




# TOWN OF FAIRFAX

## STAFF REPORT

### June 3, 2015

**TO:** Mayor and Town Council

**FROM:** Michele Gardner, Town Clerk 

**SUBJECT:** Second reading by title only and adoption of Ordinance No. 791 amending Chapter 8.32 of the Town Code (“Urban Runoff Pollution Prevention”) to be consistent with the State Water Resources Control Board Stormwater Permit requirements

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#### **RECOMMENDATION**

Waive second reading and read by title only and adopt Ordinance No. 791, an Ordinance of the Town of Fairfax Amending Town Municipal Code, Chapter 8.32, to update the Urban Runoff Pollution Prevention Regulations.

#### **DISCUSSION**

On May 6, 2015, the Town Council introduced and held the first reading by title only of Ordinance No. 791, which amends Chapter 8.32. Tonight is the second reading and adoption. If adopted, the ordinance will take effect 30 days after its passage.

In order to be in compliance with the Phase II Stormwater Permit requirements, Chapter 8.32 of the Town Code must be amended. The amendment must be adopted by the end of June.

#### **FISCAL IMPACT**

The Town’s current budget of \$16,090.46 to MCSTOPPP will increase to \$18,998.50 to cover the costs for the newly required Pesticide Total Maximum Daily Load (TMDL) water quality monitoring, and storm drain trash capture studies for future implementation.

#### **ENVIRONMENTAL REVIEW**

CEQA exempt, recorded

#### **ATTACHMENT**

Ordinance No. 791

**ORDINANCE NO. 791**

**AN ORDINANCE OF THE TOWN OF FAIRFAX  
AMENDING TOWN MUNICIPAL CODE, CHAPTER 8.32, TO UPDATE  
THE URBAN RUNOFF POLLUTION PREVENTION REGULATIONS**

The Town Council of the Town of Fairfax does ordain as follows:

**SECTION 1:** Chapter 8.32 of the Fairfax Town Code, Title 8, shall be amended and restated to read as follows:

**“8.32.010 TITLE, PURPOSE AND GENERAL PROVISIONS.**

(A) Title. This chapter shall be known as the “Town of Fairfax Urban Runoff Pollution Prevention Ordinance” and may be so cited.

(B) Purpose and intent.

(1) The purpose of this chapter is to ensure the future health, safety and general welfare of Town of Fairfax citizens and to protect and enhance watercourses, fish and wildlife habitat by:

(a) Minimizing discharges other than storm runoff to storm drains or watercourses;

(b) Responding to the discharge of spills, preventing and controlling the discharge of spills to storm drains or watercourses and prohibiting dumping or disposal of materials other than stormwater;

(c) Reducing pollutants in stormwater discharges to the maximum extent practicable;

(d) Requiring operators of construction sites, new or redeveloped land, and industrial and commercial facilities to install, implement, or maintain appropriate best management practices (BMPs); and

(e) Maintaining pre-development stormwater runoff rates and preventing nonpoint source pollution whenever possible, through stormwater management controls and ensuring that these management controls are properly maintained.

(2) The intent of this chapter is to protect and enhance the water quality of the state’s, and the nation’s watercourses, water bodies and wetlands in a manner pursuant to and consistent with the Clean Water Act. (33 U.S.C. §§ 1251 *et seq.*), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 *et seq.*), and the Phase II Small Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit, Water Quality Order No. 2013-0001—DWQ, General Permit No. CAS000004 (Phase II Stormwater Permit) and subsequent revisions and amendments thereto.

(C) Definitions.

Any terms defined in the Phase II Stormwater Permit, the federal Clean Water Act (33 U.S.C. §§ 1251 *et seq.*) and acts amendatory thereof or supplementary thereto, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency on November 16, 1990, as may from time to time be amended, as used in this chapter shall have the same meaning as in the Act or regulations. In the event of any conflict, the relevant state or federal law definition will prevail over the definitions contained herein and shall be incorporated by reference into this chapter. The terms include, but are not limited to the following:

**AUTHORIZED ENFORCEMENT OFFICIAL.** The Town Manager and his/her designee are hereby appointed authorized enforcement official(s) of this chapter.

**BASMAA POST CONSTRUCTION MANUAL.** The most recent version of the Bay Area Stormwater Management Agencies (BASMAA) Post Construction Manual which provides design guidelines for reducing stormwater pollutant discharges through the construction, operation and maintenance of source control measures, low impact development design, site design measures, stormwater treatment measures and hydromodification management measures.

**BEST MANAGEMENT PRACTICES or BMPs.** Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to waters of the United States. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste recycling or disposal or drainage from raw material storage.

**CONSTRUCTION ACTIVITY.** Any activity that involves soil disturbing activities including, but not limited to, clearing, paving, grading, disturbances to ground such as stockpiling, and excavation.

**DISCHARGE OF A POLLUTANT.**

(1) The addition of any pollutant or combination of pollutants to waters of the United States from any point source; or

(2) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. The term includes additions of pollutants to waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately or publicly owned treatment works.

**ILLICIT CONNECTION.** Any device or method that conveys non-stormwater to a municipal separate storm sewer (storm drain) system (MS4) or receiving water.

**ILLICIT DISCHARGE.** Any discharge to a municipal separate storm sewer (storm drain) system (MS4) that is prohibited under local, state, or federal statutes, ordinances, codes, or regulations. The term illicit discharge includes all non-stormwater discharges

not composed entirely of stormwater and discharges that are identified under the Discharge Regulations and Requirements Section of this chapter. The term illicit discharge does not include discharges that are regulated by an NPDES permit (other than the NPDES permit for discharges from the MS4).

**INCIDENTAL IRRIGATION RUNOFF.** Unintended amounts (volume) of runoff, such as unintended, minimal over-spray from sprinklers that escapes the landscaped area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.

**LOW IMPACT DEVELOPMENT (LID).** A sustainable practice that benefits water supply and contributes to water quality protection. LID uses site design and stormwater management to maintain the site's pre-development runoff rates and volumes. The goal of LID is to mimic a site's predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to the source of rainfall.

**MAXIMUM EXTENT PRACTICABLE (MEP)** means the minimum required performance standards, BMPs, control techniques and systems, design and engineering methods, and such other provisions as the Environmental Protection Agency Administrator or the State determines appropriate for reducing pollutants in stormwater. MEP is the cumulative effect of implementing, evaluating, and making corresponding changes to a variety of technically appropriate and economically feasible BMPs, ensuring that the most appropriate controls are implemented in the most effective manner. This process of implementing, evaluation, revising, or adding new BMPs is commonly referred to as the iterative process.

**MCSTOPPP.** The Marin County Stormwater Pollution Prevention Program.

**NPDES PERMIT.** A National Pollutant Discharge Elimination System (NPDES) permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, or a California Regional Water Quality Control Board pursuant to the Clean Water Act that authorizes discharges to waters of the United States.

**NON-STORMWATER DISCHARGE.** Any discharge that is not entirely composed of stormwater.

**PHASE II STORMWATER PERMIT.** The NPDES general stormwater permit applicable to the County of Marin, Water Quality Order No. 2013-0001—DWQ, General Permit No. CAS000004, and any subsequent amendment, reissuance or successor to this NPDES permit.

**POLLUTANT.** Dredged soil, solid waste, incinerator residue, filter backwash, sewage, pet wastes, manure, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, sediment, cellar dirt, dumped yard wastes, and industrial, municipal and agricultural waste; or sand and gravel placed in such a way as to be carried away by stormwater into the storm drains or watercourses of the town.

PREMISES. Any building, lot parcel, real estate or land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

STORM DRAINS. Includes, but is not limited to those stormwater drainage conveyance facilities within the town by which stormwater may be conveyed to waters of the United States, including any roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains, which are not part of a publicly owned treatment works (POTW) as defined at Title 40 Code of Federal Regulations (C.F.R.) pt. 122.2.

STORMWATER or STORM RUNOFF. Stormwater runoff, snow melt runoff, and surface runoff and drainage.

STORMWATER CONTROL PLAN. A plan that meets those criteria contained in the most recent version of the *BASMAA Post Construction Manual*.

STORMWATER FACILITIES OPERATION AND MAINTENANCE PLAN. A plan identifying the locations and characteristics of stormwater management facilities on a newly developed or redeveloped site and describing maintenance activities, schedules, and responsibilities to ensure the ongoing proper operation of those facilities.

STORMWATER MANAGEMENT FACILITY. Any device designated to detain, retain, filter, or infiltrate stormwater, including, but not limited to, bioretention facilities.

TOWN. The Town of Fairfax.

URBAN RUNOFF. Stormwater runoff from an urbanized area including streets and adjacent domestic and commercial properties that carries pollutants of various types into the storm drainage system and receiving waters.

WATERCOURSE. Any natural or once natural flowing river, creek, stream, swale or drainageway, whether perennial, intermittent or ephemeral. Includes natural waterways that have been channelized but does not include channels, ditches, culverts or other above or below ground constructed conduits, i.e., storm drains.

(D) Responsibility for administration. This chapter shall be administered for the town by the authorized enforcement official. In administering this chapter, the authorized enforcement official has the authority to request and require the submittal of information deemed necessary to assess compliance with this chapter and the Phase II Stormwater Permit.

(E) Construction and application. This chapter shall be construed to assure consistency with the requirements of the federal Clean Water Act (33 U.S.C. §§ 1251 *et seq.*) and acts amendatory thereof or supplementary thereto, and applicable implementing regulations, including the current and future versions of the water quality control plan for the San Francisco Bay basin and the Phase II Stormwater Permit.

### **8.32.020 DISCHARGE REGULATIONS AND REQUIREMENTS.**

(A) *Discharge of pollutants.* The discharge of non-stormwater discharges to the town storm drain system is prohibited. All discharges of material other than stormwater must be in compliance with an NPDES permit issued for the discharge.

(B) *Exceptions to discharge prohibition.* The following discharges are exempt from the prohibition set forth in division (A) of this section:

(1) Discharges regulated under another NPDES permit issued to the discharger and administered by the State of California under authority of the United States Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations.

(2) Discharges or flows from fire-fighting activities unless they are identified as significant sources of pollutants to waters of the United States.

(3) Discharges from the following activities will not be considered a source of pollutants to waters of the US when properly managed, provided any pollutants in the discharges are identified and appropriate control measures to minimize the impacts of such discharges are developed and implemented.

- (a) Water line flushing;
- (b) Individual residential car washing;
- (c) Diverted stream flows;
- (d) Rising groundwaters;
- (e) Uncontaminated ground water infiltration (as defined at 40 C.F.R. §35.2005(20)) to separate storm sewers;
- (f) Uncontaminated pumped groundwater;
- (g) Discharges from potable water sources;
- (h) Foundation drains;
- (i) Air conditioning condensation;
- (j) Springs;
- (k) Water from crawl space pumps;
- (l) Footing drains;
- (m) Flows from riparian habitats and wetlands;
- (n) Dechlorinated swimming pool discharges; and
- (o) Incidental irrigation runoff from landscaped areas provided the conditions in item 4 of this section are met.

(4) Incidental irrigation runoff is the unintended amounts of runoff that leave the area of application such as minimal overspray. Water leaving the intended area of application is not incidental if it is due to the design, excessive application, or intentional overflow or application. Irrigation systems must be designed to conserve water and prevent water leaving the area of application. Property owners and persons responsible shall control irrigation systems to prevent excessive irrigation runoff by implementing the following BMPs:

- (a) Detect and repair leaks from the irrigation system within 72 hours of discovering the leak;

(b) Properly design and aim sprinkler heads to only irrigate the planned application area;

(c) Do not irrigate during precipitation events; and

(d) Where recycled water is used for irrigation, design and manage holding ponds such that no discharge occurs unless it is the result of the 25 year-24 hour storm event. Any releases from holding ponds must be reported to the Regional Water Board and the county within 24 hours of the discharge.

(C) *Discharge in violation of permit.*

(1) Any discharge that would result in or contribute to a violation of the Phase II Stormwater Permit and any amendment, revision or reissuance thereof, either separately considered or when combined, with other discharges, is prohibited.

(2) Liability for any such discharge shall be the responsibility of the person(s) so causing or responsible for the discharge and the persons shall defend, indemnify and hold harmless the town in any administrative or judicial enforcement action relating to the discharge.

(D) *Illicit discharges and illicit connections.*

(1) The establishment, use, maintenance or continuance of illicit connections to the town storm drains or watercourse, and/or the commencement or continuance of illicit discharges to the town storm drains or watercourse is prohibited.

(2) This prohibition is expressly retroactive and applies to connections made in the past, regardless of whether made under a permit or other authorization or whether permissible under the law or practices applicable or prevailing at the time of the connection.

(3) Any person responsible for a discharge, spill, or pollutant release shall promptly cease and desist discharging and/or cleanup and abate such a discharge as directed by the authorized enforcement official.

(4) Any person responsible for an illicit connection shall promptly remove the connection as directed by the authorized enforcement official.

(5) The town may perform clean-up and abatement work and recover its costs from the responsible person as provided in Section 8.32.030.

(E) *Reduction of pollutants in urban runoff.* Any person engaged in activities which will or may result in pollutants entering the storm drains shall undertake all practicable measures to cease the activities, and/or eliminate or reduce the pollutants. The activities shall include, but not be limited to ownership and use of parking lots, gasoline stations, industrial facilities, commercial facilities, ground disturbing activities, and stores fronting town streets.

(1) *Littering.*

(a) Except for pollutants lawfully disposed of by way of containers or at a licensed dumping ground, no person shall throw, deposit, leave, maintain, keep or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage

or other discarded or abandoned objects, articles and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place or upon any public or private lot of land or other premises in the town, so that the same might be or become a pollutant discharged to water.

(b) The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee or proprietor of any premises in the Town of Fairfax in front of which there is a paved sidewalk shall maintain the 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 on the real property as required for the recycling or disposal of garbage.

(2) *Standard for parking lots and similar structures.* Persons owning or operating a parking lot, gas station, area of pavement or similar structure shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the town storm drain system or watercourse.

(3) *Construction-phase best management practices*

(a) Any person performing construction activities in the town shall implement appropriate BMPs to prevent the discharge of construction wastes or contaminants from construction materials, tools, and equipment from entering the storm drain system or watercourse.

(b) The town has the authority to review designs and proposals for construction activities to determine whether adequate BMPs will be installed, implemented, and maintained during construction and after final stabilization.

(c) Construction-phase BMPs include erosion and sediment controls and pollution prevention practices. Erosion control BMPs may include, but are not limited to, scheduling and timing of grading activities, timely revegetation of graded areas, the use of hydroseed and hydraulic mulches, and installation of erosion control blankets. Sediment control may include properly sized detention basins, dams, or filters to reduce entry of suspended sediment into the storm drain system and watercourses, and installation of construction entrances to prevent tracking of sediment onto adjacent streets. Pollution prevention practices may include designated washout areas or facilities, control of trash and recycled materials, tarping of materials stored on-site, and proper location of and maintenance of temporary sanitary facilities. The combination of BMPs used, and their execution in the field, must be customized to the site using up-to-date standards and practices. The agency will provide references to current guidance manuals and BMP information on request.

(4) *Erosion and Sediment Control Plan Requirements:*

(a) When required by the Phase II Stormwater Permit or by the town, a project shall have an Erosion and Sediment Control Plan (ESCP) which addresses erosion and sediment control and pollution prevention during the construction phase as well as final stabilization control measures. The ESCP and the specific control measures to be utilized shall be subject to the review and approval of the town. The ESCP shall be implemented year round and shall be revised to reflect changing conditions on the project site. The town shall require modifications of an approved



ESCP if during the course of construction at a site unanticipated conditions occur or the plans prove inadequate for the intended purpose. Revisions of the approved ESCP shall be submitted to the town for review and approval. An Erosion and Sediment Control Plan (ESCP) shall be required for any project:

(i) Subject to a grading permit under Chapter 12.20 Excavations Generally;

(ii) Subject to a building permit or other permit that has the potential for significant erosion and/or significant non-stormwater discharges of sediment and/or construction site waste;

(iii) As required by the town considering factors such as whether the project involves hillside soil disturbance, rainy season construction, construction near a creek or an intermittent or ephemeral drainageway, or any other condition or construction site activity that could lead to a non-stormwater discharge to a storm drain if not managed by effective implementation of an ESCP.

(b) The ESCP shall be submitted for review and approval by the town. The project applicant shall follow the most recent version of the MCSTOPPP Construction Erosion and Sediment Control Plan Applicant Package. At a minimum, the ESCP shall include:

(i) Description of the proposed project and soil disturbing activity;

(ii) Site specific construction-phase Best Management Practices (BMPs);

(iii) Rationale for selecting the BMPs;

(iv) List of applicable outside agency permits associated with the soil disturbing activity, such as: Construction General Permit (CGP); Clean Water Act Section 404 Permit; Clean Water Act Section 401 Water Quality Certification; Streambed/Lake Alteration Agreement (1600 Agreements).

(c) If the project requires coverage under the CGP issued by the State Water Resources Control Board (SWRCB), Permit Registration Documents must be filed with the SWRCB for said coverage and a copy of the Waste Discharge Identification Number shall be submitted to the town prior to issuance of a permit for construction. The applicant may submit the Storm Water Pollution Prevention Plan (SWPPP) required by the General Construction Activity Stormwater Permit in lieu of the ESCP provided it meets the requirements of the ESCP.

(d) Financial security may be required to ensure that temporary measures to control stormwater pollution are implemented and maintained during construction and after construction for a period determined by the town. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the town.

(e) Implementation of an approved ESCP shall be a condition of the issuance of a building permit, a grading permit, or other permit issued by the town for a project subject to this section. The ESCP shall be implemented year round and must be updated to reflect changing conditions on the project site. Any modifications to the ESCP shall be submitted to the town for review and approval.

(5) *Permanent stormwater controls for new development and redevelopment.*

The town may require, as a condition of project approval, permanent structural controls designed for the removal of sediment and other pollutants and for control on the volume and rate of stormwater runoff from the project's added or replaced impervious surfaces. These controls may include limits on impervious area. The selection and design of such controls shall be in general accordance with criteria established or recommended by federal, state, and local agencies, and where required by the BASMAA Post Construction Manual. Where physical and safety conditions allow, the preferred control measure is to retain drainage ways above ground and in as natural a state as possible or other biological methods such as bioretention areas. Where required by the Phase II Stormwater Permit Provision E.12, or where required by the nature and extent of a proposed project and where deemed appropriate by the agency, every applicant shall develop, submit and implement a Stormwater Control Plan (SCP) as described below:

(a) The SCP shall follow the appropriate SCP template, based on project type, in the most recent version of the BASMAA Post Construction Manual.

(b) The specific practices proposed in the SCP shall be subject to the review and approval of the town and shall be in general accordance with the BASMAA Post Construction Manual, and the Phase II Stormwater Permit.

(c) The SCP is separate and distinct from the ESCP requirements described in Section 8.32.020(E)(4).

(d) 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 BASMAA Post Construction Manual.

(e) Where required by the town, as a condition precedent to the issuance of a building permit, the applicant shall submit a preliminary Stormwater Facilities Operation and Maintenance Plan (O&M Plan). The approval of the O&M Plan by the town is required prior to final inspection and approval of building permit closure.

(f) All stormwater management facilities shall be maintained according to the approved O&M Plan. The person(s) or organization(s) responsible for maintenance shall be designated in the O&M Plan. The O&M Plan shall require that stormwater management facilities be inspected by those responsible for maintenance at least annually. The O&M Plan shall also describe how the maintenance will be funded. Upon the failure of a responsible person to maintain the stormwater management facilities in accordance with the O&M Plan, the town may perform the maintenance and recover its costs from the responsible person as provided in Section 8.32.030.

(g) Where deemed appropriate by the town, the town shall have access to stormwater management facilities for inspections, as provided in Section 8.32.030, and through such means as may be appropriate, including, but not limited to, legal agreements, recorded covenants or easements, shall be provided by the property owner.

(h) All project proponents and their successors, or successors in fee title, in control of project that is located within the town and that is defined as a Regulated Project in Provision E.12.c. of the Phase II Stormwater Permit, or where required by the town, shall submit one of the following as a condition prior to final inspection and approval of building permit closure:

(i) The project proponent's signed statement accepting responsibility for the operations and maintenance of stormwater management facilities until such responsibility is legally transferred to another entity;

(ii) Written conditions in the sales or lease agreements or deed for the project that requires the buyer or lessee to assume responsibility for the operations and maintenance of the stormwater management facilities until such responsibility is legally transferred to another entity;

(iii) Written text in project deeds, or conditions, covenants and restrictions for multi-unit residential projects that require the homeowners association or, if there is no association, each individual owner to assume responsibility for the operation and maintenance of the stormwater management facilities until such responsibility is legally transferred to another entity; or

(iv) Any other legally enforceable agreement or mechanism, such as recordation in the property deed, that assigns the operation and maintenance of the stormwater management facilities to the project owner(s) or the town.

(i) Financial security may be required to ensure that stormwater management facilities operate and are maintained following construction for a period which may be determined by the agency. Financial security shall consist of an irrevocable letter of credit, cash deposit, or performance bond as determined by the agency.

*(6) Notification of intent and compliance with general permits.*

(a) Each industrial discharger, discharger associated with construction activity or other discharger, described in any general stormwater permit addressing such discharges, as may be adopted by the United States Environmental Protection Agency, the state's Water Resources Control Board or the Regional Water Quality Control Board, shall provide Permit Registration Documents, comply with, and undertake all other activities required by any general stormwater permit applicable to the discharges.

(b) Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by the permit.

*(7) Compliance with best management practices.* Where best management practices guidelines or requirements have been adopted by any federal, State of California, regional and/or local agency for any activity, operation or facility that may cause or contribute to stormwater pollution or contamination, illicit discharges and/or discharge of non-stormwater to the storm drain system, every person undertaking the activity or operation or owning or operating the facility shall comply with the guidelines or requirements as may be identified by the authorized enforcement official.

*(F) Watercourse protection.*

(1) Every person owning, occupying, leasing, renting or in control of premises through which a watercourse passes, shall:

(a) Keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation and other obstacles which would and/or could pollute, contaminate or significantly retard the flow of water through the watercourse;

(b) Maintain existing privately-owned structures within or adjacent to a watercourse, so that the structures will not become a hazard to the use, function or physical integrity of the watercourse; and

(c) Not remove healthy bank vegetation beyond that actually necessary for the maintenance, nor remove the vegetation in a manner as to increase the vulnerability of the watercourse to erosion.

(2) No person shall commit or cause to be committed any of the following acts, unless a written permit has first been obtained from the Town of Fairfax:

(a) Discharge into or connect any pipe or channel to a watercourse;

(b) Modify the natural flow of water in a watercourse;

(c) Deposit in, plant in or remove any material from a watercourse including its banks, except as required for necessary maintenance; and

(d) Construct, alter, enlarge, connect to, change or remove any structure in a watercourse; or place any loose or unconsolidated material adjacent to or within a watercourse so as to cause a diversion of the flow, or to cause a probability of the material being carried away by storm waters passing through the watercourse.

(G) When any work is being done contrary to the provisions of this chapter, the authorized enforcement official may order the work stopped by notice in writing served on any persons engaged in doing or causing the work to be done. Such work shall stop until the authorized enforcement official authorizes the work to proceed. This remedy is in addition to and does not supersede or limit any and all other remedies, both civil and criminal provided in the Fairfax Town Code.

### **8.32.030 INSPECTION AND ENFORCEMENT.**

(A) Violations constitute a public nuisance; abatement; restoration. Any condition caused or allowed to exist in violation of any of the provisions of this chapter, constitutes a threat to the public health, safety and welfare, and is deemed and declared to be a public nuisance. This public nuisance may be summarily abated, and/or the property restored to its original condition, and/or enjoined or otherwise be compelled to cease and desist, by the authorized enforcement official, or by actions taken by the Town Attorney.

(1) *Abatement procedure; costs; lien.* The abatement of any public nuisance under this chapter shall follow the procedures as set forth in Chapter 8.28 of the Fairfax Town Code. The cost of the abatement and/or restoration of the property to its original condition shall be the responsibility of the owner of the property. The costs shall be a lien upon and against the property and shall continue in existence until it is paid. The

lien shall be imposed and collected in accordance with the applicable provisions of state law and this code.

*(2) Inspections and sampling; authority and procedure.*

(a) The authorized enforcement official has the duty and the responsibility to inspect any and all locations for any violation of the provisions of this chapter. The authorized enforcement official may, within the limitations of applicable state and federal laws, enter any building or any premises at all reasonable times to inspect the same or any facilities, equipment, practices, or operations for any or all of the following situations, as determined by the authorized enforcement official:

- (i) Routine inspections to ensure implementation of BMPs and other requirements of this chapter;
- (ii) Active or potential stormwater discharges;
- (iii) Whenever there is reasonable cause to believe that there exists any condition which constitutes a violation of the provisions of this chapter or the Phase II Stormwater Permit;
- (iv) Actual violations of this chapter or the Phase II Stormwater Permit;
- (v) Whenever necessary to enforce any of the provisions of this chapter or the Phase II Stormwater Permit; or
- (vi) To perform any duty imposed upon the official by this chapter.

(b) The authorized enforcement official must present proper credentials to, and obtain consent from the owner or occupant to enter. In the event the owner and/or occupant refuses entry, the official shall request assistance of the Town Attorney to obtain an administrative warrant for the premises, pursuant to the provisions of state law.

(c) The authorized enforcement official has the right to, and shall conduct, routine sampling and monitoring on or adjacent to the premises under review. The cost of the routine sampling and/or monitoring activities, including test reports and results, shall be borne by the local agency. The authorized enforcement official may, within the limitations of law, enter the premises at reasonable times to conduct sampling and monitoring operations, provided that the official presents proper credentials to, and obtains consent from the owner or occupant to enter. In the event the owner and/or occupant refuses entry, the official shall request assistance of the Town Attorney to obtain an administrative warrant for the premises, pursuant to the provisions of state law.

(d) Whenever the authorized enforcement official has reasonable cause to believe that the owner and/or occupant of a premises is engaged in an activity and/or operating a facility that is causing or contributing to stormwater pollution or contamination, illicit discharges and/or the discharge of non-stormwater or other unlawful material, to the storm drain system, the official may require the owner and/or occupant to conduct sampling and/or monitoring activities on the premises, and to furnish the test results and reports as the official may determine. The burden and cost of undertaking the sampling and monitoring activities, including test results and reports,

shall be borne by the owner of the premises under review. The type and method of sampling and monitoring shall bear a reasonable relationship to the need for testing and monitoring and to the benefits to be obtained, as determined by the enforcement official.

(e) Whenever a condition is found to exist in violation of this chapter that presents an immediate and present danger to the public health, safety and welfare requiring immediate remedial action to prevent injury to persons or property, the authorized enforcement official shall take whatever reasonable and appropriate action is necessary to neutralize the danger, including, but not limited to entry upon private premises for inspection, sampling and monitoring and abatement.

(B) *Violations; misdemeanors or infractions; punishment.* The violation of any provision of this chapter, or failure to comply with any of the mandatory requirements of this chapter, shall constitute a misdemeanor, except that, notwithstanding any other provision of this chapter, any such violation of this chapter may, in the discretion of the enforcement authority, constitute an infraction. If convicted of a misdemeanor, a person shall be subject to payment of a fine, imprisonment, or both, not to exceed the limits set forth in Cal. Gov't Code § 36901. If convicted of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in Cal. Gov't Code § 36900. A person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or allowed by the person, firm, corporation or organization, and shall be punishable accordingly.

(C) *Violations; civil action for enforcement.* The violation of any provision of this chapter, or the failure to comply with any of the requirements of this chapter, may be enforced by a civil action brought by the Town Attorney in any court having appropriate jurisdiction. In any such action, the town may seek any or all of the following remedies:

- (1) A temporary or permanent injunction;
- (2) Costs of investigation, inspection, sampling or monitoring activities concerning the violation and costs of suit;
- (3) Costs of restoration of the premises from its condition resulting from the violations back to its original condition; and
- (4) Compensatory damages including, but not limited to loss and/or destruction of water quality, wildlife, fish, aquatic habitat and other adverse environmental effects. Damages recovered under this division shall be paid to the town and shall be used exclusively for costs of sampling and monitoring, or establishing stormwater discharge pollution control systems, and of implementing and/or enforcing the provisions of this chapter.

(D) *Violations; administrative enforcement action.* In addition to any other enforcement powers and/or remedies provided in this chapter, an authorized enforcement official may issue an order to a person to cease and desist from the discharge, practice, operation or other activity causing or likely to cause a violation of this chapter. The order shall be directed to those persons in violation of the chapter stating clearly and concisely the nature of the violation, the requirements for compliance, a timetable for compliance, and such other remedial and/or preventive action as may be

necessary. Upon the violator's failure to comply with the order, the town shall take further enforcement action as specified in this chapter, or in accordance with any other appropriate provision of local, state or federal law. At the discretion of the authorized enforcement official, orders to cease and desist may take the following form:

(1) Warning Letters and Orders to Abate Pollution;

(2) Warning Letters with requirements to submit written reports; or

(3) Formal violations and legal action as described in this chapter and as authorized by Chapter 1.10 of the Town of Fairfax Municipal Code.

(E) Remedies not exclusive. The enumerated remedies provided in this chapter are in addition to and do not supersede or limit all other remedies, both civil and criminal. The remedies provided for herein shall be cumulative to, and not exclusive of, each other.

(F) Authority to arrest and issue citations.

(1) The authorized enforcement official shall have the authority to arrest or to cite any person who violates any provision of this chapter in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanors or for citation of infractions and notice to appear, as prescribed by Cal. Penal Code Title 3, Part 2, Chapters 5, 5C, and 5D, including § 853.6, or as the same may be hereinafter amended.

(2) It is the intent of the Town Council that the immunities provided in Cal. Penal Code § 836.5 be applicable to public officers or employees acting within the course and scope of their employment pursuant to this chapter.”

**SECTION 2:** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**SECTION 3: CEQA.** Pursuant to 14 California Code of Regulations §§ 15307 and 15308, this Ordinance is categorically exempt from the California Environmental Quality Act because the Town Council of the Town of Fairfax finds that the Ordinance consists of actions taken to assure the maintenance, restoration, enhancement, or protection of the natural resources and the environment and because the regulatory process involves procedures for the protection of water quality and the environment.

**SECTION 4:** This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, which places are designated for that purpose, to wit:

- 1. Bulletin Board, Town Hall offices, located at 142 Bolinas Road; and
- 2. Bulletin Board, Fairfax Post Office, located at 773 Center Boulevard; and
- 3. Bulletin Board, Fairfax Women’s Club building, located at 46 Park Road.

The foregoing Ordinance was introduced at a regular meeting of the Town Council on the 6<sup>th</sup> day of May 2015, and duly adopted at the next regular meeting of the Town Council on the 3<sup>rd</sup> day of June 2015, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
Barbara Coler, Mayor

Attest:

\_\_\_\_\_  
Michele Gardner, Town Clerk

\_\_\_\_\_  
Date