**”. Best Management Practices also include, but are not limited to, treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. Best Management Practices may include any type of pollution prevention and pollution control measure that can help to achieve compliance with this Chapter.

“**Channel**” means natural or improved watercourse with a definite bed and banks that conveys continuously or intermittently flowing water.

“**City**” means the City of Vista.

“Contamination” as defined in the Porter-Cologne Water Quality Control Act, is “an impairment of the quality of waters of the State by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. Contamination includes any equivalent effect resulting from the disposal of waste whether or not waters of the State are affected.”

“County” means the County of San Diego.

“Developer” is a person who seeks or receives permits for or who undertakes land development activities.

“Development Project Proponent” refers to Developer.

“Direct Discharge” means stormwater or non-stormwater that enters receiving waters from a facility or activity, without mixing with any stormwater or non-stormwater from another facility or activity prior to entering such receiving waters.

“Discharge” when used as a verb, means to allow pollutants to directly or indirectly enter stormwater, or to allow stormwater or non-stormwater to directly or indirectly enter the “MS4” or receiving waters, from an activity or operations, which one owns or operates. When used as a noun, discharge means the pollutants, stormwater and/or non-stormwater that is discharged.

“Discharger” is any person or entity engaged in activities or operations or owning facilities, which will or may result in pollutants entering stormwater, the “MS4”, or receiving waters; and the owners of real property on which such activities, operations or facilities are located; provided, however, that a local government or public authority is not a discharger as to activities conducted by others in public rights-of-way.

“Erosion” refers to any process in which land is diminished or worn away due to wind, water, or glacial ice. Often the eroded debris (silt or sediment) becomes a pollutant via storm water runoff. Erosion occurs naturally but can be intensified by land-clearing activities such as farming, development, road building, and timber harvesting.

“Groundwater” means subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated.

“Illegal Connection” means a pipe, facility, or other device connected to the “MS4” or receiving waters, which has not been authorized by the City; or a permitted/authorized pipe, facility, or other device, which conveys illegal discharges.

“Illegal Discharge” is any discharge into the MS4 or receiving waters that is prohibited by this Chapter. This includes, but is not limited to, discharges of non-stormwater that are not exempt discharges listed in Section 13.18.060, discharges of irrigation runoff to the “MS4”, any discharge from an illegal connection, and any discharge that contains additional pollutants due to the absence of a required BMP or the failure of a BMP. Discharges that require a City permit or an RWQCB permit that has not been issued or has not been acknowledged by the discharger to be applicable are illegal discharges. Discharges regulated under an applicable NPDES Permit are illegal discharges for purposes of this Chapter, unless compliance with all applicable permit and SWPPP conditions are maintained.

“Impaired Water Body” is a water body that is listed by the “RWQCB” and “SWRCB” as impaired by a particular pollutant or pollutants, pursuant to

Section 303(d) of the Federal Clean Water Act. "303(d)-Listed Water Body" has the same meaning.

"Impervious Cover or Impervious Surface" refers to constructed or modified surfaces that cannot effectively infiltrate rainfall. The term includes, but is not limited to, building rooftops, pavement, sidewalks, and driveways.

"Impervious Surface Area" means the ground area covered or sheltered by an impervious surface, measured in plan view (i.e., as if from directly above). For example, the impervious surface area for a pitched roof is equal to the ground area it shelters, rather than the surface area of the roof itself.

"Industrial Stormwater Permit" is the State General Industrial Stormwater Permit.

"Land Development Activity" is any activity or proposed activity that requires any of the permits or approvals listed in Section 13.18.040.C of this Chapter.

"Land Disturbance Activity" is any activity that moves soils or substantially alters the pre-existing vegetated or man-made cover of any land. This includes, but is not limited to, grading, digging, cutting, scraping, stockpiling or excavating of soil; placement of fill materials; paving, pavement removal, exterior construction; substantial removal of vegetation where soils are disturbed, including, but not limited to, removal by clearing or grubbing; or any activity which bares soil or rock or involves streambed alterations or the diversion or piping of any watercourse. Land disturbance activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities (i.e., land disturbances) required to protect public health and safety.

"Land Owner" is the holder of legal title to the land, and other persons or entities who exercise control over a land development project pursuant to rights granted in a purchase agreement, joint venture agreement, development agreement, or long term lease.

"Maintenance of a BMP" refers to the regular action taken to maintain the as-designed performance of a BMP, and includes, but is not limited to, repairs to the BMP as necessary, and replacement of the BMP by an equally effective or more effective BMP at the end of its useful life.

"Maximum Extent Practicable" "MEP" is an acceptability standard for Best Management Practices (BMPs). When BMPs are required to meet this standard, the BMPs must be the most effective set of BMPs that are still practicable. A BMP is effective if it prevents, reduces or removes the pollutants that would otherwise be present in runoff due to human activity. A BMP is practicable if: it complies with other regulations as well as stormwater regulations; is compatible with the area's land use, character, facilities, and activities; is technically feasible (considering area soil, geography, water resources, and other resources available); is economically feasible; and provides benefits that are reasonable in relation to costs.

"MS4 Permit" refers to RWQCB Order No. R9-2013-0001, NPDES Permit No. CAS0109266, as may be amended.

"Municipal Separate Storm Sewer System" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a state, city, town, borough, county,

parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States; (ii) Designated or used for collecting or conveying storm water; (iii) Which is not a combined sewer; (iv) Which is not part of the Publicly Owned Treatment Works "POTW" as defined at 40 CFR 122.26.

"Non-Storm Water Discharge" is any discharge to the Storm Water Conveyance System or "Receiving Waters" that is not composed entirely of stormwater.

"NPDES Permit" is a National Pollutant Discharge Elimination System permit issued by the U.S. Environmental Protection Agency, the "SWRCB", or the "RWQCB".

"Person" means any individual, corporation, partnership, organization, enterprise, or similar entity whether for profit or nonprofit.

"Pollutant" means any agent that may cause or contribute to the degradation of water quality such that a condition of pollution or contamination is created or aggravated.

"Pollution" as defined in the Porter-Cologne Water Quality Control Act, is "the alteration of the quality of the waters of the State by waste, to a degree that unreasonably affects either of the following: 1) The waters for beneficial uses; or 2) Facilities that serve these beneficial uses." Pollution may include contamination.

"Premises" means any building, lot parcel, land or portion of land whether improved or unimproved.

"Priority Development Project" "PDP" refers to new development and redevelopment project categories as more fully set forth in Section E.3.b of the MS4 Permit and in the "Stormwater Standards Manual."

"Public Nuisance" has the same meaning as in Vista Municipal Code Section 8.36.030.

"Receiving Waters" refers to all waters that are "waters of the state" within the scope of the State Water Code, including, but not limited to, natural streams, creeks, rivers, reservoirs, lakes, ponds, water in vernal pools, lagoons, estuaries, bays, the Pacific Ocean, and ground water.

"Redevelopment" is the creation, addition, and or replacement of impervious surface on an already developed site. Examples include the expansion of a building footprint, road-widening, the addition to or replacement of a structure, and creation or addition of impervious surfaces. Replacement of impervious surfaces includes any activity that is not part of a routine maintenance activity where impervious material(s) are removed, exposing underlying soil during construction. Redevelopment does not include trenching and resurfacing associated with utility work; resurfacing and reconfiguring surface parking lots and existing roadways, new sidewalk construction, pedestrian ramps, or bike lane on existing roads; or routine replacement of damaged pavement, such as pothole repair.

"Runoff" means all flows in an MS4, including stormwater (wet weather flows) and non-stormwater (dry weather flows).

“RWQCB” means the California Regional Water Quality Control Board for the San Diego Region.

“State” means the State of California.

“State General Construction Stormwater Permit” refers to “NPDES” Permit No. CAS000002, as may be amended.

“State General Industrial Stormwater Permit” refers to NPDES Permit No. CAS000001, as may be amended.

“Stop Work Order” is an order issued which requires that specifically identified activity or all activity on a site be stopped.

“Storm Water Quality Management Plan” or “SWQMP” is a report that documents how a Priority Development Project complies with applicable BMP requirements for land development and redevelopment activities listed in the “Stormwater Standards Manual.”

“Stormwater” refers to the surface runoff and drainage associated with storm events.

“Stormwater Management” is the use of structural or non-structural BMPs that are designed to reduce urban runoff pollutant loads, discharge volumes, and/or peak discharge flow rates or velocities. When applied to the City, the County or another municipality, stormwater management also includes planning and programmatic measures.

“Stormwater Pollution Prevention Plan” “SWPPP” is a document that meets the requirements for an “SWPPP” set out in the State General Construction Stormwater Permit or State General Industrial Stormwater Permit.

“Stormwater Standards Manual” refers to the manual described in Section 13.18.040.B.

“Structural BMP” A subset of BMPs that detains, retains, filters, removes, or prevents the release of pollutants to surface waters from development projects in perpetuity, after construction of a project is completed. This subset of BMPs requires regular maintenance to function as designed.

“Structural Post-Construction BMP” is a structural BMP (other than a temporary construction-related BMP) put in place in connection with a land development activity or redevelopment project to prevent or reduce contamination in stormwater or receiving waters, or to prevent or reduce erosion downstream from the project.

“SWRCB” means the State Water Resources Control Board.

“Watercourse” is a permanent or intermittent stream, creek, or other body of water, either natural or improved, which gathers or carries surface water.

“Water Pollution Control Plan” (WPCP) is a document that describes the BMPs to be implemented by the Land Owner or Discharger to eliminate or reduce to the MEP discharges of pollutants to the MS4. A WPCP must include all measures necessary to comply with this Chapter and the Stormwater Standards Manual to the satisfaction of Authorized Enforcement Staff. A WPCP is typically shorter than an SWPPP. An SWPPP may be accepted in lieu of a WPCP at the discretion of Authorized Enforcement Staff.

“Water Quality Standards” are defined as the beneficial uses (e.g., swimming, fishing, municipal drinking water supply, etc.) of water and the water quality objectives adopted by the State or the United States Environmental Protection Agency to protect those uses.

“Waters of the United States” are waters subject to the regulatory jurisdiction of the United States under the Federal Clean Water Act and applicable case law. (In general, this includes navigable waters, waters tributary to navigable waters, and adjacent wetlands.)

Section 13.18.040 General Provisions

A. Construction and Application. Interpretation of the meanings of parts of this Chapter shall assure consistency with the purpose and intent of this Chapter. This includes, but is not limited to, consistency with the requirements of the MS4 Permit. This Chapter is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this Chapter should be considered minimum requirements, and where any provision of this Chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

B. Stormwater Standards Manual. The Authorized Enforcement Official may establish a written description of the runoff management measures and programs, including minimum BMPs that the City will implement, or require to be implemented, to ensure compliance with this Chapter. These documents shall be known collectively as the Stormwater Standards Manual. Amendments to the Stormwater Standards Manual shall be approved by the Authorized Enforcement Official. The Stormwater Standards Manual shall have the same force and effect as the provisions of this Chapter, and a violation of the Stormwater Standards Manual shall constitute a violation of this Chapter and be subject to all remedies and penalties as exist for a violations of the provisions of this Chapter. A copy of the Stormwater Standards Manual, and all amendments thereto, shall be posted to the City’s website.

Section 13.18.045 Watercourse Protection

A. Every person owning or occupying property through which a natural watercourse of a stormwater conveyance system passes shall:

1. Keep and maintain that part of the watercourse within the property free of trash, debris and other materials that would pollute, contaminate, retard, or divert the flow of water through the watercourse or the MS4.

2. Maintain existing structures within or adjacent to such a watercourse so that those structures will not become a hazard to the use, function, or physical integrity of the watercourse or the MS4.

3. Not remove healthy bank vegetation beyond that necessary for maintenance, nor remove vegetation in such a manner as to increase the vulnerability of the watercourse to erosion.

4. Not deposit in, plant in, or remove any material from a watercourse, including its banks, except as required for necessary maintenance.

5. Not construct, alter, enlarge, connect to, change, or remove any structure in a watercourse.

6. Not carry out developments within 50 feet of the centerline of any watercourse or 20 feet from the top of a bank of a watercourse, whichever is the greater distance from the centerline of the watercourse.

B. The above requirements do not supersede any requirements set forth by the California Department of Fish and Game, the SWRCB, the RWQCB, or the United States Army Corps of Engineers regulating waters of the United States and/or storm water discharges.

Section 13.18.050 Discharge Prohibitions

A. **Illegal Discharges.** Illegal discharges are prohibited except where exempted in Section 13.18.060 of this Chapter. As defined in Section 13.18.030 of this Chapter, illegal discharges include, but are not limited to, discharges of non-stormwater that are not exempt, discharges listed in Section 13.18.060, discharges of irrigation runoff to the MS4, any discharge from an illegal connection, and any discharge that contains additional pollutants due to the absence of a required BMP or the failure of a BMP. Discharges that require a City permit or an RWQCB permit that has not been issued or has not been acknowledged by the discharger to be applicable are illegal discharges. Discharges regulated under an applicable NPDES Permit are illegal discharges for purposes of this Chapter unless compliance with all applicable permit and SWPPP conditions are maintained.

B. **Illegal Connection.** The establishment of illegal connections is prohibited. As defined in Section 13.18.030 of this Chapter, illegal connection means a pipe, facility, or other device connected to the MS4 or receiving waters, which has not been authorized by the City; or a permitted/authorized pipe, facility, or other device, which conveys illegal discharges. The use of illegal connections is prohibited, even if the connection was established pursuant to a valid City or County Permit and was legal at the time it was constructed.

C. **Prevention of Illegal Discharges.** Throwing, depositing, leaving, abandoning, maintaining or keeping materials or wastes on public or private lands in a manner and place where they may result in an illegal discharge is prohibited.

D. **Violations of the MS4 Permit.** It is unlawful for any person to, jointly or individually, cause by action or omission a condition, occurrence, event, or situation which causes or threatens to cause any discharge into or from the MS4 that results in or contributes to a violation of the MS4 Permit.

Section 13.18.060 Exemptions to Discharge Prohibitions

A. **Permitted Discharges.** Any discharge to the MS4 that is regulated under an NPDES permit issued to the discharger and administered by the State of California pursuant to Division 7 of the California Water Code is allowed, provided that the discharger is in compliance with all requirements of the NPDES permit and other applicable laws and regulations.

B. **Groundwater Discharges Typically Requiring Permits.** Non-storm water discharges to the MS4 from the following categories are allowed if: (i) the discharger obtains coverage under NPDES Permit No. CAG919002 (RWQCB Order No. R9-2008-0002, or subsequent order) for discharges to surface waters

other than San Diego Bay, and the discharger is in compliance with all requirements of the applicable NPDES permit and all other applicable laws and regulations; or (ii) the RWQCB determines in writing that coverage under NPDES Permit No. CAG919002 (or subsequent permit) is not required. Otherwise, non-storm water discharges from the following categories are illicit discharges:

1. Discharges from uncontaminated pumped groundwater.
2. Discharges from foundation drains when the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year.
3. Discharges from water from crawl space pumps.
4. Discharges from water from footing drains when the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year.

C. Discharges from Water Lines. Non-storm water discharges to the MS4 from water line flushing and water main breaks are allowed if the discharges have coverage under NPDES Permit No. CAG679001 (Regional Water Quality Control Board Order No. R9-2010-0003, or subsequent order), and the discharger is in compliance with all requirements of that NPDES permit and other applicable laws and regulations. This category includes water line flushing and water main break discharges from water purveyors issued a water supply permit by the California Department of Public Health or federal military installations. Discharges from recycled or reclaimed water lines to the MS4 are allowed if the discharges have coverage under an NPDES permit, and the discharger is in compliance with the applicable NPDES permit and other applicable laws and regulations. Otherwise, discharges from water lines are illicit discharges.

D. Allowable Discharges. Non-storm water discharges to the MS4 from the following categories are allowed, unless the enforcement official or the Regional Water Quality Control Board identifies the discharge as a source of pollutants to receiving waters, in which case the discharge is considered an illicit discharge:

1. Discharges from diverted stream flows.
2. Discharges from rising groundwater.
3. Discharges from uncontaminated groundwater infiltration to the MS4.
4. Discharges from springs.
5. Discharges from flows from riparian habitats and wetlands.
6. Discharges from potable water sources, except as set forth in Vista Municipal Code Section 13.18.060.C.
7. Discharges from foundation drains when the system is designed to be located above the groundwater table at all times of the year, and the system is only expected to produce non-storm water discharges under unusual circumstances.
8. Discharges from footing drains when the system is designed to be located above the groundwater table at all times of the year, and the system is only expected to produce non-storm water discharges under unusual circumstances.

E. Conditionally Allowed Discharges. Non-storm water discharges from the following categories are allowed if they are addressed as follows.

Otherwise, non-storm water discharges from the following categories are illicit discharges:

1. Air Conditioning Condensation. Air conditioning condensation discharges shall comply with applicable BMPs identified in the Stormwater Standards Manual.

2. Individual Residential Vehicle Washing. Wash water from individual residential vehicle washing must be directed to landscaped areas or other pervious surfaces, where feasible. Where discharges cannot be feasibly prevented, BMPs must be implemented in accordance with the Stormwater Standards Manual. Non-commercial car washes, such as fundraisers and other similar activities, are not considered individual residential vehicle washing. Discharges from such activities are therefore considered illegal discharges.

3. Water from swimming pools.
a. Chlorinated Swimming Pool Water. Chlorine, algaecide, filter backwash, and other pollutants shall be eliminated prior to discharging swimming pool water to the MS4.

b. Saline Swimming Pool Water. Saline swimming pool water must be directed to the sanitary sewer, landscaped areas, or other pervious surfaces that can accommodate the volume of water, unless the saline swimming pool water can be discharged directly to a naturally saline water body.

F. Firefighting Activities. Non-storm water discharges to the MS4 from firefighting activities are allowed if they are addressed as follows:

1. Non-Emergency Firefighting Discharges. Non-emergency firefighting discharges, including building fire suppression system maintenance discharges (e.g. sprinkler line flushing), controlled or practice blazes, training, and maintenance activities shall be addressed by BMPs to prevent the discharge of pollutants to the MS4.

2. Emergency Firefighting Discharges. BMPs are encouraged to prevent pollutants from entering the MS4. During emergencies, priority of efforts should be directed toward life, property, and the environment (in descending order). BMPs shall not interfere with emergency response operations or impact public health and safety.

G. Exemptions not Absolute. Notwithstanding the categories of non-storm water discharges conditionally allowed by Vista Municipal Code Sections 13.18.060.A through F, if the RWQCB or the Authorized Enforcement Official determines that any of these categories of otherwise conditionally allowed non-storm water discharges are a source of pollutants to receiving waters, are a danger to public health or safety, or are causing a public nuisance, such discharges shall be prohibited from entering the MS4.

Section 13.18.070 BMP Requirements for All Dischargers

A. Best Management Practices. Any person engaged in activities which may result in discharges to the MS4 shall, to the MEP, undertake all measures to reduce the risk of non-storm water discharges and pollutant discharges. The following requirements shall apply:

1. Every person and/or entity undertaking any activity or use of a premises that may cause or contribute to storm water pollution or contamination, illicit discharges, or non-storm water discharges to the MS4 shall

comply with BMP guidelines or pollution control requirements, as may be established by the Authorized Enforcement Official. Such BMPs include the minimum BMPs set forth in the Stormwater Standards Manual.

2. An Authorized Enforcement Official may require any business or operation that is engaged in activities which may result in pollutant discharges to the MS4 to develop and implement a Water Pollution Control Plan, which must include an employee training program and the applicable minimum BMPs from the Stormwater Standards Manual.

3. Each discharger that is subject to any NPDES Permit shall comply with all requirements of all such permits. The discharger must also make reports submitted to the RWQCB or other permitting agency, including monitoring data, available to the City upon request.

4. Parties undertaking land disturbance activities shall comply with all applicable requirements of Section 13.18.080.

5. Parties undertaking land development and redevelopment activities shall comply with all applicable requirements of Section 13.18.090.

B. Guidance Documents. Any Authorized Enforcement Official under the supervision of the City Engineer may prepare, disseminate and maintain guidance documents addressing the use of BMPs for specific activities or facilities, illegal connections, and illegal discharges. These guidance documents may set out additional compliance alternatives that, in specified circumstances, can provide the same environmental protection that is afforded by the BMPs required by this Chapter or specified in the Stormwater Standards Manual.

C. Significant Sources of Pollutants. Where Authorized Enforcement Staff identify a discharge that is in violation, or is likely to result in a violation, of Vista Municipal Code Section 13.18.050.D or 13.18.060.G, Authorized Enforcement Staff may order the discharger to install, implement and maintain additional BMPs. Any such order shall specify a reasonable date by which those BMPs must be put in place. A failure to install, implement, or maintain additional BMPs as required by any such order is a violation of this Chapter.

D. Collection and Use of Stormwater. An Authorized Enforcement Official may modify any requirement imposed by this Chapter to allow the on-site collection and use of stormwater, or the collection of stormwater for delivery to and use at City-designated sites, provided the modified requirements are enforceable and provide equivalent environmental protection.

Section 13.18.080 BMP Requirements for Land Disturbance Activity

A. Permit Issuance. No discharger and/or development project proponent shall receive any City grading, clearing, building or other land development permit without first meeting the requirements of this Chapter, Chapter 17.56, and the Stormwater Standards Manual.

B. Owners and Operators both Responsible and Liable. Persons or entities performing land disturbance activities (including, but not limited to, construction activities) in the City, and the owners of land on which land disturbance activities are performed, are dischargers for purposes of this Chapter, provided, however, that a local government or public authority is not a discharger as to activities conducted by others in public rights-of-way.

C. Plan Submittal Requirements. Any Authorized Official under supervision of the City Engineer may prepare plan submittal requirements for permit applications, consistent with the Stormwater Standards Manual.

D. Agricultural Grading and Clearing. The BMP requirements imposed by this Section for land disturbance activities apply to agricultural grading and clearing, whether a City-issued grading and clearing permit is required for that activity. Tilling or cultivating land exclusively for the purpose of growing plants or animals is not considered to be grading or clearing, provided all disturbed material remains on the same site, the tilling or cultivating will not block or divert any natural drainage way, and the land to be tilled or cultivated has been in agricultural production within the preceding five years.

Section 13.18.090 BMP Requirements for Development and Redevelopment Projects

A. Application to Development and Redevelopment Projects. No land owner or development project proponent in the City shall receive any City grading, clearing, building or other land development permit required for land development activity or redevelopment activity unless the project meets or will meet the requirements of this Chapter and the applicable requirements defined in the City's Stormwater Standards Manual. For Priority Development Projects, the project's SWQMP must be approved prior to the issuance of such permits.

B. Owners and Developers Responsible and Liable. Developers, development project proponents, and land owners for land on which development activities are performed are dischargers for purposes of this Chapter, provided, however, that a local government or public authority is not a discharger as to activities conducted by others in public rights-of-way.

C. Post-Construction Best Management Practices Required. Land development and redevelopment activities with the potential to add pollutants to stormwater or to affect the flow rate or velocity of stormwater runoff after construction is completed, shall be designed to include and shall implement post-construction BMPs to ensure that pollutants and runoff from the development will be reduced to the MEP, will not significantly degrade receiving water quality, and will not cause or contribute to an exceedance of Water Quality Standards in accordance with the requirements defined in the City's Stormwater Standards Manual.

D. Land Development Associated with Agricultural Operations. The requirements imposed by this Section for land development activities apply to such activities when they are associated with agricultural operations.

Section 13.18.100 Maintenance Requirements

A. Existing Development. Dischargers shall maintain the designed functionality of the storm drain system and BMPs they rely upon to achieve and maintain compliance with this Chapter.

B. Responsibility to Maintain. The owners and occupants of lands on which a storm drain system and BMPs have been installed to meet the requirements of this Chapter shall ensure the maintained functionality of those

structures, regardless if other persons or entities identified in 13.18.100.C fail to do so.

C. Maintenance Obligations Assumed by Contract or Other Agreement. Primary responsibility to maintain a BMP may be transferred through a contract or other agreement. If that contract provides that it will be submitted to the City pursuant to this Chapter as part of a development permit application, and if that contract is so submitted, the person or entity accepting a maintenance obligation in such a contract or agreement will also be legally obliged to maintain that BMP pursuant to this Chapter.

D. Obligation to Maintain BMPs not Avoided by Contracts or Other Agreements. For purposes of City enforcement, no contract or other agreement imposing an obligation to maintain a BMP can relieve a person or entity of any obligation to maintain a BMP imposed by this Chapter.

E. Disclosure of Maintenance Obligations. Any developer who transfers ownership of land on which a BMP is located or will be located, or who otherwise transfers ownership of a BMP or responsibility for the maintenance of a BMP to another person or entity, shall provide clear written notice of the maintenance obligations associated with that BMP to the new or additional responsible party prior to that transfer.

F. Maintenance Plans for Land Development Activities. The proponents of any land development activity or redevelopment activity that requires installation of structural post-construction BMPs shall provide to the City for review and approval prior to issuance of permits for the project a plan for maintenance of all structural post-construction BMPs associated with the project. The plan shall specify the persons or entities responsible for maintenance activity, the persons or entities responsible for funding, schedules and procedures for inspection and maintenance of the BMPs, worker training requirements, and any other activities necessary to ensure BMP maintenance. The plan shall provide for servicing of all structural post-construction BMPs at least annually, and for the retention of inspection and maintenance records for at least three years.

G. Access Requirements. Storm drain system structures shall be provided adequate access for long-term inspection and maintenance purposes.

H. Assurance of Maintenance for Land Development Projects. The proponents of any land development activity or redevelopment activity that requires a City permit shall provide to the City, prior to issuance of permits for the project, proof of a mechanism acceptable to the City which will ensure ongoing long-term maintenance of all structural post-construction BMPs associated with the proposed project. The proponents shall be responsible for maintenance of BMPs unless, and until, an alternative mechanism for ensuring maintenance is accepted by the City and becomes effective.

Section 13.18.110 Inspection and Sampling

A. Regulatory Inspections and Certification Programs. The Authorized Enforcement Official may establish inspection or certification programs to evaluate and enforce compliance with the requirements of this Chapter. Authorized enforcement officials and authorized enforcement staff may inspect facilities, activities, and properties subject to this Chapter at reasonable

times and in a reasonable manner to carry out the purposes of this Chapter. If entry for a regulatory inspection is refused by the facility owner or operator, or by the occupant of a residence, an inspection warrant shall be obtained prior to inspection.

B. Inspections of New Construction. When any new storm drain system or BMP is installed on private property as part of a project that requires a City permit, in order to comply with this Chapter, the property owner shall grant to the City access permission to enter the property at reasonable times and in a reasonable manner to ensure compliance with this Chapter. This includes the right to enter the property without prior notice for routine inspections, to enter as needed for additional inspections during construction, to enter for any needed follow-up inspections, and to enter when necessary for abatement of a nuisance or correction of a violation of this Chapter.

C. Scope of Inspections. Inspections may include all actions necessary to determine whether any illegal discharges or illegal connections exist, whether the BMPs installed and implemented are adequate to comply with this Chapter, whether those BMPs are being properly maintained, and whether the facility or activity complies with the other requirements of this Chapter.

Section 13.18.120 Violations of Chapter

A. This Chapter is violated any time a person violates any provision of this Chapter or fails to act, as required by this Chapter. For purposes of assessing and determining administrative penalties, civil penalties, or criminal penalties, a person shall be responsible or guilty of a separate offense for each and every day on which such a violation occurs and continues.

B. Failure by a person to take the actions required by an order or directive of an authorized enforcement official or authorized enforcement staff in the manner and by the time required by such order or directive shall constitute a separate violation of this Chapter apart from any other violations that may have occurred. Each day (or part thereof) in excess of the allowed period for correction shall constitute a separate violation of this Chapter.

C. A violation of this Chapter occurs any time a person makes a misrepresentation or omission of fact in a voluntary disclosure, a submission, a report, or a filing provided to the City to avoid, delay, or curtail a possible enforcement action or remedial action by the City.

D. Causing, permitting, aiding, abetting or concealing a violation of any provision of this Chapter shall constitute a violation of such provision.

Section 13.18.130 Administrative Enforcement Powers

A. In addition to the other enforcement powers and remedies established by this Chapter, any authorized enforcement official has the authority to utilize the following administrative remedies or to issue the following orders to any person responsible, in whole or part, for any violation of this Chapter:

B. Notice of Violation. When an authorized enforcement official finds that a discharge has taken place or is likely to take place in violation of this Chapter, the official may issue a notice of violation and direct that those persons

not complying shall take the following actions within the time periods specified by the authorized enforcement officials:

1. Cease and desist all activities that may cause or contribute to any discharge or condition violating any provision of this Chapter.
2. Comply with a time schedule for compliance.
3. Take appropriate remedial or preventative action to prevent the violation from recurring.
4. Submit and implement a plan approved by the enforcement official for the correction and prevention of the discharge or condition violating any provision of this Chapter.
5. Clean up any release of pollutants causing or resulting from the violation of any provision of this Chapter.
6. Mitigate any circumstances that may cause or contribute to any discharge or condition violating any provision of this Chapter.
7. Adopt and implement best management practices and/or a stormwater pollution prevention plan approved by the enforcement official.
8. Require a business or organization to establish the elements of an employee training program as may be necessary to fulfill the purposes of this Chapter where such a program has been required as part of a stormwater prevention plan or represents a BMP.
9. Assess and charge a person, business, or organization responsible for a violation the cost of any cleaning or repair of the MS4 system which resulted from an obstruction, damage or impairment caused by the violation.
10. Assess and charge a person, business, or organization responsible for a violation any and all costs which the City incurred, including any direct and indirect costs resulting from the violation.
11. Issue stop work notices or orders for any work under a City permit which is occurring in a manner to cause or threaten to cause a discharge in violation of this Chapter.
12. Suspend or revoke any permit, license, certificate, or approval issued by the City for any development, operations, use, or activity if the activities undertaken pursuant to that permit, license, certificate or approval are occurring in a manner to cause or threaten to cause a discharge in violation of this Chapter.

C. When, in the opinion of the enforcement official, any discharge from any source to the stormwater conveyance system causes or threatens to cause a condition that presents an imminent hazard to the public health, safety, or welfare, or the environment, or a violation of a NPDES permit, the Authorized Enforcement Official may issue a notice requiring the owner or occupant of the premises where the discharge is occurring to immediately abate the discharge. In any case where the discharge is not immediately abated, or for any reason the owner or occupant of the subject premises does not receive the notice, or the Authorized Enforcement Official determines that time constraints are such that abatement must occur without providing the notice, the Authorized Enforcement Official may summarily abate the condition in accordance with the provisions of Chapter 8.36 of the Vista Municipal Code or other applicable law.

D. If any violation of this Chapter constitutes a seasonal and recurrent nuisance, the Authorized Enforcement Official shall so declare in the

notice and order issued pursuant to subsection B, above. Thereafter, the owner or occupant of the subject premises shall abate such seasonal and recurrent nuisance every year without the necessity of any further notice and order. If at any time the nuisance is not abated as required herein, the enforcement official may summarily abate the condition in accordance with the provisions of Chapter 8.36 of the Vista Municipal Code or other applicable law.

E. The owner of any premises in the city from which is made a discharge in violation of this Chapter, and any person making or causing to be made the discharge, if different from the owner, shall be jointly and severally liable for the costs incurred by the City for any abatement, clean-up or restoration, including any related inspection and testing costs, arising from the discharge, and the cost therefor shall be invoiced to the owner of the premises. If the invoice is not paid within sixty (60) days, the Authorized Enforcement Official may commence proceedings for recovery of in accordance with the provisions of Chapter 8.36 of the Vista Municipal Code or other applicable law.

F. Administrative Penalties. In addition to any other remedy or penalty set forth in this Chapter or this Code, administrative penalties may be imposed pursuant to applicable provisions of Chapter 1.13 of the Vista Municipal Code against any responsible party, whether owner, lessee, sublessor, sublessee or occupant of any premises in violation of any of the provisions of this Chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Chapter 1.13 of the Vista Municipal Code.

Section 13.18.140 Civil Actions

A. In addition to any other remedies provided in this Chapter, any violation of this Section may be enforced by civil action brought by the City. In any such action, the City may seek, without limitation, and the court shall grant, as appropriate, any or all of the following remedies:

1. Injunctive relief.
2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection.
3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.
4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.
5. Payment or reimbursement of any governmental fines or penalties imposed on the City as a result of the violation.
6. Civil penalties imposed either on a daily basis or a per-gallon basis, but not both, for any discharge of nonstormwater to the stormwater conveyance system violating any provision of this Chapter. Civil penalties imposed on a daily basis shall not exceed five thousand dollars for each day or portion of a day that the discharge occurs, and civil penalties imposed on a per-gallon basis shall not exceed ten dollars for each gallon of the discharge. The amount of civil penalties imposed shall be determined by taking into consideration some or all of the following factors: the nature, circumstances,

extent, and gravity of the discharge, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, the economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

Section 13.18.150 Criminal Penalties

A. Any person who knowingly or intentionally violates any provision of this Chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed ten thousand dollars for each day such a violation exists, or both. There is no requirement that administrative enforcement authorities be used before such actions are filed. A citation and notice to appear as prescribed by Chapter 1.12 may be issued.

B. Notwithstanding paragraph A, any such violation constituting a misdemeanor under this Chapter may, in the discretion of the City Attorney or City Prosecutor, be charged and prosecuted as an infraction.

C. The immunities prescribed in Section 836.5 of the California Penal Code shall be applicable to public officers or employees acting in the course and scope of employment pursuant to this Chapter.

Section 13.18.160 Violations Deemed a Public Nuisance

A. Any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare and is declared and deemed to be a public nuisance subject to abatement.

B. A nuisance resulting from violation of any provisions of this Chapter may be summarily abated by any authorized enforcement official, and/or through a civil action to abate, enjoin or otherwise compel the cessation of such nuisance. Such actions may be undertaken by or on behalf of the City pursuant to Chapter 8.36 of the Vista Municipal Code or any other provision of law.

C. The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid.

Section 13.18.170 Remedies Not Exclusive

Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

Section 13.18.180 Use of Penalties or Assessments

Any monetary penalties or assessments collected by the city pursuant to violations of this Chapter, shall be used for storm water pollution prevention and program management.

Section 13.18.190 Appeal

If a decision or action of the Authorized Enforcement Official is not subject to an appeal procedure under any other provision of this Chapter or Code, any person who is affected by the Authorized Enforcement Official's decision or action may appeal the decision or action to the City Manager or designee within ten days following the effective date of the decision or action, by filing a written appeal with the City Manager or designee. Upon receipt of such appeal, the City Manager may request a report and recommendation from the authorized enforcement official and shall set the matter for an informal hearing at the earliest practical date. Not less than seven days prior to the date of hearing, the City Manager or designee shall provide written notice of the hearing to the person appealing the decision or action of the enforcement official. At the hearing, the appellant may be represented by any person of appellant's choice. The City Manager or designee shall hear any additional evidence presented by the appellant or the Authorized Enforcement Official, and may reject, affirm or modify the Authorized Enforcement Official's decision. The decision of the City Manager or designee shall be the City's final administrative determination of the matter.

Section 13.18.200 Severability

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this Chapter should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect."

- 3. Effective Date.** This ordinance shall be effective on the 31st day following the date of its adoption.

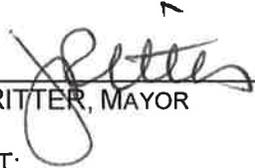
[Continued on page 19.]

4. Adoption. INTRODUCED AND ADOPTED at a meeting of the City Council held on August 23, 2016, by the following vote:

AYES: Mayor Ritter, Aguilera, Campbell, Rigby, Franklin

NOES: None

ABSENT: None

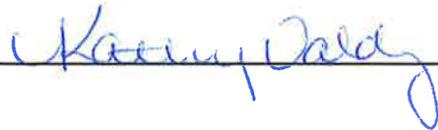


JUDY RITTER, MAYOR

APPROVED AS TO FORM:
DAROLD PIEPER, CITY ATTORNEY

ATTEST:
KATHY VALDEZ, CITY CLERK

By: _____

By: _____

APPROVED
Darold Pieper
20160815083602

CERTIFICATION

I, Kathy Valdez, City Clerk of the City of Vista, California, certify that I caused the foregoing Ordinance No. 2016-10 to be posted on August 24, 2016, at the following locations within the City of Vista: 1) the Reference Desk of the Vista Branch of the San Diego County Public Library, 700 Eucalyptus Avenue; 2) the Lobby Counter at the Gloria McClellan Adult Activity & Resource Center, 1400 Vale Terrace Drive; and 3) the City Clerk's Office, 200 Civic Center Drive.



Kathy Valdez, City Clerk