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ORDINANCE NO. ___ - _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, PROTECTING PUBLIC HEALTH AND SAFETY AND CITY PROPERTY BY IMPOSING LIMITATIONS ON RUNOFF AND CONTROLLING DISCHARGES OF POLLUTANTS TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM AND WATERS OF THE UNITED STATES BY AMENDING CHAPTER 15.10 OF TITLE 15 OF THE DANA POINT MUNICIPAL CODE

WHEREAS, The Federal Water Pollution Control Act (commonly known as the Clean Water Act or “CWA”), 33 U.S.C. § 1251 et seq., as amended, prohibits the discharge of any “Pollutant” (as defined in the CWA) to Waters of the United States from a point source, unless the discharge is authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”); and

WHEREAS, Pursuant to the CWA, the United States Environmental Protection Agency (“US EPA”) has defined the term “Municipal separate storm sewer system” (“MS4”) to mean a conveyance, or system of conveyances, including roads with drainage systems, municipal streets, curbs, gutters, catch basins, and storm drains owned or operated by a city, used for collecting Storm Water; and

WHEREAS, US EPA reports that stormwater and non-stormwater runoff results in discharges to MS4s which have had a significant adverse impact on the water quality of Receiving Waters; and

WHEREAS, CWA § 402(p), 33 U.S.C. § 1342(p), requires that the City obtain an NPDES permit for the discharge of Pollutants from the City’s MS4; and

WHEREAS, CWA § 402(p), 33 U.S.C. § 1342(p), further provides that NPDES permits shall require controls to reduce the discharge of Pollutants from the MS4 to the Maximum Extent Practicable, including management practices and such other provisions as may be appropriate for the control of Pollutants; and requires the City to effectively prohibit non-stormwater discharges to the MS4; and

WHEREAS, in implementation of CWA § 402(p), US EPA has adopted various regulations at several places in Title 40 of the Code of Federal Regulations (“CFR”) to address compliance and implementation of the CWA; and

WHEREAS, the California Water Code, the California Regional Water Quality Control Board – San Diego (“RWQCB-SD”) issued a National Pollutant Discharge Elimination System (“NPDES”) Permit and Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges within the County of Orange, “WASTE DISCHARGE REQUIREMENTS ORDER NO. R9-2002-0001 [NPDES NO CAS0108740] FOR DISCHARGES OF URBAN RUNOFF FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS FOR THE COUNTY OF ORANGE, INCORPORATED CITIES OF ORANGE COUNTY AND THE ORANGE COUNTY FLOOD CONTROL SYSTEM” (the “NPDES Order”), to cities in Orange County, including the City; and

WHEREAS, the NPDES Order and US EPA regulations implementing the CWA, require the City to demonstrate that it has adequate legal authority, through ordinance or other authority, to prohibit Illicit Discharges and to otherwise require compliance with the NPDES Order; and

DRAFT

WHEREAS, under the California Constitution and California statutory law, the City has the authority to define public nuisances and to protect the public health and safety of the residents of and visitors to the City, and the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In order to protect public health, safety and well-being; to carry out obligations imposed on the City by the Congress through the Clean Water Act and the US EPA regulations implementing the CWA; to carry out obligations imposed on the City through the Waste Discharge Requirements imposed pursuant to State laws; to "effectively prohibit" non-storm water discharges into MS4s; and to demonstrate that the City has the authority to otherwise require compliance with the NPDES Order; Title 15 of the Dana Point Municipal Code is hereby amended by replacing Chapter 15.10 with a new Chapter 15.10, "STORMWATER AND URBAN RUNOFF POLLUTION CONTROLS," to read in its entirety as follows:

CHAPTER 15.10

Sections:

15.10.010	Title
15.10.020	Purpose and Intent
15.10.030	Definitions
15.10.035	General Provisions
15.10.040	Prohibition on Illicit Connections and Prohibited Discharges
15.10.050	Control of Urban Runoff
15.10.060	BMPs, Monitoring, Inspections
15.10.070	Enforcement
15.10.080	Permits
15.10.090	Interagency Cooperation
15.10.100	Miscellaneous
15.10.110	Judicial Review

DRAFT

Chapter 15.10

15.10.010 Title.

This chapter shall be entitled "Stormwater and Urban Runoff Pollution Controls" and shall be known by this title throughout this Code.

15.10.020 Purpose and Intent.

The purpose of this Chapter is to protect the health and safety of the waters of the State of California and the United States, those who use the waters for recreation and food sources, and the marine habitats and ecosystems existing in the waters by:

- (a) Effectively prohibiting non-stormwater discharges into the Stormwater Drainage System; and
- (b) Reducing Pollutant loads from stormwater and urban runoff to the Maximum Extent Practicable.
- (c) Establishing minimum requirements for Stormwater Management, including source control requirements, to prevent and reduce pollution;
- (d) Establishing requirements for development project site design, to reduce stormwater pollution and erosion;
- (e) Establishing requirements for the management of stormwater flows from development projects, both to prevent erosion and to protect and enhance existing water-dependent habitats;
- (f) Establishing standards for the use of off-site facilities for Stormwater Management to supplement on-site practices at new development sites; and
- (g) Establishing notice procedures and standards for adjusting stormwater and non-Stormwater Management requirements where necessary.

The intent of this Chapter is to enhance and protect water quality of Receiving Waters of the State and the United States in a manner that is consistent with the Clean Water Act and State law.

15.10.030 Definitions.

For the purposes of this Chapter, the following words shall have the meanings ascribed to them in this Section:

"Accelerated Erosion" means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away. Erosion includes the movement or loss of soil by the action of water, wind, or chemical action.

"Authorized Enforcement Staff" means any City employee assigned to duties involving permits and other City approvals, inspections, and enforcement related to this Ordinance.

DRAFT

“Authorized Enforcement Official” means the City Manager or his/her designee.

"Authorized Inspector" means the City Director of Public Works and Engineering Services or his/her designee, who is assigned to investigate compliance and detect violations of this Chapter.

“Best Management Practices” means 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 Stormwater Conveyance System. 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 Ordinance.

“BMPs” means Best Management Practices.

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

“City” means the City of Dana Point.

"City Manager" means the City Manager of the City or his/her designee.

“Commercial Discharger” means a Discharger who operates a Regulated Commercial Facility.

“Constructed Wetland” means a vegetated area that has been deliberately modified to provide or enhance habitat, to provide water quality benefits, or to moderate water flow rates or velocities, that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

"Co-Permittee" means the County of Orange, the Orange County Flood Control District and/or any one of the eleven (11) municipalities (including the City) which is responsible for compliance with the terms of the NPDES Order.

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

“Detention” means the temporary storage of storm runoff in a manner that controls peak discharge rates and provides some gravity settling of Pollutants.

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

“Development Project Guidance” means DAMP Chapter VII and the Appendix thereto, entitled Best Management Practices for New Development Including Non- Residential Construction Projects.

"Director" means the City Director of Public Works and Engineering Services or his/her designee.

“Discharge” when used as a verb, means to release or allow Pollutants to directly or indirectly enter stormwater, or to allow stormwater or non-stormwater to directly or indirectly enter the

DRAFT

Stormwater Conveyance System, MS4, or Receiving Waters, from an activity or operation that one owns or operates. When used as a noun, "Discharge" means the Pollutants, stormwater and/or non-stormwater that are discharged.

"Discharge Exception" means those Discharges exempted in Section 15.10.040(c) of this Chapter.

"Discharger" means any person or entity engaged in activities or operations on and/or the ownership of facilities, which will or may result in Pollutants entering stormwater, the Stormwater Conveyance System, or Receiving Waters; and the owners, operators or persons in charge of the day to day activities 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.

"Domestic Sewage Exception" means discharges which are exceptions to this Chapter and which are excluded from the definition of Prohibited Discharge, as defined herein, including only: Discharges composed entirely of accidental spills of untreated sanitary wastes (commonly called domestic sewage) and other wastes, but limited solely to wastes that are controlled by and are within publicly owned wastewater treatment system collection facilities immediately prior to the accidental spill.

"Discharging Directly To" means that stormwater or non-stormwater entering receiving waters from a facility or activity, without mixing without any other stormwater or non-stormwater from any facility or activity prior to entering the receiving waters.

"Enforcing Attorney" means the City Attorney, the District Attorney acting as counsel to the City, or the designee of either of them, who is authorized to take enforcement action as described herein.

"EPA" or "US EPA" means the United States Environmental Protection Agency.

"Erosion and Sediment Control Plan" means a Stormwater Management Plan that is designed to minimize the Accelerated Erosion and sediment runoff at a site during construction activities.

"Environmentally Sensitive Area" means: All development and redevelopment located within or directly adjacent to or discharging directly to an Environmentally Sensitive Area (where discharges from the development or redevelopment will enter Receiving Waters within the Environmentally Sensitive Area), which either creates 2,500 square feet of impervious surface on a proposed project site or increases the area of imperviousness of a proposed project site to 10% or more of its naturally occurring condition. Environmentally Sensitive Areas include but are not limited to all Clean Water Act Section 303(d) impaired water bodies; areas designated as Areas of Special Biological Significance by the State Water Resources Control Board (Water Quality Control Plan for the San Diego Basin (1994) and amendments); water bodies designated with the RARE beneficial use by the State Water Resources Control Board (Water Quality Control Plan for the San Diego Basin (1994) and amendments); and any other equivalent Environmentally Sensitive Areas which have been identified by the Co-Permittees. "Directly adjacent" means situated within 200 feet of the Environmentally Sensitive Area. "Discharging directly to" means outflow from a drainage conveyance system that is composed entirely of flows from the subject development or redevelopment site, and not commingled with flows from adjacent lands.

"ESA" means Environmentally Sensitive Area.

"Hearing Officer" means the Director, who shall preside at the administrative hearings authorized by this Chapter and issue final decisions on the matters raised therein.

DRAFT

“High Priority Commercial Site” means the following commercial sites/sources (which are each considered to be priority threats to water quality):

- (1) Automobile mechanical repair, maintenance, fueling, or cleaning;
- (2) Airplane mechanical repair, maintenance, fueling, or cleaning;
- (3) Boat mechanical repair, maintenance, fueling, or cleaning;
- (4) Equipment repair, maintenance, fueling, or cleaning;
- (5) Automobile and other vehicle body repair or painting;
- (6) Mobile automobile or other vehicle washing;
- (7) Automobile (or other vehicle) parking lots and storage facilities;
- (8) Retail or wholesale fueling;
- (9) Pest control services;
- (10) Eating or drinking establishments;
- (11) Mobile carpet, drape or furniture cleaning;
- (12) Cement mixing or cutting;
- (13) Masonry;
- (14) Painting and coating;
- (15) Botanical or zoological gardens and exhibits;
- (16) Landscaping;
- (17) Nurseries and greenhouses;
- (18) Golf courses, parks and other recreational areas/facilities;
- (19) Cemeteries;
- (20) Pool and fountain cleaning;
- (21) Marinas;
- (22) Port-a-Potty servicing;
- (23) Other commercial sites/sources that the Director determines may contribute a significant Pollutant load to the MS4;

DRAFT

(24) Any commercial site or source Tributary To An Impaired Water Body, where the site or source generates Pollutants for which the water body is impaired; and

(25) Any commercial site or source within or directly adjacent to or discharging directly to a coastal lagoon or other receiving water within an ESA.

“High Priority Construction Site” means a site meeting either of the following two criteria or equivalent criteria:

- (1) The site is 50 acres or more and grading will occur during the wet season; or
- (2) The site is (i) 5 acres or more and (ii) Tributary To An Impaired Water Body impaired for sediment or is within or directly adjacent to or Discharging Directly To a Receiving Water within an Environmentally Sensitive Area.

“High Priority Industrial Site” means industrial facilities that are subject to section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA); industrial facilities Tributary To An Impaired Water Body, where a facility generates Pollutants for which the water body is impaired; industrial facilities within or directly adjacent to or discharging directly to Receiving Waters within ESAs; facilities subject to the Statewide General Industrial Permit (excluding those facilities that have been approved for No Exposure Certification); and all other industrial facilities that the City determines are contributing significant Pollutant loadings to its MS4, regardless of whether such facilities are covered under the Statewide General Industrial Permit or other NPDES permit.

“High Priority Residential Areas and Activity” means the following residential areas and activities (which are each considered to be priority threats to water quality):

- (1) Automobile repair and maintenance;
- (2) Automobile washing;
- (3) Automobile parking;
- (4) Home and garden care activities and product use (pesticides, herbicides, and fertilizers);
- (5) Disposal of Household Hazardous Waste (e.g., paints, cleaning products, and other wastes generated during home improvement or maintenance activities);
- (6) Disposal of pet waste;
- (7) Disposal of green waste;
- (8) Any other residential source that the Director determines may contribute a significant Pollutant load to the MS4;
- (9) Any residence Tributary To An Impaired Water Body, where the residence generates Pollutants for which the water body is impaired; and
- (10) Any residence within or directly adjacent to or discharging directly to coastal waters or other Receiving Waters within an ESA.

DRAFT

“Household Hazardous Waste” means a household hazardous material that no longer has a use and is discarded or intended to be discarded. The term includes but is not limited to paint and paint-related materials; yard and garden products; household cleaners; used oil, motor vehicle fluids, batteries and oil filters; and household batteries.

“Illicit Discharge” means any discharge to the Storm Water Drainage System that is not composed entirely of storm water except for discharges permitted pursuant to an NPDES permit (other than the NPDES Order) and except discharges resulting from firefighting activities.

“Illicit Connection” means any device or conveyance or drainage system, pipeline, conduit, inlet or outlet through or by which the discharge of any Pollutant to the Stormwater Drainage System occurs or may occur, including but not limited to floor drains, pipes or any fabricated or natural conduits. The term “Illicit Connection” shall not include Legal Nonconforming Connections or connections to the Stormwater Drainage System that are hereinafter authorized by the agency with jurisdiction over the system at the location at which the connection is made.

“Impaired Water Body” means a water body that is listed by the 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” means 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 Activity” means manufacturing, processing, or raw materials storage at a commercial, industrial or municipal facility. The term includes, but is not limited to, industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials; manufactured products, waste material, or by-product creation or storage; material handling; refuse storage or disposal; the application or disposal of process wastewaters; storage and maintenance of material handling equipment; treatment, storage or disposal of residuals; outdoor shipping and receiving; activities in manufacturing buildings; storage of raw materials and intermediate and finished products; and areas where significant Industrial Activity has taken place in the past and significant materials remain and are exposed to stormwater. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product.

“Industrial Discharger” means a Discharger who operates a Regulated Industrial Facility.

“Industrial Stormwater Permit” means all industrial stormwater permits issued under the Clean Water Act for industrial activities conducted within the City, including the State General Industrial Stormwater Permit.

“Infiltration” means the process of percolating stormwater or non-stormwater into the subsoil.

“Infiltration BMPs or Infiltration Facility” means any structural treatment BMP designed primarily to percolate water into the subsurface, such as an infiltration trench or infiltration basin. An infiltration facility may include filtering prior to or during infiltration. BMPs that infiltrate some water but which are designed primarily to retain water or to treat water, such as retention basins, Constructed Wetlands, or filtering swales are not infiltration facilities.

DRAFT

"Invoice For Costs" means the City's costs and expenses including but not limited to administrative overhead, salaries and other expenses recoverable under state law, incurred during any inspection conducted pursuant to Section 15.10.060 of this Chapter, where a notice of noncompliance, administrative compliance order or other enforcement option under Section 15.10.070 of this Chapter is utilized to obtain compliance with this Chapter.

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

"Legal Nonconforming Connection" means connections to the Stormwater Drainage System existing as of the adoption of the ordinance codified in this Chapter that were in compliance with all federal, state and local rules, regulations, statutes and administrative requirements in effect at the time the connection was established, including but not limited to, any discharge permitted pursuant to the terms and conditions of an individual discharge permit issued pursuant to County Ordinance No. 703.

"Maintenance [of a BMP]" means periodic 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.

"Medium/Low Priority Construction Site" means any construction site other than a High Priority Construction Site.

"Maximum Extent Practicable" 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 is 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.

"MEP" means Maximum Extent Practicable.

"MS4" means and shall be synonymous with the Stormwater Drainage System.

"Municipal Facility" means a facility owned or operated by the City that is used for a governmental purpose. Facilities on municipally owned land that are leased or rented to others to generate municipal revenues are not Municipal Facilities. (The commercial or industrial lessees of such facilities may, however, be subject to this Chapter as Commercial Dischargers or Industrial Dischargers.)

"New Development" means, for purposes of this Chapter, all public and private construction on unimproved properties.

DRAFT

"NPDES" means the "National Pollutant Discharge Elimination System."

"NPDES Order" means SDRWQCB Order No. R9-2002-0001, NPDES Permit No. CAS 0108740, "Waste Discharge Requirements for Discharges of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of Orange, the Incorporated Cities of Orange County, and the Orange County Flood Control District Within the San Diego Region."

"Off-Site BMP" means a Stormwater Management measure located outside the subject property boundary of a facility or outside the boundary described in the permit application for a land development activity.

"On-Site BMP" means a Stormwater Management measure located within the subject property boundary of a facility, or inside the boundary described in the permit application for a land development activity.

"Performance Standard" means a requirement under this Chapter that specifies a result that must be achieved (e.g., "minimize Impervious Surface Area" or "do not impair receiving water quality") without specifying the means that must be used to achieve that result.

"Person" means any natural person as well as any corporation, partnership, government entity or subdivision, trust, estate, association, joint venture, business entity or other similar entity, or their agent, employee or representative.

"Pollutant" means any liquid, solid or semisolid substances or combination thereof, including and not limited to:

- (1) Artificial materials, chips or pieces of natural or man-made materials (such as floatable plastics, wood or metal shavings);
- (2) Solid waste, including, but not limited to municipal waste, residential (household) waste (such as trash, paper, plastics, lawn clippings and yard wastes; animal fecal materials; excessive pesticides, herbicides and fertilizers; used oil or other fluids from motor vehicles, lawn mowers and other common household equipment);
- (3) Metals, such as cadmium, lead, zinc, copper, silver, nickel, chromium and nonmetals, such as phosphorus and arsenic;
- (4) Petroleum hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants and grease);
- (5) Excessive eroded soils, sediment and particulate materials;
- (6) Animal wastes (such as discharge from confinement facilities, kennels, pens and recreational facilities, including, stables, show facilities or polo fields);
- (7) Substances having a pH less than 6.5 or greater than 8.5, or which cause Receiving Waters to have unusual coloration, turbidity or excessive levels of fecal coliform, fecal streptococcus or enterococcus;
- (8) Waste materials and wastewater generated on construction sites and by construction activities (including but not limited to paint, paint flakes, stain, sealants, glues, limes, pesticides, fertilizers, herbicides, wood preservatives, solvents, asbestos, stucco fragments, oils, lubricants,

DRAFT

hydraulic fluid, radiator fluid, battery fluids, construction equipment wash water, concrete pouring and cleanup wash water, concrete detergents, steam cleaning and sand blasting residues, chemical degreasing or diluting agents, and super chlorinated water generated by potable water line flushing);

(9) Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon;

(10) Materials which contain base/neutral or acid extractable organic compounds;

(11) Those Pollutants defined in Section 1362(6) of the Clean Water Act, including solid waste, incinerator residue, sewage, garbage, sewage sludge, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal and agricultural waste discharged into water; and

(12) Any other constituent or material discharged from a point source that may interfere with or adversely affect the beneficial uses of the state's Receiving Waters, flora or fauna.

The term "Pollutant" shall not include uncontaminated stormwater, potable water or reclaimed water generated by a lawfully permitted water treatment facility.

"Primary Pollutant of Concern" means any of the following Pollutants, if that Pollutant may be discharged from a Priority Development Project or Significant Redevelopment project, and is also a basis for a listing of the receiving water for the project as impaired pursuant to Section 303(d) of the federal Clean Water Act: sediments, nutrients, heavy metals, organic compounds, trash and debris, oxygen demanding substances, oil and grease, bacteria and viruses, and pesticides.

"Priority Development Project" means a development project that falls within any of the following categories:

(1) *Home subdivisions of 10 or more housing units.* This category includes single-family homes, multi-family homes, condominiums, and apartments.

(2) *Commercial developments greater than 100,000 square feet.* This category is defined as any development on private land that is not for heavy industrial or residential uses where the land area for development is greater than 100,000 square feet. The category includes, but is not limited to: hospitals; laboratories and other medical facilities; educational institutions; recreational facilities; commercial nurseries; multi-apartment buildings; car wash facilities; mini-malls and other business complexes; shopping malls; hotels; office buildings; public warehouses; automotive dealerships; commercial airfields; and other light industrial facilities.

(3) *Automotive repair shops.* This category is defined as a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.

(4) *Restaurants.* This category is defined as a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption (SIC code 5812), where the land area for development is greater than 5,000 square feet.

(5) *All hillside development greater than 5,000 square feet.* This category is defined as any development which creates 5,000 square feet of impervious surface which is located in an area with known erosive soil conditions, where the development will grade on any natural slope that is twenty-five percent or greater.

DRAFT

(6) *Environmentally Sensitive Areas.*

(7) *Parking lots 5,000 square feet or more or with 15 or more parking spaces and potentially exposed to urban runoff.* "Parking Lot" is defined as a land area or facility for the temporary parking or storage of motor vehicles used personally, for business, or for commerce.

(8) *Street, roads, highways, and freeways.* This category includes construction of any paved surface which is 5,000 square feet or greater used for the transportation of automobiles, trucks, motorcycles, and other vehicles.

"Private Property" means any real property, irrespective of ownership, which is not open to the general public.

"Prohibited Discharge" means any

(1) Illicit Discharge; or

(2) any Discharge which contains any Pollutant from public or private property to: (a) The Stormwater Drainage System; (b) Any upstream flow which is tributary to the Stormwater Drainage System; (c) Any groundwater, river, stream, creek, wash or dry weather arroyo, wetlands area, marsh, coastal slough, lagoon; or (d) Any coastal harbor, bay or the Pacific Ocean.

The term "Prohibited Discharge" shall not include:

(1) Discharges occurring in compliance with a State General Permit or other Regional Water Quality Control Board, State Water Resources Control Board or EPA issued NPDES permit or permit waiver;

(2) Discharges authorized pursuant to a permit issued under Section 15.10.080 of this Chapter;

(3) Discharges allowable under the Discharge Exception; or

(4) Discharges allowable under the Domestic Sewage Exception.

"Project Proponent" means the Developer who is proposing a particular development project.

"Rainy Season" means, from October 1 through April 30.

"Receiving Waters" means all waters that are "Waters of the State" within the scope of the California 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" means any construction, alteration or improvement at an already developed site that will increase the total Impervious Surface Area of that site, or that involves activities that could expose contaminants to rainfall. Redevelopment can include but is not limited to the expansion of building footprints, the addition or replacement of a structure, exterior construction and remodeling, replacement of existing impervious surfaces that is not part of a routine maintenance activity, and other activities that create additional impervious surface.

DRAFT

“Regulated Commercial Facility” means all non-residential facilities engaged in business or commerce, whether for profit or not-for-profit, or publicly or privately owned, except for Municipal Facilities and Regulated Industrial Facilities and including residences used for commercial repair, maintenance, cleaning, manufacturing, food preparation or painting activity if that activity has the potential to result in the discharge of non-stormwater or the discharge of Pollutants to stormwater.

“Regulated Industrial Facility” means any facility subject to the State General Industrial Stormwater Permit; any other facility primarily engaged in manufacturing, processing, storage or handling of raw materials, processed bulk materials, or refuse; and any other facility with a total outdoor uncovered area of more than two (2) acres that is used for an Industrial Activity. Municipal Facilities are not considered Regulated Industrial Facilities, unless they are subject to the State General Industrial Stormwater Permit.

“Residential Discharger” means, for an occupied residence, the occupants; and for a vacant residence, the owner and the manager of the residence.

“Responsible Party” means the person(s) identified in and responsible for compliance with the provisions of a Water Quality Management Plan to be submitted to and approved by the Director.

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

“Secondary Pollutant of Concern” means any of the following Pollutants, discharged from a Priority Development Project or Significant Redevelopment project, that is not a primary Pollutant of Concern for that project: sediments, nutrients, heavy metals, organic compounds, trash and debris, oxygen demanding substances, oil and grease, bacteria and viruses, and pesticides.

“Significant Redevelopment” means (1) any Redevelopment in the City that creates or adds at least 2,500 net square feet of additional Impervious Surface Area within or within 200 feet of an Environmentally Sensitive Area (ESA), where runoff from the Redevelopment would Discharge Directly To Receiving Waters within the ESA; and (2) any Redevelopment in the City that creates or adds at least 5,000 net square feet of additional Impervious Surface Area, if that Redevelopment involves grading any natural slope with a total pre-construction height of 20 feet or more and an average pre-construction slope from toe to top of 25% or more in an area of known erosive soil conditions; and (3) any Redevelopment in the City in a Priority Development Project Category that creates or adds at least 5,000 net square feet of additional Impervious Surface Area.

“Standard Urban Stormwater Mitigation Plan” means the SUSMP.

“State General Construction Stormwater Permit” means the current State approved NPDES Permit and Waste Discharge Requirements for Discharges of Stormwater Associated with Construction Activities, and any amendments thereto.

“State General Industrial Stormwater Permit” means the current State approved NPDES Permit and Waste Discharge Requirements for Discharges of Stormwater Associated with Industrial Activities Excluding Construction Activities, and any amendments thereto.

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

“Storm water” means storm water runoff, snow melt runoff, and surface runoff and drainage.

“Stormwater Conveyance System” means private and public drainage facilities other than sanitary sewers within the City by which Urban Run-Off may be conveyed to Receiving Waters, and

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includes but is not limited to roads, streets, constructed channels, aqueducts, storm drains, pipes, street gutters, inlets to storm drains or pipes, or catch basins.

"Stormwater Drainage System" means streets, gutters, channels, storm drains, constructed drains, lined diversion structures, wash areas, inlets, outlets or other facilities which are a part of or tributary to the County-wide stormwater runoff system and owned, operated, maintained or controlled by the City or any Co. Permittee and used for the purpose of collecting, storing, transporting or disposing of stormwater.

"Stormwater Management" means the use of structural or non-Structural BMPs that are designed to reduce Urban Run-Off Pollutant loads, discharge volumes, and/or peak discharge flow rates or velocities. When applied to the City or another municipality, Stormwater Management also includes planning and programmatic measures.

"Stormwater Management Plan" means a plan, submitted on a City form or in a City-specific format in connection with an application for a City permit or other City approval, identifying the measures that will be used for stormwater and non-Stormwater Management during the permitted activity.

"Stormwater Pollution Prevention Plan" means a document (other than a Stormwater Management Plan), which meets the requirements for a SWPPP set out in the State General Construction Stormwater Permit or State General Industrial Stormwater Permit. A SWPPP submitted to the City must describe the BMPs to be implemented and other steps to be taken by the Discharger to meet the requirements of this Ordinance.

"Stormwater Retrofit" means a Stormwater Management BMP designed for an existing development site or activity that previously had either no Stormwater Management BMPs in place or that relied on BMPs inadequate to meet the Stormwater Management requirements of the site or activity.

"Structural BMP" means a BMP that relies on either a physical condition (other than an entirely natural and undisturbed condition), or on a constructed or installed device to reduce or prevent Pollutants in stormwater discharges and authorized non-stormwater discharges. Constructed or enhanced BMPs that depend on natural materials and processes (e.g., constructed drainage swales or buffers, or Constructed Wetlands), and that require periodic maintenance to function as designed, are Structural BMPs.

"Structural Post-Construction BMP" means a Structural BMP (other than a temporary construction-related BMP) put in place in connection with a land development or redevelopment project to prevent or reduce contamination in stormwater or Receiving Waters, or to prevent or reduce erosion downstream from the project.

"Structural Treatment BMPs" means a structural post construction BMP that treats or filters stormwater to remove Pollutants, or that infiltrates stormwater to soils.

"SUSMP" means the Standard Urban Stormwater Management Plan for Land Development Projects and Public Improvement Projects.

"SWPPP" means Stormwater Pollution Prevention Plan.

"SWRCB" means the State Water Resources Control Board.

"Tributary To An Impaired Water Body" facility or activity is Tributary To An Impaired Water Body if urban runoff from that facility or activity enters (1) the Stormwater Conveyance System at a place and in a manner that will carry Pollutants for which that water body is impaired in that

DRAFT

discharge to the impaired water; (2) a flowing stream that will carry Pollutants for which that water body is impaired in that discharge to the impaired water; or (3) an ephemeral stream that reaches the impaired water during storm events and that will carry pollutants for which that water body is impaired from the facility or activity to the Impaired Water Body during such storm events.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based effluent limitations because of factors beyond the reasonable control of the Discharger. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Urban Run-off" means all flows in a Stormwater Conveyance System in the City other than point source discharges in violation of a site-specific NPDES permit. Urban run-off includes but is not limited to stormwater, exempt non-stormwater discharges, and Illicit Discharges.

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

"Waters of the United States" means water subject to the regulatory jurisdiction of the United States under the Federal Clean Water Act and applicable case law.

"Water Quality Management Plan" means a plan for the control of stormwater prepared in accordance with the Development Project Guidance.

15.10.035 General Provisions.

(a) Responsibility for Administration. This Chapter shall be administered for the City of Dana Point by its Authorized Enforcement Official.

(b) Construction and Application. This Chapter shall be interpreted to be consistent with the requirements of the NPDES Order. 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 more protective standards for human health or the environment, shall take precedence.

(c) Recycled Water. This Chapter is not intended to prohibit or prevent the use of recycled water, or the discharge of recycled water after use. This Chapter is intended to require the use of BMPs for such uses and discharges as necessary to protect human health and the environment.

(d) City Permits and Approvals.

(1) Each applicant for a development project or approval shall ensure that Pollutant discharges from the project are reduced to the Maximum Extent Practicable, that peak runoff velocities and runoff volumes from the project are controlled, and that receiving water quality objectives are not violated. The applicant shall, at a minimum:

a. Implement all appropriate source control BMPs;

b. Implement site design/landscape characteristics, where feasible which maximize infiltration, provide retention, slow runoff, and minimize impervious land coverage.

DRAFT

- c. Implement buffer zones for natural water bodies, where feasible, and where infeasible, implement other buffers such as trees, lighting restrictions, access restrictions and related restrictions.
- d. Where the project will result in industrial activities which are subject to the State General Industrial Storm Water Permit, the applicant shall provide evidence that coverage under the State General Industrial Storm Water Permit has been obtained.
- e. Comply with all grading and construction activity requirements necessary to comply with the City's Grading Ordinance.
- f. Provide proof of a mechanism which will ensure ongoing long-term maintenance of all Structural Post-Construction BMPs.

(2) An application for any of the following discretionary permits or approvals shall be accompanied by plans demonstrating how the requirements of this Chapter will be met, and the permit or approval shall not be approved unless the Director determines that the application complies with the requirements of this Chapter:

- a. Demolition Permit
- b. Agricultural Exemption
- c. Final Map Modification
- d. Grading Plan (including Modification or Renewal)
- e. Improvement Plan (including Modification)
- f. Landscape Plan
- g. Conditional Use Permit (including Modification or Minor Deviation)
- h. Design Review Permit (including Modification, Minor Deviation, or Extension)
- i. Land Conservation Permit
- j. Parcel Map Modification
- k. Reclamation Plan
- l. Site Plan (including Amendment)
- m. Solid Waste Facility Permit
- n. Tentative Map (including Resolution Amendment or Time Extension)
- o. Tentative Parcel Map
- p. Variance
- q. Watercourse Permit
- r. Coastal Development Permit
- s. Encroachment Permit – Discretionary

(3) An application for any of the following ministerial permits or approvals shall be accompanied by plans demonstrating how the specifically applicable requirements, if any, set out in corresponding sections of the City Stormwater Standards Manuals, will be met, and the permit or approval shall not be approved unless the Director determines that the application complies with those requirements,:

- a. Building Permit
- b. Encroachment Permit - Ministerial
- c. On Site Wastewater System Permit
- d. Underground Tank Permit
- e. Well Permit

(e) City Stormwater Standards Manuals. The City may develop Stormwater Standards Manuals to standardize the process and requirements of compliance methods. The Director may provide additional flexibility using the Guidance Documents authorized in subsection 15.10.035 (e) below.

DRAFT

(f) Guidance Documents. The Authorized Enforcement Official may prepare, circulate for public comment, disseminate and maintain guidance documents addressing the use of pollution prevention practices and BMPs for specific activities or facilities, and addressing the detection and abatement of Illicit Connections and Prohibited 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 City Stormwater Standards Manuals.

These guidance documents may also identify practices that have been determined by the Authorized Enforcement Official to be additional BMPs that may be implemented for Land Disturbance Activities and Land Development Activities to prevent or control pollution to the Maximum Extent Practicable (MEP).

The Authorized Enforcement Official and Authorized Enforcement Staff may also take these guidance documents into account when determining whether any practices used by a Discharger, or proposed in a grading plan, a Stormwater Pollution Prevention Plan (SWPPP), an enforcement settlement offer, or any other submittal to the City, are BMPs that will prevent or control pollution to the MEP. These case-specific discretionary decisions may involve circumstances that were not anticipated when general guidance documents were prepared. Therefore, these guidance documents do not confer rights on Dischargers in these circumstances and do not constrain the discretion of Authorized the Enforcement Official or Authorized Enforcement Staff. Where appropriate and provided the same protection is provided to the environment, the Authorized Enforcement Official and Authorized Enforcement Staff may depart from these guidance documents when making case-specific decisions authorized by this Chapter.

15.10.040 Prohibited Discharges and Prohibitions on Illicit Connections.

(a) Unless otherwise permitted by this Chapter, no person shall commit, cause or contribute to a Prohibited Discharge.

(b) No person shall commit, cause or contribute to a discharge into the MS4, or into an area or manner that will result in a discharge into the MS4:

(1) any substance causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in California Water Code § 13050) into waters of the State.

(2) any substance causing or contributing to an exceedance of any Water Quality Standard for surface water or groundwater.

(3) any substance containing Pollutants which have not been reduced to the Maximum Extent Practicable.

(4) any substance discharged in any manner prohibited by the Basin Plan for the San Diego Region as set forth in Attachment A to the NPDES Order.

(c) Except for the following Discharge Exceptions, no person shall discharge non-stormwater into the Stormwater Drainage Systems:

(1) Diverted stream flows;

(2) Rising ground waters;

DRAFT

- (3) Uncontaminated ground water infiltration [as defined at 40 CFR 35.2005(20)] to MS4s;
 - (4) Uncontaminated pumped ground water;
 - (5) Foundation drains;
 - (6) Springs;
 - (7) Water from crawl space pumps;
 - (8) Footing drains;
 - (9) Air conditioning condensation;
 - (10) Flows from riparian habitats and wetlands;
 - (11) Water line flushing;
 - (12) Landscape irrigation;
 - (13) Discharges from potable water sources other than water main breaks;
 - (14) Irrigation water;
 - (15) Lawn watering;
 - (16) Individual residential car washing; and
 - (17) Dechlorinated swimming pool discharges.
 - (18) firefighting flows
- (d) No person shall construct, maintain, own, operate or in any way utilize an Illicit Connection.
- (e) Any owner and/or operator of an Illicit Connection shall immediately cause the connection to be removed and/or eliminated. This prohibition on Illicit Connections shall apply irrespective of whether the Illicit Connection was established prior to the date of the enactment of this Chapter; however, Legal Nonconforming Connections shall not become Illicit Connections until the earlier of the following:
- (1) For all structural improvements to Private Property installed for the purpose of discharge to the Stormwater Conveyance System, five (5) years from the adoption of the ordinance codified in this Section; or
 - (2) For all nonstructural improvements to Private Property (including natural surface flow patterns, depressions or channels traversing one (1) or more properties) existing for the purpose of discharge to the Stormwater Conveyance System, six (6) months following delivery of a notice to the owner or person in charge of the day to day activities of the property, which states a Legal Nonconforming Connection has been identified. The notice of a Legal Nonconforming Connection shall state the date of expiration of use under this Chapter.

DRAFT

(f) A civil or administrative violation of this Section shall occur irrespective of the negligence or intent of the violator to construct, maintain, operate or utilize an Illicit Connection, or to cause, allow or facilitate any discharge prohibited by this Section.

(g) If the Authorized Enforcement Official reasonably determines that a discharge which is otherwise within the Discharge Exception may adversely affect the beneficial uses of receiving waters, or may be a significant source of Pollutants, then the Authorized Inspector may give written notice to the owner of the Private Property or facility, that the Discharge Exception shall not apply to the subject discharge following expiration of the thirty (30) day period commencing upon delivery of the notice. Upon expiration of the thirty (30) day period, any such Discharge shall constitute a violation of this Section.

(h) The owner, operator, or person responsible for installing, maintaining, operating or utilizing an Illicit Connection that was a legal Nonconforming use may request an administrative hearing, pursuant to the procedures set forth in Sections 15.10.070(a)(6) to (10), for an extension of the period allowed for continued use of the connection. A reasonable extension of use may be authorized by the City Manager upon consideration of the following factors:

- (1) The potential adverse effects of the continued use of the connection upon the beneficial uses of Receiving Waters;
- (2) The economic investment of the Discharger in the Legal Nonconforming Connection; and
- (3) The financial effect upon the Discharger of a termination of the Legal Nonconforming Connection.

15.10.050 Control of Urban Runoff.

(a) New Development and Significant Redevelopment.

(1) All New Development and Significant Redevelopment, including Priority Development Projects, within the City shall be undertaken in accordance with:

(A) A Water Quality Management Plan, which shall be prepared in accordance with the Development Project Guidance; and

(B) Any conditions and requirements established by the Director, which are reasonably related to the reduction or elimination of Pollutants in stormwater runoff from the project site.

(2) Prior to City issuance of a grading permit, building permit and/or safety permit for any New Development or Significant Redevelopment, the applicant shall submit to and obtain the Director's approval for, a Water Quality Management Plan. If the New Development or Significant Redevelopment may be approved without application for a grading permit, building permit or safety permit, the applicant shall obtain the Director's approval of a Water Quality Management Plan prior to the issuance of a discretionary land use approval or, at the City's discretion, prior to recordation of a subdivision map.

(3) Notwithstanding Subsections (a)(1) and (2) of this Section, a Water Quality Management Plan shall not be required for construction of one single-family detached residence unless the Director determines that the construction may result in the discharge of significant levels of a Pollutant into a tributary to the Stormwater Drainage System.

DRAFT

(4) Compliance with the conditions and requirements of a Water Quality Management Plan shall not exempt any person from the requirement to independently comply with each provision of this Chapter.

(5) If the Director determines that the project will have a de minimis impact on the quality of stormwater runoff, then the Director may issue a written waiver of the requirement for preparation and approval of a Water Quality Management Plan.

(6) Each Water Quality Management Plan shall name a Responsible Party for the project.

(7) The owner of a New Development or Significant Redevelopment project, their successors and assigns and each named Responsible Party shall implement and adhere to the terms, conditions and requirements of the approved Water Quality Management Plan.

Each failure by the owner of the Private Property, their successors or assigns or a named Responsible Party to implement and adhere to the terms, conditions and requirements of an approved Water Quality Management Plan shall constitute a violation of this Chapter.

(8) The Director may require that the Water Quality Management Plan be recorded with the County Recorder's office by the Private Property owner. The signature of the owner of the Private Property, any successive owner or the named Responsible Party shall be sufficient for the recording of the plan or any revised plan and a signature on behalf of the City shall not be required for recordation.

(b) Cost Recovery. The costs and expenses of the Director incurred in the review, approval or revision of any Water Quality Management Plan, or in the approval or revision of any such plan, shall be assessed to the Private Property owner or Responsible Party and shall be due and payable to the City. The Director may elect to require a deposit of estimated costs and expenses, and the actual costs and expenses shall be deducted from the deposit. The balance, if any, shall be refunded to the Private Property owner or Responsible Party.

(c) Best Management Practice Requirements. All Dischargers must comply with the applicable prohibitions and requirements of this Chapter, and must also comply with any other Best Management Requirements as a part of Stormwater Standards Manuals or Guidance Documents that are developed by the City as a part of the Stormwater Program.

15.10.060 BMPs, Monitoring, Inspections.

(a) Scope of Inspections and Monitoring.

(1) Right to Inspect. Except for annual inspections of High Priority Industrial Facilities, prior to commencing any inspection as described in this Section, the Authorized Inspector shall obtain either the consent of the owner or person in charge of the day to day activities of the Private Property, or shall obtain an administrative inspection warrant or criminal search warrant. As to High Priority Industrial Facilities, because High Priority Industrial Facilities are identified under the NPDES Order as creating increased threats to water quality, the Director is authorized to inspect each such High Priority Industrial Facility once annually, during normal business hours upon twenty-four hours notice to the owner, operator, or person responsible for the day to day activities of such facility.

(2) Entry to Inspect. The Authorized Inspector may enter Private Property to investigate the source of any discharge of a Pollutant to any public street, inlet, gutter, storm drain or the Stormwater Drainage System located within the jurisdiction of the City.

DRAFT

- (3) Compliance Assessments. The Authorized Inspector may inspect Private Property for the purpose of verifying compliance with this Chapter.
- (4) Portable Equipment. For purposes of verifying compliance with this Chapter, the Authorized Inspector may inspect any vehicle, truck, trailer, tank truck or other mobile equipment.
- (5) Records Review. The Authorized Inspector may inspect all records of the owner or person in charge of the day to day activities of Private Property relating to chemicals or processes presently or previously occurring on-site, including material and/or chemical inventories, facilities maps or schematics and diagrams, material safety data sheets, hazardous waste manifests, business plans, pollution prevention plans, State General Permits, Stormwater Pollution Prevention Plans, monitoring program plans and any other record(s) relating to Illicit Connections, Illicit Discharges, Prohibited Discharges, a Legal Nonconforming Connection or any other source of discharge or potential discharge of Pollutants to the Stormwater Drainage System.
- (6) Sampling and Testing. The Authorized Inspector may inspect, sample and test any area runoff, soils area (including groundwater testing), process discharge, materials within any waste storage area (including any contained contents) and/or treatment system discharge for the purpose of determining the potential for the discharge of Pollutants to the Stormwater Drainage System. The Authorized Inspector may investigate the integrity of all storm drain and sanitary sewer systems, any Legal Nonconforming Connection or other pipelines on the Private Property, using appropriate tests, including but not limited to smoke and dye tests or video surveys. The Authorized Inspector may take photographs or video tapes, make measurements or drawings and create any other record reasonably necessary to document conditions on the Private Property.
- (7) Monitoring. The Authorized Inspector may erect and maintain monitoring devices for the purpose of measuring any discharge or potential source of discharge to the Stormwater Drainage System.
- (8) Test Results. The owner, operator or person in charge of the day to day activities of Private Property subject to inspection shall, on submission of a written request, be provided copies of all monitoring and test results conducted by the Authorized Inspector.

(b) Industrial Sites—BMPs, Monitoring.

- (1) BMP Implementation. Each owner, operator, or person in charge of day to day activities of each industrial site in the City shall implement those minimum BMPs as may be designated by the Director. For those industrial sites that are Tributary To Impaired Water Bodies and/or that are within or directly adjacent to or discharging directly to Receiving Waters within ESAs, such BMPs shall include such additional controls that the Director may require.
- (2) Monitoring. All High Priority Industrial Sites shall implement a monitoring program as required by the Director. Such monitoring program shall include a program that provides quantitative data from two storm events per year for the following constituents:
- i. Any Pollutant listed in Effluent Guidelines Subcategories where applicable;
 - ii. Any Pollutant for which an effluent limit has been established in an existing NPDES permit for the facility;
 - iii. Oil and grease or Total Organic Carbon (TOC);
 - iv. pH;

DRAFT

- v. Total suspended solids (TSS):
 - vi. Specific conductance; and
 - vii. Toxic chemicals and other Pollutants that are likely to be present in storm water discharges.
 - viii. Any Pollutant that may be used, stored, or generated at a facility for which is a Tributary of an Impaired Water Body (where the water body is impaired for that Pollutant), unless the facility can demonstrate approval of a No Exposure Certification.
- (c) Commercial Sites—BMPs. Each owner, operator, or person in charge of day to day operations of a High Priority Commercial Site in the City shall implement those minimum BMPs as may be designated by the Director. For those commercial sites that are Tributary To Impaired Water Bodies and/or that are within or directly adjacent to or Discharging Directly To Receiving Waters within ESAs, BMPs shall include such additional controls as the Director may require.
- (d) Residential Areas and Activities—BMPs. Each owner, operator, or person in charge of day to day operations of each High Priority Residential Area and Activity in the City shall implement those minimum BMPs as may be designated by the Director. For those High Priority Residential Areas and Activities that are Tributary to Impaired Water Bodies and/or that are within or directly adjacent to or Discharging Directly To Receiving Waters within ESAs, BMPs shall include such additional controls as the Director may require.
- (e) Common Interest Areas and Homeowners' Associations. Each person who owns, operates, or is in charge of day to day activities of common interest areas on Private Property in the City shall ensure that runoff within common interest areas from private roads, drainage facilities, and other components of the Storm Water Conveyance System, including those managed by homeowners' associations, meets the objectives of the NPDES Order, as may be required by the Director.
- (f) Construction Sites—Permit Approvals, BMPs, Inspections.
- (1) Construction and Grading Permits. Prior to issuance of any construction or grading permit, the Director may require, as a condition to such permit, the implementation of BMPs to ensure that the discharge of Pollutants from the site will be reduced to the Maximum Extent Practicable and will not cause or contribute to an exceedance of Water Quality Standards. Each construction site shall implement such BMPs to ensure that discharges of Pollutants are reduced to the Maximum Extent Practicable and will not cause or contribute to an exceedance of Water Quality Standards. All construction and grading activities shall comply with applicable laws, including all applicable City ordinances and the NPDES Order. Construction and grading permit requirements to be implemented by the Project Proponent include the following requirements or their equivalent:
- (1) developing and implementing a plan to manage storm water and non-storm water discharges from the site at all times;
 - (2) implementing BMPs for any rain events, as necessary to comply with the NPDES Order;
 - (3) emphasizing erosion prevention as the most important measure for keeping sediment on site during construction;

DRAFT

(4) utilizing sediment controls as a supplement to erosion prevention for keeping sediment on-site during construction, but not as the single or primary method;

(5) minimizing areas that are cleared and graded to only the portion of the site that is necessary for construction;

(6) minimizing exposure time of disturbed soil areas;

(7) temporarily stabilizing and reseeding disturbed soil areas as rapidly as possible;

(8) permanently revegetating or landscaping as early as feasible;

(9) stabilizing all slopes; and

(10) for each Project Proponent subject to the Statewide General Construction Storm Water Permit, providing evidence of existing coverage under such permit.

(2) BMP Implementation. Each owner, operator, or person in charge of day to day activities of each construction and/or grading site in the City shall implement those minimum BMPs as may be designated by the Director. For those construction sites that are Tributary To Impaired Water Bodies and/or that are within or directly adjacent to or Discharging Directly To Receiving Waters within ESAs, such BMPs shall include such additional controls as the Director may require.

(3) Inspections. Construction and grading sites, and discharges from such sites and operations, are identified under the NPDES Order as creating increased threats to water quality during the Rainy Season. The Director is authorized to inspect each High Priority Construction Site at a least once weekly during the Rainy Season, during normal business hours. The Director may further inspect each Medium/Low Priority Construction Site, at least twice during the Rainy Season, during normal business hours upon twenty-four hours notice to the owner, operator, or person responsible for the day to day operations of such site.

15.10.070 Enforcement.

(a) Administrative Remedies.

(1) Notice of Noncompliance. The Authorized Inspector may deliver to the owner, operator or person in charge of the day to day activities of any Private Property or to any person responsible for an Illicit Connection or a discharge prohibited by Section 15.10.040, a Notice of Noncompliance. The Notice of Noncompliance shall identify the provision(s) of this Chapter, the applicable Water Quality Management Plan or permit violated. The Notice of Noncompliance shall state that continued noncompliance may result in additional enforcement actions against the owner, operator or person in charge of the day to day activities and/or responsible person. The Notice of Noncompliance shall state a compliance date that must be met by the owner, person in charge of the day to day activities and/or other responsible person; provided, however, that the compliance date may not exceed ninety (90) days unless the Authorized Inspector extends the compliance deadline an additional ninety (90) days where good cause exists for the extension.

(2) Administrative Compliance Orders. The Authorized Inspector may issue an administrative compliance order. The administrative compliance order may be issued to:

(A) The owner, operator or person in charge of the day to day activities of any Private Property requiring abatement of conditions that cause or may cause a violation of this Chapter;

DRAFT

- (B) The owner of Private Property or a Responsible Party subject to the requirements of any Water Quality Management Plan to ensure implementation of and adherence to the terms, conditions and requirements of the plan;
- (C) A permittee subject to the requirements of any permit issued pursuant to Section 15.10.080 to ensure compliance with the terms, conditions and requirements of the permit;
- (D) Any person responsible for the Illicit Connection or discharge prohibited by Section 15.10.040.
- (3) Cease and Desist Orders. The Authorized Inspector may issue a cease and desist order. A cease and desist order may direct the owner, operator or person in charge of the day to day activities of any Private Property and/or other person responsible for a violation of this Chapter to:
- (A) Immediately discontinue any Illicit Connection or discharge prohibited by Section 15.10.040;
- (B) Immediately contain or divert any flow of water off the Private Property, where the flow is occurring in violation of any provision of this Chapter;
- (C) Immediately discontinue any other violation of this Chapter;
- (D) Fully assess and clean up the area affected by the violation.
- (4) Recovery of Costs. The Authorized Inspector may deliver to the owner, operator or person in charge of the day to day activities of any Private Property, any permittee or any Responsible Party or any other person who becomes subject to a Notice of Noncompliance or administrative order, an Invoice For Costs. An Invoice For Costs shall be delivered in accordance with Subsection (a)(5) of this Section, and shall be immediately due and payable to the City for the actual costs incurred by the City in issuing and enforcing any notice or order.

If any owner, operator or person in charge of the day to day activities, permittee or Responsible Party, or any other person fails to either pay or successfully appeal the Invoice For Costs in accordance with Subsection (a)(6) of this Section, then the Enforcing Attorney may institute collection proceedings.

- (5) Delivery of Notice. Any notice of noncompliance, administrative compliance order, cease and desist order or invoice of costs to be delivered pursuant to the requirements of this Chapter shall be subject to the following:
- (A) The notice shall state that the recipient has a right to appeal the matter as set forth in Subsections (a)(6) through (10) of this Section.
- (B) Delivery shall be deemed complete upon (a) personal service to the recipient; (b) deposit in the U.S. mail, postage prepaid for first class delivery; or (c) facsimile service with confirmation of receipt.
- (C) If the recipient of notice is the owner of the Private Property, the address for notice shall be the address from the most recently issued equalized assessment roll for the Private Property or as otherwise appears in the current records of the City.
- (D) If the owner, operator, or person in charge of the day to day activities of any Private Property cannot be located after the reasonable efforts of the Authorized Inspector, a notice of

DRAFT

noncompliance or cease and desist order shall be deemed delivered after posting on the Private Property for a period of ten (10) business days.

(6) Administrative Hearing for Notices of Noncompliance and Administrative Compliance Orders. Except as set forth in Subsection (a)(8) of this Section, any person receiving a Notice of Noncompliance, administrative compliance order, a notice of Legal Nonconforming Connection, an Invoice For Costs, or any person who is subject to any adverse determination made pursuant to this Chapter, may appeal the matter by requesting an administrative hearing.

(7) Request for Administrative Hearing. Any person appealing a notice of noncompliance, an administrative compliance order, a notice of Legal Nonconforming Connection, an Invoice For Costs or an adverse determination shall, within thirty (30) days of receipt thereof, file a written request for an administrative hearing, accompanied by an administrative hearing fee as established by separate resolution, with the Office of the City Clerk with copies of the request for administrative hearing mailed on the date of filing to the City Manager, Director and the Enforcing Attorney. Thereafter, a hearing on the matter shall be held before the Hearing Officer within forty-five (45) business days of the date of filing of the written request unless, in the reasonable discretion of the Hearing Officer and pursuant to a written request by the appealing party, a continuance of the hearing is granted.

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

(9) Hearing Proceedings. The Authorized Inspector shall appear in support of the notice, order, determination, Invoice For Costs or emergency abatement action, and the appealing party shall appear in support of withdrawal of the notice, order, determination, Invoice For Costs or in opposition to the emergency abatement action. The City shall have the burden of supporting any enforcement or other action by a preponderance of the evidence. Each party shall have the right to present testimony and other documentary evidence as necessary for explanation of the case.

(10) Final Decision and Appeal. The final decision of the Hearing Officer shall issue within ten (10) business days of the conclusion of the hearing and shall be delivered by first-class mail to the appealing party. The final decision shall include notice that any legal challenge to the final decision shall be made pursuant to the provisions of Code of Civil Procedure Sections 1094.5 and 1094.6 and shall be commenced within ninety (90) days following issuance of the final decision.

Notwithstanding this Section, the final decision of the Hearing Officer in any proceeding determining the validity of a cease and desist order or following an emergency abatement action shall be mailed within five (5) business days following the conclusion of the hearing.

(11) City Abatement. In the event the owner of Private Property, the operator of a facility, a permittee, a Responsible Party or any other person fails to comply with any provision of a compliance schedule issued pursuant to this Chapter, the Authorized Inspector may request the Enforcing Attorney to obtain an abatement warrant or other appropriate judicial authorization to enter the Private Property, abate the condition and restore the area. Any costs incurred by the City in obtaining and carrying out an abatement warrant or other judicial authorization may be recovered pursuant to Subsection (b) of this Section.

DRAFT

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

(1) Court Order to Enjoin or Abatement. The Enforcing Attorney may seek a court order to enjoin and/or abate the nuisance.

(2) Emergency Abatement. In the event the nuisance constitutes an imminent danger to public safety or the environment, the Authorized Enforcement Official may enter the Private Property from which the nuisance emanates, abate the nuisance and restore any Private Property affected by the nuisance, without prior notice to or consent from the owner or person in charge of the day to day activities thereof and without judicial warrant.

(A) An imminent danger shall include, but is not limited to, exigent circumstances created by the dispersal of Pollutants, where the same presents a significant and immediate threat to the public safety or the environment.

(B) Notwithstanding the authority of the City to conduct an emergency abatement action, an administrative hearing pursuant to Subsection (a)(8) of this Section shall follow the abatement action.

(3) Reimbursement of Costs. All costs and fees incurred by the City in responding to any nuisance, all administrative expenses, including legal fees and costs (hereinafter "Recoverable Costs"), and all other expenses recoverable under State law, shall be recoverable from the person(s) creating, causing, committing or maintaining the nuisance.

(4) Nuisance Lien. All Recoverable Costs shall become a lien against the Private Property from which the nuisance emanated and a personal obligation against the owner thereof in accordance with Government Code Section 38773.1 and Section 38773.5. The owner of record of the Private Property subject to any lien shall be given notice of the lien prior to recording as required by Government Code Section 38773.1. The Enforcing Attorney is authorized to collect Recoverable Costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the County Assessor of a special assessment against the Private Property.

(c) Criminal Sanctions.

(1) Prosecutor. The Enforcing Attorney may act on the request of the city council to pursue enforcement actions in accordance with the provisions of this Chapter.

(2) Misdemeanors. Any person who negligently or knowingly violates any provision of this Chapter, undertakes to conceal any violation of this Chapter, continues any violation of this Chapter after notice thereof, or violates the terms, conditions and requirements of any Water Quality Management Plan or permit, shall be guilty of a misdemeanor.

(d) Consecutive Violations. Each day in which a violation occurs, and each failure to comply with any provision of this Chapter, an administrative compliance order, a cease and desist order, an applicable Water Quality Management Plan or any permit issued pursuant to this Chapter, shall constitute a separate violation of this Chapter.

(e) Nonexclusive Remedies. Each remedy available for the enforcement of this Chapter shall be nonexclusive. It is within the discretion of the Authorized Inspector or Enforcing Attorney to seek cumulative remedies.

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(f) Violations of Other Laws. Any person acting in violation of this Chapter also may be acting in violation of the Clean Water Act or the State Porter-Cologne Act and other laws and also may be subject to sanctions including civil liability. Accordingly, the Enforcing Attorney is authorized to file a civil suit pursuant to Section 505 of the Clean Water Act, 33 U.S.C. Section 1365, seeking penalties, damages and orders compelling compliance and other appropriate relief. The Enforcing Attorney may notify any appropriate federal, State or local agency of any alleged violation of this Chapter.

(g) Injunctions. At the request of the City Council, the Enforcing Attorney may cause the filing in a court of competent jurisdiction of a civil action seeking an injunction against any threatened or continuing noncompliance with the provisions of this Chapter. Any temporary, preliminary or permanent injunction issued pursuant hereto may include an order for reimbursement to the City of all costs incurred in enforcing this Chapter, including costs of inspection, investigation and monitoring, the costs of abatement undertaken at the expense of the City costs relating to restoration of the environment and all other expenses as authorized by law.

(h) Other Civil Remedies.

(1) The City Council may ask the Enforcing Attorney to file an action for civil damages in a court of competent jurisdiction seeking recovery of:

(A) All costs incurred in enforcement of the Chapter, including but not limited to costs relating to investigation, sampling, monitoring, inspection, administrative expenses, legal fees and costs, and all other expenses as authorized by law, as well as consequential damages;

(B) All costs incurred in mitigating harm to the environment or reducing the threat to human health; and

(C) Damages for irreparable harm to the environment.

(2) The Enforcing Attorney is authorized to file actions for civil damages resulting from any trespass or nuisance occurring on public land or to the Stormwater Drainage System from any violation of this Chapter where the same has caused damage, contamination or harm to the environment, Private Property or the Stormwater Drainage System.

(3) The remedies available to the City pursuant to the provisions of this Chapter shall not limit the right of the City to seek any other remedy that may be available by law, including, but not limited, to the nuisance remedies under Chapter 6.14 of this Code.

15.10.080 Permits.

(a) Discharge Permit Procedure.

(1) Permit. On application of the owner of Private Property or the operator of any facility, where such Private Property is not otherwise subject to the requirements of an existing NPDES permit, the City Manager may issue a permit authorizing the release of non-stormwater discharges to the Stormwater Drainage System if:

(A) The discharge of material or constituents is reasonably necessary for the conduct of otherwise legal activities on the Private Property; and

(B) The discharge will not cause a nuisance, impair the beneficial uses of Receiving Waters or cause any reduction in established Water Quality Standards.

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

(3) Permit Issuance. The permit shall be granted or denied by the City Manager no later than sixty (60) business days following the completion and acceptance of the application as determined by the City Manager.

The applicant shall be notified in person or by first-class mail of the action taken.

(4) Permit Conditions. The permit may include terms, conditions and requirements to ensure compliance with the objectives of this Chapter and as necessary to protect the Receiving Waters, including but not limited to:

(A) Identification of the discharge location on the Private Property and the location at which the discharge will enter the Stormwater Drainage System;

(B) Identification of the constituents and quantities thereof to be discharged into the Stormwater Drainage System;

(C) Specification of pollution prevention techniques and structural or nonstructural control requirements as reasonably necessary to prevent Prohibited Discharges;

(D) Requirements for self-monitoring of any discharge;

(E) Requirements for submission of documents or data, such as technical reports, production data, discharge reports, self-monitoring reports and waste manifests; and

(F) Other terms and conditions appropriate to ensure compliance with the provisions of this Chapter and the protection of Receiving Waters, including requirements for compliance with Best Management Practices guidance documents approved by any federal or regional agency.

(5) General Permit. In the discretion of the City Manager, the permit in accordance with the conditions identified in Subsection (a)(4) of this Section may be prepared as a general permit applicable to a specific category of activities. If a general permit is issued, any person intending to discharge within the scope of the authorization provided by the general permit may do so by filing an application to discharge with the City Manager. No discharge within the scope of the general permit shall occur until such application is so filed.

Notwithstanding the foregoing in this subsection, the City Manager in his or her discretion may eliminate the requirement that an application for a general permit be filed for any specific activity for which a general permit has been issued.

(6) Permit Fees. The permission to discharge shall be conditioned upon the applicant's payment of the City's costs, in accordance with a fee schedule adopted by City Council resolution, as follows:

(A) For individually issued permits, the costs of reviewing the permit application, preparing and issuing the permit and the costs reasonably related to administering this permit program.

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(B) For general permits, the costs of reviewing the permit application, that portion of the costs of preparing the general permit which is reasonably attributable to the permittee's application for the general permit and the costs reasonably related to administering the general permit program.

(b) Permit Suspension, Revocation or Modification.

(1) The City Manager may suspend or revoke any permit when it is determined that:

(A) The permittee has violated any term, condition or requirement of the permit or any applicable provision of this Chapter;

(B) The permittee's discharge or the circumstances under which the discharge occurs have changed so that it is no longer appropriate to exempt the discharge from the prohibitions contained within this Chapter;

(C) The permittee failed to comply with any schedule for compliance issued pursuant to this Chapter; or

(D) Any regulatory agency, including EPA or a Regional Water Quality Control Board having jurisdiction over the discharge, provides written notice to the City that the discharge must be terminated.

(2) The City Manager may modify any permit when it is determined that:

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

(B) The permittee's discharge or the circumstances under which the discharge occurs have changed so that it is appropriate to modify the permit's terms, conditions or requirements; or

(C) A change to the permit is necessary to ensure compliance with the objectives of this Chapter and/or to protect the quality of Receiving Waters.

The permittee shall be informed of any change in the permit terms and conditions at least forty-five (45) business days prior to the effective date of the modified permit.

(3) The determination that a permit shall be denied, suspended, revoked or modified may be appealed by a permittee pursuant to the same procedures applicable to appeal of an administrative compliance order hereunder. In the absence of a judicial order to the contrary, the permittee may continue to discharge pending issuance of the final administrative decision by the Hearing Officer.

(c) Permit Enforcement, Penalties. Any violation of the terms, conditions and requirements of any permit issued by the City Manager shall constitute a violation of this Chapter and subject the violator to the administrative, civil and criminal remedies available under this Chapter.

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

(1) Limited Permittee Rights. Permits issued under this Chapter are for the person or entity identified therein as the "permittee" only, and authorize the specific operation at the specific

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location identified in the permit. The issuance of a permit does not vest the permittee with a continuing right to discharge.

(2) Transfer of Permits. No permit may be transferred to allow:

(A) A discharge to the Stormwater Drainage System at a location other than the location stated in the original permit; or

(B) A discharge by a person or entity other than the permittee named in the permit, provided however that the City may approve a transfer if written approval is obtained in advance from the City Manager.

15.10.090 Interagency Cooperation.

(a) The Clean Water Act provides for cooperative implementation of requirements and interagency allocations of program resources and burdens. The coordinated effort of the County and the Co-Permittees is reflected in the National Pollutant Discharge Elimination System Permit Implementation Agreement Santa Ana/San Diego Regions, the NPDES permits, the DAMP, this Chapter, the appendices to the DAMP, including, but not limited to, the Development Project Guidance, monitoring and data collection cooperation and regular emergency and spill response planning activities.

(b) The City may elect to contract for the services of any public agency or private enterprise to carry out the planning approvals, inspections, permits and enforcement authorized by this Chapter.

15.10.100 Compliance Disclaimer.

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

15.10.110 Judicial Review.

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

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

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

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PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2003.

WILLIAM L. OSSENMACHER, MAYOR

ATTEST:

SUSAN RAMOS, CITY CLERK

APPROVED AS TO FORM:

A. PATRICK MUNOZ,
CITY ATTORNEY

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STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

I, Susan Ramos, City Clerk of the City of Dana Point, do hereby certify that the foregoing Ordinance No. ____ was duly introduced and placed upon its first reading at a regular meeting of the City Council on the ____ day of _____, 2003, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the ____ day of _____, 2003, by the following roll-call vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

SUSAN RAMOS
CITY CLERK

DRAFT

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

AFFIDAVIT OF POSTING

Susan Ramos, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified Interim City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. _____
being:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT,
CALIFORNIA, PROTECTING PUBLIC HEALTH AND SAFETY AND CITY PROPERTY
BY IMPOSING LIMITATIONS ON RUNOFF AND CONTROLLING DISCHARGES OF
POLLUTANTS TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM AND
WATERS OF THE UNITED STATES BY AMENDING CHAPTER 15.10 OF TITLE 15 OF
THE DANA POINT MUNICIPAL CODE**

a certified copy of the full text of Ordinance No. ____, along with the names of those City Council
members voting for and against said Ordinance, was caused to be posted in the Office of the City
Clerk.

SUSAN RAMOS
CITY CLERK

(SEAL)