

ORDINANCE NO. 3213-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE REPEALING AND RE-ADOPTING CHAPTER 12.60 (STORMWATER MANAGEMENT) OF TITLE 12 (WATER AND SEWERS) OF THE SUNNYVALE MUNICIPAL CODE

WHEREAS, the City of Sunnyvale desires to amend Sunnyvale Municipal Code Chapter 12.60 (Stormwater Management) of Title 12 (Water and Sewers) for consistency with the Municipal Regional Stormwater Permit (Stormwater Permit) issued by the San Francisco Bay Regional Water Quality Control Board;

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

SECTION 1. CHAPTER 12.60 REPEALED AND RE-ADOPTED. Chapter 12.60 (Stormwater Management) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby repealed and re-adopted to read as shown in Exhibit “A” attached hereto and incorporated by reference.

SECTION 2. CEQA. The adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines because it is an action taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after adoption.

SECTION 4. PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on May 2, 2023, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on May 16, 2023, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk
Date of Attestation: _____

LARRY KLEIN
Mayor

(SEAL)

APPROVED AS TO FORM:

JOHN A. NAGEL
City Attorney

EXHIBIT A

SUNNYVALE MUNICIPAL CODE CHAPTER 12.60 STORMWATER MANAGEMENT

- 12.60.010. Purpose and intent.
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- 12.60.220. Numeric sizing criteria for treatment systems.
- 12.60.230. Low impact development (LID) requirements.
- 12.60.240. Hydromodification management (HM) requirements—Applicability.
- 12.60.250. Design standards concerning flooding.
- 12.60.260. Alternative certification of adherence to numeric sizing criteria for stormwater treatment systems.
- 12.60.270. Infiltration treatment measures.
- 12.60.280. Agreement to maintain best management practices.
- 12.60.290. Submission of revised stormwater management plan.
- 12.60.300. Best management practices and CASQA Stormwater Best Management Practice Handbook incorporated.
- 12.60.310. Minimum best management practices and source control measures for all dischargers.
- 12.60.320. Authority to inspect.
- 12.60.330. Requirement to remediate.
- 12.60.340. Failure to properly operate and maintain stormwater treatment and hydromodification management facilities.
- 12.60.350. Alternative compliance.
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- 12.60.370. Manner of notification of a violation.
- 12.60.380. Administrative process and civil penalties.
- 12.60.390. Administrative hearing and appeals process.
- 12.60.400. Emergency corrections.
- 12.60.410. Judicial civil penalties.
- 12.60.420. Remedies cumulative.

12.60.010. Purpose and intent.

The purpose of this chapter is to provide regulations and give legal effect to certain requirements of the National Pollutant Discharge Elimination System (NPDES) permit (the "Permit") issued to the city of Sunnyvale, among other municipal permittees, on July 1, 2022, and thereafter revised and reissued on cycles of approximately five years, regarding municipal stormwater and urban runoff requirements. This chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands lying within the city. This chapter shall be construed to assure consistency with the requirements of the Clean Water Act and Porter-Cologne Act and any applicable implementing regulations, as they exist at the time of enactment or as later amended.

12.60.020 Scope and limits of chapter.

This chapter shall apply to:

- (a) Ministerial as well as discretionary approvals of development located on applicable sites and regulated projects for new development or significant redevelopment projects, as those terms are defined in this chapter;
- (b) Dischargers at applicable sites which have been found to, or may be reasonably considered to, cause or contribute to pollution of stormwater runoff associated with commercial or industrial activity or illegal connections and other illicit discharges. Nothing in this chapter shall be interpreted to:
 - (1) Infringe any right or power guaranteed by the California Constitution, including any vested property right; or
 - (2) Require any action inconsistent with any applicable and lawfully adopted general plan, specific plan, vesting tentative map or building code that conforms to the laws of California and the requirements of this chapter.

12.60.030 Administration.

This chapter shall be administered jointly by the director of community development, the director of public works, and the director of environmental services. Any powers granted to or duties imposed upon these individuals to administer, implement and enforce the provisions of this chapter may be delegated to other city personnel.

12.60.040 Definitions.

For the purposes of this chapter the following words and phrases shall have the meanings given to them in this section. Words and phrases not defined in this chapter shall have the definitions set forth in the permit or by the regulations implementing the National Pollutant Discharge Elimination System, Clean Water Act Section 402, and Division 7 of the California Water Code, as they currently exist or may be amended.

(a) "A"

(1) "Applicable site" means any site that could reasonably be considered to cause or contribute to pollution of stormwater runoff. This definition includes, but is not limited to, pollutant sources associated with outdoor process and manufacturing areas, outdoor material storage areas, outdoor waste storage and disposal areas, outdoor vehicle and equipment storage and maintenance areas, outdoor parking areas and access roads, outdoor wash areas, outdoor drainage from indoor areas, rooftop equipment, contaminated and erodible surface areas, and other sources determined to have a reasonable potential to contribute to pollution of stormwater runoff.

(2) "Authorized enforcement official" means the director of public works, the director of community development, or the director of environmental services and their designees.

(b) "B"

(1) "Best management practices (BMP)" means a structural device, measure, facility, or activity that helps to achieve stormwater management control objectives at a regulated project or applicable site.

(A) "Maintenance of a best management practice or stormwater treatment system" means periodic action taken to maintain the as-designed performance of best management practice or stormwater treatment system, and includes, but is not limited to, repairs as necessary and replacement of the best management practice or stormwater treatment system by an equally effective or more effective best management practice or stormwater treatment system.

(B) "Source control best management practice" means any schedule of activities, prohibitions of practices, maintenance procedures, managerial practices or operational practices that aim to prevent stormwater pollution by reducing the potential for contamination at the source of pollution.

(C) "Treatment best management practice" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

(2) "Base course" means a layer of constructed material within a pavement section (typically aggregate base), located above the subbase course and/or subgrade course and below the surface layer, which supports the surface layer and distributes load.

(3) "Bio-retention area" means landscaping features adapted to treat stormwater runoff on a development site. Surface runoff is directed into shallow, landscaped depressions. These depressions are designed with soil mixtures and vegetation that incorporate many of the pollutant removal systems that operate in a natural ecosystem. If the subsurface soils will not allow for natural infiltration (e.g., heavy clay soil), the filtered runoff may be collected in a perforated underdrain in the area and returned to the storm drain collection system.

(4) "BMP Guidance Manual" as revised means the manual approved by the city of Sunnyvale directors of the public works, community development, and environmental services departments, as amended from time to time, that sets forth guidance, design standards and best management practices for stormwater treatment measures, which shall be utilized by developers and property owners to comply with this chapter. A copy of the BMP Guidance Manual may be obtained from the city's planning division.

(c) "C"

(1) "CASQA" means California Stormwater Quality Association.

(2) "CASQA Stormwater Best Management Practice Handbook" means the four-volume set of handbooks for New and Redevelopment, Construction, Industrial and Commercial, and Municipal operations produced by CASQA and available at www.casqa.org.

(3) "Construction" means constructing, clearing, grading, or excavation that results in soil disturbance. Construction also includes structure demolition. Construction does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of a facility, nor does it include emergency construction activities required to immediately protect public health and safety, interior remodeling with no outside exposure of construction material or construction waste to stormwater or mechanical permit work.

(d) "D"

(1) "Detached single-family home project" means the building of one single new house or addition and/or replacement of impervious surface to one single existing house, which is not part of a larger plan of development.

(2) "Detention" means the temporary storage of storm runoff in a manner that controls peak discharge rates and provides some gravity settling of pollutants.

(3) "Development" means any construction, rehabilitation, redevelopment or reconstruction of any public or private project, or mass grading for anticipated construction. Development does not include routine maintenance to maintain original line and grade, hydraulic capacity or original purpose of a facility, nor does it include emergency construction activities required to protect immediately public health and safety.

(4) "Director" means either the director of public works, community development, or environmental services department.

(5) "Discharge" when used as a verb, means to allow pollutants to directly or indirectly enter stormwater, or to allow stormwater or non-stormwater to directly or indirectly enter the storm drain system from an activity or operation. When used as a noun, "discharge" means the pollutants, stormwater or non-stormwater that is discharged.

(6) "Discharger" means any person or entity engaged in activities or operations or owning facilities, which will or may result in pollutants entering stormwater or the storm drain system. Discharger also means the owners of real property on which such activities, operations or facilities are located; provided, however, that a local government or public authority is not a discharger as to activities conducted by others in public rights-of-way.

(e) "E"

(1) "Enforcement response plan" established by the director contains criteria and various guidelines for implementing consistent enforcement. These enforcement guidelines shall be maintained by the director and shall be available to the public. Additions to or deletions from the guidelines may be made by the director.

(f) "F"

(1) "Full trash capture" or a "full capture system or device" means any single device or series of devices that traps all particles retained by a five millimeters mesh screen and has a design treatment capacity of not less than the peak flow rate Q resulting from a one-year, one-hour storm in the sub-drainage area and as approved by the San Francisco Bay Regional Water Quality Control Board, Region 2.

(g) "G"

(1) "General permit" means an NPDES permit issued under Code of Federal Regulations Section 122.28 (40 CFR 122.28) authorizing a category of discharges under the Clean Water Act within a geographical area.

(h) "H"

(1) "Hydromodification management (HM)" means the requirements for regulated projects that create or replace one acre or more of impervious surface and are not specifically excluded in the requirements of Provision C.3.g.ii, as adopted in the NPDES stormwater permit. A project that does not increase impervious surface area over the pre-project condition does not qualify as an HM project. The HM is designed to manage increases in the magnitude, volume and duration of runoff from new development and significant redevelopment projects in order to protect streams from increased potential for erosion or other adverse impacts. The HM contains management standards and performance criteria for subject development which are incorporated into this chapter. A copy of the HM requirements in the city's permit listed above may be obtained from the city's planning division.

(i) "I"

(1) "Illegal connection" means any device or artifice, excluding roof drains and other similar connections, connecting into the storm drain system without a permit, through or by which an illicit discharge may be discharged.

(2) "Illicit discharge" means any discharge to a storm drain system that is not composed entirely of stormwater except discharges pursuant to an NPDES permit, including categorically allowed discharges and conditionally exempted discharges permitted under Section 12.60.070(f) and (g).

(3) "Impervious surface" means constructed or modified surface that cannot effectively infiltrate rainfall. Impervious surface includes, but is not limited to, building rooftops, pavement, sidewalks, and driveways where such surfaces are not constructed with pervious materials. "Impervious surface area" means the ground area covered or sheltered by an impervious surface, measured as if from directly above.

(4) "Infiltration" means the process of percolating stormwater or non-stormwater into the subsoil.

(5) "Infiltration device" means any structure that is deeper than wide, with no underdrain and is designed primarily to infiltrate (percolate) water into the subsurface and bypass the natural groundwater protection afforded by surface soil. The definition of stormwater infiltration device does not include any septic system or other waste water disposal system, any infiltration of water other than stormwater, Santa Clara Valley Water District percolation ponds, lined sumps and basins, or any naturally occurring body of surface water.

(A) Examples of best management practices that are stormwater infiltration devices include, but are not limited to:

- (i) Infiltration basins and trenches (including French drains);
- (ii) Infiltration and exfiltration trenches;
- (iii) Unlined retention basins (i.e., basins with no outlets);
- (iv) Unlined or open-bottomed vaults or boxes installed below grade that store stormwater allowing infiltration into subsurface soils;
- (v) Dry wells; and
- (vi) Injection wells.

(B) The definition of infiltration device does not apply to the following best management practices that treat stormwater and then release it into a storm drain system:

- (i) Media filtration devices;
- (ii) Underground detention system;
- (iii) Hydrodynamic device;
- (iv) Water quality inlet filters;
- (v) Contained and flow-through planter boxes;
- (vi) Roof gardens;
- (vii) Extended detention basin;
- (viii) Any device with an impermeable liner and underdrain/outfall to the storm drain.

(6) "In-lieu fees" mean the monetary amount necessary to provide both hydraulically-sized treatment in accordance with numeric sizing (Section 12.60.220) and LID treatment measures (Section 12.60.230) of an equivalent quantity of stormwater runoff and pollutant loading and a proportional share of the operation and maintenance costs of the regulated project.

- (j) "J" – Reserved
- (k) "K" – Reserved

(l) "L"

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

(2) "Land owner" means 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.

(3) "Low impact development" ("LID") is an approach to new and redevelopment designs to reduce stormwater runoff and mimic a site's predevelopment hydrology by minimizing the amount of disturbed areas and impervious cover and then infiltrating, storing, detaining, evapotranspiring, and/or biotreating stormwater runoff close to its source. LID principles treat stormwater as a resource, rather than a waste product that must be removed from the site.

(m) "M"

(1) "Maximum extent practicable" means a standard for implementation of stormwater management programs to reduce pollutants in stormwater to the maximum extent possible, taking into account equitable considerations and competing facts including, but not limited to, the seriousness of the problem, public health risks, environmental benefits, pollutant removal effectiveness, regulatory compliance, cost and technical feasibility.

(n) "N"

(1) "Non-stormwater" means any discharge that is not composed entirely of stormwater.

(2) "Notice of violation (NV)" means an official written notice of noncompliance, issued to a discharger from the director, which provides notification that a significant violation of this chapter has occurred, consistent with an enforcement response plan.

(3) "NPDES stormwater permit" means the California Regional Water Quality Control Board San Francisco Bay Regional Stormwater NPDES Permit Order R2-2022-

0018, NPDES Permit No. CAS612008, adopted May 11, 2022, effective July 1, 2022 or as subsequently amended.

(o) "O" – Reserved

(p) "P"

(1) "Permeable surfaces" mean pervious concrete, porous asphalt, unit pavers, and/or other materials that allow water to infiltrate into subsurface soil.

(q) "Q" – Reserved

(r) "R"

(1) "Redevelopment" means land-disturbing activity that results in the creation, addition, or replacement of impervious surface area on an already developed site. Redevelopment includes, but is not limited to, the expansion of a building footprint; addition or replacement of a structure; replacement of impervious surface area that is not part of a routine maintenance activity; and land disturbing activities related to structural or impervious surfaces.

(2) "Regional project" means a regional or municipal project with sufficient capacity or credit to protect or enhance water quality and/or beneficial uses in a manner equivalent to or greater than the stormwater benefits that would have been provided from the installation of the required treatment measures at the subject project site. A regional project must discharge to or address the same receiving waters as the subject project site.

(3) "Regulated projects" are new development projects, redevelopment projects and/or road projects that create and/or replace five thousand square feet or more of impervious surface, and detached single-family home projects that create and/or replace ten thousand square feet or more of impervious surface, including portions of the public right of way, such as the street frontage, that are constructed or reconstructed as part of the development.

(4) "Riparian areas" means an ecosystem that is the interface between dry land and a water body such as a creek, stream, river, lake, or marsh. Vegetation in riparian areas is characterized by a predominance of hydrophilic plants.

(s) "S"

(1) "Self-retaining" area means an area of a development site designed to retain the first one inch of rainfall (by ponding and infiltration and/or evapotranspiration) on itself and on adjacent areas without producing stormwater runoff. Self-retaining areas may include graded depressions with landscaping or pervious pavement. "Areas draining to self-retaining areas" are adjacent impervious areas that drain to self-retaining areas.

(2) "Self-treating" areas means an area of a development site in which infiltration, evapotranspiration, and other natural processes remove pollutants from stormwater. Self-treating areas may include conserved natural open areas, areas of landscaping, green roofs, and pervious pavement. A self-treating area only treats the rain falling on itself and does not receive stormwater runoff from other areas.

(3) Special Projects are certain types of smart growth, high density and affordable housing projects that are allowed, under the Permit, to treat some stormwater runoff from the site with non-LID treatment measures.

(4) "Storm drain system" means the conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains owned or operated by the city and used for the purpose of collecting, storing, transporting, or disposing of runoff.

(5) "Stormwater" means surface runoff and drainage associated with storm events.

(6) "Stormwater management plan" means a plan identifying the measures that will be used for stormwater and non-stormwater management during the permitted activity and/or during and after construction of any development or significant redevelopment project subject to the provisions of this chapter.

(t) "T"

(1) "Treatment" means the use of designed and/or engineered systems, which use physical, chemical, or biological processes to remove pollutants. Such processes include, but are not limited to filtration, gravity settling, media absorption, biodegradation, biological uptake, chemical oxidation and ultraviolet (UV) radiation.

(u) "U" – Reserved

(v) "W"

(1) "Warning notice (WN)" means an official notice of noncompliance, either written or verbal, issued to a discharger from the director, which provides notification that a violation of this chapter has occurred. Warning notices are typically given in instances of minor violations and/or if the corrective actions taken are immediate, consistent with an enforcement response plan.

12.60.050 Ultimate responsibility of discharger.

The standards established by this chapter are minimum standards, and do not imply that compliance by any discharger will ensure that there will not be contamination, pollution, nor unauthorized discharge of pollutants. This chapter shall not create liability on the part of the city or any city employee for any damages that result from any discharger's reliance on this chapter or any lawful administrative decision.

12.60.060. Fees.

The amount of the fees for services and certifications provided under this chapter shall be established periodically by resolution of the city council.

12.60.070. Discharge Prohibitions.

(a) General Prohibition. Any discharge to the storm drain system not composed entirely of stormwater is prohibited, except as set forth in this chapter.

(b) It is unlawful to throw, deposit, leave, abandon, maintain or keep materials or wastes on public or private lands in a manner and place where they may result in an illicit discharge.

(c) Separately Permitted Discharges. Discharges regulated under a valid facility-specific NPDES permit or facility-specific Regional Water Quality Control Board waste discharge requirements permit not including a state general permit, shall be regulated exclusively by the Regional Water Quality Control Board and are exempt from discharge prohibitions established by this chapter, provided compliance with all relevant permit conditions is maintained to the satisfaction of the Board. Stormwater discharges at a facility with a facility specific permit which only addresses process discharges or non-stormwater discharges are not exempted.

(d) State General Permit Discharges. Stormwater discharges regulated under the state general industrial storm water permit or state general construction stormwater permit are exempt from discharge prohibitions established by this chapter, provided compliance with all relevant general permit conditions is maintained to the satisfaction of the Regional Water]

(e) Categorically Allowed Discharges. The following categories of non-stormwater discharges are exempt from discharge prohibitions established by this chapter:

- (1) Flows from riparian habitats or wetlands;
- (2) Diverted stream flows;
- (3) Flows from natural springs;
- (4) Rising ground waters;
- (5) Uncontaminated groundwater infiltration;
- (6) Pumped groundwater from drinking water aquifers; and
- (7) NPDES permitted discharges (individual or general permits).

(f) Conditionally Exempted Discharges. The following categories of non-stormwater discharges are conditionally exempt from discharge prohibitions established by this chapter. Dischargers must install, implement and maintain any specifically applicable minimum best

management practices, as set out in the NPDES Stormwater Permit (Provision C.15.b, Conditionally Exempted Non-Stormwater Discharges), so as to prevent or eliminate adverse impacts of such discharges:

- (1) Uncontaminated pumped groundwater;
- (2) Pumped groundwater from non-drinking water aquifers;
- (3) Foundation drains;
- (4) Water from crawl space pumps;
- (5) Footing drains;
- (6) Air condition condensate;
- (7) Irrigation water;
- (8) Landscape irrigation;
- (9) Lawn or garden watering;
- (10) Individual residential car washing;
- (11) Swimming pool, hot tub, spa and fountain water; and
- (12) Emergency discharges of water and foam that are the result of firefighting, unauthorized hydrant openings, natural or man-made disasters (e.g., earthquakes, floods, wildfires, accidents, terrorist actions).

(g) On-Site Wastewater Systems. Discharges to the subsurface from permitted properly functioning on-site wastewater systems are not prohibited by this chapter.

(h) Exemptions Not Absolute. Any discharge category described above that is a significant source of pollutant to waters of the United States shall be prohibited from entering the storm drain system, or shall be subjected to a requirement to implement additional best management practices to reduce pollutants in the discharge to the maximum extent practicable. Such prohibitions shall be effective on a schedule specified by an authorized enforcement official in a written notice to the discharger. The schedule may take into account the nature and severity of any effects caused by the discharge; and the time required to design, engineer, fund, procure, construct and make appropriate best management practices operational.

(i) Non-Stormwater Discharge. The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the state of California under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all

requirements of the permit, waiver, or order and other applicable laws and regulations. The authorized enforcement official may exempt in writing other non-stormwater discharges which are not a source of pollutants to the storm drain system upon approval by the executive officer of the San Francisco Bay Regional Water Quality Control Board.

12.60.080. Wastewater discharges containing copper or copper-based chemicals.

Discharges to the storm drain collection system from the following activities are prohibited. Discharges to landscaping or to the sanitary sewer system (with approvals from the Sunnyvale Water Pollution Control Plant) are allowed.

- (a) Discharges of wastewater generated during the installation, cleaning, treating, and washing of copper architectural features, including copper roofs.
- (b) Discharges of water from pools (including connection for filter backwash), spas, fountains and water features that contain copper-based chemicals.

12.60.090. Prohibition of illegal connection.

- (a) The construction, use, maintenance, or continued existence of illegal connections to the storm drain system is prohibited.
- (b) The authorized enforcement official may, by written notice, require a person responsible for an illegal connection to the storm drain system to eliminate or to secure approval for the connection within a specified time.

12.60.100. False statements.

It is unlawful knowingly to make or present to the city any false statement, representation, record, report, plan or other document, with regard to any requirements of this chapter.

12.60.110. Compliance with NPDES stormwater permit.

Any person subject to an industrial or construction activity general NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance may be required in a form acceptable to the authorized enforcement official prior to or as a condition of the approval of a subdivision map, site plan, building permit, development or improvement plan; upon inspection of the facility and/or during any enforcement action.

12.60.120. Stormwater pollution reduction.

All applicants for permits pertaining to the planning, design, and construction of all projects subject to this chapter shall design and implement stormwater best management practices so as to reduce stormwater pollution to the maximum extent practicable. Such projects shall utilize standards and guidelines set forth in the BMP Guidance Manual, as revised, and shall incorporate the numeric sizing criteria for best management practices set forth in this chapter.

12.60.130. Stormwater treatment requirements—Applicability.

Specific stormwater treatment requirements or source control measures, as set forth in this chapter, are mandated for certain categories of new and redevelopment projects based upon the amount of impervious area created, added, or replaced by a project. Stormwater treatment requirements shall apply to the following types of projects: development and redevelopment projects, including large single family homes (Section 12.60.140); road projects (Section 12.60.150); road reconstruction projects (Section 12.60.160) and required site design measures for small projects and single-family homes (Section 12.60.180).

12.60.140. Development and redevelopment projects—Regulated projects.

(a) Development Projects. All new development projects that create five thousand square feet or more of impervious surface collectively over the entire project site, including commercial, industrial, residential housing subdivisions (e.g., detached single-family home subdivisions, multifamily attached subdivisions such as townhomes, condominiums and apartments), mixed-use, and public projects, including sidewalks and any other portions of the public right of way that are developed or redeveloped as part of the project. This category includes development projects on public or private land that fall under the planning and building authority of the city. This category also includes detached single-family homes that create ten thousand square feet or more of impervious surface collectively over the entire project site, including sidewalks and any other portions of the public right of way that are developed or redeveloped as part of the project. Construction of a detached single-family home project that creates less than ten thousand square feet of impervious surface and that is not part of a larger plan of development, with the incorporation of appropriate pollutant source control and design measures and using landscaping to treat runoff from roof and house associated impervious surfaces, is specifically excluded from the requirements of this section.

(b) Redevelopment Projects.

(1) Redevelopment projects that create and/or replace five thousand square feet or more of impervious surface collectively over the entire project site, including commercial, industrial, residential housing subdivisions (e.g., detached single-family home subdivisions, multifamily attached subdivisions such as townhomes, condominiums and apartments), mixed-use, and public projects, (other than public road and trail projects), including sidewalks and any other portions of the public right of way that are developed or redeveloped as part of the project. Redevelopment is any land-disturbing activity that results in the creation, addition, or replacement of exterior impervious surface areas on a site on which some past development has occurred. This category includes redevelopment projects on public or private land that falls under the planning and building authority of the city. This category also includes detached single-family homes that create and/or replace ten thousand square feet or more of impervious surface collectively over the entire project site, including sidewalks and any other portions of the public right of way that are developed or redeveloped as part of the project. Redevelopment of a detached single-family home project that is not part of a

larger plan of development and that creates and/or replaces less than ten thousand square feet of impervious surface, with the incorporation of appropriate pollutant source control and design measures and using landscaping to treat runoff from roof and house associated impervious surfaces, is specifically excluded from the requirements of this section..

(2) Alterations Exceeding Fifty Percent. Where a redevelopment project results in an alteration of more than fifty percent of the impervious surface of a previously existing development that was not previously subject to the requirements of Chapter 12.60, the entire project consisting of all existing, new and/or replace impervious surfaces must be included in the treatment system design so that the stormwater treatment systems are designed and sized to treat stormwater from the entire redevelopment project.

(3) Alterations Less than Fifty Percent. Where a redevelopment project results in an alteration of less than fifty percent of the impervious surface of a previously existing development that was not subject to the requirements of Chapter 12.60, only the new and/or replaced impervious surface of the project must be included in the treatment design system so that the stormwater treatment systems are designed and sized to treat stormwater runoff from the new and/or replaced impervious surface of the project.

(4) Pavement Maintenance. The requirements for redevelopment projects include the following pavement maintenance activities on a property, either separate from or included within a development or redevelopment project:

(A) Removing and replacing an asphalt or concrete pavement to the top of the base course or lower, or repairing the pavement base (including repair of the pavement base in preparation for bituminous surface treatment, such as chip seal), as these are considered replaced impervious surfaces;

(B) Extending the pavement edge without increasing the size of the road prism, or paving graveled shoulders, as these are considered new impervious surfaces; and

(C) Resurfacing by upgrading from dirt to gravel, to a bituminous surface treatment (e.g., chip seal), to asphalt, or to concrete; or upgrading from gravel to a bituminous surface treatment, to asphalt, or to concrete, as these are considered new impervious surfaces.

(c) Specific Exclusions. The following practices are excluded from the requirements of Section 12.60.140.

(1) Interior remodels.

(2) Routine maintenance or repair such as roof or exterior wall surface replacement.

(3) The following pavement maintenance practices:

- (A) Pothole and square cut patching;
- (B) Overlaying existing asphalt or concrete pavement with asphalt or concrete without expanding the area of coverage;
- (C) Shoulder grading;
- (D) Reshaping/regrading drainage systems;
- (E) Crack sealing;
- (F) Pavement preservation activities that do not expand the road prism;
- (G) Upgrading from a bituminous surface treatment (e.g., chip seal) with an overlay of asphalt or concrete, without expanding the area of coverage;
- (H) Applying a bituminous surface treatment to existing asphalt or concrete pavement, without expanding the area of coverage;
- (I) Vegetation maintenance;
- (J) Layering gravel over an existing gravel road, without expanding the area of coverage.

(4) Public works projects, including sidewalk gap closures, sidewalk section replacement, and ADA curb ramps, that create and/or replace less than five thousand contiguous square feet of impervious surface.

(d) Applicability. Any pending Regulated Project that has not yet been approved as of June 30, 2023, and for which a Permittee has no legal authority to require new requirements under Government Code sections 66474.2 or 65589.5., subd. (o), is subject to the requirements in NPDES Permit Order R2 2009-0074, NPDES Permit No. CAS612008, October 14, 2009, effective December 1, 2009.

12.60.150. New or widening road projects—Regulated projects.

Any of the following types of road projects that create five thousand square feet or more of newly constructed contiguous impervious surface and that fall under the building and planning authority for the city:

- (a) Construction of new streets or roads, including sidewalks and bicycle lanes built as part of the new streets or roads;
- (b) Widening of existing streets or roads with additional traffic lanes.
 - (1) Where the addition of traffic lanes results in an alteration of less than fifty percent of the existing street or road that was not subject to Chapter 12.60, only the

new and/or replaced impervious surface of the project must be included in the treatment system design so that the stormwater treatment systems are designed and sized to treat stormwater from only the new traffic lanes. However, if the stormwater runoff from the existing traffic lanes and the added traffic lanes cannot be separated, any onsite treatment system must be designed and sized to treat stormwater runoff from the entire street;

- (2) Where the addition of traffic lanes results in an alteration of more than fifty percent of the existing street or road that was not subject to Chapter 12.60, the entire project, consisting of all existing, new, and/or replaced impervious surface of the project must be included in the treatment system design.
- (c) Construction of impervious trails that are greater than or equal to ten feet wide or are creekside (within fifty feet of the top of bank);
- (d) Specific exclusions to subsections (a) through (c) are:
- (1) Sidewalks built as part of new streets or roads and built to direct stormwater to adjacent vegetated areas,
 - (2) Bicycle lanes that are built as part of new streets or roads, but are not hydraulically connected to new streets or roads and that direct stormwater to adjacent vegetated areas,
 - (3) Impervious trails built to direct stormwater runoff to adjacent vegetated areas, or non-erodible permeable areas, preferably away from creeks or toward the outboard sides of levees, where those areas are at least half as large as the contributing impervious surface area,
 - (4) Sidewalks, bicycle lanes, or trails constructed with permeable surfaces such as pervious concrete, porous asphalt, unit pavers, and granular materials (excluding gravel surfaces, since they are considered impervious).
 - (5) CalTrans highway projects and associated facilities.

12.60.160. Road reconstruction—Regulated projects.

Road projects that involve the reconstruction of existing streets or roads (including roads built on levees), which create and/or replace one contiguous acre or more of impervious surface and that are public road projects and/or fall under the building and planning authority of the City, including sidewalks and bicycle lanes that are built or rebuilt as part of the existing streets or roads. This Regulated Project category includes utility trenching projects which are - on average, over the entire length of the project - greater than or equal to 8 feet wide. Pavement maintenance practices listed in Section 12.60.140 are included if they create and/or replace one contiguous acre or more of impervious surface.

(a) Where the reconstruction project results in an alteration of less than fifty percent of the existing street or road that was not subject to Chapter 12.60, only the new and/or replaced impervious surface of the project must be included in the treatment system design so that the stormwater treatment systems are designed and sized to treat stormwater from only the new and/or replaced impervious areas. However, if the stormwater runoff from the existing and replaced impervious areas cannot be separated, any onsite treatment system must be designed and sized to treat stormwater runoff from the entire street or road;

(b) Where the reconstruction project results in an alteration of more than fifty percent of the existing street or road that was not subject to Chapter 12.60, the entire project, consisting of all existing, new, and/or replaced impervious surface of the project must be included in the treatment system design.

(c) Road reconstruction projects that cannot comply with the numeric sizing requirements in Section 12.60.220 due to area or cost constraints, may use the alternate sizing criteria included in the Guidance for Sizing Green Infrastructure Facilities in Street Projects approved by the Water Board on June 21, 2019, and included in the City's BMP Guidance Manual.

12.60.170. Special Projects—Regulated Project which may qualify for use of non-LID treatment measures.

(a) Special Projects – Certain Regulated Projects that are smart growth, high density, and affordable housing projects that may be allowed to use specific types of non-LID treatment, if the use of LID treatment is first evaluated and determined to be infeasible by the City. The project applicant shall submit documentation to show where and why the use of LID treatment is infeasible and the non-LID treatment measures proposed for use based on the characteristics of the project.

(b) Special Projects may use the following two types of non-LID treatment systems:

- (1) Tree-box-type high flowrate biofilters
- (2) Vault-based high flowrate media filters.

(c) The three categories of Special Projects are:

- (1) Category A: Small Infill Projects (projects that create less than or equal to one-half acre of impervious surface)
- (2) Category B: High Density Projects (projects that create less than or equal to two acres of impervious surface)
- (3) Category C: Affordable Housing Projects

(d) Specific criteria for each of the three categories of Special Projects that dictate the amount of runoff on the site that can be treated with non-LID treatment measures are provided in the City's BMP Guidance Manual.

12.60.180. Required site design measures for small projects and smaller single-family home.

All development projects subject to approvals and/or permits issued by the planning or building divisions which create or replace two thousand five hundred square feet or more and less than five thousand square feet of impervious surface and smaller detached single-family home projects that create and/or replace two thousand five hundred square feet or more of impervious surface and less than ten thousand square feet of impervious surface will install one or more of the following site design measures:

- (a) Direct roof runoff into cisterns or rain barrels for reuse;
- (b) Direct roof runoff onto vegetated areas;
- (c) Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas;
- (d) Direct runoff from driveways or uncovered parking areas/lots onto vegetated areas;
- (e) Construct sidewalks, driveways, and/or patios with permeable surfaces;
- (f) Construct bike lanes, driveways, and/or uncovered parking lots or areas with permeable surfaces.

12.60.190. Site design measures for nonregulated project.

All new development and redevelopment projects subject to planning, building, development, or other comparable reviews by the city, but not meeting the definition of regulated project are encouraged to include adequate site design measures that include minimizing land disturbance and impervious surfaces. These may include clustering of structures and pavement; directing roof runoff to vegetated areas, use of micro-detention, including distributed landscape-based detention of stormwater, preservation of open space and/or restoration of riparian areas or wetland as project amenities.

12.60.200. Trash load reductions to storm drain collection system.

All regulated projects will install full trash capture devices to collect litter and debris from their project site, prior to connecting to the city's storm drain collection system.

- (a) Full trash capture devices that have been approved as meeting the standards set by the San Francisco Bay Regional Water Quality Control Board will be deemed as satisfactory for meeting this requirement. A list of approved devices and their manufacturers is available from the community development department or the city's BMP Guidance Manual.

(b) Installed full capture trash devices will be maintained by the property owner for the life of the project, following the manufacturer's recommendations for maintenance.

12.60.210. Stormwater management plan required.

(a) All applications for any city permit or approval required for land disturbance activities, construction, development or significant redevelopment for any regulated project subject to this chapter, including, but not limited to, use permits, specials development permits, grading permits, variances, landscape plans, design review, parcel maps or tentative maps, applicable building permits, or applicable encroachment permits, must include a stormwater management plan.

(b) The stormwater management plan shall be accompanied by plans and related documentation demonstrating how the requirements of this chapter will be met, and the permit or approval shall not be granted unless the authorized enforcement official determines that the plan complies with the requirements of this chapter.

(c) At the discretion of the authorized enforcement official, the stormwater management plan shall include, but is not limited to, the following:

- (1) Name and address of regulated project;
- (2) Responsible operator(s) of each treatment system and hydromodification (HM) control (if any);
- (3) A description of activities and pollutant sources;
- (4) Specific descriptions of the locations (or a map showing locations) of the installed stormwater treatment system(s) and HM controls (if any);
- (5) Description of the type and size of the installed stormwater treatment systems and HM controls, if applicable;
- (6) Description of applicable operation and maintenance procedures, including recommended inspections, for all structural best management practices/installed stormwater treatment systems, as recommended by the manufacturer or as referenced in the city's Stormwater BMP Guidance Manual;
- (7) Description of record keeping and internal procedures to ensure documentation and verification of applicable operational maintenance procedures. These records shall remain available for a period of at least three years;
- (8) A completed stormwater management plan data form;
- (9) A copy of the required third party certification for the regulated projects adherence to the numeric sizing criteria for stormwater treatment systems; and

(10) Property owners shall ensure that onsite, joint, or offsite stormwater treatment system(s) and HM controls installed to meet the requirements for regulated projects are properly operated and maintained for the life of the project pursuant to Section 12.60.280 agreement to maintain best management practices.

(A) In cases where the property owner for a stormwater treatment system or HM control has worked diligently and in good faith with the appropriate state and federal agencies to obtain approvals necessary to complete maintenance activities for the treatment system or HM control, but the approvals are not granted, the property owner will be considered to be in compliance with subsection (c)(10).

(B) Constructed wetlands installed by regulated projects for urban runoff treatment shall abide by the San Francisco Bay Regional Water Quality Control Board's Resolution No. 94-102: Policy on the Use of Constructed Wetlands for Urban Runoff Pollution Control and the operations and maintenance requirements contained therein.

12.60.220. Numeric sizing criteria for treatment systems.

(a) Treatment best management practices for regulated projects shall incorporate the following hydraulic sizing design criteria to treat stormwater runoff.

(1) Volume Hydraulic Design Basis. Treatment best management practices whose primary mode of action depends on volume capacity shall be designed to treat stormwater runoff equal to:

(A) The maximized stormwater quality capture volume for the area, based on historical rainfall records, determined using the formula and volume capture coefficients set forth in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87 (1998), pages 175 through 178 (e.g., approximately the eighty-fifth percentile twenty-four hour storm runoff event); or

(B) The volume of annual runoff required to achieve eighty percent or more capture, determined in accordance with the methodology set forth in Section 5 of the CASQA Stormwater Best Management Practices Handbook, New and Redevelopment (2003), or most recent edition, using local rainfall data.

(2) Flow Hydraulic Design Basis. Treatment best management practices whose primary mode of action depends on flow capacity shall be sized to treat:

(A) Ten percent of the fifty-year peak flow rate; or

(B) The flow of runoff produced by rain equal to at least two times the eighty-fifth percentile hourly rainfall intensity for the applicable area, based on

historical records of hourly rainfall depths (for Sunnyvale this is equivalent to 0.17 inches per hour); or

(C) The flow of runoff resulting from rain equal to at least two-tenths of an inch per hour intensity.

(3) Combination Flow and Volume Design Basis. Treatment systems that use a combination of flow and volume capacity shall be sized to treat at least eighty percent of the total runoff over the life of the project, using local rainfall data.

12.60.230. Low impact development (LID) requirements.

The goal of LID is to reduce runoff and mimic a site's predevelopment hydrology by implementing specific practices to control sources of potential pollution and site design strategies to treat stormwater. All regulated projects shall implement the following LID requirements:

(a) All regulated projects shall implement source control measures onsite that at a minimum, shall include the following:

(1) Implement source control measures on site to address the following potential discharges and minimize stormwater pollutants of concern. These control measures may include plumbing the following discharges to sanitary sewer lines, pending approval by the city;

(A) Discharges from floor mat, equipment, hood filter wash racks or covered outdoor wash racks for restaurants,

(B) Drips from covered trash dumpsters, food waste containers, and compactor enclosures,

(C) Discharges from covered outdoor wash areas for vehicles, equipment, and accessories,

(D) Swimming pool, spa, hot tub, or water feature discharges if discharge on site to vegetated areas is not a feasible option,

(E) Fire sprinkler test water, if on site discharge to vegetated areas is not a feasible option;

(2) Include properly designed covers, drains, and storage precautions for outdoor material storage areas, loading docks, repair or maintenance bays and fueling areas;

(3) Include properly designed trash storage areas that are covered with any drains in the area connected to the sanitary sewer lines, pending approval by the city;

- (4) Include landscaping that minimizes irrigation and runoff, promotes surface infiltration, minimizes the use of pesticides and fertilizers and incorporates sustainable landscaping practices;
 - (5) Include efficient irrigation systems; and
 - (6) Include storm drain stenciling or signage that includes the message "No Dumping, Flows to Bay" or equivalent.
- (b) Each regulated project shall, at a minimum, implement the following site design strategies on-site:
- (1) Limit disturbance of natural water bodies and drainage systems; minimize compaction of highly permeable soils, protect slopes and channels, minimize impacts from stormwater and urban runoff on the biological integrity of natural drainage systems and water bodies;
 - (2) Conserve natural areas, including existing trees, other vegetation, and soils;
 - (3) Minimize impervious surfaces;
 - (4) Minimize disturbances to natural drainages; and
 - (5) Minimize stormwater runoff by implementing one or more of the following site design measures:
 - (A) Direct roof runoff into cisterns or rain barrels for reuse,
 - (B) Direct roof runoff into vegetated areas,
 - (C) Direct roof runoff from sidewalks, walkways and/or patios onto vegetated areas,
 - (D) Direct runoff from driveways and/or uncovered parking lots onto vegetated areas,
 - (E) Construct sidewalks, walkways and/or patios with permeable surfaces,
 - (F) Construct driveways, bike lanes, and/or uncovered parking lots with permeable surfaces.
- (c) Effective December 1, 2011, all regulated projects are required to treat one hundred percent of the amount of runoff using the criteria identified in Section 12.60.220 for the regulated project's drainage area with LID treatment measures onsite or with LID treatment measures at a joint stormwater treatment facility.

- (1) LID treatment measures are defined as stormwater harvesting and re-use, infiltration, evapotranspiration, or biotreatment;
- (2) Biotreatment systems shall be designed to have a surface area no smaller than what is required to accommodate a five inches per hour stormwater runoff surface loading rate. The planting and soil media for biotreatment systems shall be designed to sustain plant growth and maximize stormwater runoff retention and pollutant removal. Biotreatment systems shall use biotreatment soil media that meets the minimum specifications set forth in the Revised Model Biotreatment Soil Media Specifications approved by the Regional Water Quality Control Board on April 18, 2016 (and any subsequent revisions). These specifications are incorporated into the city's Stormwater BMP Guidance Manual.;
- (3) Green roofs installed at Regulated Projects may be considered biotreatment systems if they meet the following minimum specifications:
 - (A) The green roof system planting media shall be sufficiently deep to provide capacity within the pore space of the media for the required runoff volume specified in Section 12.60.220.
 - (B) The green roof system planting media shall be sufficiently deep to support the long-term health of the vegetation selected for the green roof, as specified by a landscape architect or other knowledgeable professional.

12.60.240. Hydromodification management (HM) requirements—Applicability.

- (a) Requirement. Stormwater discharges from any HM project shall be designed and maintained so they shall not cause an increase (over the pre-project existing condition) in the erosion potential of the stream into which they flow. Increases in runoff flow and volume shall be managed so that post-project runoff shall not exceed estimated pre-project rates and durations, where such increased flow and/or volume is likely to cause increased potential for erosion of creek beds and banks, silt pollutant generation, or other adverse impacts on beneficial uses due to increased erosive force. All applicants are required to comply with the standards and performance criteria and requirements set forth in the key elements (e.g., Range of Flows to Control, Goodness of Fit Criteria, Precipitation Data, and Calculations for Post-Project Runoff) of the HM requirements for Santa Clara County as described in Provision C.3.g Hydromodification Management and Attachment F as adopted in the NPDES Stormwater Permit. A copy of the HM requirements may be obtained from the city's planning division and is available in the city's Stormwater BMP Guidance Manual.
- (b) Applicability. All new and redevelopment project that create or replace one acre or more of impervious surface shall implement the hydromodification controls and standards as described in subsection (a). The following projects are exempt from HM compliance:

- (1) Projects that do not create an increase in impervious surface over pre-project conditions;
- (2) Projects located within areas that drain to stream channels within the tidally influenced area. Such areas are shown in the HM zone map included in the city's BMP Guidance Manual;
- (3) Projects located within areas that drain to non earthen stream channels that are hardened on three sides and extend continuously upstream from the tidally influenced area. Such areas are depicted in the city's BMP Guidance Manual HM maps;
- (4) Projects draining to Sunnyvale East or West Channels. Such areas are depicted in the city's BMP Guidance Manual HM maps;
- (5) Projects draining to an underground storm drain that discharges directly to San Francisco Bay;
- (6) Projects that demonstrate, upon completion of stream-specific and modeling studies that are consistent with the method identified in the HM requirements in provision C.3.g and Attachment F of the NPDES stormwater permit and its supporting technical documents, that there will be no increase in potential for erosion or other adverse impact to beneficial uses to any state waters;
- (7) Projects less than one acre and that are located in the HM applicable areas as depicted in the city's HM maps in the BMP Guidance Manual are encouraged, but not required, to implement HM requirements.

12.60.250. Design standards concerning flooding.

Except as this chapter may specifically exempt, every best management practice required to be implemented in new development or redevelopment shall not, by its construction, operation, maintenance, or lack thereof, lead to or cause flooding.

12.60.260. Alternative certification of adherence to numeric sizing criteria for stormwater treatment systems.

The authorized enforcement official may accept or require a signed certification from a civil engineer or a licensed architect or landscape architect registered in the state of California that the numeric sizing for stormwater treatment systems and/or hydromodification management (HM) facilities meets the hydraulic sizing design requirements of this chapter and the established criteria of the NPDES Stormwater Permit. Each certifying person shall establish to city's satisfaction that such person has been trained on best management practice design for water quality not more than three years prior to the signature date, and that each certifying person understands the groundwater protection principles applicable to the project site. Any consultant hired to design and/or construct a stormwater treatment system for a regulated project shall not be the certifying person for the project. Training conducted by an organization

with stormwater treatment best management design expertise such as a university, the American Society of Civil Engineers, American Society of Landscape Architects, American Public Works Association, California Water Environment Association, Bay Area Stormwater Management Agencies, National Association of Flood and Stormwater Management Agencies, California Stormwater Quality Association, or the equivalent, may be considered qualifying.

12.60.270. Infiltration treatment measures.

In order to protect groundwater from pollutants that may be present in urban runoff, treatment best management practices that function primarily as stormwater infiltration devices, with no underdrain, must meet, at a minimum, the following conditions:

- (a) Pollution prevention and source control best management practices shall be implemented at a level appropriate to protect groundwater quality at sites where infiltration devices are to be used. This includes a minimum of two feet of suitable soil to achieve a maximum of five inches per hour infiltration rate for the infiltration system.
- (b) Infiltration devices shall not be placed in the vicinity of known contamination sites unless it has been demonstrated that increased infiltration will not increase leaching of contaminants from soil, alter groundwater flow conditions affecting contaminant migration in groundwater or adversely affect remedial activities.
- (c) Use of infiltration devices shall not cause or contribute to degradation of groundwater quality at applicable sites or of groundwater quality objectives.
- (d) Infiltration devices shall be adequately maintained to maximize pollutant removal capabilities.
- (e) The vertical distance from the base of any infiltration device to the seasonal high groundwater mark shall be at least ten feet. A greater separation from the high groundwater mark may be required. In locations which are characterized by highly porous soils and/or a high groundwater table, for such areas best management practices approvals will be subject to a higher level of analysis (e.g., considering the potential for pollutants such as on-site chemical use, the level of pretreatment to be achieved, and similar factors in the overall analysis of groundwater safety).
- (f) Unless stormwater is first treated by a means other than infiltration, infiltration devices shall not be employed for areas of industrial or light industrial activity; are as subject to high vehicular traffic (twenty-five thousand or greater average daily traffic on main roadway or fifteen thousand or more average daily traffic on any intersecting roadway); automotive repair shops, car washes; fleet storage areas (e.g., bus, truck); nurseries; and other high threat to water quality land uses and activities as designated by city.
- (g) Infiltration devices shall be located a minimum of two hundred fifty feet horizontally from any water supply wells and one hundred feet from any septic systems or underground

storage tanks with hazardous materials. A greater separation may be required in locations which are characterized by highly porous soils and/or a high groundwater table. For such areas, best management practice approvals will be subject to a higher level of analysis that considers the potential for pollutants such as on-site chemical use, the level of pretreatment to be achieved, and similar factors in the overall analysis of groundwater safety.

12.60.280. Agreement to maintain best management practices.

(a) Every person applying for a city planning or building permit to construct any new development or redevelopment project subject to this chapter, shall agree in writing to properly maintain any HM control, stormwater structural control, treatment system, and/or best management practices to be implemented at the project. Such agreement shall be through means such as a covenant running with the land, enforceable conditions of approval, or other legal agreement. The agreement shall provide access to the extent allowable by law for representatives of city, the local vector control district, and the Regional Water Quality Control Board, strictly for the purposes of performing operation and maintenance inspections of the installed stormwater treatment systems, best management practices, and/or HM controls (if any). The agreement shall be recorded in the office of the county recorder, shall remain in force, and upon transfer, shall be binding on the new owner(s).

(b) Any land owner of a property which has been required by this chapter to construct or install and maintain such best management practices shall, upon transferring ownership of such property, provide the new owners with a current copy of this chapter, and shall inform the new owners in writing of their obligation to properly operate and maintain such stormwater treatment and/or source control best management practice.

12.60.290. Submission of revised stormwater management plan.

(a) An authorized enforcement official may require a discharger who has previously received approval of a stormwater management plan, to prepare and submit a revised stormwater management plan for approval if any of the following occurs:

- (1) the project was not constructed according to the approved plans; or
- (2) the plan as constructed is not adequate for the site; or
- (3) the site is not adequately maintained; or
- (4) is a significant source of contaminants to the storm drain system.

(b) The revised stormwater management plan shall identify the stormwater treatment controls, best management practices, and/or HM controls that will be used by the discharger to prevent or control pollution of stormwater to the maximum extent practicable.

(c) If the activity at issue is a construction or land disturbance activity, the revised plan submitted to the city shall at a minimum meet the requirements of the Statewide NPDES Construction General Permit Order 2009-0009 DWQ or as subsequently amended.

(d) Whenever submission of a stormwater management plan or a revised stormwater management plan is required pursuant to this chapter, any authorized enforcement staff may use the City of Sunnyvale Stormwater Quality BMP Guidance Manual and/or the CASQA Stormwater BMP Handbooks to assess the adequacy of the proposed plan.

12.60.300. Best management practices and CASQA Stormwater Best Management Practice Handbook incorporated.

The BMP Guidance Manual and CASQA Stormwater Best Management Practice Handbook are incorporated by reference into this chapter. The authorized enforcement official may from time to time revise or add to such manual to comply with NPDES requirements and stay current with technology and best management practices.

12.60.310. Minimum best management practices and source control measures for all dischargers.

The director may require submission of information to evaluate the implementation and/or require the implementation of best management practices (BMPs), including, but not limited to, the following:

(a) Minimum Best Management Practices. All dischargers must implement and maintain at least the following minimum best management practices:

Appropriate BMPs will be implemented to prevent pollutant sources from entering the city's storm drain collection system that are associated with outdoor process and manufacturing areas, outdoor material storage areas, outdoor waste storage and disposal areas, outdoor vehicle and equipment storage and maintenance areas, outdoor parking and access roads, outdoor wash areas, outdoor drainage from indoor areas, rooftop equipment, contaminated and erodible surfaces, or other sources determined by the director to have a reasonable potential to contribute to pollution of stormwater runoff.

(b) Inspection, Maintenance, Repair and Upgrading of Best Management Practices. Best management practices at staffed and unstaffed facilities must be inspected and maintained by the discharger according to manufacturer specifications, the City of Sunnyvale Stormwater Quality BMP Guidance Manual, and/or the CASQA Stormwater BMP Handbooks. These best management practices must be maintained so that they continue to function as designed. Best management practices which fail must be repaired as soon as it is safe to do so. If the failure of a best management practice indicates that the best management practices in use are inappropriate or inadequate to the circumstances, the practices must be modified or upgraded to prevent any further failure in the same or similar circumstances.

(c) Construction Site Stormwater Pollution Controls. All construction sites will implement effective erosion control, run-on and runoff control, sediment control, active treatment systems (as appropriate), good site management, and non-stormwater management through all phases of construction (including, but not limited to, site grading, building and finishing of lots) until the site is fully stabilized by landscaping or the installation of permanent erosion control measures.

(d) All applicable sites are encouraged to include adequate source control measures to limit pollutant generation, discharge and runoff. These source control measures are identified in Section 12.60.230.

12.60.320. Authority to inspect.

(a) Whenever necessary to make an inspection to enforce any provision of this chapter, or whenever the authorized enforcement official has cause to believe that there exists, or potentially exists, in or upon any applicable site any condition which constitutes a violation of this chapter, the official may enter such premises at all reasonable times to inspect the premises, to inspect and copy records related to stormwater compliance, and to collect samples and take measurements. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the city is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(b) Whenever necessary to perform operations and maintenance verification inspections of installed full trash capture systems, stormwater treatment system(s) and HM control(s) (if any), all regulated projects shall grant site access to all representatives of the authorized enforcement official, local mosquito and vector control agency staff, and water board staff.

12.60.330. Requirement to remediate.

Whenever the authorized enforcement official finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollutants discharged to stormwater or the storm drain system, the official may require by written notice to the owner or responsible person that the pollution be remediated and the affected property restored within a specified time.

12.60.340. Failure to properly operate and maintain stormwater treatment and hydromodification management facilities.

(a) It is a violation of this code for any land owner to fail to properly operate and maintain any approved stormwater treatment facilities, hydromodification management facilities and/or source control best management practices on the owner's property.

(b) It is a further violation for any land owner to fail to follow any stormwater management plan submitted and approved by city unless a modification to the plan is later approved in

writing by the authorized enforcement official and such modification is thereafter recorded in the same manner as the original agreement.

12.60.350. Alternative compliance.

A regulated project may be allowed to provide alternative or in-lieu compliance in accordance with one of the following two options.

(a) A portion of the amount of runoff from a regulated project's drainage area required to be treated per Section 12.60.220 may be treated with LID measures on site or with LID treatment measures at a joint stormwater treatment facility, and any remaining portion of the stormwater runoff treated with LID treatment measures at an off-site project in the same watershed. The offsite LID treatment measures must provide hydraulically sized treatment in accordance with Section 12.60.220 of an equivalent quantity of both stormwater runoff and pollutant loading and achieve a net environmental benefit.

(b) A portion of the amount of runoff from a regulated project's drainage area required to be treated per Section 12.60.220 may be treated with LID treatment measures on site or with LID treatment measures at a joint stormwater treatment facility, and an equivalent amount of in-lieu fees paid to treat the remaining portion of the runoff with LID treatment measures at an off-site project. The off-site project must achieve a net environmental benefit.

(c) Off-site or regional projects must be completed within three years after the end of construction of the regulated project. The timeline for completion of an off-site or regional project may be extended for up to five years after completion of the regulated project with prior approval of the Executive Officer of the San Francisco Bay Regional Water Quality Control Board.

12.60.360. Public nuisance.

Illicit discharge, threatened illicit discharge, or any condition or act in violation of any provision of this chapter or of any order or directive of the director authorized by the provisions of said chapter is hereby declared to be a public nuisance. Such nuisance may be abated, removed or enjoined, and damages assessed therefor, in any manner provided by law.

12.60.370. Manner of notification of a violation.

(a) Warning Notice or Notice of Violation. When the director finds that a user has violated, or continues to violate, any provision of this chapter, or order issued hereunder, or any other stormwater standard or requirement, the director may serve upon that user a verbal or written warning notice or notice of violation. The director will require corrections to occur within a reasonably short and expedient time frame commensurate with the threat to water quality. Violations that are observed by the director shall be corrected prior to the next rain event or within ten business days after the violation is first noted. If more than ten business days are required for a correction, a rationale must be provided. A rapid, temporary repair shall be

required and a longer time for implementation of more permanent solutions may be allowed if significant capital expenditures or construction is required to resolve the discharge problem.

(b) Explanation of Violation and Plan for Correction/Prevention. The director may require the submission of an explanation of the violation and a plan for the satisfactory correction and prevention thereof, within the time specified in the notice, to include specific required actions. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(c) Notice to Comply.

(1) When the director finds that a discharge or threatened discharge of non-stormwater is taking place, has been taking place, or threatens to take place, in violation of prohibitions or limitations prescribed in this chapter, the director may, at the director's discretion, also require the user to submit for approval, with such modifications as the director deems necessary, a detailed compliance time schedule of specific actions which the user shall take in order to prevent or correct a violation of code provisions or of any permit, and to take such action in accordance with such schedule.

(2) Nothing provided in this section shall limit or prohibit the city from pursuing any other remedy, legal or equitable, otherwise available to city, or from seeking sanctions in any criminal or civil action related to such discharge or potential discharge.

(d) Issuance of Cease and Desist Orders. When the authorized enforcement official finds that a discharge of stormwater has taken place or is likely to take place in violation of this chapter, the authorized enforcement official may include in the notice, an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct those persons not complying with such prohibitions, limits, requirements, or provisions to comply forthwith; comply in accordance with a time schedule set forth by the city; or take appropriate remedial or preventive action.

12.60.380. Administrative process and civil penalties.

(a) Complaint. The director may serve an administrative complaint on any person who has violated any applicable code provision. The complaint shall state:

(1) The act or failure that constitutes the violation;

(2) The provisions of law authorizing the civil liability to be imposed; and

(3) The proposed civil penalty. The complaint shall be served by personal delivery or certified mail on the person subject to requirements that the director alleges were violated, and shall inform the person served that a hearing on the complaint shall be

conducted within thirty days after service, unless the person charged with the violation waives his or her right to a hearing.

(b) Civil Penalties. Civil penalties that may be imposed pursuant to Government Code Section 54740.5 are as follows:

- (1) An amount not to exceed two thousand dollars for each day for failing or refusing to furnish technical or monitoring reports;
- (2) An amount not to exceed three thousand dollars for each day for failing or refusing to timely comply with any compliance schedule established by the city;
- (3) An amount not to exceed five thousand dollars per violation for each day of violation for illicit discharges in violation of any waste discharge limitation, permit condition or requirement issued, reissued or adopted by the city; and
- (4) An amount not to exceed ten thousand dollars per gallon for discharges in violation of any suspension, cease and desist order, or other orders, or prohibition issued, reissued or adopted by the city.

(c) Lien. The amount of any civil penalties imposed under this section which have remained delinquent for a period of sixty days shall constitute a lien against the real property of the discharger from which the violation occurred resulting in imposition of the penalty. The director shall cause the amount of uncollected penalty to be recorded with the county recorder, in accordance with Section 54740.5 of the California Government Code.

12.60.390. Administrative hearing and appeals process.

(a) Hearing. Unless the person charged with the violation(s) waives his or her right to a hearing, the director or designee ("hearing officer") shall conduct a hearing within thirty days. If the hearing officer finds that the person has violated any reporting or discharge requirement of Chapters 12.04 through 12.18 herein, he or she may assess administrative penalties against the person. In determining the amount of the civil penalty, the hearing officer may take into consideration all relevant circumstances, including but not limited to the extent of harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurs, and corrective action, if any, attempted or taken by the discharger.

(b) Appeal. Any person against whom penalties are assessed by the hearing officer may appeal the decision of the hearing officer within fifteen days of notice of the decision to the city manager. The city manager may hear the appeal or deny review of the case. If the city manager decides to hear the appeal, it shall conduct the appeal in accordance with procedures established by the council. The decision of the city manager shall be in writing and shall be final. All civil penalties imposed in accordance with this section shall be payable within thirty days of

the decision of the hearing officer; provided, that if the decision is appealed, all penalties shall be payable within thirty days after the city manager's decision on the appeal.

12.60.400. Emergency corrections.

In the event cleanup, repairs, construction, or other work is performed on any applicable site pursuant to any provision of law relating to an emergency or pursuant to any other provision of law authorizing public work on private property in order to correct, eliminate or abate a condition upon such premises which threatens to cause, or has caused, a violation of any provision of this chapter, the person responsible for the occurrence or condition giving rise to such work, the occupant and the owner of the premises shall be liable, jointly and severally, to the city for public expenditures.

12.60.410. Judicial civil penalties.

Any person who intentionally or negligently violates any provision of this chapter shall be civilly liable to the city. The city may petition the Superior Court to impose, assess, and recover such sums.

12.60.420. Remedies cumulative.

The remedies provided for in this chapter shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the city.