AGENDA ITEM E-13

CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Re-introduce Ordinance Amending Lodi Municipal Code Title 13 - Public Services by adding Chapter 13.14 "Stormwater Management and Discharge Control" relating to Stormwater.

MEETING DATE: May 5, 2004

PREPARED BY: Interim City Attorney

RECOMMENDED ACTION: That the City Council re-introduce Ordinance amending Lodi Municipal Code Title 13 – Public Services by adding Chapter 13.14 "Stormwater Management and Discharge Control" relating to stormwater.

BACKGROUND INFORMATION: As you will recall, this Ordinance was introduced at the meeting held December 17, 2003, and adopted at the January 7, 2004 City Council meeting. Unfortunately, the wrong version was inadvertently prepared for adoption, leaving some blanks not filled in as required. In order to correct the omission, staff recommends re-introducing and adopting this Ordinance.

FUNDING: None Required.

Respectfully submitted,

D. Stephen Schwabauer
Interim City Attorney

APPROVED:

H. Dixon Flynn, City Manager

E-13

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE TITLE 13 – PUBLIC SERVICES BY REPEALING AND REENACTING CHAPTER 13.14 "STORMWATER MANAGEMENT AND DISCHARGE CONTROL" RELATING TO STORMWATER

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

Section 1. Lodi Municipal Code Chapter 13.14 "Stormwater Management and Discharge Control" is hereby repealed and reenacted to read as follows:

Chapter 13.14

STORMWATER MANAGEMENT AND DISCHARGE CONTROL

Article 1. General Provisions

Sections:

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Article I. General Provisions

13.14.010 Title

This chapter shall be known as the City "Stormwater Management and Discharge Control Code," and may be cited as such, and will be referred to herein as "this chapter."

13.14.020 Purpose and Intent

The purpose of this chapter is to protect and promote the health, safety and general welfare of the citizens of the City by controlling Nonstormwater Discharges to

the Stormwater Conveyance System, by eliminating discharges to the Stormwater Conveyance System from spills, dumping or disposal of materials other than Stormwater, and by reducing Pollutants in urban Stormwater discharges to the maximum extent practicable. This chapter is intended to assist in the protection and enhancement of the water quality of Watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Water Pollution Control Act and amendments thereto and to assure compliance with the conditions set forth by the National Pollution Discharge Elimination System (NPDES) as requirements of Stormwater discharge permits.

13.14.030 Definitions

The following words, when used in this chapter, shall have the following meanings:

"Basin Plan" means the water quality control plan for the San Joaquin River Basin adopted by the Central Valley Regional Quality Control Board, Central Valley Region.

"Best Management Practices" (BMP) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and education practices, maintenance procedures, and other management practices to prevent or reduce to the maximum extent practicable the discharge of Pollutants directly or indirectly to waters of the United States. "Best management practices" also include treatment requirements, operating procedures, and practices to control plant runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage.

"City" means the City of Lodi.

"Development" means the building or placement of any structure or portion thereof. "Development" includes excavation and grading.

"Employee Training Program" means a documented Employee Training Program which may be required to be implemented by a business pursuant to a Stormwater Pollution Prevention Plan for the purpose of educating its employees on methods of reducing discharge of Pollutants to the Stormwater Conveyance System.

"Enforcement Agency" means the City of Lodi through its Public Works Department.

"Enforcement Official" means the Public Works Director or his or her designee or any agent of the City authorized to enforce compliance with this chapter.

"Illegal Discharge" means any discharge to the Stormwater Conveyance System that violates this chapter, or is prohibited by federal, state, or local laws, or which degrades the quality of Receiving Waters in violation of any Plan Standard.

"Illicit Connection" means any physical connection to the Stormwater conveyance system which is not authorized by the City of Lodi or the Regional Water Quality Control Board Central Valley Region.

"National pollution discharge elimination system (NPDES) permit" means a permit issued by the Regional Water Quality Control Board or the State Water Resources Control Board pursuant to Division 7, Chapter 5.5 of the California Water Code (commencing

with Section 13370) to control discharges from point sources to waters of the United States.

"Noncommercial Vehicle Washing" means the washing and rinsing of passenger vehicles on private property in which no commercial enterprise is being conducted in the washing of those vehicles.

"Nonstormwater Discharge" means any discharge to the Stormwater Conveyance System that is not entirely composed of Stormwater.

"Order" means current Regional Water Quality Control Board Order or general permit which applies to the city of Lodi together with all amendments.

"Person" means any Person, firm, corporation, business entity, or public agency, whether principal, agent, employee, or otherwise.

"Plan Standard" means any or all applicable requirements of the basin plan or any other approved plan.

"Pollutant" means any contaminant which can degrade the quality of the receiving water in violation of any Plan Standard.

"Premises" means any building, lot, parcel, land or portion of land whether improved or unimproved.

"Public Works Director" means the director of the City of Lodi, Public Works Department or his or her designee.

"Receiving Waters" means surface bodies of water, including creeks, canals, and rivers, which serve as discharge points for the Stormwater Conveyance System.

"Stormwater" means surface runoff and drainage associated with storm events which is free of Pollutants to the maximum extent practicable.

"Stormwater Conveyance System" means those artificial and natural facilities within the City of Lodi, whether publicly or privately owned, by which Stormwater may be conveyed to a Watercourse or waters of the United States, including any roads with drainage systems, streets, alleys, catch basins, pumps, natural and artificial channels, aqueducts, stream beds, gullies, curbs, gutters, ditches, sand and oil separators, open fields, parking lots, impervious surfaces used for parking, and natural and artificial channels or storm drains.

"Stormwater Pollution Prevention Plan" means a document which describes the Best Management Practices to be implemented by the owner or operator of a business or City to eliminate Nonstormwater Discharges and/or reduce to the maximum extent practicable Pollutant discharges to the Stormwater Conveyance System.

"User" means any Person that discharges, causes or permits the discharge of Stormwater into the conveyance system.

"Watercourse" means any natural stream, whether flowing continuously or not, that is fed from permanent or natural sources, and includes, without limitation rivers, creeks, canals, runs, and rivulets.

Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the Stormwater discharge permitting program issued by the Environmental Protection Agency, as amended, and which are not specifically defined in the above definitions of this section shall, when used in this chapter, have the same meaning as set forth in said act or regulation.

13.14.040 Conflicts with Other Laws

In the event of any conflict between this chapter and any federal or state law, regulation, order, or permit, that requirement which establishes the higher standard for public health or safety shall govern. To the extent permitted by law, nothing in this chapter shall preclude enforcement of any other applicable law, regulation, order or permit.

Article II Discharge Restrictions

13.14.050 Discharge of Nonstormwater Prohibited

Except as provided in Section 13.14.060 of this chapter, it is unlawful for any Person to make or cause to be made any Nonstormwater Discharge. Notwithstanding the exemptions provided in this chapter, if the Regional Water Quality Control Board or the Enforcement Official determines that any otherwise exempt discharge causes or significantly contributes to violations of any Plan Standard, or conveys significant quantities of Pollutants to surface water(s) or Watercourse(s), or is a danger to public health or safety, such discharge shall be prohibited from entering the Stormwater Conveyance System.

13.14.060 Exceptions to Discharge Prohibition

Subject to the authority granted to the Regional Water Quality Control Board and the Enforcement Official in Section 13.14.420 of this chapter, the following discharges to the Stormwater Conveyance System are exempt from the prohibition set forth in Section 13.14.050 of this chapter.

A. Any discharge or connection regulated under a NPDES permit issued to the discharger and administered by the State of California pursuant to Division 7, Chapter 5.5 of the California Water Code, provided that the discharger is in compliance with all requirements of the permit and all other applicable laws and regulations;

B. Discharges from the following activities which do not cause or contribute to the violation of any Plan Standard:

1. Water line and well flushing and other discharges from potable water sources,
2. Landscape irrigation and lawn watering,
3. Rising ground waters or springs,
4. Passive foundation and footing drains,
5. Water from crawl space pumps and basement pumps,
6. Air conditioning condensate,
7. Noncommercial Vehicle Washing,
8. Natural flows from riparian habitats and wetlands,

9. Dechlorinated swimming pool discharges,
10. Flows from fire suppression activities, including fire hydrant flows and fire hydrant flow testing.
11. Waters not otherwise containing wastes as defined in California Water Code Section 13050(d) and California Health and Safety Code Section 25117,
12. Diverted stream flows,
13. Uncontaminated ground water infiltration to separate storm sewers;

C. Any discharge which the Enforcement Official, the local health officer, or the Regional Water Quality Control Board determines in writing is necessary for the protection of the public health and safety;

D. Any discharge caused by flooding or other natural disaster which could not have been reasonably foreseen or mitigated for in advance by the discharger, as determined by the Enforcement Official.

13.14.070 Groundwater Discharges

Discharges of pumped groundwater not subject to a NPDES permit may be permitted to discharge to the Stormwater Conveyance System upon written approval from the City and in compliance with conditions of approval set forth by the City.

13.14.080 Discharge in Violation of Permit

It is unlawful for any Person to cause either individually or jointly any discharge to the Stormwater Conveyance System which results in or contributes to a violation of Order No. 2003-0005 DWG.

13.14.090 Illicit Connections Prohibited

It is unlawful and a violation of this chapter for any Person to establish, use, or maintain any Illicit Connection.

13.14.100 Concealment and Abetting

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of this chapter.

13.14.110 Acts Potentially Resulting in Violation of Federal Clean Water Act and/or Porter-Cologne Act

Any Person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the Federal Clean Water Act (33 USC 1251 et seq.) and or Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.) and may be subject to the sanctions of those Acts including civil and criminal penalties.

13.14.120 Reduction of Pollutants in Stormwater

Any Person engaged in activities which may result in Pollutants entering the Stormwater Conveyance System shall, to the maximum extent practicable, undertake the measures set forth below to reduce the risk of Nonstormwater Discharge and/or Pollutant discharge.

A. Business Related Activities

1. Stormwater Pollution Prevention Plan. The Enforcement Official may require any business in the City that is engaged in activities which may result in Pollutant discharges to develop and implement a Stormwater Pollution Prevention Plan, which must include an Employee Training Program. Business activities which may require a Stormwater Pollution Prevention Plan include, but are not limited to, maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading or fueling, or cleanup procedures which are carried out partially or wholly out of doors.

2. Coordination with Hazardous Materials Release Response Plans and Inventory. Any business requiring a hazardous materials release response and inventory plan under Chapter 6.95 (commencing with Section 25500) of Division 20 of the California Health and Safety Code, shall include in that plan provisions for compliance with this chapter, including the provisions prohibiting Nonstormwater Discharges and Illegal Discharges, and requiring the release of Pollutants to be reduced to the maximum extent practicable.

3. Coordination with Hazardous Waste Generator Contingency Plan and Emergency Procedures. Any business requiring a hazardous waste generator contingency plan and emergency procedures pursuant to California Code of Regulations, Title 22, Sections 66265.51 to 66265.56, shall include in that plan provisions for compliance with this chapter, including the provisions prohibiting Nonstormwater Discharges and Illegal Discharges, and requiring the release of Pollutants to be reduced to the maximum extent practicable.

B. Development

1. The Enforcement Official may develop BMP including controls as appropriate to minimize the long-term, post construction discharge of Stormwater Pollutants from new development(s) or modifications to existing development(s). Controls may include source control measures to prevent pollution of Stormwater and/or treatment controls designed to remove Pollutants from Stormwater.

2. Any Person performing construction in the City shall prevent Pollutants from entering the Stormwater Conveyance System and comply with all applicable federal, state and local laws, ordinances or regulations including but not limited to the State general permit for Stormwater discharges associated with construction activity and the City grading, erosion and sediment control policies.

C. Compliance with General Permits. Each industrial discharger, discharger associated with construction activity, or other discharger subject to any general Stormwater permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, the Regional Water Quality Control Board Central Valley Region or the City of Lodi shall comply with the requirements of such permit, and

shall provide copies of permits and applicable reports to the Enforcement Official upon request.

D. Compliance with Best Management Practices. Every Person undertaking any activity or use of a Premises which may cause or contribute to Stormwater pollution or contamination, Illegal Discharges, or Nonstormwater Discharges shall comply with Best Management Practices guideline or pollution control requirements as may be reasonably established by the Enforcement Official.

13.14.130 Containment and Notification of Spills

Any Person owning or occupying a Premises who has knowledge of any release of Pollutants or Nonstormwater Discharge from or across those Premises which might enter the Stormwater Conveyance System, other than a release or discharge that is permitted by this chapter, shall immediately take all reasonable action to contain and abate the release of Pollutants or Nonstormwater Discharge, and shall notify the Enforcement Agency within twenty-four (24) hours of the release of Pollutants or Nonstormwater Discharge.

Article III Service Charges and Fees

13.14.140 Storm Drain and Cooling Water Service Charges

A. The fees and charges for disposal of storm waters, cooling water discharges or construction flush waters into the City's Stormwater Conveyance System will be those established and approved by the City Council from time to time by resolution.

B. The schedule of charges for the inspection, sampling and analysis of questionable storm water flowing into the City's Stormwater Conveyance System will be those established and adopted by the City council from time to time by resolution.

C. The City shall estimate and determine the amount of storm, cooling water or construction flush waters deposited into the City's Stormwater Conveyance System unless the User of the service elects to provide, install and maintain in good working order an integrating meter satisfactory to the City for the purposes of measuring such storm, cooling water or construction flush water.

D. In determining the amount of storm, cooling water or construction flush waters deposited into the City's Stormwater Conveyance System, no charge shall be made for the storm waters or minor irrigation waters or drainage from roofs, pavements or hard-surfaced areas within the City limits. Where such drainage is metered along with construction flush water, a credit of one thousand two hundred fifty (1,250) gallons per year for each one hundred (100) square feet, as projected and measured upon a horizontal plane, or such drainage area tributary to the meter shall be allowed. Where roofs or other areas are sprinkled or flushed, such flushing or sprinkling waters shall be included in the quantities for billing purposes.

13.14.150 Billing and Collections

All billing and collections for service charges shall be per Section 13.04.030 of this code.

Article IV. Construction Generally

13.14.160 Permit

No unauthorized Person shall uncover, make any connection with or opening into, use, alter or disturb any Stormwater Conveyance System or appurtenances, thereof without first obtaining a written permit from the Public Works Director.

13.14.170 Design Standards

All construction of public Stormwater Conveyance Systems or appurtenances shall conform to the design criteria, the standard plans and specifications and the inspection and testing procedures in accordance with current City public improvement design standards.

Article V. Extensions

13.14.210 Purpose

The City council has adopted a Stormwater conveyance extension policy that is fair and equitable to all developing properties and that provides that the cost of extension shall be distributed among subsequently developing properties connecting thereto.

13.14.220 Application

Whenever a property owner requires storm drainage, an application shall be made to the Public Works Department. The Public Works Director shall determine the closest Stormwater conveyance and, if an extension is necessary, indicate the size of the main to be extended and the limits of the extension.

13.14.230 Applicant's Obligation

Whenever the Public Works Director determines that a Stormwater conveyance extension is necessary, the applicant will be required to install, at the applicant's own expense, the Stormwater conveyance extension in accordance with the engineering plans furnished by applicant and approved by the Public Works Director. The plans shall be prepared in accordance with the City design standards.

13.14.240 Extension for Full Frontage Width

In every case where a storm drain is to be tapped to serve a parcel, the same shall be extended the full frontage of the parcel unless the Public Works Director determines that the storm drain will not need to be extended to serve any other properties.

13.14.250 Minimum Diameter

The minimum size storm drain shall have a nominal inside diameter of twelve (12) inches. Larger size mains may be required as determined by the Public Works Director in accordance with the City public improvement design standards to the City master storm drain plans.

13.14.260 Reimbursement – Oversize Mains

Whenever the City requires that a storm drain larger than eighteen (18) inches in diameter be installed in order to serve additional property or to conform to the applicable master plan, the applicant shall be reimbursed for the oversized pipe. The reimbursement shall be based on the difference in cost between the actual pipe to be installed and an eighteen-inch storm drain as applicable. The difference in cost shall be determined by the Public Works Director. The reimbursement shall be made in accordance with Chapter 16.40.

Article VI. Administration

13.14.310 Monitoring Facilities

A. The Public Works Director may require a commercial/industrial User to construct and maintain, at the User's expense, monitoring facilities which meet all government safety regulations (OSHA) to allow inspection, sampling and flow measurement of the building internal storm drainage systems and may also require sampling or metering equipment to be provided, installed, operated and maintained at the User's expense. The monitoring facility should normally be situated on the User's Premises, but the Public Works Director may, when such a location would be impractical or cause undue hardship on the User or the City, require the facility to be constructed in the public right-of-way and located so that it will not be obstructed by landscaping or parked vehicles.

B. When the monitoring facility is inside the User's fence, there shall be accommodations to allow access for the Enforcement Official, such as a gate secured with a City lock. There shall be ample room in or near such monitoring facility to allow accurate sampling and compositing of samples for analysis. The monitoring facility shall be maintained at all times in a safe and proper operating condition at the expense of the User.

C. Whether constructed on public or private property, plans and specifications shall be approved by the Public Works Director and be in accordance with all applicable City construction standards and specifications. Construction shall be completed within sixty (60) days following written notification by the City, unless a time extension is otherwise granted by the City.

13.14.320 Inspection, Sampling, Monitoring and Analysis

The Enforcement Official may inspect the facilities of any User to ascertain whether the purpose of this chapter is being met and all requirements are being complied with. Persons or occupants of Premises where Stormwater is discharged shall allow the Public Works Director or designated representative ready access at all reasonable times to all parts of the Premises for the purposes of inspection or sampling or in performance

of any of their duties. The Enforcement Official shall have the right to set up on the User's property such devices as are necessary to conduct sampling or metering operations. Where a User has security measures in force which would require proper identification and clearance before entry into their Premises, the User shall make necessary arrangements with its security guards so that upon presentation of suitable identification, the Enforcement Official will be permitted to enter without delay for the purposes of performing their specific responsibilities. The User may be charged a fee to recover the costs for inspection (investigations), sampling, monitoring and analyses performed by the City to establish billing rates and to ensure compliance with all regulations.

13.14.340 Confidential Information

A. All information and data on a User obtained from reports, questionnaires, permit application, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless (1) the User specifically requests and is able to demonstrate to the satisfaction of the Public Works Director that the release of such information would divulge information, processes or methods that would be detrimental to the User's competitive position; and (2) disclosure is not required by the California Public Records Act.

B. When requested by the Person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available to governmental agencies for use in making studies per 40 CFR 403.14; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the Person furnishing the report. Stormwater constituents and characteristics will not be recognized as confidential information.

13.14.350 Special Agreements

Special agreements and arrangements between the City and any Persons or agencies may be established when, in the opinion of the City council, unusual or extraordinary circumstances compel special terms and conditions. However, in no case may federal standards be waived or modified.

Article VII. Enforcement

13.14.410 Inspection Authority

Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized Enforcement Official has reasonable cause to believe that there exists in any building or upon any Premises any condition which constitutes a violation of this chapter, the Enforcement Official may enter such building or Premises at all reasonable times to inspect the same or perform any duty imposed upon the officer by this chapter. Any request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event that such entry is refused, inspection may be made upon issuance of a warrant issued by a court of competent jurisdiction. In the event the owner or occupant refuses entry after such request has been made, the Enforcement Official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. Inspections shall be based upon such

reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to, random sampling and/or sampling in areas with evidence of Stormwater contamination, Illegal Discharge, Nonstormwater Discharge to the Stormwater Conveyance System, or similar factors.

A. Sampling Authority. During any inspection, the Enforcement Official may take samples as necessary in order to implement and enforce the provisions of this chapter. This authority may include the installation of sampling and metering devices on private property, or requiring the Person owning or occupying the Premises to supply samples.

B. Monitoring, Analysis and Reporting Authority. The Enforcement Official may require monitoring, analysis and reporting of discharges from any Premises to the Stormwater Conveyance System. Upon service of written notice by the Enforcement Official, the burden, including cost, of these activities, analyses and reports, incurred in complying with the requirement shall, to the extent permitted by law, be borne by the property owner or occupant of the facility or activity for which testing and monitoring has been requested.

13.14.420 Enforcement Authority

The Enforcement Official may exercise any enforcement powers authorized or provided in this code, including without limitation, administrative penalties pursuant to this code, as may be necessary to effectively implement and enforce this chapter.

A. Administrative Enforcement Powers. The Enforcement Official may also exercise any of the following supplemental enforcement powers as may be necessary or advisable in the Enforcement Official's judgment under the circumstances:

1. Notice of Violation (NOV). Whenever the Enforcement Official finds that any Person owning or occupying a Premises has violated or is violating this chapter or an order issued hereunder, the Enforcement Official may serve, by personal service, or by registered or certified mail, upon said Person a written NOV. Within thirty (30) days of the receipt of this notice, or as may be prescribed in the NOV, the person so noticed shall submit to the Enforcement Official an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions. Submission of this plan shall in no way relieve the Person of liabilities for violations occurring before or after receipt of the NOV.

2. Cease and Desist Orders. The Enforcement Official may require any Person owning or occupying a premises to cease and desist all activities that may cause or contribute to discharge in violation of this chapter. This order may also require such Person to: (i) comply with the applicable provisions of this chapter within a designated period of time or; (ii) take appropriate remedial or preventative action to keep the violation from recurring.

3. Notice to Clean and Abate. The Enforcement Official may require any Person owning or occupying a premises to clean up and abate any release of Pollutants on those Premises which may result in a violation of this chapter. The Enforcement Official may also order abatement of activities or practices which may reasonably be expected to result in such a violation.

4. Mitigation. The Enforcement Official shall have authority to order the mitigation of circumstances which may result in or contribute to Illegal Discharges.

5. Stormwater Pollution Prevention Plan. The Enforcement Official shall have the authority to establish elements of a Stormwater Pollution Prevention Plan, and to require any business to adopt and implement such a plan, as may be reasonable and necessary to fulfill the purposes of this chapter.

6. Best Management Practices. The Enforcement Official may establish the requirements of Best Management Practices for any Premises.

7. Violations Constituting Misdemeanors. In addition to civil penalties provided for in this chapter, any violation of this chapter may be punishable as a misdemeanor as provided by Section 1.08.010 of this code.

8. Violations Deemed a Public Nuisance. In addition to the penalties hereinbefore provided, 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 or welfare and is thus deemed a nuisance. Any such nuisance may be summarily abated and/or restored by any authorized Enforcement Official. The City attorney is authorized to pursue civil action(s) pursuant to subsection B of this section to abate, enjoin, or otherwise compel the cessation of the nuisance.

9. Cost Recovery. The cost of the abatement and restoration shall be borne by the owner of the property and the cost therefore shall be invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, the Enforcement Official shall have the authority to place a lien upon and against the property. If the lien is not satisfied within three months, the Enforcement Official is authorized to take all legal measures as are available to enforce the lien as a judgment, including, without limitation, enforcing the lien in an action brought for a money judgment or by delivery to the county assessor or a special assessment against the property in accordance with Government Code Section 38773.5

10. Seasonal and Recurrent Nuisance. If any violation of this chapter constitutes a seasonal and recurrent nuisance, the Enforcement Official shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

11. Costs of Enforcement. If the City prevails in any administrative, civil or criminal proceeding initiated under this chapter, the City shall be entitled to seek reimbursement for all costs incurred in connection with said proceeding. Such reimbursable expenses may include, but are not limited to, costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, and costs of suit. If any such costs are granted to the City, said costs shall be recoverable pursuant to subsection (A)(9) of this section.

B. Civil Actions. 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 attorney. Monies recovered under this subsection shall be paid to the City to be used exclusively for costs associated with monitoring and establishing Stormwater discharge pollution control systems and/or implementing or enforcing the provisions of this chapter. In any such action, the City may seek, as appropriate, any or all of the following remedies:

1. A temporary and/or permanent injunction;

2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;

3. Costs incurred in removing, correcting or terminating the adverse effects resulting from the violation;

4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life not to exceed $6,000 per day, per occurrence in which such violations occur. The City attorney, upon order of the City council, shall petition the superior court to impose, assess and recover such sums. This penalty is in addition to any penalties which may be imposed by the State Regional Water Quality Control Board and the Environmental Protection Agency. Should the damage also cause the City to be cited for a violation of State or Federal requirements, the cost of said citation will be passed onto the offending party.

C. Authority to Arrest or Issue Citations. Any authorized Enforcement Official shall have and is vested with the authority to arrest or cite and release any Person who violates any section of this chapter in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanors or infractions as described by Chapters 5, 5(c) and 5(d) of Title 3, Part 2 of the California Penal Code (or as the same may hereafter be amended). Such authorized Enforcement Official may issue citations and notice to appear in the manner prescribed by Chapter 5(c) Title 3, Part 2 of the California Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the City council that the immunities prescribed in Section 836.5 of the California Penal Code be applicable to public officers or employees acting in the course and scope of employment pursuant to this chapter.

D. Emergency Orders and Abatements. The Enforcement Official may order the abatement of any discharge from any source to the Stormwater Conveyance System when, in the opinion of the Enforcement Official, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, or the environment, or a violation of a NPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety or welfare, or the environment or a violation of a NPDES permit, the City may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the owner and shall be collectable in accordance with the provisions of subsection (A)(9) of this section.

E. Contents of Notice. Any NOV, cease and desist order, or other civil notice or civil order issued by the Enforcement Official pursuant to this chapter shall include a copy of Section 13.14.450 of this chapter outlining appeal rights.

13.14.430 Remedies not Exclusive

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

13.14.440 Compliance Timetable

When the City finds that discharge of unacceptable Stormwater has been taking place, or is threatening to take place, in violation of prohibitions or limitations prescribed in this chapter, the City may require the User to submit for approval, with such modifications as it deems necessary a detailed time schedule of specific actions, which the User shall take in order to prevent or correct a violation of requirements.

13.14.450 Appeal

A. Any Person served with a NOV, who is subject to a cease and desist order, who is subject to an abatement order, who is required to perform monitoring, analyses, reporting and/or corrective activities by an authorized Enforcement Official, or who is otherwise grieved by the decision of the authorized Enforcement Official, may appeal the decision to the Public Works Director within ten (10) days following the effective date of the decision by filing a written appeal with the Public Works Director. Upon receipt of such request, the Public Works Director shall request a report and recommendation from the authorized Enforcement Official and shall set the matter for hearing at the earliest practical date. Due notice of the hearing shall be provided to the Person appealing the decision of the authorized Enforcement Official. At the hearing, the Public Works Director may hear additional evidence, and may reject, affirm or modify the authorized Enforcement Official's decision.

B. If the ruling made by the Public Works Director is unsatisfactory to the person requesting reconsideration, the person, may, within twenty days after notification of the City's action, file a written appeal to the City Council. The written appeal shall be heard by the council within twenty days from the date of filing. The City council shall make a final ruling on the appeal within twenty days of the hearing. The determination shall remain in effect during such period of reconsideration.

13.14.460 Disclaimer of Liability

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of Pollutants into the waters of the United States. This chapter shall not create liability on the part of the City, any officer or employee thereof for any damages that result from reliance on the code or any administrative decision lawfully made thereunder.

13.14.470 City Authority

The Enforcement Official is authorized to make any decision on behalf of the City required or called for by this chapter.

13.14.480 Judicial Review

The provisions of California Code of Civil Procedure Section 1094.6 are applicable to judicial review of City decisions pursuant to this chapter.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City of outside of the City so as to provide a basis of civil liability for damages, except otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. This ordinance shall be published one time in the Lodi News-Sentinel," A daily newspaper of general circulation printed and published in the City of Lodi and shall take effect thirty days from and after its passage and approval.

Approved this ____ day of _____, 2004

_____
LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held May 5, 2004, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES; COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
Interim City Attorney