ITEM NO. 30

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OCEANSIDE AMENDING CHAPTER 40 OF THE OCEANSIDE CITY CODE RELATING TO URBAN RUNOFF AND DISCHARGE CONTROL REGULATIONS

WHEREAS, on May 8, 2013, the San Diego Regional Water Quality Control Board (RWQCB) adopted NPDES Permit Order No. R9-2013-0001, Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems Draining the Watersheds within the San Diego Region (MS4 Permit), effective on June 27, 2013;

WHEREAS, the MS4 Permit requires co-permittees, including the City of Oceanside, to adopt new discharge prohibitions and requirements within a reasonable time frame; and

WHEREAS, the City of Oceanside's Jurisdictional Runoff Management Program Annual Report, associated with its MS4 Permit, submitted to RWQCB on October 31, 2014, reported that ordinance updates have been undertaken.

NOW, THEREFORE, the City Council of the City of Oceanside does ordain and amend portions of Chapter 40 of the Oceanside City Code as follows:

SECTION 1. Section 40.1.3. is hereby amended to read as follows:

"The following definitions shall be applicable when the following words or phrases are used hereafter in this chapter, whether or not these words or phrases are capitalized:

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 supervised by an authorized enforcement official, assigned to duties involving permits and other City approvals, inspections, and enforcement related to this chapter.

Authorized enforcement official means the director of the water utilities department, director of public works; the director of the development services; the director of the housing and neighborhood services department; the chief of police, and the chief of the fire department.

Best management practices (BMPs) 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 receiving waters, or the MS4. Best management practices also include but are not limited to treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage. Best management practices may include any type of pollution prevention and pollution control measure that can help to achieve compliance with this chapter.

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

City means the City of Oceanside.

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

Discharge, when used as a verb, means to allow pollutants to directly or indirectly enter urban runoff, or to allow storm water or non-storm water to directly or indirectly enter the MS4 or receiving waters, from an activity, operations or property, which one owns or operates. When used as a noun, "discharge" means the pollutants, storm water and/or non-storm water that are discharged.

Discharger means any person engaged in activities or operations or owning facilities or property, which will or may result in pollutants entering urban runoff, the MS4, or receiving waters; and the owners of real property on which such activities, operations or facilities are located.

Erosion control plan means an urban runoff management plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

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

Illegal connection means any man-made physical connection to the MS4 that conveys an illicit discharge.

Illicit discharge means any discharge of any material to the MS4, or to receiving waters, that is not composed entirely of storm water, except discharges allowed under an *NPDES permit* and discharges conditionally allowed under the *MS4 Permit*, as set forth in Oceanside Municipal Code section 40.2.2. Illicit discharges include irrigation runoff discharged to the MS4.

Impaired water body means a water body that is listed by the State Water Resources Control Board (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.

Infiltration means the process of percolating storm water or non-storm water 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.

Land development activity means any activity or proposed activity that requires any of the permits or approvals listed in section 40.1.4(d) of 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.

Legally responsible person (LRP) will typically be the land disturbance project proponent. For any land disturbance project where multiple persons or entities are eligible to serve as the LRP, those persons or entities shall select a single LRP. In exceptional circumstances, a person or entity that qualifies as the LRP may provide written authorization to another person or entity to serve as the LRP. In such a circumstance, the person or entity that provides the authorization retains all responsibility for compliance with the state NPDES general construction storm water permit. Except as provided in category 2(d), a contractor who does not satisfy the requirements of any of the categories below is not qualified to be an LRP. The following persons or entities may serve as an LRP:

1. A person, company, agency, or other entity that possesses a real property interest (including, but not limited to, fee simple ownership, easement, leasehold, or other rights of way) in the land upon which the construction or land disturbance activities will occur for the regulated site.
2. In addition to the above, the following persons or entities may also serve as an LRP:
   a. For linear underground/overhead projects (LUP), the utility company, municipality, or other public or private company or agency that owns or operates the LUP;

b. For land controlled by an estate or similar entity, the person who has day to-day control over the land (including, but not limited to, a bankruptcy trustee, receiver, or conservator);

c. For pollution investigation and remediation projects, any potentially responsible party that has received permission to conduct the project from the holder of a real property interest in the land; or

d. For U.S. Army Corp of Engineers projects, the U.S. Army Corps of Engineers may provide written authorization to its bonded contractor to serve as the LRP, provided, however, that the U.S. Army Corps of Engineers is also responsible for compliance with the general permit, as authorized by the Clean Water Act or the Federal Facilities Compliance Act.

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.

Maximum extent practicable (MEP) has the same meaning as defined in Regional Water Quality Control Board Order No. R-9-2013-0001 (NPDES No. CAS0109266), Attachment C, or subsequent order.

Municipal separate storm sewer system (MS4) means any drainage facilities, other than sanitary sewers, within the City by which urban runoff may be conveyed to receiving waters (including but not limited to roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) and which is: (1) owned or operated by the City; (2) designed or used for collecting or conveying storm water; (3) which is not a combined sewer; and (4) which is not part of the Publicly Owned Treatment Works as defined in 40 Code of Federal Regulations section 122.26.

Municipal separate storm sewer system permit (MS4 permit) means Regional Water Quality Control Board Order No. R-9-2013-0001,NPDES No. CAS0109266, as may be amended or subsequent order.

Non-emergency firefighter discharges means waters associated with fire hydrant and sprinkler line flushing, controlled or practice blazes, firefighting training, and maintenance activities not associated with building suppression systems.

Non-storm water discharge means any discharge to or from the *MS4* that is not entirely composed of *storm water*, including but not limited to *illicit discharges*, discharges allowed under an *NPDES permit*.

NPDES permit means a National Pollutant Discharge Elimination System permit issued by the U.S. Environmental Protection Agency, the SWRCB, or the Regional Water Quality Control Board (RWQCB).

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. (This chapter applies performance standards only to certain land development and redevelopment projects that require discretionary City permits; those permits will typically include enforceable project-specific requirements intended to achieve the result required by the performance standard.)

Person means any individual, organization, business, trust, company, partnership, entity, firm, association, or other business form.

Pollutant means any agent introduced to the MS4 that may cause or contribute to the degradation of water quality such that public health, the environment, or beneficial uses of receiving waters may be affected. The term may include but is not limited to dredged spoil, rock, sand, or silt (excluding sediment, silt, or substances in quantities which would enter storm water from a natural undeveloped watershed); solid waste, sewage, garbage, or medical waste; wrecked or discarded equipment; radioactive materials; industrial waste; fecal coliform, fecal streptococcus, and enterococcus bacteria and pathogens that pose a threat to human health; volatile organic compounds, toxic organics, surfactants, oil and grease, petroleum hydrocarbons, total organic carbon, lead, copper, chromium, cadmium, silver, nickel, zinc, cyanides, phenols, and biocides; and any contaminant which can significantly degrade the

quality of receiving waters by altering pH, total suspended or settleable solids, biochemical oxygen demand, chemical oxygen demand, nutrients, or temperature.

Pollution prevention plan means a document (other than a management plan), which meets the requirements for a storm water pollution prevention plan (SWPPP) set out in the State General Construction Storm Water Permit or State General Industrial Storm Water Permit. A SWPPP submitted to or reviewed by the City must describe the BMPs to be implemented and other steps to be taken by the discharger to meet the requirements of this chapter.

Post Construction BMPs are structural and non-structural controls which detain, retain, or filter the release of pollutants to receiving waters after final stabilization is attained.

Priority project means all new development and *redevelopment* projects falling under the categories or locations listed below:

a. *New development projects* that create 10,000 square feet or more of impervious surfaces (collectively over the entire project site). This includes commercial, industrial, residential, mixed-use, and public development projects on public or private land.

b. *Redevelopment projects* that create and/or replace 5,000 square feet or more or impervious surface (collectively over the entire project site on an existing site of 10,000 square feet or more of impervious surfaces).

c. *New and redevelopment projects* that create 5,000 square feet or more of impervious surface (collectively over the entire project site), and support one or more of the following uses:

1. *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 section 5812), where the land area for development is greater than five thousand (5,000) square feet.
2. *All hillside development projects.* This category includes development on any natural slope that is twenty-five percent or greater.

3. *Parking lots,* defined as a land area or facility for the temporary parking or storage of motor vehicles used personally, for business or for commerce.

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

d. *Environmentally sensitive areas.* All new development or redevelopment projects 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 two thousand five hundred (2,500) square feet of impervious surface on a proposed project Environmentally sensitive areas include but are not limited to all Clean Water Action 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); areas designated as preserves or their equivalent under the Multi Species Conservation Program with the Cities and County of San Diego; and any other equivalent environmentally sensitive areas which have been identified by the co-permittees. "Directly adjacent" means situated within two hundred (200) feet of the environmentally sensitive area. "Discharging directly to" means outflow from a drainage system that is composed entirely of flows from the subject development or redevelopment site, and not commingled with flows from adjacent lands.

e. *New development or redevelopment projects* that support one or more of the following uses:

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

2. *Retail gasoline outlets (RGOs).* This category includes RGOs that meet the following criteria (a) 5,000 square feet or more or (b) a projected Average Daily Traffic (ADT) of 100 or more vehicles per day.

f. *New development or redevelopment projects* that result in the disturbance of one or more acres of land and are expected to generate pollutants post construction.

Rainy season means, from October 1 through April 30.

Receiving Waters means waters of the United States as defined under the Clean Water Act. Generally, receiving waters include surface bodies of water which serve as discharge points for the MS4, including creeks, rivers, reservoirs, lakes, lagoons, estuaries, harbors, bays and the Pacific Ocean.

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

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

Standard Urban Runoff Management Plan [Reserved]

State General Construction Storm Water Permit means Order No. 2009-0009-DWQ, NPDES Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activities, and any amendments thereto or subsequent order.

State General Industrial Storm Water Permit means Order No. 97-03-DWQ, NPDES Permit No. CAS000001, Waste Discharge Requirements for Discharges of Pollutants Associated with Industrial Activities, and any amendments thereto or subsequent order.

Stop work order means an order issued which requires that specifically identified activity or all activity on a site be stopped.

Storm water runoff means water flow generated when precipitation from rain and snowmelt events flows over land or impervious surfaces and does not percolate into the ground.

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 storm water discharges and authorized non-storm water 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 storm water or receiving waters, or to prevent or reduce erosion downstream from the project.

Structural treatment BMPs [Reserved].

SWPPP means pollution prevention plan.

SWRCB means the State Water Resources Control Board.

Urban runoff means all surface flows within the City including storm water and non-storm water discharges.

Urban runoff 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 storm water and non-storm water management during the permitted activity.

Water main means a potable or recycled water delivery line greater than or equal to four (4) inches in diameter.

Watercourse means a permanent, ephemeral or intermittent stream or other body of water, either natural or improved, which gathers or carries surface water.

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

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. (In general, this includes "navigable" waters, waters tributary to "navigable" waters, and adjacent wetlands.)"

SECTION 2. Section 40.1.4. of Chapter 40 of the Oceanside Municipal Code is hereby amended to read as follows:

"(a) *Responsibility for administration.* This chapter shall be administered for the City by its authorized enforcement officials.

(b) *Construction and application.* Interpretation of the meanings of parts of this chapter shall assure consistency with the purpose and intent of this chapter. This includes but is not limited to consistency with the requirements of NPDES Permit No. CAS0109266. This chapter is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence.

(c) *Severability and validity.* If any section of this chapter is declared invalid by a court of law, the remaining sections shall remain valid.

(d) *City permits and approvals.*

(1) An application for any of the following discretionary permits, approvals, or exemptions shall be accompanied by plans or information demonstrating how the requirements of this chapter will be met, and the permits, approvals, or exemptions

shall not be approved unless the decision maker determines that the application complies with the requirements of this chapter:

(a) Administrative permit for clearing or grubbing;

(b) Agricultural exemption;

(c) Lot line adjustment;

(d) Final map modification;

(e) Grading plans or permit (including modification or renewal);

(f) Improvement plans (including modification);

(g) Landscape plans;

(h) Major use permit (including modification, minor deviation, or extension);

(i) Minor use permit (including modification, minor deviation, or extension);

(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) Local coastal permit.

(2) An application for any of the following ministerial permits or approvals shall be accompanied by plans or information demonstrating how the requirements of this chapter will be met, and the permit or approval shall not be approved unless the decision maker determines that the application complies with those requirements.

(a) Building permit;

(b) Construction right-of-way permit;

(c) Encroachment permit;

(d) Excavation permit;

(e) On-site waste water system permit;

(f) Underground tank permit;

(g) Well permit;

(h) Business license.

(3) The issuance of a permit, approval of exemption not in conformance with chapter shall be deemed null and void, and shall not prevent the enforcement of this chapter.

(e) *Collection and use of storm water.* An authorized enforcement official may modify any requirement imposed by this chapter to allow the on-site collection and use of, or the collection of storm water for delivery to and use at City-designated sites, provided the modified requirements are enforceable and provide equivalent environmental protection."

SECTION 3. Subsection 40.2.1e is hereby amended to read as follows:

"(e) *Violation of NPDES permit.* Any discharge that would result in or contribute to a violation of RWQCB Order No. R-9-2013-0001 (NPDES Permit No. CAS0109266) and any amendment, revision, reissuance thereof, or subsequent order, either separately considered or when combined with other discharges, is prohibited."

SECTION 4. Section 40.2.2 is hereby amended to read as follows:

"All non-stormwater discharges must be addressed as illicit discharges unless a non-stormwater discharge is either identified as a discharge authorized by a separate NPDES permit, or identified as a category of non-storm water discharges or flows that must be addressed pursuant to the following requirements:

(a) Discharge of non-storm water to the City MS4 from the following categories are illicit discharges unless the discharge has coverage under NPDES Permit No. CAG919002 (Order No. R9-2008-0002, or subsequent order; commonly called "Groundwater Dewatering Permit") for discharges to surface waters other than San Diego Bay:

(1) Uncontaminated pumped ground water;

(2) Discharges from foundation drains (if not covered under an NPDES permit, the

discharge is only prohibited if the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year);

(3) Water from crawl space pumps;

(4) Water from footing drains (if not covered under an NPDES permit, the discharge is only prohibited if the system is designed to be located at or below the groundwater table to actively or passively extract groundwater during any part of the year);

(b) Discharges of non-storm water from water line flushing and water main breaks, including those from water purveyors issued water supply permit by the California Department of Public Health or federal military installations, to the MS4 are illicit discharges unless the discharge has coverage under NPDES Permit No. CAG 679001 (Order No. R9-2010-0003 or subsequent order).

(c) The following categories of non-storm water discharges are illicit discharges only if the City or the RWQCB identifies the discharge as a source of pollutants to receiving waters:

(1) Diverted stream flows;

(2) Rising ground water;

(3) Uncontaminated ground water infiltration to storm drains;

(4) Springs;

(5) Flows from riparian habitats and wetlands;

(6) Discharges from potable water sources;

(7) Discharges from foundation drains; (only applies if the system is designed to be located above the groundwater table at all times of year and is only expected to discharge under unusual circumstances) and

(8) Discharges from footing drains (only applies if the system is designed to be located above the groundwater table at all times of year and is only expected to discharge under unusual circumstances).

(d) Discharges of non-storm water to the MS4 from the following categories are subject to BMPs set out in *section 40.2.3* and must be controlled, where feasible, through installation, implementation, and maintenance of the specifically applicable minimum BMPs outlined below. Any discharge not controlled by the specific BMPs below will be considered and addressed by the City as an illicit discharge:

(1) Air conditioning condensation

(i) The discharge of air conditioning condensation shall be directed to landscaped areas or other pervious surfaces where feasible.

(2) Individual residential vehicle washing

(i) The discharge of wash water shall be directed to landscaped areas or other pervious surfaces where feasible.

(3) Dechlorinated swimming pool discharges

(i) Where feasible, the discharge of non-saline pool waters must be directed to landscaped areas or other pervious surfaces that can accommodate the volume of water;

(ii) Residual chlorine, algaecide, filter backwash, and other pollutants must be eliminated prior to discharging pool water to the MS4; and

(iii) The discharge of saline swimming pool water shall be diluted to lower the salt concentration and directed to landscaped areas or other pervious surfaces that can accommodate the volume of water unless the saline swimming pool water can be discharged via a pipe or concrete channel directly to a naturally saline water body (e.g. Pacific Ocean).

(e) *Firefighting Discharges*. Firefighting discharges to the MS4 are considered illicit discharges if the City or San Diego Water Board identifies the discharge as a significant source of pollutants to receiving waters. Firefighting discharges to the MS4 not identified as a significant source of pollutants to receiving waters must be addressed, at a minimum, as follows:

(1) Non-emergency firefighting discharges

(i) Building fire suppression system maintenance discharges (e.g. sprinkler line flushing) to the MS4 is considered an illicit discharge unless BMPs are implemented to prevent pollutants associated with such discharges to the MS4.

(ii) Non-emergency firefighting discharges (i.e. discharges from controlled or practice blazes, firefighting training, and maintenance activities not associated with building fire suppression systems) are subject to BMPs set out in *section 40.2.3* to reduce or eliminate pollutants in such discharges from entering the MS4.

(2) Emergency firefighting discharges

(iii) The City encourages implementation of BMPs to reduce or eliminate pollutants in emergency firefighting discharges to the City MS4 and receiving waters within its jurisdiction. During emergency situations, priority of efforts should be directed toward life, property, and the environment (in descending order). BMPs should not interfere with immediate emergency response operations or impact public health and safety.

(f) If the City or RWQCB identifies any category of non-storm water discharges listed under *Section 40.2.2* as a source of pollutants to the MS4 or receiving waters, the category will be considered and addressed as an illicit discharge.

(g) *Exemptions to protect public health and safety.* Discharges determined by any authorized enforcement official or by authorized enforcement staff to be necessary to protect public health and safety are exempt from discharge prohibitions established by this chapter, provided any conditions on such discharges imposed by the authorized enforcement official or authorized enforcement staff are satisfied. In emergency circumstances, the determination of an authorized enforcement official or authorized enforcement staff that a discharge is necessary may initially be oral but must be promptly confirmed in writing by an authorized enforcement official or by authorized enforcement staff. In non-emergency situations, a prior written determination is required to exempt a discharge.

(h) *On-site wastewater systems.* Discharges to the subsurface from permitted properly functioning on-site wastewater systems are not prohibited by this chapter.

(i) *Unimproved property.* BMPs listed in Section 40.2.3 are required to be implemented to reduce or eliminate discharges, which may contain sediment, from vacant unimproved property where no land disturbance activity has ever occurred."

SECTION 4. Section 40.2.3 is hereby amended to read as follows:

"(a) *Applicable requirements.* All dischargers in the City must comply with the generally applicable prohibitions and requirements in sections 40.1 through 40.2 of this chapter, and must also comply with any other parts of this chapter that are applicable to the type of facility or activity owned or operated by that discharger. In addition, all dischargers and potential dischargers shall implement all effective pollution prevention BMPs and procedures outlined in the City's Jurisdictional Runoff Management Program (JRMP) Plan.

(b) *Minimum best management practices for all dischargers.* All dischargers in the City must install, implement and maintain at least the following minimum BMPs:

(1) *Eroded soils.* Prior to rain events, dischargers must remove or secure any significant accumulations of eroded soils from slopes previously disturbed by clearing or grading, if those eroded soils could otherwise enter the MS4 system or receiving waters during the rain event.

(2) *Pollution prevention.* Dischargers shall implement storm water pollution prevention practices that are generally recognized in that discharger's industry or business as being effective and economically advantageous.

(3) *Prevention of illicit discharges.* Illicit connections must be eliminated (even if the connection was established pursuant to a valid permit and was legal at the time it was constructed), and illicit discharge practices eliminated, refer to Section 40.2.2.

(4) *Slopes.* Completed slopes that are more than five (5) feet in height, more than two hundred fifty (250) square feet in total area, and steeper than 3:1 (run-to-rise) that have been disturbed at any time by clearing, grading, or landscaping, shall be

protected from erosion prior to the first rain event following completion of the slope, and continuously thereafter.

(5) *Storage of materials and wastes.* All materials and wastes with the potential to pollute urban runoff shall be stored in a manner that either prevents contact with rainfall and storm water, or contains contaminated runoff for treatment and disposal.

(6) *Use of materials.* All materials with the potential to pollute urban runoff (including but not limited to cleaning and maintenance products used outdoors, fertilizers, pesticides and herbicides, etc.) shall be used in accordance with label directions. No such product may be disposed of or rinsed into receiving waters or the MS4 system.

(7) Every person undertaking any activity or use of a premise which may cause or contribute to storm water pollution or contamination, illicit discharges, or non-storm water discharges to the MS4 shall comply with BMP guidelines or pollution control requirements outlined in the City's JRMP Plan or as may be established by the enforcement official as necessary to prevent pollution. BMPs shall be maintained routinely throughout the life of the activity.

(c) *Inspection, maintenance, repair and upgrading of BMPs.* BMPs at manned facilities must be inspected by the discharger before, during, and following rain events. BMPs at unmanned facilities must be inspected by the discharger at least once during the rainy season and at least once between each rainy season. These BMPs must be maintained so that they continue to function as designed. BMPs that fail must be repaired as soon as it is safe to do so. If the failure of a BMP indicates that the BMPs in use are inappropriate or inadequate to the circumstances, the BMPs must be modified or upgraded to prevent any further failure in the same or similar circumstances.

(d) *Storm water pollution prevention plan.* An authorized enforcement official may require a commercial, industrial or land disturbance activities discharger to prepare and submit a SWPPP for approval by that official if: (1) the discharger does not come into compliance with this chapter after one or more warnings or other enforcement action,

because BMPs are inadequate or are not being adequately maintained; or (2) the facility or activity at issue is a significant source of contaminants to receiving waters despite compliance with this chapter. Any discharger required to submit and to obtain approval of a SWPPP shall install, implement and maintain the BMPs specified in the approved SWPPP.

(1) The SWPPP shall identify the BMPs that will be used by the discharger to prevent or control pollution of storm water. If the facility is an industrial facility, the SWPPP submitted to the City shall at a minimum meet the requirements of the state NPDES general industrial storm water permit. If the activity at issue is a construction or land disturbance activity, the SWPPP submitted to the City shall at a minimum meet the requirements of the state NPDES general construction storm water permit. The authorized facility representative (or legally responsible person) shall ensure that the SWPPP content and formatting is consistent with requirements set forth in the general industrial storm water permit and general construction storm water permit, as applicable. If a facility, required to submit a SWPPP to the City, discharges non-storm water to ground water, the facility shall obtain an RWQCB permit as required by the State Water Code, and shall describe the requirements of that permit in the SWPPP.

(2) The SWPPP document (including any associated records of amendments, employee training certifications or document reviews) shall be kept on the facility grounds during regular business hours, and must be made available for review to any authorized enforcement official.

(e) MS4 Protection. Every person owning or occupying property through which the MS4 passes shall:

(1) Keep and maintain that part of the property reasonably free of trash, debris and other obstacles which would pollute, contaminate, or retard the flow of water through the MS4; and

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

(f) *Notification of spills, releases and illegal discharges.* Spills, releases, and illegal discharges of pollutants into receiving waters or into the MS4 system shall be reported by the discharger as required by all applicable state and federal laws. In addition, any such spills, releases and illegal discharges of pollutants into receiving waters or into the MS4 system that pose a threat to human or environmental health shall be reported to the City of Oceanside Fire Department immediately after discovery of the spill, release or discharge. If safe to do so, necessary actions shall be taken to contain and minimize the spill, release or illegal discharge.

(g) *Sampling, testing, monitoring, and reporting.* Commercial, industrial or land disturbance activities dischargers shall perform the sampling, testing, monitoring and reporting required by this chapter. In addition, an authorized enforcement official or authorized enforcement staff may conduct testing or monitoring or order a discharger to conduct testing or monitoring and to report the results to the City if: (1) the authorized enforcement official determines that testing or monitoring is needed to determine whether BMPs are effectively preventing or reducing pollution in storm water, or to determine whether the facility is a significant source of contaminants to receiving waters; or (2) the authorized enforcement official or authorized enforcement staff determines that testing or monitoring is needed to assess the impacts of an illegal discharge on health, safety or the environment; or (3) an illegal discharge has not been eliminated after written notice by an authorized enforcement official or authorized enforcement staff; or (4) repeated violations have been documented by written notices from authorized enforcement officials or authorized enforcement staff; or (5) the RWQCB requires the City to provide any information related to the discharger's activities.

Testing and monitoring ordered pursuant to this subsection may include the following:

(1) Visual monitoring of dry weather flows, wet weather erosion, and/or BMPs;

(2) Visual monitoring of premises for spills or discharges;

(3) Laboratory analyses of storm water or non-storm water discharges for pollutants;

(4) Background or baseline monitoring or analysis; and

(5) Monitoring of receiving waters or sediments that may be affected by pollutant discharges by the discharger (or by a group of dischargers including the discharger).

The authorized enforcement official or authorized enforcement staff may direct the manner in which the results of required testing and monitoring are reported, and may determine when required sampling, testing or monitoring may be discontinued.

(h) *Mitigation.* All illicit discharges and illegal connections must be mitigated within a reasonable period of time to correct or compensate for all damage to the environment caused by the illicit discharge. The authorized enforcement official or authorized enforcement staff who issued notice to the discharger, shall determine whether mitigation measures proposed or completed by the discharger meet this standard. The authorized enforcement official or authorized enforcement staff may require the discharger to submit a mitigation plan and schedule by a specified date prior to taking action, and to submit a summary of completed mitigation by a specified date."

SECTION 5. Section 40.2.4 is hereby deleted and reserved.

SECTION 6. Section 40.2.5 is hereby amended to read as follows:

"(a) *Permit issuance.* No land owner or development project proponent shall receive any City grading, clearing, building or other land development permit required for land disturbance activity or land development activity without first meeting the requirements of this chapter with respect to the portion of the development project and the land disturbance activity to which the permit at issue would apply. The issuance of a permit for land disturbance activity or land development activity that is not in conformance with this chapter shall be deemed null and void and shall not prevent enforcement of this chapter.

(b) *Legally Responsible Person.* The legally responsible person, as defined in Sec. 40.1.3, performing land disturbance activities (including but not limited to construction activities) in the City are dischargers for purposes of this chapter.

(c) *Minimum BMPs for land disturbance activities.* Whether a City permit or approval is required or not, and whether a urban runoff management plan is required to be submitted or not, all dischargers engaged in land disturbance activities shall implement required BMPs as detailed in the City JRMP Plan.

(d) *Control to the maximum extent practicable.* All dischargers engaged in land disturbance activities must install, implement and maintain BMPs which effectively prevent non-storm water discharges into the MS4. All dischargers engaged in land disturbance activities must install, implement and maintain BMPs to reduce pollutant discharges in urban runoff from land disturbance to the MEP. BMPs must be site specific, seasonally appropriate, construction phase appropriate and implemented at the site year-round. BMPs are not limited to and must be implemented in the following categories:

(1) Project Planning;

(2) Good Site Management, including waste;

(3) Non-storm Water Management;

(4) Erosion Control;

(5) Sediment Control, including but not limited to dust control and offsite tracking;

(6) Run-on and Run-off Control; and

(7) Active/Passive Sediment Treatment Systems, where applicable.

(e) *Notice of intent.* Dischargers required to comply with the state construction general storm water permit shall maintain on site and make available for inspection on request by the City any state-issued waste discharge identification number (WDID) for the site, and a copy of the notice of intent (NOI) filed with the RWQCB pursuant to that permit. Failure to obtain a WDID and NOI when required to do so by the state construction general storm water permit is a violation of this chapter.

(f) *Storm water pollution prevention plan.* Dischargers required to prepare a SWPPP under the state general construction storm water permit must prepare the plan, implement the plan and maintain it at the site, readily available for review. Failure to comply with an applicable state-required SWPPP is a violation of this chapter.

(g) *Facility monitoring.* Dischargers required to conduct monitoring under the state construction general storm water permit must conduct such monitoring in conformance with requirements specified by the state, retain records of such monitoring on site, and make such records available for inspection by an authorized enforcement official or authorized enforcement staff."

SECTION 7. Section 40.2.6 is hereby amended to read as follows:

"*(a) Legally Responsible Person.* The legally responsible person, as defined in Sec. 40.1.3, performing land disturbance activities (including but not limited to construction activities) in the City are dischargers for purposes of this chapter.

(b) Storm Water Mitigation Plan. All applications to the City for a permit or approval associated with a land disturbance activity must be accompanied by a storm water mitigation plan. The storm water mitigation plan shall specify the manner in which the discharger/applicant will implement the BMPs required by this chapter for the activity at issue, including but not limited to the applicable BMPs required by subsection (e) below. Approval of a formal amendment to the storm water mitigation plan must be granted by the City prior to altering any storm water BMPs.

(c) *Post-construction best management practices required.* Land development and redevelopment projects with the potential to add pollutants to urban runoff or to affect the flow rate or velocity of urban runoff after construction is completed, shall be designed to include and shall implement post-construction BMPs to ensure that pollutants and runoff from the development will be reduced to the MEP, will not significantly degrade receiving water quality, and will not cause or contribute to an exceedance of receiving water quality objectives.

(d) *Urban runoff management plan review deposit.* [Reserved]

(e) *Minimum BMPs for land development activities.* All new development and redevelopment projects are required to comply with the City BMP Design Manual."

SECTION 8. Section 40.2.7 is hereby amended to read as follows:

"(a) *Existing development.* Residential, commercial, industrial and developer dischargers, as well as other dischargers required by this chapter to implement BMPs shall maintain the BMPs they rely upon to achieve and maintain compliance with this chapter.

(b) *New development.* The owners and occupants of lands on which structural post-construction BMPs have been installed to meet the requirements of this chapter shall ensure the maintenance of those BMPs, and shall themselves maintain those BMPs if other persons or entities who are also obliged to maintain those BMPs (by contract or covenant, or pursuant to this chapter) fail to do so.

(c) *Maintenance obligations assumed by contract or other agreement.* Primary responsibility to maintain a BMP may be transferred through a contract or other agreement. If that contract provides that it will be submitted to the City pursuant to this chapter as part of a development permit application, and if that contract is so submitted, the person or entity accepting a maintenance obligation in such a contact or agreement will also be legally obliged to maintain that BMP pursuant to this chapter.

(d) *Obligation to maintain BMPs not avoided by contracts or other agreements.* For purposes of City enforcement, no contract or other agreement imposing an obligation to maintain a BMP can relieve a person or entity of any obligation to maintain a BMP imposed by this chapter.

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

(f) *Maintenance plans for land development projects.* The proponents of any land development project or redevelopment project that requires a discretionary City permit,

shall provide to the City for review and approval prior to issuance of such permit, a plan for maintenance of all structural post-construction BMPs associated with the project. The plan shall specify the persons or entities responsible for maintenance activity, the persons or entities responsible for funding, schedules and procedures for inspection and maintenance of the BMPs, worker training requirements, and any other activities necessary to ensure BMP maintenance. The plan shall provide for servicing of all structural post-construction BMPs at least annually and for the retention of inspection and maintenance records for at least three (3) years.

(g) *Access easement/agreement.* The proponents of any land development project or redevelopment project that requires a discretionary City permit, shall provide to the City for review and approval prior to issuance of such permit an executed, permanent, easement onto the land on which structural post-construction BMPs will be located (and across other lands as necessary for access), to allow inspection and/or maintenance of those BMPs.

(h) *Assurance of maintenance for land development projects.* The proponents of any land development or significant redevelopment project that requires a discretionary permit, shall provide to the City prior to issuance of such permit, proof of a mechanism acceptable to the City which will ensure ongoing long-term maintenance of all Structural post-construction BMPs associated with the proposed project. The proponents shall be responsible for maintenance of BMPs unless and until an alternative mechanism for ensuring maintenance is accepted by the City and becomes effective."

SECTION 9. Section 40.3.2 (j) is hereby amended so that subsections (1) (2) and (3) under subsection (j) are now distinguished using lower case roman numerals, i, ii, and iii.

SECTION 10. The City Clerk of the City of Oceanside is hereby directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15) days after its passage in the San Diego Union Tribune, North County Edition, a newspaper of general circulation published in the City of Oceanside.

SECTION 11. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California, held on the ___ day of _____, 2014, and, thereafter,

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Oceanside California, held on the ____ day of _____, 2014, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

Patricia Hamilton, ASST.
_____
CITY ATTORNEY