

ORDINANCE NO. 01-05

**AN ORDINANCE OF THE CITY OF OAKLEY AMENDING CHAPTER 11 OF TITLE 6
OF THE MUNICIPAL CODE RELATING TO
STORMWATER MANAGEMENT AND DISCHARGE CONTROL**

THE CITY COUNCIL OF THE CITY OF OAKLEY DOES ORDAIN AS FOLLOWS:

Section 1. The Oakley Municipal Code is hereby amended by deleting Chapter 6.11 as currently written and adding a new chapter 6.11.

Section 2. This ordinance is exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code pursuant to CEQA Guidelines Section 15308 as an action that assures the maintenance, restoration, enhancement or protection of the environment where the regulatory process involves procedures for protection of the environment.

Section 3. Chapter 6.11 of the Oakley Municipal Code is hereby amended to read as follows:

CHAPTER 11. STORMWATER MANAGEMENT AND DISCHARGE CONTROL

ARTICLE 1 GENERAL PROVISIONS

6.11.102 Intent and Purpose.

a. The intent of this Chapter is to protect and enhance the water quality in the City of Oakley's watercourses pursuant to, and consistent with the Porter-Cologne Water Quality Control Act (Water Code section 13000 *et seq.*) and the Federal Clean Water Act (33 U.S.C. section 1251 *et seq.*).

b. This chapter also carries out the conditions in the City's National Pollutant Discharge Elimination System (NPDES) permit that require effective, February 15, 2005, implementation of appropriate source control and site design measures and stormwater treatment measures for projects that create or replace one acre or more of impervious surface, and that, effective August 15, 2006, reduce the threshold to projects that create or replace 10,000 square feet or more of impervious surface.

c. It is the purpose of the City Council in enacting this chapter to protect the health, safety and general welfare of Oakley's citizens by:

(1) Minimizing non-stormwater discharges, pollutants of which would otherwise degrade the water quality of local streams, to the stormwater system.

(2) Minimizing increases in nonpoint source pollution caused by stormwater runoff from development that would otherwise degrade local water quality.

(3) Controlling the discharge to the City's stormwater system from spills, dumping or disposal of materials other than stormwater.

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

6.11.104 Definitions

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

a. "Best management practices" or "BMP" are structural devices, measures, stormwater management facilities or activities that help to meet development runoff requirements at the premises. BMP also include schedules of activities, prohibitions or practices, general good housekeeping, pollution prevention practices, maintenance procedures and other management practices, to prevent or reduce the discharge of pollutants directly or indirectly to watercourses, water bodies, and wetlands.

b. "City's NPDES permit" shall mean the NPDES permit issued to the City of Oakley, Permit No. CAS0029912, and any subsequent amendment, reissuance or successor to this NPDES permit.

c. "Development runoff requirements" shall mean the provisions in the City's NPDES permit that contain performance standards to address both the construction and post-construction phase impacts of new projects and redeveloped projects on stormwater quality. In the City's 1999 NPDES permit these requirements are in section C. 3.

d. "Director" shall mean the City Engineer of the City of Oakley or his or her designee.

e. "Enforcement officer" or "Officer" shall mean those individuals designated by the director to act as authorized enforcement officers.

f. "Guidebook" shall mean the most recent version of the Contra Costa Clean Water Program Stormwater C. 3. Guidebook.

g. "Non-stormwater discharge" is any addition of any pollutant to the City's stormwater system, except discharges pursuant to a NPDES permit, or discharges further exempted in Section 6.11.206(c) and (d) of this chapter.

h. "Pollutant" shall mean any material other than stormwater, including but not limited to: Petroleum products or by-products, solid waste, incinerator residue, sewage, sewage sludge, heat, chemical waste, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, soil and industrial, municipal or agricultural waste discharged into the water or stormwater system.

i. "Premises" shall mean any building, structure, facility, or installation, (including a building's grounds or other appurtenances), and adjacent sidewalks and parking strips.

j. "Responsible person" shall mean the owner or occupant of any premises or who engages in any activity from which there is or may be a non-stormwater discharge or any person who releases pollutants to the City's stormwater system.

k. "Stormwater" shall mean flow on the surface of the ground resulting from precipitation.

l. "Stormwater management facility" shall mean any device designated to detain, retain, filter, or infiltrate stormwater.

m. "Stormwater control plan" shall mean a plan that meets those criteria contained in the most recent version of the Contra Costa Clean Water Program Stormwater C. 3. Guidebook.

n. "Stormwater system" is that system of facilities by which stormwater may be conveyed to any stream, watercourse, other body of water or wetlands, including flood control channels, any roads with drainage systems, city streets, catch basins, curbs, gutters, ditches, improved channels, storm drains or storm drain system, which are not part of a Publicly Owned Treatment Works ("POTW") as that term is defined in 40 CFR section 122.2.

6.11.106 Responsibility for Administration. The director or his designee shall administer this chapter for the City.

ARTICLE 2 APPLICATION

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

6.11.204 Stormwater Control Plan Required.

a. Every application for a development project, including but not limited to a rezoning, tentative map, parcel map, conditional use permit, variance, site development permit, design review, or building permit that is subject to the development runoff requirements in the City's NPDES permit shall be accompanied by a stormwater control plan that meets the criteria in the most recent version of the Contra Costa Clean Water Program Stormwater C. 3. Guidebook.

(1) Effective February 15, 2005 this requirement shall apply to:

(A) All developments that create one acre (43,560 square feet) or more of impervious surface. Excluded from this category is the construction of one single family home, which is not part of a larger plan of development, with appropriate pollutant source control and site design measures, and using landscaping to appropriately treat runoff from roof and house-associated impervious surfaces.

(B) Streets and road projects that create one acre (43,560 square feet) or more of new impervious surface. Excluded from this category are sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features.

(C) Projects on previously developed sites that result in the addition or replacement of a combined total of one acre (43,560 square feet) or more of impervious surface. Excluded from this category are interior remodels and routine maintenance or repair. Excluded routine maintenance and repair includes roof or exterior surface replacement, pavement resurfacing, repaving and road pavement structural section rehabilitation within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed.

(2) Effective August 15, 2006 this requirement shall apply to:

(A) All developments that create 10,000 square feet or more of impervious surface. Excluded from this category is the construction of one single family home, which is not part of a larger plan of development, with appropriate pollutant source control and site design measures, and using landscaping to appropriately treat runoff from roof and house-associated impervious surfaces.

(B) Streets and road projects that create 10,000 square feet or more of new impervious surface. Excluded from this category are sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features.

(C) Projects on previously developed sites that result in the addition or replacement of a combined total of 10,000 square feet or more of impervious surface. Excluded from this category are interior remodels and routine maintenance or repair. Excluded routine maintenance and repair includes roof or exterior surface replacement, pavement resurfacing, repaving and road pavement structural section rehabilitation

within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed.

(3) Subsections (a)(1) and (a)(2) shall be interpreted in a manner that is consistent with the development runoff requirements and exclusions in the City's NPDES permit.

b. Implementation of an approved stormwater control plan and submittal of an approved stormwater control operation and maintenance plan by the applicant shall be a condition precedent to the issuance of a certificate of occupancy for a project subject to this section.

c. All stormwater management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines are outlined in the guidebook.

d. All stormwater management facilities shall be maintained according to the guidebook and the approved stormwater control operation and maintenance plan. The person(s) or organization(s) responsible for maintenance shall be designated in the plan. Unless a different time period is provided for in the plan, those responsible for maintenance shall inspect the stormwater management facility at least annually. The plan shall also describe how the maintenance costs will be funded. Upon the failure of a responsible person to maintain a stormwater management facility in accordance with this chapter or the plan, the City may perform the maintenance and recover its costs from the responsible person as provided in sections 6.11.314 and 6.11.316.

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

6.11.206 Prohibited Discharges.

a. The release of non-stormwater discharges to the City stormwater system is prohibited.

b. The discharge of stormwater from premises or an activity that causes or contributes to a violation of receiving water limitations in the City's NPDES permit is prohibited.

c. The following discharges are exempt from the prohibition set forth in subsection (a) above:

(1) Any discharge in compliance with a NPDES permit issued to the discharger.

(2) Flows from riparian habitats and wetlands, diverted stream flows, springs, rising groundwater and uncontaminated groundwater infiltration.

d. The following discharges are exempt from the prohibitions set forth subsection (a) above if the Regional Water Quality Control Board approves the exempted category under section C.11 of the City's NPDES permit: uncontaminated pumped groundwater, foundation drains, water from crawl space pumps, footing drains, air conditioning condensate, irrigation water, landscape irrigation, lawn or garden watering, planned and unplanned discharges from potable water sources, water line and hydrant flushing, individual residential car washing, discharges or flows from emergency fire fighting activities, and dechlorinated swimming pool discharges.

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

6.11.210 Unlawful Discharge and Unlawful Connections.

a. It is unlawful to establish, use, maintain or continue unauthorized drainage connections to the City's stormwater system, and to commence or continue any unauthorized discharges to the City's stormwater system.

b. No discharge shall cause the following conditions, create a nuisance or adversely affect beneficial uses of waters of the State:

(1) Floating, suspended or deposited macroscopic matter or foam;

(2) Bottom deposits or aquatic growth;

(3) Alterations of temperature, sediment load, nutrient load, or dissolved oxygen, which cause significant adverse impacts to native aquatic biota;

(4) Visible, floating, suspended or deposited oil or products of petroleum origin; or,

(5) Substances present in concentrations or quantities which cause deleterious effects on aquatic biota, wildlife or waterfowl, or which render any of these unfit for human consumption.

6.11.212 Best Management Practices and Standards.

a. Generally. Any person owning or operating premises that may contribute pollutants to the City's stormwater system shall undertake all practicable best

management practices to reduce the potential for pollutants entering the system. Examples of such premises include, but are not limited to, parking lots, gasoline stations, industrial facilities, and other commercial enterprises.

b. Litter. No person shall throw, deposit, leave, keep or permit to be thrown, deposited, placed, left or maintained any refuse, rubbish, garbage or other discarded or abandoned objects, articles or other litter in or upon any street, alley, sidewalk, business place, creek, stormwater system, fountain, pool, lake, stream, river or any other body of water, or upon any public or private parcel of land so that the same might become a pollutant, except in containers or in lawfully established waste disposal facilities.

c. Sidewalks. The occupant or tenant or, in the absence of occupant or tenant, the owner or proprietor of any real property in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained as required for the disposal of solid waste.

d. Parking Lots, Paved Areas and Related Stormwater Systems. Persons owning, operating or maintaining a paved parking lot, the paved areas of a gasoline station, a paved private street or road, and related stormwater systems shall clean those premises as frequently and thoroughly as practicable in a manner that does not result in the discharge of pollutants to the City's stormwater system.

e. Construction Activities. All construction shall conform to the requirements of the CASQA Stormwater Best Management Practices Handbooks for Construction Activities and New Development and Redevelopment, the ABAG Manual of Standards for Erosion & Sediment Control Measures, the City's grading and erosion control ordinance and other generally accepted engineering practices for erosion control as required by the director when undertaking construction activities. The director may establish controls on the rate of stormwater runoff from new developments and redevelopment as may be appropriate to minimize the discharge and transport of pollutants.

f. Notification of Intent and Compliance with General Permits. Each discharger associated with construction activity or other discharger described in any general stormwater permit addressing discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, shall provide the director with the notice of intent, comply with and undertake all other activities required by any general stormwater permit applicable to such dischargers. Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by the permit.

g. Development Runoff Requirements. For each new development and redevelopment project subject to the development runoff requirements, every applicant

shall submit a stormwater control plan and implement conditions of approval that reduce stormwater pollutant discharges through the construction, operation and maintenance of treatment measures and other appropriate source control and site design measures. Similarly, increases in runoff volume and flows shall be managed in accordance with the development runoff requirements.

h. Compliance with Best Management Practices. Where best management practices guidelines or requirements have been adopted by any federal, state, regional, city or county agency, for any activity, or operation of premises which may cause or contribute to non-stormwater discharges, every person undertaking such activity, operation or owning and operating such premises shall comply with such guidelines or requirements.

i. Stormwater Pollution Prevention Plan. The director may require any business or utility in the City that is engaged in activities that may result in non-stormwater discharges or runoff pollutants to develop and implement a stormwater pollution prevention plan, which must include an employee training program. Business activities which may require a stormwater pollution prevention plan include maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading, fueling, vehicle maintenance, food handling or processing, or cleanup procedures which is carried out partially or wholly out of doors.

j. Coordination with Hazardous Material Release Response and Inventory Plans. Any business subject to the Hazardous Material Release Response and Inventory Plan, Division 20, chapter 6.95 of the California Health and Safety Code (commencing with section 25500), shall include, in that Plan, provision for compliance with this chapter, including the prohibitions of non-stormwater discharges and the requirement to reduce release of pollutants to the maximum extent practicable.

6.11.214 Compliance Certificates for Stormwater Management Facilities.

a. Every person who owns, leases or operates any premises containing a stormwater management facility or facilities is required to obtain annually a valid operation and maintenance certificate of compliance certifying to the inspection of and the proper operation and maintenance of the treatment measures and other appropriate source control and site design measures. Each responsible person subject to this requirement shall request an inspection from the City every 12 months. Upon the filing of such request, and the payment of a fee covering the cost of inspection, the City shall inspect the property and shall either issue such certificate upon a determination by the inspector that all treatment measures and other appropriate source control and site design measures have been properly maintained and are in good condition, or shall issue a conditional certificate noting deficiencies that must be corrected within a time indicated on the certificate, or shall deny the certificate. A certificate shall be valid for one year from the date of issuance. The City Council may by resolution establish the fee for the inspection and certificate.

b. In lieu of a City inspection, such person may arrange for an inspection from a private company authorized to conduct inspections by the City. Such company shall use a City-approved inspection form that shall be executed under penalty of perjury. Should such inspection form establish that the treatment measures and other appropriate source control and site design measures have been properly maintained and are in good condition, the City may issue an operation and maintenance certificate of compliance or the City may at its cost re-inspect the property and proceed as described in subsection (a). The filing of a false inspection report shall be a misdemeanor.

6.11.216 Authority to Inspect.

a. Generally. Routine or scheduled inspections shall be based upon as reasonable a selection process as may be deemed necessary to carry out the intent of this chapter, including, but not limited to, random sampling or sampling in areas with evidence of stormwater contamination, evidence of the discharge of non-stormwater to the stormwater system, or similar activities. Inspections may also be conducted in conjunction with routine or scheduled inspections conducted by other public agencies or special district, including but not limited to the Central Contra Costa Sanitary District, the Contra Costa County Fire Protection District, County Environmental Health Department, the Contra Costa Mosquito and Vector Control District, or the Regional Water Quality Control Board.

b. Authority to Sample and Establish Sampling Devices. With the consent of the owner or occupant, or pursuant to a search or inspection warrant, any officer may establish on any property such devices as are necessary to conduct sampling or metering operations. During all authorized inspections, the officer may take any sample deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on site.

c. Notification of Spills. All persons in charge of the premises or responsible for emergency response for the premises have a responsibility to train premises' personnel and maintain notification procedures to ensure that immediate notification is provided to the City of any suspected, confirmed or unconfirmed release of pollutants creating a risk of non-stormwater discharge into the City stormwater system.

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

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

ARTICLE 3 ENFORCEMENT

6.11.302 Violations Constituting Misdemeanors.

The violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this article shall constitute a misdemeanor, except that notwithstanding any other provisions of this article, any violation constituting a misdemeanor under this chapter may, at the discretion of the officer or city attorney, be charged and prosecuted as an infraction.

6.11.304 Penalty for Violation.

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

b. Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code section 36900.

6.11.306 Continuing Violation. Every day that any violation of this chapter shall continue shall constitute a separate offense.

6.11.308 Concealment. Concealing, aiding or abetting a violation of any provision of this chapter shall constitute a violation of such provision.

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

6.11.312 Violations Deemed a Nuisance. In addition to the penalties provided herein, any condition caused or permitted to exist in violation of any of the

provisions of this chapter is a threat to the public health, safety and welfare. Such condition is hereby declared and deemed to be a nuisance, which may be abated as provided in Chapter 6 of Title 1 (commencing with section 1.6.102) of this Code including the assessment of the costs of abatement which may be collected at the same time and in the same manner as ordinary municipal taxes as provided by Government Code section 38773.5, and by civil action to abate, enjoin or otherwise compel the cessation of such nuisance by the City Attorney.

6.11.314 Civil Actions.

a. In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any and all of the following remedies:

- (1) A temporary restraining order, preliminary injunction and permanent injunction;
- (2) An action for an unlawful business practice pursuant to Business and Professions Code section 17206;

b. In addition any person violating this chapter shall be liable for:

- (1) Reimbursement for the costs of any investigation, inspection or monitoring which led to the discovery of the violation;
- (2) Costs incurred in removing, correcting, or terminating the adverse effect(s) resulting from the violation;
- (3) Compensatory damages for the loss of, or destruction to, water quality, wildlife, fish or aquatic life. Costs and damages under this subsection shall be paid to the City and shall be used exclusively for costs associated with monitoring and establishing a stormwater discharge pollution control system and implementing or enforcing the provisions of this chapter;
- (4) The cost of maintenance and repair of any BMP or stormwater management facility that is not maintained in accordance with the guidebook or the stormwater control plan;
- (5) The reasonable costs of preparing and bringing administrative action under this chapter.

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

6.11.318 Notice of Violation. Any person required to perform monitoring, analysis, reporting or corrective activity by any officer may be informed of such decision, in writing, by a notice of violation. Any person aggrieved by the decision of the officer, may file a written appeal of the notice of violation to the director within 10 (ten) days following the date of the notice of violation. Upon receipt of such request, the director shall request a report and recommendation from the officer and shall set the matter for hearing at the earliest practical date. At said hearing, the director may hear additional evidence, and may reject, affirm or modify the officer's decision. The decisions of the director shall be final.

6.11.320 Judicial Review. The provisions of Code of Civil Procedure section 1094.5 are applicable to judicial review of determinations made by the director pursuant to this chapter.

Section 4. Severability.

If any portion of this ordinance is determined by a court of competent jurisdiction to be illegal, it shall be severed from this ordinance and all other portions of the ordinance shall remain in full force and effect. The City Council declares that it would have adopted each and every section of this ordinance separately, even if it had not adopted any other section.

Section 5. Effective Date and Posting.

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk of the City of Oakley shall cause this Ordinance to be posted in at least three (3) public places in the City of Oakley in accordance with Section 36933 of the Government Code of the State of California.

ADOPTED, THIS 10th day of January, 2005 by the following vote:

AYES:	Anderson, Nix, Rios, Romick
NOES:	None
ABSTENTIONS:	None
ABSENT:	None

APPROVED:



MAYOR

ATTEST:



CITY CLERK