

ORDINANCE NO. 3493 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMENDING MONTEREY CITY CODE CHAPTER 31.5 ARTICLE 2 URBAN STORM WATER
QUALITY MANAGEMENT AND DISCHARGE CONTROL TO IMPLEMENT
POST-CONSTRUCTION STORMWATER MANAGEMENT REQUIREMENTS
FOR DEVELOPMENT PROJECTS

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

SECTION 1:

WHEREAS, the City of Monterey (City) regulates storm water management and discharge control as set forth in Monterey City Code Chapter 31.5 Storm Water Management, Articles 1 and 2, and as mandated by the State Water Resources Control Board (SWRCB) and Central Coast Regional Water Quality Control Board (Regional Board), and the City is authorized by Article XI, Sections 5 and 7 of the State Constitution to make and enforce regulations to promote and protect the health, safety, and security of the public; and,

WHEREAS, on February 5, 2013, the SWRCB adopted Water Quality Order No. 2013-0001, which is a statewide National Pollutant Discharge Elimination System (NPDES) General Permit required under federal Clean Water Act section 402(p)(6) for small municipalities that operate storm drainage systems that discharge storm flows to waters of the United States; and,

WHEREAS, Regulations in the NPDES General Permit require, among other regulations, small municipalities to address storm water runoff from development and redevelopment projects through post-construction storm water management requirements, and for permittees in the Central Coast region to comply with alternative post-construction storm water management requirements based on a watershed-process approach developed and approved by the Regional Board; and,

WHEREAS, in association with the NPDES General Permit Section E.12.k, on July 12, 2013 the Central Coast Regional Water Quality Control Board (Regional Board) adopted Resolution No. R3-2013-0032 (the Resolution), which includes Post-Construction Stormwater Management Requirements (PCRs) for Development Projects in the Central Coast Region and has a local municipal implementation date of March 6, 2014, including adoption of local enforceable mechanisms; and,

WHEREAS, the City intends to comply with the Resolution that requires the City to regulate water quality and drainage impacts of urbanization caused by development and to demonstrate regulatory compliance with the NPDES General Permit and associated PCRs, which shall be accomplished by revision to Monterey City Code Chapter 31.5 so as to reference to the new, extensive water quality regulations mandated by the SWRCB and Regional Board; and,

WHEREAS, the implementation of the PCRs through low impact development (LID) is widely recognized as a sensible approach to managing the quantity and quality of storm water runoff by setting standards and practices to maintain or restore the natural hydrologic character of a development site, reduce off-site runoff, improve water quality, and provide groundwater recharge; and,

WHEREAS, the City of Monterey Planning Office determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15308, Class 8) because the project proposes to enact water quality regulations applicable to development projects to assure the maintenance and protection of the environment. Furthermore, the project does not qualify for any of the exceptions to the categorical exemptions found at CEQA Guidelines Section 15300.2, as described below:

Exception a - Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. The proposed project is the enactment of water quality regulations applicable to development projects to protect the environment and itself does not create a physical change to any sensitive environments.

Exception b - Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The proposed project enacts local water quality regulations applicable to development projects, and thus through this environmental protection, the project will have no negative cumulative impact to the environment.

Exception c - Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The proposed project enacts local water quality regulations applicable to development projects to protect the environment and itself does not create a physical change to the environment, and thus no significant negative effect to the environment will occur.

Exception d - Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements, which are required as mitigation by an adopted negative declaration or certified Environmental Impact Report (EIR). The proposed project is the enactment of water quality regulations applicable to development projects to protect the environment and itself does not create a physical change to the environment or scenic highways. There will be no impact to the scenic resources such as trees, historic buildings, rock outcroppings, or similar resources.

Exception e - Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. The proposed project enacts local water quality regulations for development projects citywide to protect the environment, and itself does not create a physical change to the environment nor impact hazardous waste sites.

Exception f - Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. The project enacts local water quality regulations for development to protect the environment, and itself does not create a physical change to the environment nor impact historical resources.

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 31.5, Article 2, Section 31.5-5 is hereby amended to read as follows:

"The purpose and intent of this Article is to ensure the health, safety, and general welfare of citizens, and protect and enhance the water quality of waters of the state and waters of the United States, and protect water bodies in a manner pursuant to and consistent with the Clean Water Act Section 402(p)(6), Porter-Cologne Water Quality Control Act (California Water Code §13000 et seq.), State Water Resources Control Board (SWRCB) Water Quality Order No. 2013-0001-DWQ National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004 Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (General Permit), Central Coast Regional Water Quality Control Board Resolution No. R3-2013-0032 Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast Region, and per subsequent amendments thereto, by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges to the Storm Drain System."

SECTION 3: Monterey City Code, Chapter 31.5, Article 2, Section 31.5-6(a) is hereby amended to read as follows:

"(a) Best Management Practices ("BMPs"). Activities, practices, and procedures to prevent or reduce the discharge of pollutants directly or indirectly into the municipal Storm Drain System and waters of the state or U.S. Best Management Practices include but are not limited to: treatment facilities to remove pollutants from storm water; operating and maintenance procedures; facility management practices to control runoff, spillage or leaks of non-storm water, waste disposal, and drainage from materials storage; erosion and sediment control practices; and the prohibition of specific activities, practices, and procedures and such other provisions as the City determines appropriate for the control of pollutants. Please refer to the NPDES General Permit for specific regulatory requirements."

SECTION 4: Monterey City Code, Chapter 31.5, Article 2, Section 31.5-6(l) is hereby amended to read as follows:

"(l) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits. General, group, and individual storm water discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act. The State Water Resources Control Board and Central Coast Regional Water Quality Control Board (hereinafter, Regional Board) have adopted general storm water discharge permits, including but not limited to Municipal General Permits, Construction General Permit and Industrial General Permit."

SECTION 5: Monterey City Code, Chapter 31.5, Article 2, Section 31.5-6(w) is hereby added to read as follows:

“(w) Waters of the United States (“waters of the U.S.”). Per 40 Code of Federal Regulations 230.3(s) and as amended thereto, waters of the U.S. generally include:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: which are or could be used by interstate or foreign travelers for recreational or other purposes; or, from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or, which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in (w) 1. through 4. of this section;
6. The territorial sea; and,
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in (w) 1. through 6. of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.”

SECTION 6: Monterey City Code, Chapter 31.5, Article 2, Section 31.5-7 is hereby amended to read as follows:

“Section 31.5-7. Applicability and Effective Dates. This Article, including any amendments or revisions thereto, shall apply to all water entering the Storm Drain System generated on or flowing over any developed and undeveloped land lying within the City of Monterey.

The provisions and requirements of this Article shall become effective upon its adoption by the City Council, except that:

(a) The provisions and requirements pertaining to Construction Sites as described in §31.5-15(c) and in the NPDES General Permit shall not become effective until September 8, 2007, and,

(b) The provisions and requirements pertaining to New Development and Redevelopment, as described in §31.5-15(b) and in the NPDES General Permit shall not become effective until September 8, 2008. In addition, the provisions and requirements pertaining to New Development and Redevelopment as mandated by Regional Board Resolution No. R3-2013-0032 shall not become effective until March 6, 2014.”

SECTION 7: Monterey City Code, Chapter 31.5, Article 2, Section 31.5-15 is hereby amended to read as follows:

“Section 31.5-15. Requirement to Prevent, Control, and Reduce Storm Water Pollutants. (a) Authorization to Adopt and Impose Best Management Practices. The City may adopt requirements identifying BMPs for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the Storm Drain System, waters of the state or U.S. Where BMPs requirements are promulgated by the City or any Federal, State of California, or regional agency for any activity, operation, or facility which would otherwise cause the discharge of Pollutants to the Storm Drain System or water of the U.S., every person undertaking such activity or operation, or owning or operating such facility shall comply with such requirements.

The Director will periodically report to the City Council on the status of implementation of existing BMP regulations and any new BMP regulations to be developed for inclusion in the NPDES General Permit.

(b) New Development and Redevelopment. The City shall require any owner or person developing real property to identify appropriate BMPs to control the volume, rate, and potential Pollutant load of storm water runoff from new development and redevelopment projects required by the NPDES General Permit, Regional Board Resolution No. R3-2013-0032, and per subsequent amendments thereto, to minimize the generation, transport and discharge of Pollutants. The City shall incorporate such requirements in any land use entitlement and/or construction or building-related permit to be issued relative to such development or redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and/or building permits as required in this Article, the NPDES General Permit and as amended thereto, and the City Storm Water Utility Ordinance, Chapter 31.5, Article 1.

These requirements may include a combination of structural and non-structural BMPs, and shall include requirements to ensure the proper long-term operation and maintenance of these BMPs, including but not limited to an agreement with the City to perform regular inspections, maintenance and annual documentation of these activities, as well as provide for right of entry by City staff or designee to ensure compliance with the requirements of this Article or enforcement with any provision of this Article or the NPDES General Permit.

(c) Construction Sites. BMPs to reduce pollutants in any storm water runoff activities shall be incorporated in any land use entitlement and/or construction or building-related permit. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and/or building permits as required by the City and as required by the NPDES General Permit and as amended thereto.

(d) Responsibility to Implement Best Management Practices. Notwithstanding the presence or absence of requirements promulgated pursuant to subsections (a), (b) and (c) above, any person or entity engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering storm water, the Storm Drain System, or waters of the state or U.S. shall implement BMPs to the extent they are technologically achievable to prevent and reduce such pollutants. The owner or operator of a commercial or industrial establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal Storm Drain System, or waters of the state or U.S. Facilities to prevent

accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense."

SECTION 8: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 9: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 4th day of February, 2014, by the following vote:

AYES:	5	COUNCILMEMBERS:	Downey, Haffa, Selfridge, Sollecito, Della Sala
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:



Mayor of said City



City Clerk thereof

