

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow
Chris Burton

SUBJECT: SEE BELOW

DATE: May 23, 2024

Approved



Date

5/24/24

SUBJECT: AMENDMENTS TO TITLE 5, TITLE 15, AND TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, AMENDMENT TO COUNCIL POLICY 6-29, ADOPTION OF COUNCIL POLICY 6-35, 6-36, AND 6-37, AND AMENDMENT TO THE ADMINISTRATIVE CITATION SCHEDULE OF FINES ALL RELATED TO THE MUNICIPAL REGIONAL STORMWATER PERMIT REQUIREMENTS

RECOMMENDATION

- (a) Approve an ordinance amending Section 5.09.500 of Chapter 5.09 of Title 5; amending Chapter 15.14 of Title 15 to add sections 15.14.337, 15.14.377, 15.14.426, 15.14.443, 15.14.771, 15.14.772, and 15.14.773; amending section 20.95.020 of Chapter 20.95 and section 20.100.470 of Chapter 20.100 of Title 20 of the San José Municipal Code related to compliance with the Municipal Regional Stormwater Permit.
- (b) Adopt a resolution amending Council Policy No. 6-29, *Post Construction Urban Runoff Management*.
- (c) Adopt a resolution adopting Council Policy No. 6-35, *Source Properties of Mercury, PCBs, or Other Pollutants: Best Management Practices*.
- (d) Adopt a resolution adopting Council Policy 6-36, *Private Land Directly Plumbed to the Storm Sewer System: Best Management Practices*.
- (e) Adopt a resolution adopting Council Policy No. 6-37, *Projects Disturbing Less than One Acre: Best Management Practices*.
- (f) Adopt a resolution amending the Administrative Citation Schedule of Fines to update fines for violations of San José Municipal Code Chapter 15.14, Sections 15.14.771 and 15.14.772 to create a new fine for violations pertaining to Council Policy 6-36; Section 15.14.773 to create a new fine for violations pertaining to Council Policy 6-35; Section 15.14.770 to update the fine for violations pertaining to best management practices as applied to stormwater control; and repealing Resolution No. RES2024-24.

SUMMARY AND OUTCOME

Approval of the proposed ordinance and updates to the Council Policy Manual, and the Administrative Citation Schedule of Fines will enable the City to comply with the implementation and enforcement requirements of the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (Stormwater Permit) (effective July 1, 2022), including as amended for Provision C.3 requirements that became effective as of November 1, 2023.

BACKGROUND

The City of San José has two separate sewer systems. The sanitary system flows into the San José-Santa Clara Regional Wastewater Facility where sewage is treated before discharging into the San Francisco Bay. The City's storm sewer system captures stormwater through approximately 35,000 inlets along City streets. It is then conveyed through approximately 1,070 miles of storm sewer mains and discharged through 1,700 outfalls into local creeks and streams, and ultimately into San Francisco Bay.

The Federal Clean Water Act requires the City to operate its municipal separate storm sewer system under a National Pollutant Discharge Elimination System permit (NPDES Permit) for the discharge of stormwater to waterways. The State Water Resources Control Board (Water Board) and its regional boards administer the Clean Water Act. The City is one of 79 public entities located in the Bay Area that are permittees under a (Stormwater Permit). The Stormwater Permit specifies actions necessary to reduce the discharge of pollutants in stormwater to the maximum extent practicable and essentially prohibits non-stormwater discharges into the storm sewer system to protect local waterways and the bay. The City must comply with the Stormwater Permit, which is updated approximately every five years.

On May 11, 2022, the Water Board adopted a revised Stormwater Permit, effective July 1, 2022. On April 12, 2023, the City's Planning Commission reviewed the initial changes to the San José Municipal Code to meet the Stormwater Permit's requirements. On October 11, 2023, the Water Board approved an amendment to the Stormwater Permit's C.3 New and Redevelopment Provision (effective on November 1, 2023) that includes an exemption for temporary emergency housing projects from stormwater treatment requirements, updates to the Special Project Category C Affordable Housing stormwater credit calculation, and a sub-provision on alternative treatment systems. In addition, staff determined that the San José Municipal Code required further clarification to meet all Stormwater Permit requirements.

On May 22, 2024, the City's Planning Commission reviewed and recommended changes to Title 20 of the San José Municipal Code and Council Policy 6-29, and creation of Council Policy 6-37 (**Attachment** – May 22, 2024 Planning Commission Staff Report).

May 23, 2024

Subject: Amendments to the Title 5, Title 15, and Title 20 of the San José Municipal Code, Amendment to Council Policy 6-29, Adoption of Council Policy 6-35, 6-36, and 6-37, and Amendment to the Administrative Citation Schedule of Fines all Related to the Municipal Regional Stormwater Permit Requirements

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ANALYSIS

Staff recommends amending the San José Municipal Code and relevant existing Council Policy, as well as creating new City Council policies to comply with the Stormwater Permit as recently amended. These proposed changes will codify current language to align with the Stormwater Permit's requirements, as well as eliminate obsolete information.

Below are summaries of the proposed changes. Please see the **Attachment** – May 22, 2024 Planning Commission Staff Report for complete language of proposed changes to San José Municipal Codes, Council Policies, and Administrative Citation Schedule of Fines.

1. Update San José Municipal Codes Sections 5.09.500.G and 5.09.500.I

Staff recommends updating San José Municipal Code §5.09.500.G to correct a typographical error.

The Stormwater Permit Amendment, effective as of November 1, 2023, modified new development and redevelopment requirements in the Stormwater Permit. Staff recommends updating San José Municipal Code §5.09.500.I to reflect that the Stormwater Permit amendment exempts interim housing from green stormwater requirements.

2. Create New San José Municipal Code Sections 15.14.377, 15.14.443, 15.14.771, and 15.14.772 regarding Private Land Drainage Areas

Staff recommends creating San José Municipal Code §15.14.377 to define private land drainage areas (PLDAs) in alignment with the Stormwater Permit.

Staff recommends creating San José Municipal Code §15.14.443 to define the Stormwater Permit.

Staff recommends creating San José Municipal Code §15.14.771 and § 15.14.772 to implement PLDA requirements. Stormwater Permit provision C.10.a.ii.b requires that the City ensures that trash is being properly managed on PLDA properties and not discharged into the City's storm sewer system. Applicable PLDA properties are properties that 1) have an onsite private storm drain directly plumbed to the City's storm sewer system and 2) are not upstream of an existing full trash capture system installed in the City's storm sewer system. The Stormwater Permit requires the City to assess and ensure all PLDA parcels are not discharging trash to the storm sewer system by June 30, 2025. PLDA properties identified as generating medium, high, or very high trash loads must install 'full trash capture' controls to capture trash or implement equivalent trash control practices on their properties to maintain low trash generation as assessed by City staff performing on-land visual trash assessments. Properties assessed as generating 'low trash' levels are not required to install full trash capture, but must maintain the 'low' assessment in perpetuity.

3. Create New San José Municipal Code Sections 15.14.337, 15.14.426, 15.14.443, and 15.14.773 regarding Mercury and Polychlorinated Biphenyls from Old Industrial Source and Moderate Properties

The Stormwater Permit under Provision C.11.c and C.12.c requires permittees, including the City, to implement specific actions to abate mercury and polychlorinated biphenyls (PCB) from old industrial areas entering the storm sewer system. Permittees were required to submit a Regional Control Measure Plan (Plan) to reduce mercury and PCBs in urban runoff from old industrial areas to achieve the countywide mandated load reduction. The Santa Clara Valley Urban Runoff Pollution Prevent Program submitted the Plan on behalf of the City and other Santa Clara Valley permittees on March 31, 2023. The Water Board provided comments on the Plan in August 2023, and City staff worked with local and regional partners to review and respond to these comments. The revised Plan addressed all Regional Water Board comments and was submitted to the Water Board on March 31, 2024. The Plan details a targeted control measure program using available information and monitoring data for land areas with moderate to high levels of mercury and PCBs to implement new and enhanced efforts to gain access to and collect samples on private properties to determine if a property is a source of mercury and PCBs properties. The City will investigate areas of elevated PCBs contamination to identify confirmed “moderate source properties” that are discharging elevated levels of PCBs to the City’s right-of-way or storm sewer system and will work directly with property owners to require abatement of their property. In addition, provision C.12.b calls out “high source properties” with high PCBs concentrations and requires the City to either: 1) enforce abatement similar to “moderate source properties” or 2) refer the site to the Water Board for abatement and implement enhanced operation and maintenance within the City right-of-way to removed polluted sediments during the abatement process. The City will refer the eight confirmed high source properties to the Regional Water Board for follow-up investigation and abatement. The creation of San José Municipal Codes §15.14.337, §15.14.426, §15.14.443, §15.14.773, and Council Policy 6-35 (see below) are recommended to implement the PCBs requirements at applicable Old Industrial properties.

4. Update San José Municipal Code Sections 20.95.020 and 20.100.470 regarding Green Stormwater Infrastructure

Staff recommends updating San José Municipal Code §20.95.020 to incorporate new Stormwater Permit requirements. Low impact development systems, sometimes referred to as Green Stormwater Infrastructure, mimic the natural processes that result in infiltration or the use of stormwater in a manner that protects water quality and the environment. The new Stormwater Permit established new and updated existing impervious surface thresholds and definitions for regulated projects required to implement low impact development. The Stormwater Permit expanded the categories of regulated projects to include utility trenching and subsequent road reconstruction projects. These projects involve the reconstruction of existing streets, roads, sidewalks, and bicycle lanes which create and/or replace greater than or equal to one contiguous acre of impervious surface and are on average over the entire length of the project greater than or equal to eight feet wide.

Staff recommends amending San José Municipal Code §20.100.470 to remove outdated references to guidance documents that are obsolete. These are the *Blueprint for a Clean Bay* and the *Association of Bay Area Government's Manual of Standards Erosion & Sediment Control Measures*. The revised Council Policy 6-37 will contain the best management practices.

5. Update Council Policy 6-29 *Post Construction Urban Runoff Management*

Staff recommends updating Council Policy 6-29, *Post Construction Urban Runoff Management* to remove “gravel” as a form of pervious surface, as gravel is no longer considered a pervious under the Stormwater Permit. Staff also recommends updating the Council Policy to include utility trenching projects as detailed above in Section §20.95.020.

6. Create Council Policy 6-35 *Source Properties of Mercury, PCBs, or Other Pollutants: Best Management Practices*

Staff recommends adopting a new Council Policy 6-35 entitled *Source Properties of Mercury, PCBs, or other Pollutants: Best Management Practices* to meet the Stormwater Permit’s C.11 and C.12 investigation and abatement requirements by regulating source properties. This policy defines the best management practices, operation, and maintenance required to prevent mercury, PCBs, or other pollutant-laden sediments from discharging to the public right-of-way and the storm sewer system.

7. Create Council Policy 6-36 *Private Land Directly Plumbed to the Storm Sewer System: Best Management Practices*

Staff recommends adopting a new Council Policy 6-36 entitled *Private Land Directly Plumbed to the Storm Sewer System: Best Management Practices* which will allow the City to investigate, educate, register, and enforce the new Stormwater Permit requirements related to trash from private properties.

8. Create Council Policy 6-37 *Projects Disturbing Less Than One Acre: Best Management Practices*

Staff recommends adopting a new Council Policy 6-37 entitled *Projects Disturbing Less than One Acre: Best Management Practices*. This Council Policy will better communicate appropriate best management practices for preventing stormwater pollution from construction projects disturbing less than one acre. This will give the City the ability to enforce upon construction project managers if and when sites are not complying with Stormwater Permit requirements.

9. Update the Administrative Citation Schedule of Fines to Ensure Proper Enforcement

Updates to the Administrative Citation Schedule of Fines are recommended to ensure that the storm sewer system is adequately protected from pollutants and to ensure enforcement of the obligations. Fines for the failure to comply with Council Policies 6-35 and 6-36, per San José

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Subject: Amendments to the Title 5, Title 15, and Title 20 of the San José Municipal Code, Amendment to Council Policy 6-29, Adoption of Council Policy 6-35, 6-36, and 6-37, and Amendment to the Administrative Citation Schedule of Fines all Related to the Municipal Regional Stormwater Permit Requirements

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Municipal Code §15.14.771, §15.14.772, and §15.14.773 are recommended to be set at \$500 per instance, consistent with fines for other related policy provisions.

In addition, staff recommends maintaining the fine amount for San José Municipal Code §15.14.770 subsections A through E at \$300, since these relate to pretreatment fines. Staff also recommends increasing, to \$500, subsections F and G to be consistent to other stormwater potential discharge fines of \$500 (See San José Municipal Code §15.14.530, Protection from Accidental Discharge).

EVALUATION AND FOLLOW-UP

The San José Municipal Code amendments will go into effect 30 days after the City Council's approval and adoption. If City Council approves and adopts the recommendations in this memorandum at the June 4, 2024 City Council meeting, the amendments will go into effect on July 18, 2024. Policies are effective when they are approved. The Stormwater Permit requires the City to report annually to the Water Board each fiscal year on progress.

COST SUMMARY/IMPLICATIONS

The City's stormwater-related revenue is not sufficient to meet the obligations of the new Stormwater Permit, nor do PLDA and PCB mitigation activities represent a proportionate benefit to all rate payers. As a result, additional costs related to implementation of these new provisions are being absorbed by the City's General Fund.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, Office of Economic Development and Cultural Affairs, and the Departments of Planning, Building and Code Enforcement; Public Works; and Transportation.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 4, 2024 City Council meeting.

Public Works Department staff have been keeping developers apprised of relevant Stormwater Permit new development and redevelopment updates through its respective developers industry meetings.

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Public Works Department staff have also been informing development permit applicants of the new development and redevelopment requirements effective July 1, 2023, through the permit review process. City staff from the Environmental Services Department, Public Works Department, and the Planning, Building, and Code Enforcement Department finalized and published an updated Stormwater Evaluation Form on December 20, 2023 for development permit applicants to complete and determine whether their project is subject to new and updated Stormwater Permit requirements. The City's internal and external processes and outreach items, including websites and other pertinent paperwork, were updated to reflect these changes.

The City's website has information about the PLDA requirement on <https://www.sjenvironment.org/PrivateLands>. The website includes a) general information, b) frequently asked questions, c) requirements, d) contact information, and e) approved best management practices., and f) registration information.

In early April 2024, the City mailed letters to approximately 1,100 properties affected by the new requirements. In addition, the City hosted two virtual community meetings to explain requirements for PLDAs, to receive feedback on best management practices, and to answer questions from property owners. The first session was held on Tuesday, April 30, 2024, from 2:00 p.m. to 3:00 p.m., and the second session was held on Wednesday, May 8, 2024, from 6:30 p.m. to 7:30 p.m. Links to the recorded presentations are on the PLDA website.

In May 2024, the City mailed a notification of inspection and sampling letters to 18 parcels affected by the new mercury and PCBs requirements for old industrial areas. These 18 parcels are planned for onsite investigation in the upcoming months. As more properties are identified as potential sources of mercury and PCBs, the City will continue its outreach efforts, providing notification to those affected by the new policy. The letter included information on the proposed best management practices, City Council discussion, and adoption results on Tuesday, June 4, 2024.

COMMISSION RECOMMENDATION AND INPUT

The proposed ordinance and policies that fall under the Planning Commission's purview were presented to the Planning Commission on May 22, 2024. The Planning Commission recommends approval (11-0). Please see the **Attachment** - May 22, 2024 Planning Commission Staff Report.

CEQA

Categorically Exempt, File No. ER24-105, CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. These proposed actions are taken to fulfill the City's obligations mandated by the State in the California Regional Water Quality

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Control Board San Francisco Bay Region Municipal Regional Stormwater NPDES Permit [Order No. R2-2022-0018, NPDES Permit No. CAS612008 (referred to as the “Stormwater Permit” in this memorandum)]. The Stormwater Permit implements the Federal Clean Water Act and requires that the City shall within its jurisdiction, “effectively prohibit the discharge of non-stormwater (materials other than stormwater) into storm drain systems and watercourses.” (Stormwater Permit, Par. A.1.) As outlined in the Analysis section of this memorandum, the proposed actions implement State-mandated requirements to protect the environment and are categorically exempt from CEQA.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City’s Open Government Resolution.

/s/
KERRIE ROMANOW
Director, Environmental Services

/s/
CHRIS BURTON
Director, Planning Building and
Code Enforcement

For questions, please contact Rajani Nair, Deputy Director, Environmental Services Department at rajani.nair@sanjoseca.gov or (408) 799-7462.

ATTACHMENT - May 22, 2024 Planning Commission Staff Report



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 23, 2024

SUBJECT: FILE NO. PP23-008: AMENDMENT TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, AMENDMENT TO COUNCIL POLICY 6-29, AND ADOPTION OF COUNCIL POLICY 6-37 RELATED TO THE MUNICIPAL REGIONAL STORMWATER PERMIT REQUIREMENTS

RECOMMENDATION

The Planning Commission voted 11-0-0 to recommend the City Council take the following actions:

1. Consider the exemption in accordance with the California Environmental Quality Act (CEQA), as amended.
2. Approve an ordinance of the City of San Jose amending Section 20.95.020 of Chapter 20.95 and section 20.100.470 of Chapter 20.100 of Title 20 of the San José Municipal Code related to compliance with the Municipal Regional Stormwater Permit.
3. With respect to the policies within the Planning Commission's purview, adopt a resolution:
 - a. Amending City Council Policy No. 6-29, Post Construction Urban Runoff Management
 - b. Adopting City Council Policy No. 6-37, Projects Disturbing Less than One Acre: Best Management Practices.

SUMMARY AND OUTCOME

Approval of the proposed San José Municipal Code updates will implement and ensure enforcement of the requirements of the City's Municipal Regional Stormwater Permit, (effective July 1, 2022), as amended by the Water Board on October 11, 2023 for Provision C.3 (New and Redevelopment, effective November 1, 2023).

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Subject: File No. PP23-008: Amendment to Title 20 of the San Jose Municipal Code, Amendment to Council Policy 6-29, and Adoption of Council Policy 6-37 Related to the Municipal Regional Stormwater Permit Requirements

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BACKGROUND

The proposed update incorporates amendments to Title 20 of the San José Municipal Code, amendments to Council Policy 6-29, and adoption of Council Policy 6-37, all related to the Municipal Regional Stormwater Permit requirements. These changes will allow the City to implement necessary Stormwater Permit compliance activities that protect our waterways and the San Francisco Bay.

ANALYSIS

The Planning Commission staff report dated May 22, 2024 (attached) contains a complete analysis of the information related to this policy and code update.

CONCLUSION

The Planning Commission voted 11-0-0 to recommend that the City Council approve an ordinance amending various sections of Title 20 of the San José Municipal Code and to make other technical, non-substantive, or formatting changes. These changes align with San Francisco Municipal Regional Permit 3.0 requirements.

EVALUATION AND FOLLOW-UP

If the proposed San José Municipal Code changes are approved by City Council, the new ordinance will be effective 30 days after the second reading, and the policy changes will be effective upon City Council approval.

COORDINATION

The proposed ordinance and this memorandum were coordinated with the City Attorney's Office.

PUBLIC OUTREACH

This memorandum is posted on the City's Planning Commission website for the May 22, 2024, meeting. Additionally, Department of Public Works staff have been keeping developers apprised of relevant Stormwater Permit new development and redevelopment updates through their respective Developers Industry meetings.

HONORABLE MAYOR AND CITY COUNCIL

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Public Works advises development applicants of the new development and redevelopment requirements effective July 1, 2023, through the permit review process. City staff from Environmental Services, Public Works, and Planning, Building, and Code Enforcement departments finalized and published an updated Stormwater Evaluation Form for development permit applicants to complete and determine whether their project is subject to new and updated Stormwater Permit requirements. The City's internal and external processes and outreach items, including websites and other pertinent paperwork, were updated to reflect these changes:

<https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/start-a-new-project-or-use/stormwater-management-measures>.

COMMISSION RECOMMENDATION AND INPUT

On May 22, 2024, the Planning Commission conducted a public hearing on the proposed San José Municipal updates. Staff presented a background and summary of the proposed changes for the Commission.

There were no comments from the Commissioners or the public about the item.

CEQA

Categorically Exempt. CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. These proposed actions are taken to fulfill the City's obligations mandated by the State in the California Regional Water Quality Control Board San Francisco Bay Region Municipal Regional Stormwater NPDES Permit [Order No. R2-2022-0018, NPDES Permit No. CAS612008 (referred to as the "Stormwater Permit" in this memorandum)]. The Stormwater Permit implements the Federal Clean Water Act and requires that the City shall within its jurisdiction, "effectively prohibit the discharge of non-stormwater (materials other than stormwater) into storm drain systems and watercourses." (Stormwater Permit, Par. A.1.) As outlined in the Analysis section of this memorandum, the proposed actions implement State-mandated requirements to protect the environment and are categorically exempt from CEQA.

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Subject: File No. PP23-008: Amendment to Title 20 of the San Jose Municipal Code, Amendment to Council Policy 6-29, and Adoption of Council Policy 6-37 Related to the Municipal Regional Stormwater Permit Requirements

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PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

Chris Burton, Director
Planning Commission

For questions, please contact Robert Manford, Deputy Director, at
Robert.Manford@sanjoseca.gov

Attachment - Planning Commission Memorandum dated May 22, 2024



Memorandum

TO: PLANNING COMMISSION

FROM: Christopher Burton

SUBJECT: File No. PP23-008

DATE: March 14, 2024

Project	Zoning Ordinance Update
Applicability	Citywide in applicable Zoning Districts
Project Description	An ordinance of the City of San José amending various sections of Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code to amend multiple sections for consistency with the San Francisco Bay Regional Water Quality Control Board's revised Municipal Regional Stormwater NPDES Permit, including amendments to Part 1 of Chapter 20.95.020, Applicability, and Part 3 of Chapter 20.100.470, Administration and Permits.
CEQA Clearance	Categorically Exempt.
Project Planner	Rajani Nair

RECOMMENDATION

Staff recommends that the Planning Commission recommends the City Council to take all of the following actions:

1. Consider the exemption in accordance with CEQA, as amended;
2. With respect to the Title 20 revisions, approve an ordinance of the City of San Jose of amending section 20.95.020 of chapter 20.95 and section 20.100.470 of chapter 20.100 of Title 20 of the San Jose Municipal Code related to Compliance with the Municipal Regional Stormwater Permit, and;
3. With respect to the policies within the Planning Commission's purview, adopt a Resolution:
 - a. Amending City Council Policy No. 6-29, Post Construction Urban Runoff Management
 - b. Adopting City Council Policy No. 6-37, Projects Disturbing Less than One Acre: Best Management Practices

OUTCOME

Approval of the Proposed Municipal Code updates will implement and ensure enforcement of the requirements of the City's Municipal Regional Stormwater Permit, (effective July 1, 2022), as amended by the Water Board on October 11, 2023 for Provision C.3 (New and Redevelopment, effective November 1, 2023).

PROJECT BACKGROUND

The City of San José has two separate sewer systems. The sanitary system flows into the San José -Santa Clara Regional Wastewater Facility where sewage is treated before discharging into the San Francisco Bay. The City's storm sewer system captures stormwater through approximately 35,000 inlets where it is then conveyed through approximately 1,070 miles of storm sewer mains and discharged largely without treatment through 1,700 outfalls into local creeks and streams, and ultimately into San Francisco Bay.

The Federal Clean Water Act requires the City to operate its municipal separate storm sewer system (MS4) under a National Pollutant Discharge Elimination System permit (NPDES Permit) for the discharge of stormwater to waterways. The State Water Resources Control Board (Water Board) and its regional boards administer the Clean Water Act. The City is one of seventy-nine (79) public entities located in the Bay Area that are permittees under a Municipal Regional Stormwater NPDES Permit (Stormwater Permit). The Stormwater Permit specifies actions necessary to reduce the discharge of pollutants in stormwater to the maximum extent practicable and essentially prohibits non-stormwater discharges into the MS4 to protect local waterways and the Bay. The City must comply with the Stormwater Permit, which is updated approximately every five years.

On May 11, 2022, the Water Board adopted a revised Stormwater Permit, effective July 1, 2022. On April 12, 2023, the Planning Commission reviewed the initial changes to the Municipal Code to meet the Stormwater Permit's requirements. Since that time, on October 11, 2023, the Water Board approved an amendment to the Stormwater Permit's C.3 New and Redevelopment Provision, which became effective on November 1, 2023 that includes: an exemption for temporary emergency housing projects from stormwater treatment requirements, updates to the Special Project Category C Affordable Housing stormwater credit calculation, and a sub-provision on alternative treatment systems. In addition, staff determined that the Municipal Code required further clarification.

Planning Commission review is appropriate because there are changes necessary to Title 20, including Policies that are incorporated into it. In addition to the changes before the Planning Commission, Council will also consider amendments to Titles 5 and 15 of the Municipal Code, Council Policies, and the Resolution for the Administrative Citation Schedule of Fines to ensure compliance and facilitate enforcement. The amendments to Title 5 reflect the Stormwater Permit update which exempted interim housing from green stormwater requirements. In addition, the Council will consider amendments to Title 15 which codify the Stormwater Permit requirements and facilitates the City's ability to enforce as required. Lastly, Council will also consider two new additional Council policies (Policy 6-35 *Source Properties of PCBs, Mercury, or Other Pollutants: Best Management Practices* and Policy 6-36 *Private Land Directly*

Plumbed to the Storm Sewer System: Best Management Practices) which will allow the City to investigate and enforce stormwater permit requirements related to environmental contamination from private properties.

ANALYSIS

Staff Recommended Updates

Staff recommends amending the Municipal Code and relevant City Council Policy, as well as creating a new City Council Policy to comply with the new Stormwater Permit and Permit Amendment. These proposed changes will codify current language to align with the Stormwater Permit's requirements, as well as eliminate obsolete information.

1. Update SJMC §20.95.020 and §20.100.470

Staff recommend updating §20.95.020 to incorporate new Stormwater Permit requirements. Low impact development systems, sometimes referred to as Green Stormwater Infrastructure, mimic the natural processes that result in infiltration or the use of stormwater in a manner that protects water quality and the environment. The new Stormwater Permit established new and updated existing impervious surface thresholds and definitions for regulated projects required to implement low impact development. The Stormwater Permit expanded the categories of regulated projects to include utility trenching and subsequent road reconstruction projects. These projects involve the reconstruction of existing streets, roads, sidewalks, and bicycle lanes which create and/or replace greater than or equal to one contiguous acre of impervious surface, and are on average over the entire length of the project greater than or equal to eight (8) feet wide.

Staff recommends updating SJMC §20.100.470 to remove outdated references to guidance documents that are obsolete. These are the *Blueprint for a Clean Bay* and the *Association of Bay Area Government's Manual of Standards Erosion & Sediment Control Measures*. The revised Council Policy 6-29 will contain the best management practices.

2. Update Council Policy 6-29 *Post Construction Urban Runoff Management*

Staff recommends updating Council Policy 6-29, *Post Construction Urban Runoff Management* to remove "gravel" as a form of pervious surface, as gravel is no longer considered a pervious under the Stormwater Permit. Staff also recommend updating the Policy to include utility trenching projects as detailed above in SJMC §20.95.020.

3. Create Council Policy 6-37 *Projects Disturbing Less than One Acre: Best Management Practices*

Staff recommends adopting a new Council Policy 6-37 entitled *Projects Disturbing Less than One Acre: Best Management Practices*. This Council Policy will better communicate appropriate best management practices for preventing stormwater pollution from construction projects disturbing less than one acre. This will give the City the ability to enforce upon construction project managers if and when sites are not complying with Stormwater Permit requirements.

General Plan Conformance

The Envision San José 2040 General Plan encourages the periodic review of the Zoning Ordinance and other supporting Ordinances in the Municipal Code to ensure that the document reflects the goals, policies, and implementation of the General Plan.

General Plan Goals/Policies: Title 20- Zoning Ordinance

The proposed amendments to Title 20 would update certain sections of the Zoning Code to allow for conformance with and implementation of the policies of the Stormwater Permit. The proposed amendments to Title 20 are consistent with the following General Plan policy:

1. *Measurable Environmental Sustainability Policy MS-3.4: Promote the use of green roofs (i.e., roofs with vegetated cover), landscape-based treatment measures, pervious materials for hardscape, and other stormwater management practices to reduce water pollution.*
2. *Measurable Environmental Sustainability Policy MS-18.12: Encourage stormwater capture and encourage, when feasible and cost-effective, on-site rainwater catchment for new and existing development.*
3. *Environmental Resources Policy ER-8.1: Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.*
4. *Environmental Resources Policy ER-8.3: Ensure that private development in San José includes adequate measures to treat stormwater runoff.*
5. *Environmental Resources Policy ER-8.5: Ensure that all development projects in San José maximize opportunities to filter, infiltrate, store and reuse or evaporate stormwater runoff onsite.*
6. *Environmental Resources Policy ER-8.6: Eliminate barriers to and enact policies in support of the reuse of stormwater runoff for beneficial uses in existing infrastructure and future development in San José.*
7. *Environmental Resources Policy ER-8.7: Encourage stormwater reuse for beneficial uses in existing infrastructure and future development through the installation of rain barrels, cisterns, or other water storage and reuse facilities.*
8. *Infrastructure Policy IN-3.10: Incorporate appropriate stormwater treatment measures in development projects to achieve stormwater quality and quantity standards and objectives in compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit.*

The amendments to Title 20 (Section 20.95.020 and 20.100.470) contained within the Proposed Ordinance, Exhibit "A", Revised Council Policy 6-29 (Exhibit "B") and new Council Policy 6-37 (Exhibit "C") are necessary to ensure implementation of, and compliance with, the Stormwater Permit. These changes help ensure that the City's Municipal Code and Council Policies are appropriately updated and are consistent with regionwide stormwater requirements.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Categorically Exempt. CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment. These proposed actions are taken to fulfill the City's obligations mandated by the State in the California Regional Water Quality Control Board San Francisco Bay Region Municipal Regional Stormwater NPDES Permit [Order No. R2-2022-0018, NPDES Permit

No. CAS612008 (referred to as the “Stormwater Permit” in this memorandum)]. The Stormwater Permit implements the Federal Clean Water Act and requires that the City shall within its jurisdiction, “effectively prohibit the discharge of non-stormwater (materials other than stormwater) into storm drain systems and watercourses.” (Stormwater Permit, Par. A.1.) As outlined in the Analysis section of this memorandum, the proposed actions implement State-mandated requirements to protect the environment and are categorically exempt from CEQA.

PUBLIC OUTREACH

This memorandum will be posted on the City's Planning Commission website for the May 22, 2024, Planning Commission Meeting. Additionally, Department of Public Works (DPW) staff have been keeping developers apprised of relevant Stormwater Permit new development and redevelopment updates through their respective Developers Industry meetings.

DPW advises development applicants of the new development and redevelopment requirements effective July 1, 2023, through the permit review process. City staff from the Environmental Services Department (ESD), DPW, and Department of Planning, Building, and Code Enforcement (PBCE) finalized and published an updated Stormwater Evaluation Form for development permit applicants to complete and determine whether their project is subject to new and updated Stormwater Permit requirements. The City's internal and external processes and outreach items, including websites and other pertinent paperwork, were updated to reflect these changes: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/start-a-new-project-or-use/stormwater-management-measures>.

Project Manager: Rajani Nair

Approved by: /s/ Robert Manford, Deputy Director for Christopher Burton, Planning Director

ATTACHMENTS:	
Exhibit A:	Draft Ordinance
Exhibit B:	Draft revised Council Policy 6-29
Exhibit C:	Draft proposed new Council Policy 6-37
Exhibit D:	Statement of Exemption

PP23-008

Links to Attachments

Click on the title to view document.

<u>Exhibit A: Draft Ordinance</u>
<u>Exhibit B: Draft revised Council Policy 6-29</u>
<u>Exhibit C: Draft proposed new Council Policy 6-37</u>
<u>Exhibit D: Statement of Exemption</u>