



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
April 3, 2013**

**TO:** Mayor and City Council  
**FROM:** Mercy G. Cabral, Deputy City Clerk  
**SUBJECT:** Adopting Ordinance 1368 C.S.  
**DATE:** March 27, 2013

**RECOMMENDATION:**

Adopt Ordinance No. 1368 C.S. amending the Martinez Municipal Code Title 15, Building and Construction, Chapter 15.06 Stormwater Management and Discharge Control.

**BACKGROUND:**

At the City Council meeting of March 20, the above ordinance was introduced and a public hearing was held in accordance with California Government Code. The ordinance is now before you for adoption and will become effective after 30 days.

**FISCAL IMPACT:**

No fiscal impact.

**ACTION:**

Motion to adopt Ordinance No. 1368 C.S. Stormwater Management and Discharge Control.

Attachment: Ordinance

**APPROVED BY:**

  
City Manager

ORDINANCE NO. 1368 C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINEZ AMENDING  
CHAPTER 15.06 OF TITLE 15 OF THE MUNICIPAL CODE RELATING TO  
STORMWATER MANAGEMENT AND DISCHARGE CONTROL

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

SECTION 1.

Chapter 15.06 of Title 15 of the City of Martinez is hereby amended to read as follows:

CHAPTER 15.06 STORMWATER MANAGEMENT AND DISCHARGE CONTROL

15.06.010 Intent and Purpose.

- A. The intent of this Chapter is to protect and enhance the water quality in the City of Martinez's watercourses pursuant to, and consistent with the Porter-Cologne Water Quality Control Act (Water Code Section 13000 et seq.) and the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.).
- B. This Chapter also carries out the conditions in the City's National Pollutant Discharge Elimination System (NPDES) permit that require implementation of appropriate source control and site design measures and stormwater treatment measures for development projects.
- C. It is the purpose of the City Council in enacting this Chapter to protect the health, safety and general welfare of Martinez's citizens by:
  - 1. Minimizing non-stormwater discharges, whose pollutants would otherwise degrade the water quality of local streams, to the stormwater system.
  - 2. Minimizing increases in nonpoint source pollution caused by stormwater runoff from development that would otherwise degrade local water quality.
  - 3. Controlling the discharge to the City's stormwater system from spills, dumping or disposal of materials other than stormwater.

4. Reducing stormwater runoff rates and volumes and nonpoint source pollution whenever possible, through stormwater management controls and ensuring that these management controls are properly maintained and pose no threat to public safety.

#### 15.06.020 Definitions.

The following words and phrases when used in this Chapter shall be as defined herein. Words and phrases in this Chapter and not otherwise defined shall be interpreted as defined in the regulations issued by the United States Environmental Protection Agency to implement the provisions of the Federal Clean Water Act, and as defined by the State Water Resources Control Board to implement the Porter-Cologne Act:

- A. **Best management practices or "BMP"** are structural devices, measures, stormwater management facilities, activities, prohibitions, or practices; general good housekeeping, pollution prevention practices, maintenance procedures, and other management practices, to prevent or reduce the discharge of pollutants directly or indirectly to watercourses, water bodies, and wetlands.
- B. **City's NPDES permit** shall mean the NPDES permit issued to the City of Martinez, Permit No. CAS612008 and any subsequent amendment, reissuance or successor to this NPDES permit.
- C. **Development runoff requirements** shall mean the provisions in the City's NPDES permit that contain performance standards to address both the construction and post-construction phase impacts of new projects and redeveloped projects on stormwater quality.
- D. **Director** shall mean the City Manager of the City of Martinez or his or her designee.
- E. **Enforcement officer or Officer** shall mean those individuals designated by the Director to act as authorized enforcement officers.
- F. **Guidebook** shall mean the most recent version of the Contra Costa Clean Water Program Stormwater C.3. Guidebook.
- G. **Non-stormwater discharge** is any addition of any pollutant to the City's stormwater system, except discharges pursuant to a NPDES

permit, or discharges further exempted in Section 15.06.060 C. and D. of this Chapter.

- H. **Pollutant** shall mean any material other than stormwater including, but not limited to, petroleum products or by-products, solid waste, incinerator residue, sewage, sewage sludge, heat, chemical waste, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, soil and industrial, municipal or agricultural waste discharged into the water or stormwater system.
- I. **Premises** shall mean any building, structure, facility, or installation, (including a building's grounds or other appurtenances), and adjacent sidewalks and parking strips.
- J. **Responsible person** shall mean the owner or occupant of any premises or who engages in any activity from which there is or may be a non-stormwater discharge or any person who releases pollutants to the City's stormwater system.
- K. **Stormwater** shall mean flow on the surface of the ground resulting from precipitation.
- L. **Stormwater control plan** shall mean a plan that meets those criteria contained in the most recent version of the Contra Costa Clean Water Program Stormwater C.3. Guidebook.
- M. **Stormwater management facility** shall mean any device that utilizes detention, retention, filtration, harvest for reuse, evapotranspiration or infiltration to provide treatment (and/or control volume, flows, and durations) of stormwater for purposes of compliance with development runoff requirements.
- N. **Stormwater Operation and Maintenance Plan** shall mean a detailed plan that incorporates requirements for the operation and maintenance of the stormwater control management facilities that meets those criteria contained in Chapter 6 of the most recent version on the Contra Cost Clean Water Program Stormwater C.3 Guidebook.
- O. **Stormwater system** is that system of facilities by which stormwater may be conveyed to any stream, watercourse, other body of water or wetlands, including flood control channels, any roads with drainage systems, City streets, catch basins, curbs, gutters, ditches, improved channels, storm drains or storm drain system, which are not part of a Publicly Owned Treatment Works ("POTW") as that term is defined in 40 CFR Section 122.2.

**15.06.030 Responsibility for Administration.**

The Director or his or her designee shall administer this Chapter for the City.

**15.06.040 Construction and Application.**

This Chapter shall be construed consistent with the requirements of the Federal Clean Water Act and amendments thereto or applicable implementing regulations and the City's NPDES permit.

**15.06.050 Stormwater Control Plan Required.**

- A. In accordance with thresholds and effective dates in the City's NPDES Permit, every application for a development project, including but not limited to a rezoning, tentative map, parcel map, conditional use permit, variance, site development permit, design review, or building permit that is subject to the development runoff requirements in the City's NPDES permit shall be accompanied by a stormwater control plan that meets the criteria in the most recent version of the Contra Costa Clean Water Program Stormwater C.3 Guidebook.
- B. Implementation of an approved stormwater control plan and submittal of an approved stormwater control operation and maintenance plan by the applicant shall be a condition precedent to the issuance of a certificate of occupancy for a project subject to this Section.
- C. All stormwater management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines are outlined in the Guidebook.
- D. All stormwater management facilities shall be maintained according to the Guidebook and the approved stormwater control operation and maintenance plan. The person(s) or organization(s) responsible for maintenance shall be designated in the stormwater control operation and maintenance plan. Unless a different time period is provided for in the plan, those responsible for maintenance shall inspect the stormwater management facility at least annually. The stormwater operation and maintenance plan shall also describe how the maintenance costs will be funded. Upon the failure of a responsible person to maintain a stormwater management facility in accordance with

this Chapter or the plan, the City may perform the maintenance and recover its costs from the responsible person as provided in Sections 15.06.170 and 15.06.180.

- E. Easements or recorded covenants for access to stormwater management facilities for inspections and maintenance, shall be provided by the property owner for access by the City, the Contra Costa Mosquito and Vector Control District, and the Regional Water Quality Control Board.

#### **15.06.060 Prohibited Discharges.**

- A. The release of non-stormwater discharges to the City stormwater system is prohibited.
- B. The discharge of stormwater from premises or an activity that causes or contributes to a violation of receiving water limitations in the City's NPDES permit is prohibited.
- C. The following discharges are exempt from the prohibition set forth in subsection A above:
  - 1. Any discharge in compliance with a NPDES permit issued to the discharger.
  - 2. Flows from riparian habitats and wetlands, diverted stream flows, flows from natural springs, rising ground waters, uncontaminated and unpolluted groundwater infiltration, single-family homes' pumped groundwater, foundation drains, and water from crawl space pumps and footing drains, and pumped groundwater from drinking water aquifers.
- D. The following discharges are exempt from the prohibition set forth in subsection A above, if and only if, the discharges are in accordance with conditions including but not limited to specific conditions for each type of discharge set forth in Section C.15 of the City's NPDES permit: pumped groundwater from non-drinking-water aquifers; pumped groundwater from other sources, foundation drains, and water from crawl space pumps and footing drains; air conditioning condensate; planned discharges from routine operation and maintenance activities in the potable water distribution system; unplanned discharges from breaks, leaks, overflows, fire hydrant shearing, or emergency flushing of the potable water distribution system; emergency discharges of the potable water distribution system as a result of firefighting, unauthorized hydrant openings, or natural or man-made disasters; individual residential car washing; swimming pool, hot tub, spa, and fountain water discharges, and

discharges from irrigation water, landscape irrigation, and lawn or garden watering.

**15.06. 070 Discharges in Violation of NPDES Permit.**

Any discharge that would result in or contribute to a violation of the City's NPDES permit either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge, and such person shall defend, indemnify and hold harmless the City in any administrative or judicial enforcement action relating to such discharge.

**15.06.080 Unlawful Discharge and Unlawful Connections.**

- A. It is unlawful to establish, use, maintain or continue unauthorized drainage connections to the City's stormwater system, and to commence or continue any unauthorized discharges to the City's stormwater system.
- B. No discharge shall cause the following conditions, create a nuisance, or adversely affect beneficial uses of waters of the State:
  - 1. floating, suspended or deposited macroscopic matter or foam;
  - 2. bottom deposits or aquatic growth;
  - 3. alterations of temperature, sediment load, nutrient load, or dissolved oxygen, which cause significant adverse impacts to native aquatic biota;
  - 4. visible, floating, suspended or deposited oil or products of petroleum origin; or
  - 5. substances present in concentrations or quantities which cause deleterious effects on aquatic biota, wildlife or waterfowl, or which render any of these unfit for human consumption.

**15.06.090 Best Management Practices and Standards.**

- A. **Generally.** Any person owning or operating premises that may contribute pollutants to the City's stormwater system shall undertake best management practices to reduce the potential for

pollutants entering the system to the maximum extent practicable. Examples of such premises include, but are not limited to, parking lots, gasoline stations, industrial facilities, and other commercial enterprises. Examples of best management practices include, but are not limited to, those described in publications by the United States Environmental Protection Agency, the California Water Boards, the California Stormwater Quality Association, the Bay Area Stormwater Management Agencies Association, the Contra Costa Clean Water Program, and, the City of Martinez.

- B. **Litter.** No person shall throw, deposit, leave, keep or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage or other discarded or abandoned objects, articles or other litter in or upon any street, alley, sidewalk, business place, creek, stormwater system, fountain, pool, lake, stream, river or any other body of water, or upon any public or private parcel of land so that the same might become a pollutant, except in containers or in lawfully established waste disposal facilities.
- C. **Sidewalks.** The occupant or tenant of, or in the absence of an occupant or tenant, the owner or proprietor of any real property in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained as required for the disposal of solid waste. This section constitutes an alternative procedure and shall not limit or restrict the City from the civil, criminal or administrative enforcement of this or other city ordinances in any other manner provided by law.
- D. **Maintenance of Facilities and Landscaped Areas.** Best Management Practices shall be implemented to minimize the release of pesticides, fertilizers, herbicides, and other related materials used to maintain landscaping and facilities.
- E. **Parking Lots, Paved Areas and Related Stormwater Systems.** Persons owning, operating or maintaining a paved parking lot, the paved areas of a gasoline station, a paved private street or road, and related stormwater systems shall clean those premises as frequently and thoroughly as practicable in a manner that does not result in the discharge of pollutants to the City's stormwater system. Upon a determination by the Director that a discharge of pollutants to the City's stormwater system is likely to occur based upon the condition or use of such paved areas, the Director may require installation and maintenance of devices or facilities to prevent the discharge of trash or other

pollutants from private parking lots, streets, roads, and drainage facilities into the storm drain system. The Director shall provide written notice of such determination and requirement for the installation of devices or facilities to the persons owning, operating or maintaining such paved area. Failure or refusal to comply with such requirement is prohibited and shall constitute a violation of this Chapter.

- F. **Construction Activities.** All construction projects shall incorporate site-specific BMPs, which can be a combination of BMPs from the California BMP Handbook, Construction, January 2003, the Caltrans Stormwater Quality Handbooks, Construction Site Best Management Practices Manual, Manual, March 2003, the San Francisco Bay Regional Water Quality Control Board Erosion and Sediment Control Field Manual, 2002, the City's grading and erosion control ordinance and other generally accepted engineering practices for erosion control as required by the Director. The Director may establish controls on the rate, volume, and duration of stormwater runoff from new developments as may be appropriate to minimize the discharge and transport of pollutants. Such controls shall be incorporated into the conditions of approval or permit conditions for the new development.
- G. **Notification of Intent and Compliance with General Permits.** Each discharger associated with construction activity or other discharger described in any general stormwater permit addressing discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, shall provide the Director with the notice of intent, comply with and undertake all other activities required by any general stormwater permit applicable to such dischargers. Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by the permit.
- H. **Development Runoff Requirements.** For each new development project subject to the development runoff requirements, every applicant will submit a stormwater control plan and implement conditions of approval that reduce stormwater pollutant discharges through the construction, operation and maintenance of treatment measures and other appropriate source control and site design measures. Similarly, increases in runoff volume, flows, and durations shall be managed in accordance with the development runoff requirements "that meets the requirements of the conditions of approval and those criteria contained in the most recent version on the Contra Cost Clean Water Program Stormwater C.3 Guidebook."

- I. **Stormwater Pollution Prevention Plan.** The Director may require any business or utility in the City that is engaged in activities that may result in non-stormwater discharges or runoff pollutants to develop and implement a stormwater pollution prevention plan, which must include an employee training program. Business activities which may require a stormwater pollution prevention plan include, but are not limited to, maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading, fueling, vehicle maintenance, food handling or processing, or cleanup procedures, carried out partially or wholly out of doors. The Director shall provide written notice of the requirement for such plan to such building or utility. Failure or refusal to comply with such requirement is prohibited and shall constitute a violation of this Chapter.
  
- J. **Coordination with Hazardous Material Release Response and Inventory Plans.** Any business subject to the Hazardous Material Release Response and Inventory Plan, Division 20, Chapter 6.95 of the California Health and Safety Code (commencing with section 25500), shall include, in that Plan, provision for compliance with this Chapter, including the prohibitions of non-stormwater discharges and the requirement to reduce release of pollutants to the maximum extent practicable.

15.06.100 **Authority to Inspect.**

- A. **Generally.** Routine or scheduled inspections shall be based upon as reasonable a selection process as may be deemed necessary to carry out the intent of this Chapter, including, but not limited to, random sampling or sampling in areas with evidence of stormwater contamination, evidence of the discharge of non-stormwater to the stormwater system, inspection of stormwater treatment and flow-control facilities for proper operation and evidence of routine and corrective maintenance, inspections for compliance with the City's Enforcement Response Plan, or similar activities. Inspections may also be conducted in conjunction with routine or scheduled inspections conducted by other public agencies or special districts, including but not limited to the Central Contra Costa Sanitary District, the Contra Costa County Fire Protection District, County Environmental Health Department, the Contra Costa Mosquito and Vector Control District, or the Regional Water Quality Control Board. The City Council may by resolution establish a schedule of fees for inspections.

- B. **Authority to Sample and Establish Sampling Devices.** With the consent of the owner or occupant, or pursuant to a search or inspection warrant, any Officer may establish on any property such devices as are reasonably necessary to conduct sampling or metering operations. During all authorized inspections, the Officer may take any sample deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on-site.
- C. **Notification of Spills.** All persons in charge of the premises or responsible for emergency response for the premises have a responsibility to train premises' personnel and maintain notification procedures to ensure that immediate notification is provided to the City of any suspected, confirmed or unconfirmed release of pollutants creating a risk of non-stormwater discharge into the City stormwater system.

As soon as any person in charge of the premises or responsible for emergency response for the premises has knowledge of any suspected, confirmed or unconfirmed release of non-stormwater discharge entering the City stormwater system, such person shall take all necessary steps to ensure the detection and containment and clean up of such release and shall notify the City of the occurrence by telephoning the Director. This notification requirement is in addition to and not in lieu of other required notifications.

- D. **Requirement to Test or Monitor.** Any Officer may require that any person engaged in any activity or owning or operating any premises that may cause or contribute to non-stormwater discharges, undertake such monitoring activities or analysis and furnish such reports as the Officer may specify in writing. The burden, including costs of these activities, analysis and reports shall bear a reasonable relationship to the need for the monitoring, analysis and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analysis and reports required.

#### **15.06.110 Violations**

- A. The violation of any provision of this Chapter, or failure to comply with any of the mandatory requirements of this Chapter shall constitute a misdemeanor, except that notwithstanding any other provisions of this Chapter, any violation constituting a misdemeanor under this Chapter may, at the discretion of the Officer or City Attorney, be charged and prosecuted as an infraction.

B. Any person required to perform monitoring, analysis, reporting or corrective activity pursuant to this Chapter by any Officer may be informed of such decision, in writing, by a notice of violation. Any person aggrieved by the decision of the Officer, may file a written appeal of the notice of violation to the Director within 10 (ten) days following the date of the notice of violation. Upon receipt of such request, the Director shall request a report and recommendation from the Officer and shall set the matter for hearing at the earliest practical date. At said hearing, all evidence and testimony deemed relevant and admissible by the Director shall be considered, and the Director may reject, affirm, or modify the Officer's decision. Formal rules of evidence shall not apply. Failure to request a hearing or appear at the hearing shall constitute a waiver and failure to exhaust administrative remedies.

B. In addition to the penalties and procedures provided herein, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare. Such condition is hereby declared and deemed to be a nuisance, which may be abated as provided in Chapters 12 and 13 of Title 1 of this Code including the assessment of the costs of abatement which may be collected at the same time and in the same manner as ordinary municipal taxes as provided by Government Code section 38773.5, and by civil action to abate, enjoin or otherwise compel the cessation of such nuisance by the City Attorney.

#### **15.06.120 Penalty for Violation.**

- A. Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code section 36901.
- B. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code section 36900.

#### **15.06.130 Continuing Violation.**

Every day that any violation of this Chapter shall continue shall constitute a separate offense.

**15.06.140 Concealment.**

Concealing, aiding or abetting a violation of any provision of this Chapter shall constitute a violation of such provision.

**15.06.150 Acts Potentially Resulting in Violation of the Federal Clean Water Act or Porter-Cologne Act.**

Any person who violates any provision of this Chapter, or the provisions of any permit issued pursuant to this Chapter, or who releases a non-stormwater discharge, or who violates any cease and desist order, prohibition or effluent limitation, may also be in violation of the Federal Clean Water Act or the Porter-Cologne Act and may be subject to the enforcement provisions of those acts, including civil and criminal penalties. Any enforcement actions authorized pursuant to this Chapter may also include notice to the violator of such potential liability pursuant to federal or state law.

**15.06.160 Civil Actions.**

- A. In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any and all of the following remedies:
  - 1. a temporary restraining order, preliminary injunction and permanent injunction;
  - 2. an action for an unlawful business practice pursuant to Business and Professions Code section 17206.
- B. In addition any person violating this Chapter shall be liable for:
  - 1. reimbursement for the costs of any investigation, inspection or monitoring which led to the discovery of the violation;
  - 2. costs incurred in removing, correcting, or terminating the adverse effect(s) resulting from the violation;
  - 3. compensatory damages for the loss of, or destruction to, water quality, wildlife, fish or aquatic life. Costs and damages under this subsection shall be paid to the City and shall be used exclusively for costs associated with monitoring and establishing a stormwater discharge

pollution control system and implementing or enforcing the provisions of this Chapter;

4. the cost of maintenance and repair of any BMP or stormwater management facility that is not maintained in accordance with the Guidebook or the stormwater control plan;
5. the reasonable costs of preparing and bringing administrative action under this Chapter.

**15.06.170 Remedies Not Exclusive.**

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

**15.06.180 Judicial Review.**

The provisions of Code of Civil Procedure section 1094.5 are applicable to judicial review of determinations made pursuant to this Chapter.

**15.06.190 Appeal.**

Decisions by the Director made pursuant to this Chapter are appealable to the City Council. Appeals shall be made, within ten (10) calendar days of the date a decision was rendered. All appeals shall be submitted in writing, together with the name, address, phone number and signature of the appellant and the filing fee as set forth by resolution of the City Council. The written appeal shall specifically state the pertinent facts of the case and the basis for the appeal.

**SECTION 2. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

**SECTION 3. Effective date.** This ordinance shall become effective 30 days after the date of adoption.

**SECTION 4. Posting.** At least five (5) days prior to its final adoption, a certified copy of the full text of this ordinance shall be posted in the office of the City Clerk.

The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the adopted ordinance.

APPROVED: \_\_\_\_\_  
Rob Schroder, Mayor

ATTEST: \_\_\_\_\_  
Deputy City Clerk

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 20th day of March, 2013, and duly passed and adopted at a Regular Meeting of said City Council held on the 3rd day of April, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK CITY  
OF MARTINEZ