REGULAR

NUMBER **239.1**

TITLE: **AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER 16, TITLE XI OF THE MILPITAS MUNICIPAL CODE**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of January 7, 2003, upon motion by Councilmember Livengood and was adopted (second reading) by the City Council at its meeting of January 21, 2003, upon motion by Councilmember Livengood. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:	(5)	Mayor Esteves and Councilmembers Dixon, Gomez, Livengood, and Polanski
NOES:	(0)	None
ABSENT:	(0)	None
ABSTAIN:	(0)	None

ATTEST:

Gail Blalock, City Clerk

APPROVED:

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

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

Chapter 16

URBAN RUNOFF
AND WATERCOURSE PROTECTION

Ordinance No 239.1

Sections:

XI-16-1	Purpose
XI-16-2	Definitions
XI-16-3	Limitations on Point of Discharge
XI-16-4	Discharge into Storm Drains Prohibited
XI-16-5	Discharge Permitted Pursuant to NPDES Permit
XI-16-6	Public Nuisance
XI-16-7	Protection from Accidental Discharge
XI-16-8	Accidental Discharge - Notification of Discharge
XI-16-9	Watercourse Protection
XI-16-10	Outdoor Storage of Materials
XI-16-11	Violation
XI-16-12	Administrative Citations
XI-16-13	Use of Proceeds of Fines and Penalties
XI-16-14	Acts Potentially Resulting In a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act
XI-16-15	Deleted
XI-16-16	Deleted

Chapter 16

Urban Runoff and Watercourse Protection

Ordinance No. 239.1

XI-16-1 PURPOSE

The U.S. Environmental Protection Agency has identified urban storm water runoff as the leading cause of water pollution in the United States. Furthermore, both federal and state agencies have identified storm water runoff from the City of Milpitas as a major source of pollution adversely impacting the beneficial uses of the South San Francisco Bay. As a result, the California Regional Water Quality Control Board, San Francisco Bay Region, has issued the City of Milpitas, among others, a National Pollutant Discharge Elimination System ("NPDES") permit requiring the City of Milpitas to establish legal authorities sufficient to protect its Storm Drain System from certain prohibited discharges. The City of Milpitas is also required to implement a Storm Water Management Program to assure that storm water runoff from the City of Milpitas does not cause or contribute to a violation of the water quality standards of South San Francisco Bay.

The purpose of this Chapter is therefore to provide minimum requirements designed to control the discharge of pollutants into the City of Milpitas' Storm Drain System and to assure that discharges from the City of Milpitas Storm Drain System comply with applicable provisions of the Federal Clean Water Act and the National Pollutant Discharge Elimination System Permit No. CA0029718. Enactment of this Chapter falls within the scope of the City of Milpitas police power to protect the health, safety, and welfare of its residents. Nothing in this Chapter is intended to preclude more stringent federal or state regulation of any activity covered by this Chapter.

XI-16-2 DEFINITIONS

The following words and phrases, when used in this Chapter, shall be as defined herein. Words and phrases used in this Chapter and not otherwise defined shall be as defined in the regulations promulgated by the U.S. Environmental Protection Agency to implement the requirements of the Federal Clean Water Act, or as defined by the State Water Resources Control Board to implement the California Water Code.

"Applicable Materials" means all materials used in industrial or commercial establishments that are stored outdoors, that may be exposed to Storm Water, and that have the reasonable potential to degrade the quality of runoff from the site. These include, but are not limited to, all materials containing cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, and zinc, which are pollutants that have specifically been identified as known to contribute to impairment of applicable water quality standards.

"City" means and includes all the territory lying within the municipal boundaries of the City of Milpitas as existing as of the date of adoption of this ordinance, plus all territory which may be added thereto during the effective term of the ordinance codified herein.

"Discharge" means the discharge, addition, placement, deposit, release or dumping of any, applicable material, grease, pollutant or combination of pollutants to surface waters from any point source. This definition includes, but is not limited to, additions of pollutants into waters from: surface runoff and discharges through pipes, sewers, channels, or other conveyances owned by a State, or municipality.

"Grease" means, and includes, fats, oils, waxes, or other related constituents. Grease may be of mineral origin, including kerosene's, lubricating oil, and road oil. Grease may also be of vegetable or animal origin, including butter, lard, margarine, vegetable fats and oils, fats in meats, cereals, seeds, nuts, and certain fruits. Grease is generally present as, but need not be, a floatable solid, a liquid, a colloid, an emulsion, or in a solution.

"Grease Generating Activity" means any commercial or industrial activity that uses or produces Grease on an ongoing basis.

"Grease Removal Device" means an interceptor or other mechanical device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of Grease to the sanitary sewer or City's Storm Drain System.

"Industrial Waste" means the wastes of producing, manufacturing, and processing operations of every kind and nature.

"Interceptor" means a receptacle or trap designed and constructed to intercept, separate and prevent the passage of prohibited substances into the sanitary sewer or City's Storm Drain System.

"Major Development or Redevelopment Project" means construction activities that result in the disturbance of five or more acres of total land area.

"NPDES Permit" means a valid National Pollutant Discharge Elimination System permit issued by the California Regional Water Quality Control Board, San Francisco Bay Region, in accordance with regulations promulgated by the U.S. Environmental Protection Agency to implement the requirements of the federal Clean Water Act.

"Person" includes any person, firm, association, organization, partnership, business trust, joint venture, corporation or company, and includes the United States, the State of California, the County of Santa Clara, special purpose districts, and any officer or agency thereof.

"Pollutants" mean and include all sewage, sewage sludge, garbage, biological materials, radioactive materials, chemical, industrial, and agricultural waste discharged into water.

"Storm Drain" is any manmade structure that coveys storm water runoff and includes but is not limited to underground pipe or open channel.

"Storm Drain System" means and includes, but shall not be limited to, those facilities within the municipality by which storm water may be conveyed to waters of the United States, including any roads with drainage systems, city streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains, which are not part of a Publicly Owned Treatment Works (POTW).

"Storm Water" means all rainfall runoff, surface runoff, and drainage.

"Watercourses" means and includes all public or privately owned natural waterways and definite channels and depressions in the earth that carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons. Watercourses include, but are not limited to, facilities owned and operated by the Santa Clara Valley Water District and the City of Milpitas.

"Waste" is any discarded material that is either manmade or of natural origin.

XI-16-3 LIMITATIONS ON POINT OF DISCHARGE

No person shall discharge any substance directly into a manhole or other opening in a City owned or maintained storm drain or watercourse other than through a City approved storm drain connection.

XI-16-4 DISCHARGE INTO STORM DRAINS PROHIBITED

It shall be unlawful to discharge, or cause, allow, or permit to be discharged into any storm drain or watercourse all wastes or pollutants, including but not restricted to sewage, industrial wastes, petroleum products, coal tar or any refuse substance arising from the manufacture of gas from coal or petroleum, chemicals, polluted cooling water, detergents, solvents, paints, contaminated or chlorinated swimming pool water, pesticides, herbicides and fertilizers.

Allowable discharges shall not cause any impairment in the beneficial uses or quality of water of the state as defined in the California Water Code or any special requirements of the Regional Water Quality Control Board, San Francisco Bay Region or to injure or interfere with the operation of any watercourses within the State. The City may, from time to time, by resolution of the City Council adopt supplementary rules and regulations on discharge into any City owned or maintained storm drain or watercourse which shall have the same force and effect as if set forth herein and for which the remedies herein for violation shall be applicable.

XI-16-5 DISCHARGE PERMITTED PURSUANT TO NPDES PERMIT

The provisions of this Chapter shall not prohibit any discharge in compliance with a valid NPDES permit issued to the discharger.

XI-16-6 PUBLIC NUISANCE

The discharge of weeds, rubbish, refuse or dirt, unscreened garbage, fruit, vegetable, applicable materials, grease, pollutants, animal or industrial wastes into any storm drain or watercourse, in violation of any provision of this Chapter, is hereby declared to be a public nuisance and shall be handled in the same manner as provided for in Chapter 500 of Title V of this Code.

XI-16-7 PROTECTION FROM ACCIDENTAL DISCHARGE

Each person shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this Chapter into any storm drain or watercourse. Facilities to prevent accidental discharge or prohibited materials shall be provided and maintained at the person's expense.

XI-16-8 ACCIDENTAL DISCHARGE-NOTIFICATION OF DISCHARGE

(a) All persons shall notify the City by telephone immediately by dialing (911) upon accidentally discharging any material other than an acceptable discharge into a storm drain or watercourse to enable countermeasures to be taken by the City to minimize damage to storm drains and the receiving waters. In conformance with Chapter500 of Title V of this Code, the City may abate any nuisance that obstructs the public right-of-way or poses an immediate danger to persons, property or wildlife. The City, at its sole option, may direct the person or persons responsible for the discharge to perform cleanup activities when it is deemed by the City that the person or persons have the capability to perform such activities.

(b) This notification shall be followed, within ten (10) days of the date of occurrence, by a detailed written statement to the City Engineer describing the causes of the accidental discharge and the measures being taken to prevent future occurrences. Such notification will not relieve persons of liability for violations of this Chapter or for any fines imposed on the City on account thereof under Section 13350 of the California Water Code, or for violation of Section 5650 of the California Fish and Wildlife Code, or any other applicable provisions of State or Federal laws.

XI-16-9 WATERCOURSE PROTECTION

A. Watercourse Protection Requirements. Every person owning, operating, or leasing property through which a Watercourse passes, shall keep and maintain that part of the Watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the Watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a Watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the Watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the Watercourse to erosion.

B. Acts Requiring Permit. No person shall commit or cause to be committed any of the following acts, unless an encroachment permit or an approved plan has been issued by the City Engineer or his/her designee to the applicant.

(1) Construct, alter, enlarge, connect to, discharge to, change, or remove any structure in a City owned or maintained watercourse or storm drain.

(2) Modify the natural flow of water in a City owned or maintained watercourse;

(3) Deposit in, plant in, or remove any material from, a City owned or maintained watercourse; including its banks, except as required for necessary maintenance;

C. Suspension or Revocation The City Engineer may suspend or revoke a permit issued under this title whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance, the terms of the permit, regulations, or any of the provisions of this Title.

XI-16-10 OUTDOOR STORAGE OF MATERIALS

A. Proper Outdoor Storage of Materials Required. All applicable materials, grease or potential pollutants stored outdoors at a commercial or industrial establishment shall be managed in a manner that minimizes the Discharge of Pollutants to Storm Water and as is required to meet water quality standards. Establishments covered by the General NPDES Permit for Storm Water Discharges "Associated With Industrial Activities" that has been promulgated for Santa Clara County by the California Regional Water Quality Control Board, San Francisco Bay Region, shall address this requirement in applicable provisions of their Storm Water Pollution Prevention Plan (SWPPP).

B. Protection Against Accidental Discharge. Each person shall provide protection against the accidental discharge of prohibited materials to the City's Storm Drain System or Watercourse. Protection may include but is not limited to secondary containment systems or equivalent measures. Any system that includes the permanent modification of a building, site, or the addition of a building or structure, shall be submitted to the City's Building Inspection Division for approval in accordance with applicable Building Codes. All facilities to prevent the accidental discharge of prohibited materials to the City's Storm Drain System or Watercourse shall be provided and maintained at the owner or operator's expense.

C. Report of Accidental Discharge to the Storm Drain. The owner or operator of an establishment shall notify the City as described in Title XI, Chapter 16, section 8, of this code. The owner or operator of such establishment shall also retain an on-site written record of all accidental discharges of prohibited materials (whether or not such discharge actually entered the City's Storm Drain System or Watercourse) and the actions taken to prevent their reoccurrence. Such records shall be retained for at least five years. A notice shall be permanently posted in a conspicuous place on the premises of each commercial or industrial establishment advising employees of the agency to call in case of such an accidental discharge.

XI-16-11 VIOLATION

Any person who violates any provision of this Chapter shall be guilty of a misdemeanor, which shall be punishable by a fine not exceeding One Thousand Dollars ($1000) or imprisonment in the County jail of Santa Clara County, California, for a term not exceeding six months, or both such fine and imprisonment.

XI-16-12 Administrative Citations

When he or she determines that one or more violations of this Chapter have occurred, the City Engineer and his/her designee may issue administrative citations pursuant to the procedures set forth in sections V-500-8.00 through V-500-8.06. The schedule of fines for administrative citations issued for violations of this Chapter is as follows:

1. Not to exceed $100 for the first violation

2. Not to exceed $200 for the second violation within one year; and

3. Not to exceed $500 for the third violation within one year

4. Not to exceed $25 delinquency penalty for penalties received after the due date (after 30 days from the date of the administrative citation)

XI-16-13 Use of Proceeds of Fines and Penalties

Funds collected pursuant to this Chapter shall be paid to the City's urban runoff violation account and may be used for any purpose related to the City's implementation of its NPDES permit.

XI-16-14 Acts Potentially Resulting in a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act

Any person who violates any provision of the Chapter of any provision of any requirement issued pursuant to this Chapter, may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this article shall also include written notice to the violator of such potential liability.

XI-16-15 Deleted

XI-16-16 Deleted