



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Introduce an Ordinance to Repeal and Re-Adopt Sunnyvale Municipal Code Chapter 12.60 (Stormwater Management) and Find That the Action is Categorically Exempt From the California Environmental Quality Act (CEQA) Pursuant to Section 15308 of the CEQA Guidelines

BACKGROUND

The Clean Water Act requires that all operators of municipal separate storm sewer systems be regulated for discharge of stormwater to local waterways via a National Pollutant Discharge Elimination System (NPDES) Permit. In the Bay Area, this permit is called the Municipal Regional Stormwater Permit (Stormwater Permit) issued by the San Francisco Bay Regional Water Quality Control Board. The Stormwater Permit was last issued in May 2022 (Order R2-2022-0018); it became effective July 1, 2022. This Permit is shared by 79 permittees, so all Bay Area communities face the same requirements. The entire text of the permit can be found in Attachment 2.

In 2003, Council adopted Sunnyvale Municipal Code (SMC) Chapter 12.60 (Stormwater Management) and has adopted amendments periodically as new Stormwater Permits have been promulgated. The last major revision to SMC Chapter 12.60 was in 2010 (RTC No. 10-303).

The new Stormwater Permit continues many previous requirements and adds new ones, including expanded implementation of stormwater treatment integrated into new and redevelopment projects. Such treatment is generally required by the Permit to be landscaped based features that absorb and filter water before being discharged in the storm system. This technique is also called Green Stormwater Infrastructure (GSI). The proposed changes to SMC Chapter 12.60 will provide the City with the legal authority to implement the new requirements of the Permit, and the City is specifically required by the Permit to have that authority.

As part of this update, SMC Chapter 12.60 has also been renumbered and cleaned up. A table reconciling the old and new chapter sections is included as Attachment 3.

EXISTING POLICY

General Plan Policy EM-8.3 Ensure that stormwater control measures and best management practices (BMPs) are implemented to reduce the discharge of pollutants in stormwater to the maximum extent practicable.

General Plan Goal EM-10 Minimize the quantity of runoff and discharge of pollutants to the maximum extent practicable by integrating surface runoff controls into new development and redevelopment land use decisions.

ENVIRONMENTAL REVIEW

Adoption of this Ordinance does not approve any specific construction activities. All construction projects will be reviewed in accordance with the California Environmental Quality Act (CEQA) prior to approval. As such, the adoption of the Ordinance is exempt from environmental review because it is a regulatory action for the protection of the environment where the regulatory process involves procedures for the protection of the environment (CEQA Guidelines Section 15308).

DISCUSSION

The changes proposed to SMC Chapter 12.60 are aimed to address expanded requirements for new and redevelopment projects to manage stormwater runoff from their site. Specific criteria are included in the Stormwater Permit to designate which projects are “regulated projects,” which are required to provide stormwater treatment, integrate design features that minimize impervious area and pollutants, and in some cases reduce or eliminate runoff from the site to absorb into the ground and minimize creek erosion from higher flows. The requirements apply to both private development and the City’s own projects.

The new criteria are required to be applied for projects whose permits are not approved by June 30, 2023. Some exceptions occur where certain permitting actions are taken that preclude the City from adding additional requirements to a project. A summary of key changes to the criteria for regulated projects is shown below.

SMC Section Reference	Previous NPDES Permit	Current/New NPDES Permit
12.60.121	<i>Impervious Area thresholds:</i> 10,000 square feet created and/or replaced for most projects; 5,000 square feet for “special land use” projects.	5,000 square feet for all projects except single-family homes.
12.60.121	<i>Single family homes:</i> Not regulated if detached and not part of a larger plan of development.	Regulated at threshold of 10,000 square feet of impervious area created and/or replaced.
12.60.124	<i>Special Projects Category C:</i> Transit-oriented projects eligible for treatment reduction credits under this category.	Only affordable housing projects are eligible for treatment reduction credits under this category.
12.60.122 and 12.60.123	<i>Public Roads Projects:</i> Required to treat only if creating a new road or adding travel lanes to existing roads.	Required for new and widened roadway areas (including sidewalks and bicycle lanes) for projects of 5,000 square feet or more of contiguous area. Also required for road reconstruction projects greater than one acre.

Separate from and in addition to integrating treatment on new and redevelopment projects, the City is also required by the Stormwater Permit to implement additional GSI beyond regulated projects. The

target for implementation of additional GSI for Sunnyvale is the proactive treatment of five (5) acres of impervious area. Such projects involve retrofitting an area (such as a street or parking lot) that are not already part of a regulated project and including treatment for those areas. Another example would be expanding the scope of a planned project to treat adjacent roadway runoff; the treatment features in the Caribbean Drive project are an example of this approach. No municipal code changes are proposed at this time to advance implementation of GSI beyond regulated projects, though additional changes may be beneficial in the future.

FISCAL IMPACT

The cost of implementing the requirements on additional private development “regulated projects” will be integrated into the City’s Operating Budget process. These costs would be funded by the Development Enterprise Fund. The Community Development Department is evaluating whether changes to permit fees are needed to address the ongoing cost of stormwater review during permit processing.

The cost of implementing the requirements for additional public “regulated projects” constructed by the City will be integrated into the Projects Budget for those projects as part of the budget process. These costs would be funded by the same fund supporting the capital project.

PUBLIC CONTACT

The Community Development Department has been providing information to permit applicants regarding the new requirements and the July 1, 2023 effective date since December 2022, and outreach information has been posted to the City’s website since February 2023.

Public contact was made by posting the Council meeting agenda on the City’s official-notice bulletin board at City Hall, at the Sunnyvale Public Library and in the Department of Public Safety Lobby. In addition, the agenda and this report are available at the NOVA Workforce Services reception desk located on the first floor of City Hall at 456 W. Olive Avenue (during normal business hours), and on the City’s website.

ALTERNATIVES

1. Introduce the Ordinance in Attachment 1 to repeal and re-adopt Chapter 12.60 (Stormwater Management) of Title 12 (Waters and Sewers) of the Sunnyvale Municipal Code and find that this action is categorically exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines.
2. Do not introduce the Ordinance and provide direction to staff if modifications are desired.

STAFF RECOMMENDATION

Alternative 1: Introduce the Ordinance in Attachment 1 to repeal and re-adopt Chapter 12.60 (Stormwater Management) of Title 12 (Waters and Sewers) of the Sunnyvale Municipal Code and find that this action is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15308 of the CEQA Guidelines.

The Stormwater Permit provides compliance dates for each of the various requirements, Adopting the Ordinance now will ensure that the compliance dates for these requirements are met and that the Sunnyvale Municipal Code is aligned with the Stormwater Permit requirements.

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ATTACHMENTS

1. Draft Ordinance
2. Municipal Regional Stormwater Permit
3. Chapter 12.60 Comparison Table