

**ORDINANCE NO. 567**

**AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY;  
REPEALING, AMENDING, AND REENACTING  
CHAPTER 14.48 OF THE MORRO BAY MUNICIPAL CODE  
(STORM WATER CONTROL)**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the City is obligated under the federal Clean Water Act and the State Porter-Cologne Act to protect and enhance the water quality of watercourses and water bodies; and

**WHEREAS**, the City is part of a group of agencies identified by the Clean Water Act required to implement a Storm Water Management Plan; and

**WHEREAS**, the City has prepared a Storm Water Management Plan for approval which includes a commitment to prepare a storm water ordinance to regulate stormwater discharge, animal waste, construction related erosion and sediment control, and post construction devices; and

**WHEREAS**, the Regional Water Quality Control Board has required implementation of Low Impact Development principals and features as part of the Joint Effort Program; and

**WHEREAS**, the Storm Water Quality Ordinance is statutorily exempt from CEQA under Discharge Requirements, Section 15263 of the CEQA Regulations; and

**NOW, THEREFORE**, the City Council of the City of Morro Bay does ordain as follows:

**SECTION 1:** Chapter 14.48 of the City's Municipal Code entitled Stormwater Management is hereby repealed in its entirety.

**SECTION 2:** A new Chapter 14.48, entitled Illicit Discharge and Stormwater Management Control hereby added to the Morro Bay Municipal Code to read as follows:

## Chapter 14.48

### BUILDING REGULATIONS -- ILLICIT DISCHARGE AND STORMWATER MANAGEMENT CONTROL

#### Sections:

- 14.48.010 Purpose and intent
- 14.48.020 Definitions
- 14.48.030 Applicability
- 14.48.040 Responsibility for administration
- 14.48.050 Regulatory Consistency
- 14.48.060 Severability
- 14.48.070 Ultimate responsibility of discharger
- 14.48.080 Prohibition of illegal discharges
- 14.48.090 Exceptions to discharge
- 14.48.100 Prohibition of illicit connections.
- 14.48.110 Notification
- 14.48.120 Requirement to eliminate illegal discharges and remediate
- 14.48.130 Animals
- 14.48.140 Requirement to prevent, control and reduce stormwater and pollutants
- 14.48.150 Maintenance
- 14.48.160 Requirement to monitor and analyze
- 14.48.170 Remediating discharges
- 14.48.180 Notice of violation
- 14.48.190 Appeal
- 14.48.200 Urgency abatement
- 14.48.210 Charging cost of abatement/liens
- 14.48.220 Acts potentially resulting in a violation of the Clean Water Act and/or the Porter-Cologne Act

#### 14.48.010 Purpose and intent

The purpose of this ordinance is to ensure the health, safety and general welfare of citizens, and to protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. § 1251 et seq.) by reducing pollutants in stormwater discharges to the maximum extent practicable and by prohibiting non-stormwater discharges to the stormwater conveyance system.

#### 14.48.020 Definitions

The terms used in this chapter shall have the following meanings:

A. **Animal Waste** - Includes domestic animal fecal material from any property, residence, yard, kennel, pen, park, animal show, or any activity involving an animal, including keeping, riding, exercising, showing, recreating, walking, or transporting. Does not include waste from non-domestic "wild" animals.

B. **Authorized representative** - that person designated in writing to the director by the property owner to act on behalf of the property owner.

C. **Automotive Repair Shop** - Automotive Repair Shop means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.

D. **Best Management Practices (BMPs)** - Activities, practices, and procedures to prevent or reduce the discharge of pollutants directly or indirectly to the municipal storm drain system and waters of the United States. Best Management Practices include but are not limited to: treatment facilities to remove pollutants from stormwater; operating and maintenance procedures; facility management practices to control runoff, spillage or leaks of non-stormwater, waste disposal, and drainage from materials storage; erosion and sediment control practices; and the prohibition of specific activities, practices and procedures and other such provisions as the City determines appropriate for the control of pollutants.

E. **City** - the City of Morro Bay in the County of San Luis Obispo, State of California.

F. **Clean Water Act (Act)** - The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

G. **Commercial activity** - any public or private activity not defined as an industrial activity in 40 CFR 122.25 (b) (14) involving in the storage, transportation, distribution, exchange or sale of goods providing professional or non-professional services.

H. **Construction activity** - any of the following activities: including but not limited to clearing and grubbing, grading, excavating, demolition and construction.

I. **Director** - The Public Services Director and his or her designees.

J. **Discharge** - any release, spill, leak, pump, flow, escape, dumping, or disposal of any liquid semi-solid or solid substance.

K. **Illegal discharge** - any direct or indirect non-stormwater discharge to the storm drain system, except as exempted by this chapter.

L. **Illicit connection** - any of the following:

1. Any conveyance system, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system.

2. Any connections to the storm drain system from indoor drains and sinks not currently exempted or permitted, regardless of whether the drain or connection has been previously allowed, permitted, or approved by a government agency.

3. Any drain or conveyance connected from any land use to the storm drain system which has not been documented and approved by the City.

4. Any unpermitted connection of a stormwater system to the publicly owned treatment works as defined in this chapter.

M. **Industrial activity** - any activity subject to a NPDES industrial permit as defined in 40 CFR Section 122.26(b)(14).

N. **Maximum Extent Practicable (MEP)** - a standard for implementation of stormwater management programs to reduce pollutants in stormwater; while taking into account equitable consideration and competing facts, including but not limited to; the seriousness of the problem, public health risk, environmental benefits, pollutant removal effectiveness, regulatory compliance, ability to implement, cost and technical feasibility. MEP allows for maximum flexibility on the part of MS4 operators as they develop and implement their programs to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of pollutants.

O. **Municipal Storm Sewer System (MS4)** - a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

1. designed or used for collecting or conveying stormwater;
2. which is not a combined sewer; and
3. which is not part of a Publicly Owned Treatment Works (POTW). [See Title 40, Code of Federal Regulations (40 CFR) §122.26(b)(8).]

P. **National Pollutant Discharge Elimination System (NPDES) Permit** - NPDES Permit shall mean a permit issued by either the Regional Water Quality Control Board or the State Water Resources Control Board pursuant to Chapter 5.5 (commencing with § 13370) of Division 7 of the Water Code to control discharges from point sources to waters of the United States.

Q. **Development** - Development means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and land subdivision. Development includes redevelopment which means, on an already developed site, the creation, addition or replacement of impervious area. Redevelopment includes, but is not limited to: the expansion of a building footprint or addition of a structure; structural development including an increase in gross floor area and/ or exterior construction or remodeling; land disturbing activities related with structural or impervious surfaces.

R. **Non-stormwater discharge** - any discharge to the storm drain system that is not composed entirely of stormwater.

S. **Pollutant** - anything which causes or contributes to pollution including, but not limited to, paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes, wastes and residues that result from constructing a building or structure, including but not limited to soil, sediment, slurry, and concrete residuals; and noxious or offensive matter of any kind.

T. **Pollution** - discharge of a pollutant.

U. **Porter-Cologne Act** - means the Porter-Cologne Water Quality Control Act and as amended (California Water Code §13000 et seq.). The Porter Cologne Act is commonly referred to as the California Water Code.

V. **Premises** - means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

W. **Prohibited Discharge** - Any non-stormwater discharge to the City storm drain system or directly to natural creeks and small streams, which is not otherwise specifically authorized by this Chapter, the Regional Board, State or federal Law, or an NPDES permit.

X. **Publicly Owned Treatment Works (POTW)** - as defined at 40 CFR Section 122.2.

Y. **Receiving Waters** - Surface bodies of water, as defined by the Municipal Stormwater Permit, including, but not limited to, creeks rivers, and bay which serve as discharge points for the City storm drain system.

Z. **Storm drain system** - means any public or private facilities by which stormwater is collected and/or conveyed, including but not limited to roads, sidewalks, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels and swales, reservoirs, lakes, creeks, waters of the United States and other drainage structures which are within the City and are not part of a publicly owned treatment works as defined at 40 CFR Section 122.2.

1. Public facilities are those owned, maintained and operated by the City and other public agencies including the enclosed system of pipelines, catch basins, manholes and junction structures.

2. Private facilities are those on private property or under the control of persons other than the City or other public agencies.

AA. **Stormwater**- Surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation.

BB. **Structural BMP** - any structural facility designed and constructed to mitigate the adverse impacts of stormwater and urban runoff pollution (e.g. canopy, structural enclosure). The category may include both Treatment Control BMPs and Source Control BMPs.

CC. **Stormwater pollution prevention plan or SWPPP** - a plan required by the State Water Board Construction General permit for stormwater discharges associated with construction activities.

DD. **Treatment Control BMP** - any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

EE. **Waters of the United States** - Surface watercourses and water bodies as defined in 40 CFR 122.2, including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry stormwater at and during all times and seasons.

**14.48.030 Applicability**

This chapter shall apply to all discharges entering the storm drain system (MS4) within the City.

**14.48.040 Responsibility for administration**

The Director shall administer, implement, and enforce the provisions of this chapter.

**14.48.050 Regulatory Consistency**

This Chapter shall be construed to assure consistency with the requirements of the Clean Water Act and Porter-Cologne Act and acts amended thereto or supplementary thereto, or any applicable implementing regulations.

**14.48.060 Severability**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

**14.48.070 Ultimate responsibility of discharger**

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend nor imply that a person's compliance will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the United States. This chapter shall not create liability on the part of the City, or any of its employees or agents, for any damages that result from any person's reliance on this chapter or any administrative decision lawfully made thereunder.

**14.48.080 Prohibition of illegal discharges**

No person shall discharge or cause to be discharged into the storm drain system any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater, to the maximum extent practicable.

An illegal discharge is assumed to have occurred if a pollutant is placed, blown, washed, tracked or in any way allowed to accumulate in any part of the MS4 so that it can be conveyed by stormwater.

**14.48.090 Exceptions to discharge**

No person shall commence, conduct, or continue any illegal discharge to the storm drain system except as follows. Discharges from the following will not be considered a source of pollutants to the storm drain system and to waters of the United States when properly managed to ensure that no potential pollutants are present, and therefore they shall not be considered illegal discharges unless determined to cause a violation of the provisions of the Porter-Cologne Act, Clean Water Act, or this chapter:

A. The following non-storm water discharges or flows: water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR §35.2005(20) to separate storm sewers; uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensation; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; and discharges or flows from fire fighting activities.

B. Any non-stormwater discharge permitted or approved under a National Pollutant Discharge Elimination System permit, waiver, or waste discharge order issued to the discharger and administration by the State of California under the authority of the Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations and provided that written approval has been granted by the City for any discharge to the storm drain system.

C. With written concurrence of the Central Coast Regional Water Quality Control Board, the City may exempt in writing other non-stormwater dischargers which are not a source of pollutants to the storm drain system or Water of the U.S.

D. Agricultural discharges regulated by the State Water Resources Control Board and/or Regional Board pursuant to waiver and/or formal policy, provided compliance with all relevant permit, waiver or policy conditions established by the State Water Resources Control Board and/or Regional Board.

#### **14.48.100 Prohibition of illicit connections**

The construction, use, maintenance or continued existence of illicit connections to the storm drain system or to a POTW is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

#### **14.48.110 Notification**

A. Notification of any confirmed or unconfirmed release of materials, pollutants or waste which may result in pollutants or non-stormwater discharges entering the City storm drain system shall be made immediately by any person in charge of a facility or responsible for emergency response for a facility as follows:

1. The release of a hazardous material or hazardous waste shall be reported to emergency services immediately by emergency dispatch services (911). A written notification of the release shall also be made to the Director within five business days of the release. A copy of the written notice shall be retained for at least three (3) years.

2. The inadvertent release, and clean-up, of a non-hazardous waste shall be reported to the Director by phone no later than 5:00 P.M. of the same business day. If the release occurs on a weekend or Holiday, notification shall be made on the next business day. A written notification of the release shall also be made to the Director within five business days of the release. A copy of the written notice shall be retained for at least three (3) years.

B. Release of any hazardous substances, sewage, oil, or petroleum to any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall be reported to the State Office of Emergency Services, as required by Sections 13271 and 13272 of California Water Code.

C. Commercial/Industrial Properties. If the reported discharge emanates from a commercial or industrial property, the owner or operator of the property shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years from the date of the occurrence and be available for inspection by the director.

**14.48.120 Requirement to eliminate illegal discharges and remediate**

Whenever the director determines that a discharge of pollutants is occurring, or has occurred, and the discharge has caused, or will cause, pollution of stormwater or the storm drain system, or determines an illegal discharge is occurring or has occurred, the director will require by written notice to the property owner and/or their authorized representative (A) remediation of the pollution and restoration of the affected property within a specified time/date, and (B) discontinuance of the discharge and, if necessary, implementation of measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges.

**14.48.130 Animals**

A. Property Maintenance. Where it is determined by the City or by the Central Coast Regional Water Quality Control Board that an area used by animals is affecting water quality, the City will require the property owner or authorized representative to implement measures, which may include installation of preclusionary devices, to eliminate the pollution and prevent the migration of waste components to the storm drain system. Installation of devices or measures may require permits from the City or other regulatory agency. Installation, maintenance and permitting are the responsibility of the property owner.

B. Feeding Near Water Bodies. No person shall feed feral or wild animals or deposit or leave any foodstuff of any kind or nature, except in a trash receptacle provided for that purpose, within one hundred feet of a water body including but not limited to, creek dry or otherwise, ocean and bay.

C. Any owner or keeper who requires the use of a disability assistance animal shall be exempt from the provisions of this section while such animal is being used for that purpose.

**14.48.140 Requirement to prevent, control and reduce stormwater and pollutants**

A. All improved areas of new and redevelopment development resulting in the creation, addition, or replacement of two thousand five hundred (2,500) square feet of impervious surface shall be governed by the Stormwater Control section of the Engineering Standards.

B. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance, in a form acceptable to the director, shall be provided:

1. Prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan;
2. Upon inspection of the facility;
3. During any enforcement proceeding or action; or
4. For any other reasonable cause.

**14.48.150 Maintenance**

General. Property owners are responsible to maintain their premises in such a way as to comply with this chapter and prevent migration of pollutants into the storm drain system.

A. Construction Stormwater Devices. BMPs installed during construction or as measures for post-construction stormwater shall be maintained as required to ensure proper operation. Failure to maintain construction BMPs will result in a stop work order being issued until the site is in conformance with the requirements of this chapter.

B. Post-construction Stormwater Devices. Property owners of development or redevelopment projects which require installation of post-construction stormwater devices shall submit a maintenance plan or manufacturer's maintenance guide for those devices as part of the project submittal. The plan or guide provided shall be considered the minimum maintenance required, with additional maintenance performed as needed to comply with this chapter. All property owners with post-construction stormwater devices on their property shall submit to the director annual

inspection/maintenance reports to confirm continued compliance with this chapter. Reports shall be signed and certified by the property owner or the authorized representative.

**14.48.160 Requirement to monitor and analyze**

The director may require any person engaged in any activity, and/or owning or operating any facility, which may cause or contribute to stormwater pollution, illegal discharges, and/or non-stormwater discharges to the storm drain system, to undertake, at the person's expense, a monitoring, analysis, and reporting program, as approved by the director, to determine compliance with this chapter.

**14.48.170 Remediating discharges**

Notwithstanding other requirements of law, as soon as any property owner, authorized person, or any other person responsible for property, a facility or an operation, or the person responsible for emergency response for a facility or operation, has information of any known or suspected release of pollutants which may result or have resulted in illegal discharges or pollutants discharging into stormwater or the storm drain system from the property, facility or operation, the person shall take all necessary steps to ensure the containment, and remediation of such release.

**14.48.180 Notice of violation**

A. Violation Conditions. Whenever the director finds that a person has violated this chapter, the director may issue to the person a notice of violation and order compliance. Such notice may require without limitation:

1. Monitoring, providing analyses, and reporting;
2. Eliminating illicit connections or discharges;
3. Cease and desist of discharges, practices, or operations;
4. Abating or remediating stormwater pollution or contamination hazards, and restoring the affected property;
5. Implementing source control or treatment BMPs; and
6. Paying a fine and administrative and remediation costs.

B. Abatement. If abatement of a condition and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed. The notice shall further provide that if there is not compliance with the notice within the established deadline, the City may abate the condition and/or restore the property, and the expenses thereof shall be charged to the property owner and/or the person responsible for the violation.

**14.48.190 Appeal**

Except as provided in Section 14.48.200, Urgency abatement, any person receiving a notice of violation may appeal following the procedures in Chapter 1.03.

**14.48.200 Urgency abatement**

A. Immediate Abatement. The director may require immediate abatement of any violation of this chapter that constitutes an immediate and significant threat to the health, safety or well-being of the public.

B. Failure to Abate. If a violation as described in subsection A of this section is not immediately abated, the City is authorized to enter the premises and take any and all measures required to abate the violation. Any expenses incurred by the City related to such abatement shall be charged to the property owner. These expenses shall be based on the City's fully loaded rates for labor and equipment. Any relief obtained under this section shall not prevent the City from seeking other and further relief authorized under this chapter.

C. Construction Sites. The director may give verbal notice and shall issue a stop work order to persons owning or controlling construction sites with inadequate erosion and sediment controls and such controls must be put in place immediately, and the City shall not allow any other site work until the controls are in place.

**14.48.210 Charging cost of abatement/liens**

A. Notice of Cost. If the City has incurred costs to abate a violation, the director shall notify the property owner within thirty days of the cost, including administrative costs.

B. Appeal. Within ten calendar days of the director's notice, the property owner may file with the City clerk a written appeal objecting to the amount of the costs. The City clerk shall set the matter for hearing by the City council. The decision of the City council shall be final.

C. Payment Due Date—Failure to Pay. If no appeal has been filed or if an appeal has been filed and the City council has made a decision on the appeal, any cost due shall be paid in full within ten days. If the costs are not paid in full within thirty calendar days, the costs shall become a special assessment against the property and shall constitute a lien on the property. The information shall be provided to the county auditor so that the auditor may enter the amount of the assessment against the property, as it appears on the current assessment roll, and the tax collector include the amount of the assessment on the bill for taxes levied against the property.

**14.48.220 Acts potentially resulting in a violation of the Clean Water Act and/or the Porter-Cologne Act**

Any person who violates any provision of this chapter or any provision of any requirement issued pursuant to this chapter may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the provisions of those acts including civil and criminal penalties. Any enforcement action authorized under this chapter shall also include written notice to the violator of such potential liability.

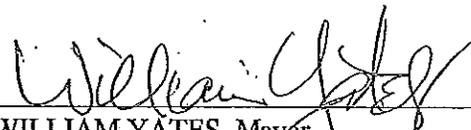
**INTRODUCED** at a regular meeting the of the City Council of Morro Bay, held on the 10<sup>th</sup> day of May, 2011 by motion of Councilmember Johnson, seconded by Councilmember Smukler.

**PASSED AND ADOPTED** on the 24<sup>th</sup> day of May, 2011, by the following vote:

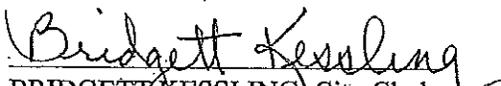
AYES: Borchard, Johnson, Leage, Smukler

NOES: Yates

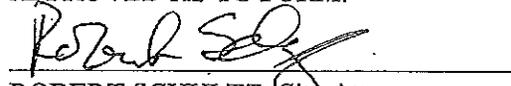
ABSENT: None

  
WILLIAM YATES, Mayor

ATTEST:

  
BRIDGETT KESSLING, City Clerk

APPROVED AS TO FORM:

  
ROBERT SCHULTZ, City Attorney

