ORDINANCE NO. 707

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, STATE OF CALIFORNIA, REPLACING CHAPTER 19.05 TO THE CALISTOGA MUNICIPAL CODE - THE STORMWATER RUNOFF POLLUTION CONTROL ORDINANCE REGULATING PROHIBITED DISCHARGES, NPDES COMPLIANCE, REDUCTION OF POLUTANTS IN STORMWATER AND NOTIFICATION OF SPILLS AND DELETION OF SECTION 19.08.060 – REQUIREMENTS FOR EROSION CONTROL PLANS.

BE IT ORDAINED by the City Council of the City of Calistoga as follows:

SECTION 1. Section Chapter 19.05 is hereby amended to read as follows:

Chapter 19.05

STORMWATER RUNOFF POLLUTION CONTROL

Sections:

19.05.010 Title.
19.05.020 Purpose and Intent.
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19.05.010 Title.

This chapter shall be known as the City "Stormwater Runoff Pollution Control Ordinance," and may be cited as such, and will be referred to herein as "this Chapter."

19.05.020 Purpose and Intent.

The purposes of this Chapter is to protect the health, safety and general welfare of City of Calistoga residents; to protect water resources and to improve water quality; to protect and enhance watercourses, fish, and wildlife habitat; to cause the use of management practices by the City and its citizens that will reduce the

adverse effects of polluted runoff discharges on waters of the state; to secure benefits from the use of stormwater as a resource; and to ensure the City is compliant with applicable state and federal law. This chapter seeks to promote these purposes by:

1. Prohibiting illicit discharges to the stormwater conveyance system;
2. Establishing authority to adopt minimum requirements for stormwater management, including source control requirements, to prevent and reduce pollution;
3. Establishing authority to adopt requirements for development project site design, to reduce stormwater pollution and erosion both during construction and after project is complete.
4. Establishing authority to adopt requirements for the management of stormwater flows from development projects, both to prevent erosion and to protect and enhance existing water-dependent habitats;
5. Establishing authority to adopt standards for the use of off-site facilities for stormwater management to supplement on-site practices at new development sites; and

19.05.030 Definitions.

A. The following words, when used in this Chapter, shall have the following meanings:

1. "BASMAA Post Construction Manual" means the most recent version of the Bay Area Stormwater Management Agencies (BASMAA) Post Construction Manual.
2. "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
3. "City" means the City of Calistoga.
4. "Construction activity" means any activity that involves soil disturbing activities including, but not limited to, clearing, paving, grading, disturbances to ground such as stockpiling, and excavation.
5. "Development" means any activity that moves soils or substantially alters the preexisting vegetated or man-made cover of any land. This includes, but is not limited to, grading, digging, cutting, scraping, stockpiling or excavating of soil, placement of fill materials, paving, pavement removal, exterior construction, substantial removal of vegetation where soils are disturbed including but not limited to removal by clearing or grubbing, or

any activity which bares soil or rock or involves streambed alterations or the diversion or piping of any watercourse. Development does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities (i.e., land disturbances) required to protect public health and safety.

6. "Development runoff requirements" means the provisions in the Phase II Stormwater Permit that contain design standards or performance criteria to address both the construction and post-construction phase impacts of new projects and redeveloped projects on stormwater quality and quantity.
7. "Director of Public Works" or "Director" means the Director of the City of Calistoga Department of Public Works.
8. "Discharge of a Pollutant" or Discharge means the release, addition or deposit of any fluid, liquid, solid, flowing substance, or any other material or substance to the City's stormwater conveyance system.
9. "Employee training program" means a documented employee training program which may be required to be implemented by a business pursuant to a stormwater pollution prevention plan for the purpose of educating its employees on methods of reducing discharge of pollutants to the stormwater conveyance system.
10. "Enforcement agency" means the City of Calistoga Public Works Department.
11. "Enforcement official" or "Authorized Enforcement Official" means the Director of Public Works or his or her designee or any agent of the City authorized to enforce compliance with this Chapter.
12. "Erosion and Sediment Control Plan" means a plan prepared to control erosion and sediment discharges from a construction site that meets those criteria identified in the most recent version of the Napa Countywide Erosion and Sediment Control Plan Model Template any issued Technical Bulletins.
13. "Illicit discharge" means any discharge to a stormwater conveyance system or receiving water that is not composed entirely of stormwater that is prohibited under local, state, or federal statutes, ordinances, codes or regulations. The term illicit discharge does not include discharges that are regulated by an NPDES permit (other than the Phase II Stormwater Permit) and discharges that are identified under the Exceptions to Discharge Prohibition section of this Chapter.
14. "Illicit connection" means a pipe, facility, or other device, whether on the surface or subsurface, which allows an illicit discharge to enter the stormwater conveyance system or receiving water regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency.
15. "Incidental irrigation runoff" (i.e. nonagricultural) means unintended

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

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

17. "Maximum extent practicable (MEP)" means a technology-based standard established by Congress in the Clean Water Act section 402(p)(3) (B)(iii) for stormwater discharge that municipalities must meet. MEP is generally the result of emphasizing pollution prevention and source control best management practices (BMPs) primarily (as the first line of defense) and in combination with treatment methods serving as backup (additional line of defense). The MEP approach is an ever evolving, flexible and advancing concept, which considers technical and economic feasibility. As knowledge about controlling urban runoff continues to evolve, so does what constitutes MEP.

18. "National Pollutant Discharge Elimination System (NPDES) Permit" means a permit issued by the U.S. EPA, State Water Resources Control Board, or the California Regional Water Quality Control Board pursuant to the Clean Water Act (CWA) that authorizes discharges to waters of the United States and requires the reduction of pollutants in the discharge.

19. "NCSPPP" is the Napa County Stormwater Pollution Prevention Program.

20. "Non-stormwater discharge" means any discharge to the stormwater conveyance system that is not entirely composed of stormwater.

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

22. "Phase II Stormwater Permit" means the NPDES general stormwater permit applicable to the City of Calistoga, Water Quality Order No. 2013-001-DWQ, General Permit No. CAS000004, and any subsequent amendment, reissuance or successor to this NPDES permit.

23. "Plan standard" means any and/or all applicable requirements of the Water Quality Control Plan for Basin 2, adopted by the Regional Water Quality Control Board, San Francisco Bay Region, and all subsequent amendments.

24. "Pollutant" means any "pollutant" defined in Section 502(6) of the CWA (33 U.S.C. 1362) or incorporated into the California Water Code Section 13373. Pollutants may include, but are not limited to the following:

a) Residential, commercial and industrial waste (such as trash, litter, fuels, solvents, detergents, plastic pellets, hazardous substances, fertilizers, pesticides, slag, ash, and sludge);

b) Metals such as cadmium, lead, zinc, silver, nickel, chromium, copper and non-metals such as phosphorous and arsenic;

c) Petroleum hydrocarbons (such as fuels, lubricants, surfactants, waste oils, solvents, coolants, and grease);

d) Excessive eroded soil, sediment, and particulate materials in amounts that may adversely affect the beneficial use of the receiving waters, flora or fauna of the State.

e) Animal wastes (such as discharge from confinement facilities, kennels, pens, recreational facilities, stables, and show facilities; and

f) Substances having characteristics such as pH less than 6 or greater than 9, or unusual coloration or turbidity, or excessive levels of fecal coliform, or fecal streptococcus, or enterococcus.

25. "Post-Construction Measures Requirements" means the provisions in Section E.12 of the Phase II Stormwater Permit that contain design standards or performance criteria to address the Post-construction phase impacts of new projects and redeveloped projects.

26. "Premises" means any building, lot, parcel, land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

27. "Receiving Waters" means all waters that are "Waters of the United States" within the scope of the Federal Clean Water Act or Waters of the State" within the scope of the State Water Code, including but not limited to natural streams, creeks, rivers, reservoirs, lakes, ponds, water in vernal pools, lagoons, estuaries, bays, the Pacific Ocean, and ground water.

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

29. "Stormwater Control Plan (SCP)" means a plan that meets those criteria contained in the most recent version of the BASMAA Post Construction Manual and any issued Technical Bulletins.

30. "Stormwater conveyance system" or "Storm Drain" means those artificial and natural facilities within the incorporated area of the City of Calistoga, whether publicly or privately owned, by which stormwater may be conveyed to a watercourse or receiving water, including any roads with drainage systems, streets, catch basins, natural and artificial channels, aqueducts, stream beds, gullies, curbs, gutters, ditches, and natural and artificial channels or storm drains.

31. "Stormwater Facilities Operation and Maintenance Plan" means a plan

identifying the locations and characteristics of stormwater management facilities on a newly developed or redeveloped site and describing maintenance activities, schedules, and responsibilities to ensure the ongoing proper operation of those facilities.

32. "Stormwater Management Facility" means any device designated to detain, retain, filter, or infiltrate stormwater.
33. "Stormwater pollution prevention plan (SWPPP)" means a document which describes the best management practices to be implemented by the owner or operator of a business or construction site to eliminate illicit discharges and/or reduce to the maximum extent practicable pollutant discharges to the stormwater conveyance system. SWPPP's have to be prepared by a Qualified Stormwater Developer (QSD) and inspected by a Qualified Stormwater Practitioner (QSP).
34. "Technical Bulletin" means a document issued by and under the authority of the Director of Public Works to revise, amend, augment guidance manuals, documents, and templates including but not limited to the BASMAA Post-Construction Manual and the Napa Countywide Erosion and Sediment control Plan Model Template.
35. "Urban runoff" means stormwater runoff from an urbanized area including streets and adjacent domestic and commercial properties that carry pollutants of various types into the storm drainage system and receiving waters.
36. "Watercourse" means any natural stream, whether flowing continuously or not, that is fed from permanent or natural sources, and includes, without limitation rivers, creeks, runs, and rivulets.
37. Quantity – Stormwater peak flow and/or volume
38. Quality – Stormwater pollutants

B. Any term(s) defined in the Federal Clean Water Act and the California Water Code, as amended, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency, as amended, and/or defined in the Phase II Stormwater Permit, and which are not specifically defined in subsection A of this section shall, when used in this Chapter, have the same meaning as set forth in said act or regulation.

19.05.040 Conflicts with Other Laws.

In the event of any conflict between this chapter and any federal or state law or regulation, that requirement which establishes the higher standard for public health or safety shall govern. Nothing in this Chapter is intended to duplicate nor shall preclude enforcement of any other applicable law, regulation, order, or permit.

19.05.050 Discharge Prohibitions.

A. Illicit Discharges. Except as provided in Section 19.05.060 of this Chapter, it is unlawful for any person to make or cause to be made any illicit discharge. Notwithstanding the exemptions provided by Section 19.05.060A and B of this Chapter, if the Regional Water Quality Control Board or the Enforcement Official determines that any otherwise exempt discharge causes or significantly contributes to violations of any plan standard, or conveys significant quantities of pollutants to surface water(s) or watercourse(s), or is a danger to public health or safety, such discharge shall be prohibited from entering the stormwater conveyance system

B. Illicit Connection. The construction, use, maintenance or continued existence of illicit connections to a storm drain or watercourse is prohibited. This prohibition includes illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection.

C. Litter, Dumps, and Stockpiles. Throwing, depositing, leaving, abandoning, maintaining or keeping materials or wastes on public or private lands in a manner and place where they may result in an illicit discharge is prohibited.

19.05.060 Exceptions to Discharge Prohibition.

Subject to the authority granted to the Enforcement Official in this Chapter, the following discharges are exempt from the prohibition set forth in Section 19.05.050:

A. Any discharge or connection regulated under a NPDES permit (other than the Phase II Permit, e.g. agricultural or industrial under different permit) issued to the discharger and administered by the State of California pursuant to Division 7, Chapter 5.5 of the California Water Code, provided that the discharger is in compliance with all requirements of the permit and all other applicable laws and regulations;

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

C. Discharges from the following activities, which do not cause or contribute to the violation of any plan standard provided any pollutant discharges are identified and appropriate control measures to minimize the impacts of such discharges are developed and implemented:

    1. Water line flushing and other discharges from potable water sources,
    2. Rising ground waters or springs,
    3. Passive foundation and footing drains,
    4. Uncontaminated infiltration to storm drains,
    5. Water from crawl space pumps and basement pumps,

6. Air conditioning condensate,
7. Individual residential vehicle washing,
8. Natural flows from riparian habitats and wetlands,
9. Dechlorinated swimming pool discharges,
10. Diverted stream flows,
11. Uncontaminated ground water infiltration (as defined at 40 CFR S35.2005(20) to separate storm sewers,
12. Uncontaminated pumped ground water,
13. Incidental irrigation runoff from landscaped areas provided the conditions in Item D of this section are met.

D. Incidental irrigation runoff is the unintended amounts of runoff that leave the area of application such as minimal overspray. Water leaving the intended area of application is not incidental if it is due to the design, excessive application, or intentional overflow or application. Irrigation systems must be designed to conserve water and prevent water leaving the area of application. Persons responsible for controlling irrigation systems shall prevent excessive irrigation runoff by:

1. Detecting and correcting leaks within 72 hours of discovering the leak.
2. Properly designing and aiming sprinkler heads to only irrigate the planned application area.
3. Not irrigating during precipitation events.
4. Where recycled water is used for irrigation, designing and managing holding ponds to such that no discharge occurs unless it is the result of the 25 year-24 hour storm event. Any releases from holding ponds must be reported to the Regional Water Board and the City of Calistoga within 24 hours of the discharge.

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

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

19.05.070 Proof of Compliance With NPDES Permit.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall provide proof of compliance with said permit and undertake all activities required by such permit in a form acceptable to the Enforcement Official prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable

cause.

19.05.080 Concealment and Abetting.

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

19.05.090 Reduction of Pollutants in Stormwater.

Any person engaged in activities which may result in pollutants entering the stormwater conveyance system shall, to the maximum extent practicable, comply with the requirements set forth below to reduce the risk of illicit discharge and/or pollutant discharge.

A. Urban Runoff.

1. Any person engaged in activities which will, or may result in, pollutants entering the storm drains, shall undertake all practicable measures to cease such activities, and/or eliminate or reduce such pollutants through the implementation of BMPs, consistent with the California Stormwater Quality Association BMPs. Such activities shall include, but not be limited to, ownership and use of parking lots, gasoline stations, industrial facilities, commercial facilities, ground disturbing activities, and stores fronting city streets.
2. Except for pollutants lawfully disposed of by way of containers or at lawfully established dumping grounds, no person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private lot of land in the City, such that, in the opinion of the authorized enforcement official, the same might be or become a pollutant discharged to the waters of the United States.
3. The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real property in the City in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt and/or littler to the maximum extent practicable. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property as required for the recycling or disposal of garbage.

B. Business Related Activities.

1. Stormwater Pollution Prevention Plan. The Enforcement Official may require any business in the City that is engaged in activities, which may result in pollutant discharges to develop and implement a stormwater pollution prevention plan, which shall, without

limitation, include an employee training program. Business activities, which may require a stormwater pollution prevention plan, include, but are not limited to, maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading or fueling, or cleanup procedures including grease disposal which are carried out partially or wholly out of doors.

2. Persons owning or operating a parking lot, gas station tarmac, or similar structure shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the city storm drains.

C. Development and Redevelopment Activities. Nothing in this section shall limit the City's ability to establish requirements to control runoff to prevent flooding for the protection of safety and property.

1. Prior to and/or during construction, the enforcement official may establish controls on the volume and rate of stormwater runoff from new developments and redevelopment as may be appropriate to minimize peak flows or total runoff volume, and to mimic the pre-development site hydrology (for 2, 10, 100yr, 24hour events or as directed by Public Works Director). These controls may include limits on impervious area or provisions for detention and retention of runoff on-site.

2. The enforcement official may require, as a condition of project approval, permanent structural controls designed for the removal of sediment and other pollutants and for control on the volume and rate of stormwater runoff from the project's added or replaced impervious surfaces. The selection and design of such controls shall be in accordance with criteria established or recommended by federal, state, local agencies, and where required, the BASMAA Post-Construction Manual and any issued Technical Bulletins. Where physical and safety conditions allow, the preferred control measure is to retain drainage ways, above ground and in as natural a state as possible or other biological methods such as bioretention areas.

D. Stormwater Control Plan Requirements

1. For each new development and redevelopment project subject to the post-construction measures requirements, or where required by the nature and extend of a proposed project and where deemed appropriate by the agency, every applicant shall submit a Stormwater Control Plan (SCP) that meets the criteria in the most recent version of the BASMAA Post-Construction Manual and any issued Technical Bulletins, and shall implement conditions of approval that reduce stormwater pollutant discharges through the construction, operation and maintenance of source control measures, low impact development design, site design measures, stormwater treatment measures and hydromodification management measures, increases in runoff shall be managed in

accordance with the post-construction requirements.

2. The SCP is separate and distinct from the ESCP requirements described herein.Where projects are required to have a SCP, project applicants shall follow the appropriate SCP template, based on the project type, in the BASMAA Post-Construction Manual and any issued Technical Bulletins.

3. Implementation of an approved SCP and submittal of an approved Stormwater Facilities Operation and Maintenance Plan by the applicant shall be a condition precedent to the issuance of a building permit or a construction permit for a project subject to this section.

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

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

6. All stormwater management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines are outlined in the BASMAA Post-Construction Manual and any issued Technical Bulletins.

7. All stormwater management facilities shall be maintained according to the approved Stormwater Facilities Operation and Maintenance Plan. The person(s) or organization(s) responsible for maintenance shall be designated in the plan. Unless a different time period is provided for in the plan, those responsible for maintenance shall inspect the stormwater management facilities at least annually. The Stormwater Facilities Operation and Maintenance Plan shall describe how the maintenance costs will be funded. Upon the failure of a responsible person to maintain the stormwater management facilities in accordance with this chapter or the plan, the City may perform and maintenance and recover its costs from the responsible person as provided in Section 19.05.160.

8. For each new development and redevelopment project subject to the post-construction measures requirements, or where deemed appropriate by the agency, access by the City to stormwater management facilities for inspections, as provided in Section 19.05.110 and through such means as may be appropriate,

including, but not limited to, legal agreements, recorded covenants or easements shall be provided by the property owner.

9. All project proponents and their successors, or successors in fee title, in control of a new development and redevelopment project subject to the post-construction measures requirements, shall submit on of the following as a condition prior to final inspection and approval of building permit closure:

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

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

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

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

E. Ground Disturbing Activities.

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

2. All construction plans and applications submitted to the City pursuant to any permit applications shall implement appropriate BMPs to prevent the discharge of construction sediments, wastes or contaminants from construction materials, tools, and equipment from entering a City storm drain or watercourse.

   a. Construction-phase BMPs include erosion and sediment controls and pollution prevention practices. Erosion control BMPs may include, but are not limited to, scheduling and timing of grading activities, timely revegetation of graded areas, the use of hydroseed and hydraulic mulches, and installation of erosion control blankets. Sediment control may include properly sized detention basins, dams, or filters to reduce entry of suspended sediment into the storm drain

system and watercourses, and installation of construction entrances to prevent tracking of sediment onto adjacent streets. Pollution prevention practices may include designated washout areas or facilities, control of trash and recycled materials, tarping of materials stored on-site, and proper location of and maintenance of temporary sanitary facilities. The combination of BMPs used, and their execution in the field, must be customized to the site using up-to-date standards and practices. The agency will provide references to current guidance manuals and BMP information on request.

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

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

d. The City has the authority to review designs and proposals for construction activities and new development and redevelopment sites to determine whether adequate BMPs will be installed, implemented, and maintained during construction and after final stabilization (post-construction).

e. All construction plans and applications for construction activity submitted to the City shall consider the potential for erosion and sedimentation at the construction site, and shall include appropriate erosion and sedimentation controls.

f. An Erosion and Sediment Control Plan (ESCP) shall be required for:

i. Any project subject to a grading permit under Section 16.16.050.

ii. Any project, subject to another City permit that has the potential for significant erosion and/or significant non-stormwater discharges of sediment and/or construction site waste including but not limited to:

(a) Projects within 50 feet of the storm drain system, or

(b) Projects disturbing 10,000 square feet (sf) of soil

or more, or

(c) Projects installing new storm drains that discharge to the storm drain system or watercourse, or

(d) Projects on slopes of 5% or more.

iii. Any other project as required by the enforcement official considering factors such as whether the project involves hillside soil disturbance, rainy season construction, construction near a watercourse, or any other condition or construction site activity that could lead to a non-stormwater discharge to a storm drain if not managed by effective implementation of an ESCP.

3. The ESCP shall be submitted for review and approval by the enforcement official. The project applicant shall follow the most recent version on the Napa Countywide Erosion and Sediment Control Plan Model Template and any issued Technical Bulletins to prepare the ESCP. At a minimum, the ESCP shall include:

   a. Description of the proposed project and soil disturbing activity.

   b. Site specific construction-phase BMPs.

   c. Rationale for selecting the BMPs, including if needed, soil loss calculations.

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

   e. Proof that the applicant has obtained the applicable permits associated with the soil disturbing activity must be submitted prior to approval of the ESCP.

   f. Project information as required by the ESCP applicant checklist provided in the Napa Countywide Erosion and Sediment Control Plan Model Template and any issued Technical Bulletin's:

      i. Owner and contractor contact information;

      ii. Site information (location, status, size of project, size of disturbed area);

      iii. Project watershed;

      iv. Planned start date and anticipated completion date (as may be revised from time to time).

4. For projects subject to the State's General Construction Activity Stormwater Permit (CGP), project applicants may submit a Stormwater

Pollution Prevention Plan developed pursuant to the CGP in lieu of submitting an ESCP.

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

F. Compliance with Stormwater General Permits. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall provide the City with proof of compliance with said permit in a form acceptable to the enforcement official prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

19.05.100 Containment and Notification of Spills.

Any person owning or occupying a premises who has knowledge of any release of any pollutant or illicit discharge from or across those premises which might enter the stormwater conveyance system, other than a release or discharge that is permitted by this Chapter, shall immediately take all reasonable action to contain and abate the release of pollutants or illicit discharge, and also shall promptly notify the enforcement agency within twenty-four (24) hours of the release of any pollutant or illicit discharge.

19.05.110 Inspection Authority.

Whenever necessary to make an inspection to enforce any of the provisions of this Chapter, or whenever the Enforcement Official has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of this Chapter, the Enforcement Official may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the officer by this Chapter. Any request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made upon issuance of a warrant issued by a court of competent jurisdiction. In the event the owner or occupant refuses entry after such request has been made, the Enforcement Official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. Inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Chapter, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater contamination, illicit discharge, non-stormwater discharge to the stormwater conveyance system, or similar factors.

A. Sampling Authority. During any inspection, the Enforcement Official may take samples as necessary in order to implement and enforce the provisions of this Chapter. This authority may include the installation of sampling and

metering devices on private property, or requiring the person owning or occupying the premises to supply samples.

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

C. Fee Authority. The enforcement agency has the authority to conduct inspections and collect fees for the purpose of ensuring compliance with this Chapter from any person or business issued one or more of the following permits:

1. Hazardous Material Business Plan;
2. Food establishments except restricted food service transient occupancy establishments;
3. Building permits;
4. Grading permits.

A fee schedule for the purpose of enforcing this Chapter shall be set by Council resolution.

D. Records Review. The authorized enforcement official may demand the production of such records as is necessary to determine compliance with the provisions of this chapter and for the purpose of examination and copying.

19.05.120 Enforcement Authority.

The Enforcement Official is authorized to enforce the provisions of this Chapter and to exercise any enforcement powers authorized or provided in this Chapter, including without limitation the imposition of administrative requirements, orders and penalties pursuant to this Chapter, as may be necessary to effectively implement and enforce this Chapter. Without limitation on the enforcement authority set forth above, the Enforcement Official is authorized to exercise any and all of the following supplemental enforcement powers as he or she determines may be necessary or appropriate in the enforcement official's judgment under the circumstances:

A. Administrative Actions. In addition to any other enforcement powers and/or remedies provided in this chapter, an authorized enforcement official may issue an order to a person to cease and desist from the discharge, practice, operation or other activity causing or likely to cause a violation of this chapter. Such order shall be directed to those persons in violation of the chapter stating clearly and concisely the nature of the violation, the requirements for compliance, a timetable for compliance and such other remedial and/or preventive action as may be necessary. Upon the violator's failure to comply with such an order, the City shall take further enforcement action as specified

in this chapter, or in accordance with any other appropriate provision of local, state or federal law. At the discretion of the authorized enforcement official, enforcement may take the following forms:

1. Verbal Warnings, as may be issued during inspections;
2. Warning Letters and Orders to Abate Pollution;
3. Warning Letters with requirements to submit written reports and/or fines (per 19.050.160);
4. Civil Actions or Criminal Enforcement actions as authorized by the City Municipal Code.

B. Notice of Violation (NOV). Whenever the Enforcement Official determines that any person owning or occupying a premises has violated or is violating this Chapter or order issued hereunder, the Enforcement Official may serve, by personal service, or by registered or certified mail, upon said person a written NOV. Within thirty (30) days of the receipt of this notice, or shorter period as may be prescribed in the NOV, the person to whom the NOV has been issued shall provide the Enforcement Official a written explanation or denial of the violation and, if the person does not deny the violation, a plan for the satisfactory correction and prevention thereof, which shall include without limitation specific actions or mitigations required by the Enforcement Official in the NOV. Submission of this plan shall in no way relieve the person of liability for any violation before or after receipt of the NOV.

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

D. Notice to Clean and Abate. The Enforcement Official may require any person owning or occupying a premises to clean up and abate any release of one or more pollutants on those premises, which otherwise would result in a violation of this Chapter. The Enforcement Official may also order abatement of activities or practices, which otherwise reasonably would result in such a violation.

E. Mitigation. The Enforcement Official shall have authority to order the mitigation of any condition, activity or circumstance which otherwise would result in or contribute to Illicit discharges.

F. Stormwater Pollution Prevention Plan. The Enforcement Official shall have the authority to establish elements of a stormwater pollution prevention plan, and to require any business or person to adopt and implement such a plan, as may be reasonably necessary to fulfill the purposes of this chapter.

G. Best Management Practices. The Enforcement Official may establish and impose the requirements of best management practices for any premises.

H. Seasonal and Recurrent Nuisance. If any violation of this chapter constitutes

a seasonal and recurrent nuisance, the Enforcement Official shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

I. Emergency Orders and Abatements. The Enforcement Official may order the abatement and cleanup of any discharge from any source to the stormwater conveyance system when, in the opinion of the Enforcement Official, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, or the environment. Discharges in violation of this Chapter are considered as presenting an imminent danger to the environment. In situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety, or welfare, or the environment or a violation of a NPDES permit, the city may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the owner and shall be collectable in accordance with the provisions of this Chapter.

J. Contents of Notice. Any NOV, cease and desist order, or other civil notice or civil order issued by the enforcement official pursuant to this Chapter shall include a copy of Section 19.05.130 of this Chapter outlining appeal rights.

K. The City is authorized to file a citizen suit pursuant to CWA Section 505(a), seeking penalties, damages and orders compelling compliance and other appropriate relief.

L. The City may notify EPA Region IX, the Regional Board, or any other appropriate state or local agency, for any alleged violation of this Chapter.

19.05.130 Appeal.

Any person served with a NOV, who is subject to a cease and desist order, who is subject to an abatement order, who is required to perform monitoring, analyses, reporting and/or corrective activities by an authorized Enforcement Official, or who is otherwise aggrieved by any decision of the Enforcement Official, may appeal the decision to the City Council. Such appeal shall be in writing, shall fully state all legal and factual basis for the appeal, and shall be filed with the City Clerk within ten (10) days following the receipt of the NOV or decision was served on the person. Upon receipt of such appeal, the City Clerk shall set the matter for an administrative hearing by the City Council at the earliest practical date, and notice of the hearing shall be provided to the person appealing. At the hearing, the City Council may hear additional evidence, and shall overrule, affirm or modify the Enforcement Official's decision. The decision by the City Council shall be in writing, shall set forth the City Council's findings, and shall be final. Any appeal that does not satisfy all of the requirements of this Chapter shall be invalid, and shall not be heard or considered by the City Council, in which case the Enforcement Official's decision shall be final.

19.05.140 Violations Constituting Misdemeanors.

Any violation of this Chapter may be punishable as a misdemeanor.

19.05.150 Remedies Not Exclusive.

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

19.05.160 Costs And Expenses of Enforcement; Civil Penalties; Authorization For Special Assessment Against Subject Property; Notice.

A. The City shall be entitled to reimbursement from any person violating any requirement or provision of this Chapter for all costs and expenses incurred in connection with the enforcement of this Chapter. Such reimbursable costs and expenses shall include, but are not limited to, costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit, salaries, attorney fees, expert fees, testing and monitoring expenses, and other expenses recoverable under state law, incurred during any inspection or investigation conducted pursuant to this Chapter. In addition to any and all other costs and expenses, any person who or entity that violates any provision of this Chapter shall be liable and responsible for, and shall pay to the City, a civil penalty of $1,000.00 for each violation.

B. The Enforcement Officer shall keep an itemized statement of costs and expenses incurred by the City in enforcing the provisions of this Chapter, the costs and expenses incurred by the City in causing the owner or responsible person to abate the violation of any provision of this Chapter and the civil penalties imposed pursuant to this Section. The costs and expenses, including but not limited to the incidental expenses of enforcing this Chapter or causing the owner or responsible person to abate the violation of this Chapter, and the civil penalties, shall be billed to the owner or responsible persona and shall become due and payable thirty (30) days thereafter. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect, for administration and enforcement including, but not limited to, attorney's fees; costs incurred in inspecting the property; costs incurred in documenting the violation; the expenses and costs of the City in preparation of notices, specifications and contracts and in inspecting the subject premises or property; and the cost of preparing, printing and mailing the notices and documents hereunder. The Enforcement Officer shall provide a copy of this statement of costs, expenses and civil penalties to the owner of the subject premises or property and to any responsible person(s). The owner of the subject premises or property, as well as any responsible person(s) shall be liable and responsible for, and required to pay, all such costs, expenses and civil penalties.

C. The owner and/or responsible person(s) may request an administrative hearing before the City Council to appeal the statement of costs, expenses and civil penalties. The request for a hearing shall be filed with the City Clerk in writing within ten (10) days of receipt of the statement, and shall fully state all factual and legal bases for the appeal. Any appeal that does not fully satisfy all of the requirements of this Section shall be invalid and shall not be heard by the City Council, in which case the statement of costs, expenses and civil penalties shall be final.

D. For any appeal satisfying the requirements of this Section, the City Council shall review the statement of costs, expenses and civil penalties and any evidence presented by the owner or responsible person(s), as well as the Enforcement Official, and shall affirm, overrule or modify the decision of the Enforcement Official in imposing the costs, expenses and/or civil penalties. The City Council shall consider in making its decision (1) the nature, circumstances, extent and gravity of the violation; (2) the extent to which the violation was willful and/or intentional; and (3) whether or to what extent the violation has continued or recurred. The City Council's decision shall be in writing, shall state the City Council's findings, and shall be mailed to the owner and all responsible persons. The decision of the City Council shall be final.

E. If the property owner does not pay the costs, expenses and civil penalties in full within thirty (30) days after receipt of the statement of costs pursuant to Section 19.05.160 B or, if requested, after any decision on appeal by the City Council pursuant to Section 19.05.160 C which confirms in whole or in part the costs, expenses and civil penalties, the costs, expenses and civil penalties shall become a special assessment against the real property upon which the violation(s) of this Chapter occurred. The assessment shall continue until it is paid, together with interest at the rate of twelve percent (12%) a year computed from the date of confirmation of the statement until payment. The assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All acts applicable to levy, collection and enforcement of municipal taxes apply to this special assessment.

F. The City shall file in the office of the County Recorder a certificate substantially in the following form:

NOTICE OF SPECIAL ASSESSMENT

Under the authority of Government Code Section 38773.5 and Chapter 19.05 of the Calistoga Municipal Code, the City did on _____, _____, enforce the provisions of Calistoga Municipal Code Chapter 19.05, the violation of which is deemed a public nuisance, upon the real property hereunder described and

then on _____, _____, did assess the costs expenses and civil penalties of the enforcement upon the real property and/or the costs and expenses of causing the owner or responsible person to comply with the provisions of Chapter 19.05. The City of Calistoga claims a special assessment on the real property for such costs, expenses and civil penalties in the amount of $_____. This amount is a special assessment against the real property until it is paid, with interest at the rate of twelve percent (12%) a year from _____, ____ *(insert date of confirmation of statement)*, and discharged of record. The assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All acts applicable to levy, collection, and enforcement of municipal taxes apply to this special assessment. The real property referred to above, and upon which the special assessment is claimed is that certain parcel of land situated within the City of Calistoga, County of Napa, and State of California, more particularly described as follows: _____, Calistoga, California.

Dated: _____
By: _____

G. Any monies recovered under this Section shall be used exclusively for costs and programs associated with monitoring and establishing stormwater discharge pollution control systems, implementing or enforcing the provisions of this Chapter and/or creating educational and/or remedial programs relating to stormwater discharge pollution.

19.05.170 Civil Actions.

In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City Attorney. In any such action, the City Attorney shall be authorized to any or all of the following remedies:

1. A temporary restraining order and/or preliminary and/or permanent injunction;
2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
3. Costs incurred or required to remove, correct, or terminate the adverse effects resulting from the violation;
4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.
5. Attorney's fees.

19.05.180 Violations Deemed a Public Nuisance.

In addition or as an alternative to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety or welfare and is thus deemed a nuisance. Any such nuisance may be abated and/or restored by the Enforcement Official and also may be abated pursuant to Chapter 19.05 of this Code. The City Attorney also is authorized to pursue any remedy he or she deems necessary or appropriate to abate, enjoin, or otherwise compel the cessation of the nuisance.

SECTION 2. Section 19.08.060 (Requirements for Erosion Control Plans) of the Calistoga Municipal Code is deleted in its entirety.

SECTION 3. Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date and Operational Dates. This ordinance shall become effective thirty (30) days following adoption.

THIS ORDINANCE was introduced with first reading waived at a regular meeting of the Calistoga City Council on the **3rd day of February, 2015** and was passed and adopted at a regular meeting of the Calistoga City Council on the **17th day of February, 2015**, by the following vote:

AYES:	**Vice Mayor Dunsford, Councilmembers Barnes, Lopez-Ortega and Kraus and Mayor Canning**
NOES:	**None**
ABSTAIN:	**None**
ABSENT:	**None**

CHRIS CANNING, Mayor

ATTEST:

Kathy Flamson

KATHY FLAMSON, City Clerk