



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow
Chris Burton

SUBJECT: SEE BELOW

DATE: April 17, 2023

Approved

Date

4/25/23

SUBJECT: PROPOSED AMENDMENTS TO THE SAN JOSE MUNICIPAL CODE AND ADOPTION OF CITY COUNCIL POLICY 6-28 AND AMENDMENTS TO CITY COUNCIL POLICIES 6-29 AND 8-14 ALL RELATED TO STORMWATER AND COMPLIANCE WITH THE MUNICIPAL REGIONAL STORMWATER PERMIT

RECOMMENDATION

- (a) Approve an ordinance amending section 5.09.500 of Chapter 5.09 of Title 5; sections 15.14.515 and 15.14.770 of Chapter 15.14 of Title 15; section 20.80.460 of Chapter, 20.80, sections 20.95.020 and 20.95.110 of Chapter 20.95, and sections 20.100.465, 20.100.480, 20.100.910, 20.100.1030, and 20.100.1090 of Chapter 20.100, Title 20 of the San José Municipal Code to make amendments related to compliance with the Municipal Regional Stormwater Permit.
- (b) Adopt a resolution approving a new Council Policy 6-28, *Management of Pollutants During Demolition of Applicable Projects*.
- (c) Adopt a resolution amending the Council Policy 6-29: *Post-Construction Urban Runoff Management*.
- (d) Adopt a resolution amending Council Policy 8-14: *Post-Construction Hydromodification Management*.
- (e) Adopt a resolution amending the Administrative Citation Schedule of Fines for violations of San José Municipal Code Chapter 20.95, Sections 20.95.110, and Chapter 20.100 Sections 20.100.465 to create new fines for violations pertaining to stormwater control measures, including site control, management of pollutants, and proper documentation, and repealing Resolution No. 80714.

SUMMARY AND OUTCOME

The City's Municipal Regional Stormwater Permit (Stormwater Permit) effective as of July 1, 2022, requires ordinances and policies to be updated in a phased approach. This City Council action focuses on the approval of the proposed ordinances, development of new and updates to existing

City Council policies, and the Administrative Fines to implement and to ensure enforcement of the requirements specified in Provisions C.3 (New and Redevelopment) and C.12 (PCB Control Measures). The proposed changes entail the following:

1. Modifying current language to align with the Stormwater Permit's new threshold requirements for new development and redevelopment projects, single-family home projects, small projects, and smaller single-family home projects, including sidewalks and other parts of the public right-of-way that will be developed or redeveloped as a part of the project;
2. Incorporating requirements for notifications, inspections, and disposal documentation in support of the City's Polychlorinated Biphenyls (PCBs) in the Demolition Program;
3. Updating City Council policies to ensure notice and enforceability; and
4. Updating the administrative citations fines to ensure enforceability.

The Stormwater Permit requires updates to the following San José Municipal Code sections and policies related to stormwater urban runoff to ensure the City's compliance:

- Chapter 5.09, Emergency Bridge Housing;
- Chapter 15.14, Sewer Use Regulations;
- Chapter 20.80, Specific Use Regulations;
- Chapter 20.95, Stormwater Management;
- Chapter 20.100, Administration and Permits;
- City Council Policy 6-28 Management of Pollutants During Demolition of Applicable Projects;
- City Council Policy 6-29 Post-Construction Urban Runoff Management; and
- City Council Policy 8-14 Post-Construction Hydromodification Management.

BACKGROUND

The City of San José has two separate sewer systems that must comply with State and Federal regulations. The sanitary system flows into the San José-Santa Clara Regional Wastewater Treatment Facility and is treated before discharging into the San Francisco Bay. The City's storm sewer system captures stormwater and discharges largely without treatment. Stormwater runoff travels through approximately 35,000 inlets where it is then conveyed through

April 17, 2023

Subject: Proposed Amendments to the San Jose Municipal Code and Adoption of City Council Policy 6-28 and Amendments to City Council Policies 6-29 and 8-14 All Related to Stormwater and Compliance with the Municipal Regional Stormwater Permit

Page 3

approximately 1,070 miles of storm sewer mains, through 1,700 outfalls into local creeks and streams, and ultimately discharges 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 (NPDES) permit for the discharge of stormwater to waterways. The State Water Resources Control Board (Water Board) and its regional agencies administer the Federal Clean Water Act's permitting. The City is one of

76 public entities located in Northern California that are permittees under a Municipal Regional Stormwater NPDES Permit. The Stormwater Permit specifies actions through various provisions necessary to reduce the discharge of pollutants in stormwater runoff to the maximum extent practicable and essentially prohibits non-stormwater discharges into the municipal separate storm sewer system to protect local waterways and the San Francisco 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. The Stormwater Permit increases several requirements and imposes mandates that must be in place by July 1, 2023. Since the adoption, City staff presented updates on the status of the Stormwater Permit to the [Transportation and Environment Committee](#) meeting on December 5, 2022 that was cross-referenced to [City Council](#) on January 31, 2023.

To meet requirements in Stormwater Permit provisions C.3 and C.12, the City must amend relevant sections of the San José Municipal Code and City Council policies and adopt a new City Council policy pertaining to PCBs building demolition by July 1, 2023. In addition, staff proposes to clarify enforcement actions in accordance with provisions C.4, C.5, and C.6. The relevant sections are Title 5, Title 15, Title 20, City Council Policy 6-28, City Council Policy 6-29, City Council Policy 8-14, and the Administrative Citation Schedule of Fines. Because there are changes necessary to Title 20, City staff brought the Proposed Ordinances and Policies to the Planning Commission on April 12, 2023 (See **Exhibit A** - April 12, 2023 Planning Commission Staff Report).

This memorandum explained the modifications and updates recommended to comply with the City's Stormwater Permit as described below:

New and Redevelopment

The intent of the New Development and Redevelopment provision (Stormwater Permit Provision C.3) is to reduce runoff, improve water quality, and mimic a site's predevelopment hydrology by treating stormwater runoff close to its source. The previous permit mandated that new development, redevelopment, and newly constructed contiguous roadway projects with added travel lanes (Regulated Projects) that created and/or replaced 10,000 square feet or more of impervious surface or 5,000 square feet for certain heavy polluting land (e.g., gas stations), to include treatment measures (i.e., green stormwater infrastructure, bioretention, low impact

development) to manage stormwater runoff pollutants and prevent increases in runoff flows. Detached single-family home projects that were not part of a larger plan of development were exempt.

The current Stormwater Permit provides more stringent requirements, effective July 1, 2023, for new development and redevelopment projects, including:

- Reducing the threshold from 10,000 to 5,000 square feet for new development, redevelopment, and newly constructed contiguous roadway projects
- Expanding the project footprint to include sidewalks and other portions of the right of way developed or redeveloped as a part of the project
- Including single-family home projects with a 10,000 square feet threshold.

PCBs – Building Demolition

PCBs (Stormwater Permit Provision C.12) are toxic to people and aquatic life and exist in unhealthy quantities in the San Francisco Bay due to human activities. The previous Stormwater Permit mandated permittees to develop a protocol to prevent urban stormwater containing PCBs from entering the municipal separate storm sewer system starting from July 1, 2019. The City initiated a program to require demolition project applicants to complete a PCBs screening form prior to City approval of building demolitions.

The current Stormwater Permit provides more prescriptive requirements for Applicable Structures with building materials confirmed to contain PCBs and testing at 50 parts per million or above, effective July 1, 2023, to achieve PCBs load reductions, including:

- Requirement for contractors to notify the City, the Water Board, and United States Environmental Protection Agency at least one week before any demolition is to occur.
- Requirement for the City to inspect demolition sites to ensure controls are in place for minimizing the migration of PCBs and collect verification that the developer properly disposed of PCBs in demolished buildings.
- Requirement for the applicant to submit documentation confirming proper disposal of building materials containing PCBs.

Single-family residences and wood frame structures are exempt. These updates will be incorporated into a new City Council Policy, enforceable through the San José Municipal Code.

Discharge Prevention

The current Stormwater Permit (Provisions C.4, C.5, C.6) requires permittees to have the authority to abate potential and actual non-stormwater discharges from industrial, commercial, construction site, and illicit activities. The proposed ordinance provides increased clarity and additional tools to educate and enforce to protect the storm sewer system, creeks, and San Francisco Bay.

ANALYSIS

Staff Recommended Updates

Staff recommends adopting a new policy and amending the San José Municipal Code and relevant City policies to comply with the current Stormwater Permit. These proposed changes include the following:

1. Modifying current language to align with the Stormwater Permit's new threshold requirements for new development and redevelopment projects, single-family home projects, small projects, and smaller single-family home projects, including sidewalks and other parts of the public right-of-way that will be developed or redeveloped as a part of the project;
2. Incorporating requirements for notifications, inspections, and disposal documentation in support of the City's PCBs in the Demolition Program;
3. Updating City Council policies to ensure notice and enforceability; and
4. Updating the administrative citations fines to ensure enforceability.

A summary of San José Municipal Code changes is provided in table format in **Exhibit B**.

1. San José Municipal Code Updates and Thresholds for Low Impact Development

The new Stormwater Permit reduces the threshold from 10,000 square feet to 5,000 square feet for new development and redevelopment projects, expands the project footprint to include sidewalks and other portions of the right of way developed or redeveloped as a part of the project, and includes single-family home projects with a 10,000 square feet threshold. The Proposed Ordinance reflects the new changes. (*See*, Proposed Ordinance SJMC §5.09.500, 20.95.020, 20.100.465, 20.100.910, 20.100.1030, 20.100.1090.)

Another required update relates to new or widened roadway projects. These projects also require low impact development if they include the creation of 5,000 square feet of newly constructed contiguous impervious surface. Regulated road reconstruction projects have a threshold of one contiguous acre where the base layer is disturbed (including sidewalks and bicycle lanes in the public right of way that is built or rebuilt and utility trenching projects that are on average greater than or equal to eight feet wide). City projects are handled through the internal development review process.

Although the new Stormwater Permit requires more projects to comply and provide Green Stormwater Infrastructure, the Water Board determined these actions are necessary to protect the environment. By taking this recommended action, the City can implement and enforce these requirements.

April 17, 2023

Subject: Proposed Amendments to the San Jose Municipal Code and Adoption of City Council Policy 6-28 and Amendments to City Council Policies 6-29 and 8-14 All Related to Stormwater and Compliance with the Municipal Regional Stormwater Permit

Page 6

2. San José Municipal Code Amendment and New City Council Policy Regarding PCBs in Building Demolition

The new Stormwater Permit requires additional processes to be added which include notifications, inspections, and disposal documentation. The City must collect the documentation about how a project disposed of PCB-containing materials and provide those records with its own annual report to the State.

To address these requirements and to ensure enforcement, a new policy will be adopted (*See, Policy 6-28, Management of Pollutants During the Demolition of Applicable Projects*) and incorporated into the San José Municipal Code (*See, Proposed Ordinance, §§20.80.460, 20.95.020, 20.95.110, 20.100.465*) as a requirement and permit conditions. This new policy includes prior and updated Stormwater Permit requirements related to PCBs during demolition. A new fine will also be proposed to ensure the City shall comply with the new Stormwater Permit requirements.

3. Update to Existing City Council Policies Regarding Stormwater Management

In addition to the new City Council Policies regarding PCBs in demolition mentioned above, staff proposes updates to two other policies, which are also incorporated into Title 20: Policy 6-29, *Post Construction Urban Runoff Management*, and Policy 8-14 *Post-Construction Hydromodification Management*. (*See, Proposed Ordinance, SJMC §20.95.110, 20.100.465, 20.100.480, 20.100.1030.*)

These updates reflect the lowered impervious surface thresholds and are necessary to ensure the City's compliance with the new Stormwater Permit.

4. Update to San José Municipal Code and Administrative Fines Resolution to Ensure Proper Enforcement.

Lastly, several of the Proposed Ordinance Provisions relate to the enforceability of these revised requirements. (*See, Proposed Ordinance, SJMC §§ 20.80.460 and 20.95.110.*) Updates to Title 15 are recommended to ensure that the storm sewer system is adequately protected from pollutants (*See, Proposed Ordinance SJMC §§15.14.515, 15.14.770*). In addition, the Resolution for the Administrative Citation Schedule of Fines is recommended to be updated to ensure enforcement of the obligations. Fines for the design, maintenance, and documentation requirements under the new Proposed Ordinance and updated Policies is \$100.00 per day, consistent with fines for other related policy provisions. (*See, Proposed Ordinance, SJMC §§20.95.110, 20.100.465; and City Council Resolution for Administrative Citation Schedule of Fines*).

April 17, 2023

Subject: Proposed Amendments to the San Jose Municipal Code and Adoption of City Council Policy 6-28 and Amendments to City Council Policies 6-29 and 8-14 All Related to Stormwater and Compliance with the Municipal Regional Stormwater Permit

Page 7

Policy Alternatives

Alternative #1: Do not update San José Municipal Codes nor add or update existing City Council policies.

Pros: None known.

Cons: The San José Municipal Codes and City Council policies are outdated, and it will be challenging to enforce the new Stormwater Permit requirements.

Reason for not recommending: The City risks non-compliance with the Stormwater Permit and the Federal Clean Water Act, resulting in significant financial costs due to enforcement actions.

Racial Equity Impact Analysis

Staff will evaluate the data collected during and after the implementation of the San José Municipal Code ordinance and City Council policy changes to better understand their racial equity impacts. The quantitative impacts of these programs are unknown to date since there is insufficient data available. This is the case for the Management of Pollutants During Demolition of Applicable Projects program, which cannot predict where demolition will occur nor whether the demolition materials contain PCBs.

Although the new development and redevelopment requirements covered by this memorandum will be implemented citywide, the increased regulation may burden lower-income individuals and organizations. The lowering of the impervious surface threshold from 10,000 square feet to 5,000 square feet potentially subjects 12,030 more properties (or a 58% increase) to these requirements if they choose to redevelop. According to the City's Equity Atlas, the majority of these properties (approximately 4,087 or 51% percent) are in areas with lower median household incomes and higher percentages of people of color (combined equity scores of 8-10¹). Lower-income residents and property owners, and non-profit and smaller businesses and developers that were previously exempt from these requirements, may be financially burdened by the need to build stormwater treatment systems on their projects and within the adjacent City right-of-way. Once these systems are built, these individuals and organizations will be responsible for maintaining them in perpetuity, resulting in an additional financial burden.

The proposed San José Municipal Code changes will also allow the use of education through environmental enforcement with greater ease in translation and communication to better explain how discharges into the storm drain are prohibited and what best management practices should be used in accordance with the Stormwater Permit requirements.

Implementing these measures will overall create a healthier environment by intercepting pollutants from urban runoff discharge, improving local and regional water quality, decreasing the exposure of harmful legacy pollutants to the residents, beautifying neighborhoods, and

¹ This score is taken from the [San José Equity Atlas](#) and represents combined separate scores for percentage of people of color and median household income across San José's Census Tracts. The higher the score, the higher the density of people of color and low-income communities within the Census Tracts.

increasing climate and flooding resilience. This is especially important in locations where many of San José's lower-income communities and communities of color reside, which tend to lack tree canopy cover and are prone to localized flooding and the urban heat island effect.

EVALUATION AND FOLLOW-UP

The second City Council hearing for the San José Municipal Code amendments is scheduled on May 23, 2023. The San José Municipal Code amendments and City Council policy updates will go into effect 30 days after their approval and adoption, on June 23, 2023, ahead of the Stormwater Permit July 1, 2023 effective date for these requirements. The Stormwater Permit requires the City to provide a progress report each fiscal year. City staff will provide an update to City Council in September 2023.

COST SUMMARY/IMPLICATIONS

New and Redevelopment

The proposed Ordinance lowers the impermeable surface threshold for "Regulated Projects", so more projects (public or private) must provide low-impact development (i.e., green infrastructure). The cost to build low-impact development will significantly vary depending on site conditions, prior use, or nature and size of the project. Staff estimates that the total number of Regulated Projects will continue to rise, and development trends indicate this will continue in upcoming years. This may result in an increase in inspection, administration, engineering, enforcement, and ongoing maintenance needs.

If necessary, the City will re-examine and reallocate existing resources to meet the most immediate needs, identify new or increased fees to meet cost recovery levels, and other revenue sources to pay for new and expanded programs by leveraging Federal and State grant opportunities where available, and potentially seek General Fund resources. The City will also explore potential funding opportunities to support mitigation efforts by the property owners and businesses. Any associated new or increased program funding needs will be considered as part of a future budget process, in consideration of the City's budgetary position and other City Council priorities.

PCBs – Building Demolition

The proposed changes to the Ordinance and the new City Council policy are driven by new and existing PCBs requirements in the Stormwater Permit. For the PCBs in building demolition, City staff estimates that these requirements will apply to approximately five projects/permits each year. Regarding the proposed work associated with PCBs in building demolition that entails inspection, enforcement, administrative citation, and outreach will be funded by an existing position in the General Fund. City staff will evaluate if the City should continue to incur the cost or impose fees on the permit applicant. If the permit applicant fails to comply with the new

HONORABLE MAYOR AND CITY COUNCIL

April 17, 2023

Subject: Proposed Amendments to the San Jose Municipal Code and Adoption of City Council Policy 6-28 and Amendments to City Council Policies 6-29 and 8-14 All Related to Stormwater and Compliance with the Municipal Regional Stormwater Permit

Page 9

Policy 6-28, the additional fine will be \$100 per day (as noted in the Administrative Citation Schedule of Fines).

Discharge Prevention

The recommended Ordinance changes in Title 15 provide increased clarity for the enforcement of the discharge prohibition and best management practices. There are no cost implications associated with these changes. Similarly, the update to the Administrative Citation Schedule of Fines is not anticipated to be a significant source of new revenue, as staff will continue its focus on compliance, rather than fines.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the City Manager's Office of Economic Development and Cultural Affairs, the Department of Public Works, and the Department of Transportation.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the May 9, 2023 City Council meeting. This memorandum was presented at the Planning Commission meeting on April 12, 2023.

When the demolition of applicable projects program began, Bay Area Stormwater Management Agencies Association, Santa Clara Valley Urban Runoff Pollution Prevention Program, and the City completed substantial outreach to developers. The City's website includes a webpage that provides an overview and history of the demolition of applicable projects requirement and provides links to the following: a screening form and supporting documents template, applicant guide, sampling protocol, links to consultants/contractors who may be able to assist with PCBs screening, and City contact information for questions about the program.

The Environmental Services Department partnered with the Department of Planning, Building, and Code Enforcement to provide PCBs demolition information to developers, including the permit application process, PCBs assessment forms, Bay Area Stormwater Management Agencies Association Protocol Guide, and Managing PCBs-Containing Materials During Demolitions Guide. These forms/guides and other information can be found on the City's Demolition Permit Application Managing PCBs web page.

In anticipation of the increased requirements, the Department of Public Works staff has been keeping developers apprised of relevant Stormwater Permit updates. Staff presented the Stormwater Permit requirements to the Developer Industry Group on May 14, 2021, December 17, 2021, and April 22, 2022. Staff also informed the group in anticipation of increased

requirements, about the Water Board permit adoption hearing scheduled for May 11, 2022. Developers, industry associations, and non-profit development organizations made public comments at the adoption hearing.

City staff has also been informing development permit applicants of the Stormwater Permit requirements effective July 1, 2023, through the permit review process. City staff will finalize and publish an updated Stormwater Evaluation Form for development permit applicants to complete and determine whether their projects are subject to new and updated Stormwater Permit requirements. The City's internal and external processes and outreach items, including websites and other pertinent paperwork, will be updated to reflect these changes.

COMMISSION RECOMMENDATION AND INPUT

The proposed Ordinance and resolution was presented to the Planning Commission on April 12, 2023. Please see Exhibit A: April 12, 2023 Planning Commission Staff Report.

Below is a summary of City staff's responses to Planning Commission's concerns:

- Cost to build Low Impact Development will vary depending upon site conditions, prior use or nature and size of project
- Lower thresholds for New Development and Redevelopment provision (Stormwater Permit Provision C.3) may require increased permit fees
- City will be using General Fund to support PCBs Building Demolition Program until further data is obtained either to incur cost or impose fees on permit applicants
- City staff will evaluate racial equity impacts where PCBs are found and lowered threshold requirements
- Educate public on enforcement requirements and provide necessary translation as needed

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.

HONORABLE MAYOR AND CITY COUNCIL

April 17, 2023

Subject: Proposed Amendments to the San Jose Municipal Code and Adoption of City Council Policy 6-28 and Amendments to City Council Policies 6-29 and 8-14 All Related to Stormwater and Compliance with the Municipal Regional Stormwater Permit

Page 11

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/

CHRISTOPHER BURTON

Director, Planning Building and
Code Enforcement

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

ATTACHMENT

Exhibit A: April 12, 2023 Planning Commission Staff Report

Exhibit B: Summary of San José Municipal Code Changes



Memorandum

TO: PLANNING COMMISSION

FROM: Christopher Burton

SUBJECT: SEE BELOW

DATE: April 12, 2023

SUBJECT: File No. PP22-003. APPROVAL OF AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING VARIOUS SECTIONS OF TITLES 5, 15, AND TITLE 20 (ZONING ORDINANCE OR ZONING CODE) OF THE SAN JOSÉ MUNICIPAL CODE; ADOPTION OF A RESOLUTION APPROVING COUNCIL POLICY 6-28, AND AMENDING COUNCIL POLICIES 6-29, AND 8-14; AND ADOPTION OF A RESOLUTION AMENDING THE SCHEDULE OF FINES TO UPDATE FINES AND PENALTIES ALL RELATED TO STORMWATER MANAGEMENT UNDER THE SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD'S REVISED REGIONAL STORMWATER NPDES PERMIT REQUIREMENTS

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 the California Environmental Quality Act (CEQA), as amended;
2. With respect to the Title 20 revisions, approve an Ordinance Amending Section 5.09.500 of Chapter 5.09 of Title 5; Sections 15.14.515 and 15.14.770 of Chapter 15.14 of Title 15; Section 20.80.460 of Chapter 20.80, Sections 20.95.020 and Sections 20.95.110 of Chapter 20.95, and Sections 20.100.465, 20.100.480, 20.100.910, 20.100.1030, and 20.100.1090 of Chapter 20.100 of Title 20 of the San José Municipal Code to make Amendments Related to Compliance with the Municipal Regional Stormwater Permit;
3. Adopt a Resolution:
 - a. Approving a new City Council Policy No. 6-28, *Management of Pollutants During Demolition of Applicable Projects*;
 - b. Amending City Council Policy No. 6-29, *Post Construction Urban Runoff Management*;
 - c. Amending City Council Policy No. 8-14, *Post-Construction Hydromodification Management*; and
4. Adopt a Resolution amending the Administrative Citation Schedule of Fines for violations of San José Municipal Code Chapter 20.95, Sections 20.95.110, and Chapter 20.100 Sections 20.100.465 to create new fines for first, second, third and

PLANNING COMMISSION

April 12, 2023

Subject: Updates to Codes and Policies for Stormwater Permit

Page 2 of 9

subsequent violations pertaining to stormwater control measures, including site control, management of pollutants, and proper documentation and repealing [Resolution No. 80714](#).

OUTCOME

Approval of the Proposed Ordinance, update to Council Policies, and the Administrative Fines will implement and ensure enforcement of the requirements of the City's Municipal Regional Stormwater Permit, which was adopted by the Water Board on May 11, 2022 and became effective on July 1, 2022.

BACKGROUND

The City of San José has two separate sewer systems that are regulated. The sanitary system flows into the San José -Santa Clara Regional Wastewater Treatment Facility and 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 agencies administer the Clean Water Act's permitting. The City is one of seventy-six (76) public entities located in Northern California 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. The Stormwater Permit increases several requirements and imposes mandates that must be in place by July 1, 2023. As a result, staff is proposing changes to the San José Municipal Code in Titles 5, 15, and 20 to become effective by the dates provided in the Stormwater Permit. Because there are changes necessary to Title 20, including policies that are incorporated into it, staff brings the Proposed Ordinances and Policies to the Planning Commission. Council will also consider other changes to Title 5 and 15 of the Municipal Code, Council Policies, and the Resolution for the Administrative Citation Schedule of Fines will also be updated to ensure proper enforcement.

ANALYSIS

Staff Recommended Updates

Staff recommends amending the Municipal Code and relevant City policies in order to comply with the new Stormwater Permit. These proposed changes fall within the following categories:

- Modifying current language to align with the Stormwater Permit's new threshold requirements for new development and redevelopment projects, single-family home

PLANNING COMMISSION

April 12, 2023

Subject: Updates to Codes and Policies for Stormwater Permit

Page 3 of 9

projects, small projects, and smaller single-family home projects, including sidewalks and other parts of the public right-of-way that will be developed or redeveloped as a part of the project

- Incorporating requirements for notifications, inspections, and disposal documentation in support of the City's Polychlorinated Biphenyls (PCBs) in Demolition Program
- Updating Council policies to ensure notice and enforceability; and
- Updating the administrative citations fines to ensure enforceability.

1. Municipal Code Updates and Thresholds for Low Impact Development

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 the environment. The new Stormwater Permit decreases the threshold for low impact development. The Stormwater Permit now requires new development or redevelopment projects that create and/or replace 5,000 square feet of impervious surface to include stormwater treatment. This is a more stringent requirement and change from the former permit, which regulated projects that created and/or replaced 10,000 square feet or more of impervious surface of similar nature within San José. This requirement now applies to sidewalk improvements or any other portions of the public right-of-way (e.g., bike lanes, roadways) that are either developed or redeveloped as part of these projects.

The existing Municipal Code addresses the requirements under the previous stormwater permit, but needs to be updated to comply with the new stormwater permit. For example, the old permit mandated that new development and redevelopment projects (Regulated Projects) that created and/or replaced 10,000 square feet or more of impervious surface or 5,000 square feet for certain heavy polluting land uses such as gas stations, to include treatment measures (i.e., green stormwater infrastructure, bioretention, low impact development) to manage stormwater runoff pollutants and prevent increases in runoff flows. Roadway projects were also Regulated Projects if they included the creation of 10,000 square feet of newly constructed contiguous impervious surface and added traffic lanes. Detached single-family home projects that were not part of a larger plan of development were exempt.

The new Stormwater Permit changes the threshold to 5,000 square feet for new development and redevelopment projects, expands the project footprint to include sidewalks and other portions of the right of way developed or redeveloped as a part of the project, and includes single-family home projects with a 10,000 square feet threshold. The Proposed Ordinance reflects the new changes. (*See*, Exhibit A, Proposed Ordinance SJMC §20.95.020, 20.100.465, 20.100.910, 20.100.1030, 20.100.1090.)

Another required update relates to new or widened roadway projects. These projects also require low impact development if they include the creation of 5,000 square feet of newly constructed contiguous impervious surface. Regulated road reconstruction projects have a threshold of one contiguous acre (including sidewalks and bicycle lanes that are built or rebuilt and utility trenching projects that are on average greater than or equal to eight feet wide). City projects are handled through the internal development review process.

PLANNING COMMISSION

April 12, 2023

Subject: Updates to Codes and Policies for Stormwater Permit

Page 4 of 9

Although the new Stormwater Permit requires more projects to comply and provide Green Stormwater Infrastructure, the Water Board determined these actions are necessary to protect the environment. By taking this recommended action, the City implements these requirements.

2. Municipal Code Amendment and New Council Policy Regarding PCBs in Building Demolition

PCBs are toxic and exist in unhealthy quantities in the San Francisco Bay. As such, the new Stormwater Permit places a high priority on remediating PCBs since urban stormwater is thought to be the primary pathway and source of the contamination in the San Francisco Bay.

Under the old Permit, the City was required to develop a protocol to prevent PCBs from entering the storm sewer system starting from July 1, 2019. Accordingly, the City created a program to require project applicants to complete a PCBs screening form prior to the approval of building demolitions. The developers are responsible for testing and proper disposal of demolition materials if PCBs are found. The new Stormwater Permit requires additional processes to be added which includes notifications, inspections, and disposal documentation. The City must collect the documentation about how the project disposed of PCB containing materials, and provide those records with its own annual report to the State.

To address these requirements and to ensure enforcement, a new policy will be adopted (Exhibit B, Policy 6-28, *Management of Pollutants During the Demolition of Applicable Projects*) and incorporated into the Municipal Code (Exhibit A, Proposed Ordinance, §§20.80.460, 20.95.020, 20.95.110, 20.100.465) as a requirement and permit conditions. This new policy includes prior and updated Stormwater Permit requirements related to PCBs during demolition. A new fine will also be proposed to ensure the City shall comply with the new Stormwater Permit requirements.

3. Update to Existing Council Policies Regarding Stormwater Management

In addition to the new Council Policies regarding PCBs in demolition mentioned above, staff proposes updates to two other policies, which are also incorporated into Title 20 – Policy 6-29, *Post Construction Urban Runoff Management*, and Policy 8-14 *Post-Construction Hydromodification Management*. (See, Exhibit A, Proposed Ordinance, SJMC §20.95.110, 20.100.465, 20.100.480, 20.100.1030, and draft policy language Exhibits C, D.)

These updates reflect the lowered impervious surface thresholds and permit, and are necessary to ensure the City's compliance with the new Stormwater Permit.

4. Update to Municipal Code and Administrative Fines Resolution to Ensure Proper Enforcement.

Lastly, several of the Proposed Ordinance Provisions relate to the enforceability of these revised requirements. (*See for example*, Exhibit A, Proposed Ordinance, SJMC §§ 20.80.460 and 20.95.110.) The Council will also consider updates to Title 15 to ensure that the storm drains are adequately protected from pollutants (*See*, Exhibit A, Proposed Ordinance SJMC §§15.14.515, 15.14.770). In addition, the Resolution for the

PLANNING COMMISSION

April 12, 2023

Subject: Updates to Codes and Policies for Stormwater Permit

Page 5 of 9

Administrative Citation Schedule of Fines will also be updated to ensure enforcement of the obligations. Fines for the design, maintenance, and documentation requirements under the new Proposed Ordinance and updated Policies is \$100.00 per day, consistent with fines for other related policy provisions. (See, Exhibit A, Proposed Ordinance, SJMC §§20.95.110, 20.100.465; and Council Resolution 80714 Administrative Citation Schedule of Fines).

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.*

PLANNING COMMISSION

April 12, 2023

Subject: Updates to Codes and Policies for Stormwater Permit

Page 6 of 9

The amendments to Sections 20.80.460, 20.95.020, 20.95.110, 20.100.465, 20.100.480, 20.100.910, 20.100.1030, and 20.100.1090 (see Exhibit A), are substantive and non-substantive changes proposed as part of the effort to ensure consistency with the Stormwater Permit. These changes help ensure that the Zoning Ordinance is appropriately updated and is consistent with regionwide stormwater requirements.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's Planning Commission website for the April 12, 2023 Planning Commission Meeting. Additionally, the 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. Staff presented the Revised Permit requirements to the Developer Industry Group on May 14, 2021, December 17, 2021, and April 22, 2022. Staff informed the group about the Water Board permit adoption hearing scheduled for May 11, 2022. A couple of developers, two industry associations, and one non-profit development organization made comments at the adoption hearing.

Department of Public Works (DPW) 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 (ESD), DPW, and Department of Planning, Building, and Code Enforcement (PBCE) will finalize and publish 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, will also be updated to reflect these changes.

When the demolition of applicable projects program first began, the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and the City completed substantial outreach to developers. The City's website includes a webpage that provides an overview and history of the demolition of applicable projects requirement/program and provides links to the following: a screening form and supporting documents template, applicant guide for the entire process, sampling protocol, links to consultants/contractors who may be able to assist with PCBs screening, and City contact information for questions about the program. City staff is currently making minor updates to these documents through a regional working group (Bay Area Municipal Stormwater Collaborative). These changes will be incorporated into the City's website and relevant documents.

ESD has partnered with the PBCE Department on providing managing PCB demolition information to developers including the permit application process, PCB assessment forms, Bay Area Stormwater Management Agencies Association Protocol Guide and Managing PCBs-Containing Materials During Demolitions Guide. These forms/guides and other information can be found on the City's Demolition Permit Application Managing [PCBs web page](#). ESD will enhance outreach to developers and provide additional information through the City's PBCE newsletters, Office of Economic Development developers distribution list, developer association presentations, social media and other outreach methods. If you would like more information or a presentation, please email us at sjenvironment@sanjoseca.gov.

PLANNING COMMISSION

April 12, 2023

Subject: Updates to Codes and Policies for Stormwater Permit

Page 7 of 9

COORDINATION

The preparation of the proposed ordinance, draft policies, and this staff report were coordinated with the Departments of Public Works, Environmental Services, Office of Economic Development, and the City Attorney's Office.

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.

_____/s/____ Michael Brilliot for
CHRISTOPHER BURTON, DIRECTOR
Planning, Building and Code Enforcement

Attachments:

Exhibit A: Proposed Ordinance

Exhibit B: Proposed New Council Policy 6-28, *Management of Pollutants During the Demolition of Applicable Projects*

Exhibit C: Proposed Updated Council Policy 6-29, *Post-Construction Urban Runoff Management*

Exhibit D: Proposed Updated Council Policy 8-14, *Post-Construction Hydromodification Management*

PLANNING COMMISSION

April 12, 2023

Subject: Updates to Codes and Policies for Stormwater Permit

Page 8 of 9

Summary of Municipal Code Changes

Program	Code Section(s)	Proposed Change
Polychlorinated Biphenyls (PCBs)	20.80.460 9	Adding requirement to provide evidence of compliance for pre-demolition activities to comply with new City Council Policy No. 6-28.
New and Redevelopment	20.95.020 A	Updating to include redevelopment projects and sidewalks and any other portions of the right of way as part of new and/or replaced impervious surface calculation for the project.
New and Redevelopment	20.95.020 B	Updating new and/or replaced impervious surface threshold from 10,000 square feet to 5,000 square feet for new development and redevelopment projects.
New and Redevelopment	20.95.020 C	Updating new and/or replaced upper impervious surface threshold from 10,000 square feet to 5,000 square feet for small projects.
New and Redevelopment	20.95.020 D	Updating new and/or replaced impervious surface threshold for detached single-family home projects to 10,000 square feet over the entire project site.
Polychlorinated Biphenyls (PCBs)	20.95.020 E	Adding application of provision to whenever a proposed development of real property requires the demolition of a structure.
New and Redevelopment	20.95.110 A	Splitting 20.95.110 to two parts by adding subtitle “Design Requirements” to Part A and requirement for projects to comply and be maintained in conformance with City Council Policy No. 6-29.
Polychlorinated Biphenyls (PCBs)	20.95.110 B	Adding conformance requirement for a proposed project of real property that will require demolition to comply with new City Council Policy No. 6-28.
New and Redevelopment	20.100.465 A	Applying requirement for all proposed development that meet new and/or replaced impervious surface threshold of 5,000 square feet to be designed, comply, and be maintained in conformance and comply with City Council Policy No. 6-29 and City Council Policy No. 8-14.
Polychlorinated Biphenyls (PCBs)	20.100.465 B	Applying requirement for all proposed development that will require the demolition of a structure to comply with new City Council Policy No. 6-28.
New and Redevelopment	20.100.480 F	Update requirement to focus on hydromodification management by changing the threshold from 10,000 square feet to one acre, and replacing the referenced City Council Policy No. 6-29 with City Council Policy No. 8-14

PLANNING COMMISSION

April 12, 2023

Subject: Updates to Codes and Policies for Stormwater Permit

Page 9 of 9

New and Redevelopment	20.100.910 G	Adding new and/or replaced impervious surface threshold of 10,000 square feet over the entire project site for single-family residence projects with a valid planned development permit or amendment.
New and Redevelopment	20.100.1030 B	Updating Subsection B to reference Subsection D. Single family house permits issued under code 20.100.1030 will be exempted under conditions set forth in Subsection D.
New and Redevelopment	20.100.1030 C	Adding to require a valid single-family permit and compliance with City Council Policy No. 6-29 if the project creates and/or replaces 10,000 square feet or more of impervious surface.
New and Redevelopment	20.100.1090 A 5	Adding director approval requirements for single-family house permits for projects subject to Section 20.100.1030 C, which require compliance with Chapter 20.95 of this Code.

Exhibit A
PP22-003

Links to Attachment A - D

Click on the title to view document

Exhibit A: Proposed Ordinance
Exhibit B: Proposed New Council Policy 6-28, <i>Management of Pollutants During the Demolition of Applicable Projects</i>
Exhibit C: Proposed Updated Council Policy 6-29, <i>Post-Construction Urban Runoff Management</i>
Exhibit D Proposed Updated Council Policy 8-14, <i>Post-Construction Hydromodification Management</i>

Exhibit B: Summary of San Jose Municipal Code Changes

Program	Code Section(s)	Proposed Change
New and Redevelopment	5.09.500 I	Updating the threshold of impervious surfaces that can be included in the development of Emergency Bridge Housing from 10,000 square feet to 5,000 square feet.
Discharge to Storm Drain Prohibited	15.14.515 A	Clarifying applicability to any person and adding “and it is unlawful to” into discharge prohibition to prevent discharges of sewage, industrial waste, or other polluted waters.
Discharge to Storm Drain Prohibited	15.14.515 B	Clarifying discharge prohibition to include placing, leaving, abandoning, or maintaining pollutants, and strengthening requirement to prevent potential discharges.
Best Management Practices	15.14.770 A	Clarifying that the City may develop best management practices by ordinance, Resolution, or Director order to implement limits, regulations, and requirements.
Best Management Practices	15.14.770 F	Adding requirement for all persons to implement BMPs or make reasonable efforts, and ensure monitoring, treatment, and other measures to prevent pollutant and unauthorized discharges.
Best Management Practices	15.14.770 G	Adding requirement for implementation and record keeping of BMPs in response to enforcement action, order or permit to be continued until regulatory authorization received.
Polychlorinated Biphenyls (PCBs)	20.80.460 9	Adding requirement to provide evidence of compliance for pre-demolition activities to comply with new City Council Policy No. 6-28.
New and Redevelopment	20.95.020 A	Updating to include redevelopment projects and sidewalks and any other portions of the right of way as part of new and/or replaced impervious surface calculation for the project.
New and Redevelopment	20.95.020 B	Updating new and/or replaced impervious surface threshold from 10,000 square feet to 5,000 square feet for new development and redevelopment projects.
New and Redevelopment	20.95.020 C	Updating new and/or replaced upper impervious surface threshold from 10,000 square feet to 5,000 square feet for small projects.
New and Redevelopment	20.95.020 D	Updating new and/or replaced impervious surface threshold for detached single-family home projects to 10,000 square feet over the entire project site.
Polychlorinated Biphenyls (PCBs)	20.95.020 E	Adding application of provision to whenever a proposed development of real property requires the demolition of a structure.
New and Redevelopment	20.95.110 A	Splitting 20.95.110 to two parts by adding subtitle “Design Requirements” to Part A and requirement for projects to comply and be maintained in conformance with City Council Policy No. 6-29.

Exhibit B: Summary of San Jose Municipal Code Changes

Polychlorinated Biphenyls (PCBs)	20.95.110 B	Adding conformance requirement for a proposed project of real property that will require demolition to comply with new City Council Policy No. 6-28.
New and Redevelopment	20.100.465 A	Applying requirement for all proposed development that meet new and/or replaced impervious surface threshold of 5,000 square feet to be designed, comply, and be maintained in conformance and comply with City Council Policy No. 6-29 and City Council Policy No. 8-14.
Polychlorinated Biphenyls (PCBs)	20.100.465 B	Applying requirement for all proposed development that will require the demolition of a structure to comply with new City Council Policy No. 6-28.
New and Redevelopment	20.100.480 F	Update requirement to focus on hydromodification management by changing the threshold from 10,000 square feet to one acre, and replacing the referenced City Council Policy No. 6-29 with City Council Policy No. 8-14
New and Redevelopment	20.100.910 G	Adding new and/or replaced impervious surface threshold of 10,000 square feet over the entire project site for single-family residence projects with a valid planned development permit or amendment.
New and Redevelopment	20.100.1030 B	Updating Subsection B to reference Subsection D. Single family house permits issued under code 20.100.1030 will be exempted under conditions set forth in Subsection D.
New and Redevelopment	20.100.1030 C	Adding to require a valid single-family permit and compliance with City Council Policy No. 6-29 if the project creates and/or replaces 10,000 square feet or more of impervious surface.
New and Redevelopment	20.100.1090 A 5	Adding director approval requirements for single-family house permits for projects subject to Section 20.100.1030 C, which require compliance with Chapter 20.95 of this Code.