

ORDINANCE NO. 26-_____

AN ORDINANCE AMENDING MULTIPLE PARTS OF ARTICLE 8 (STORMWATER QUALITY MANAGEMENT AND DISCHARGE CONTROL CODE) OF CHAPTER 3 (PUBLIC PROPERTY AND PUBLIC WORKS) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO STORMWATER QUALITY MANAGEMENT AND DISCHARGE CONTROL CODE AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Part 1 (General Provisions) of Article 8 (Stormwater Quality Management and Discharge Control Code) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

3.8.103: DEFINITIONS:

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COLORADO DISCHARGE PERMIT SYSTEM (CDPS) Permit: A permit issued by Colorado Department of Public Health and Environment.

CONSTRUCTION ACTIVITY: Refers to ground surface disturbing and associated activities (land disturbance), which include, but are not limited to, clearing, grading, excavation, demolition, installation of new or improved haul roads and access roads, staging areas, stockpiling of fill materials, and borrow areas. Activities that include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility are not considered construction activities. Activities to conduct repairs that are not part of regular maintenance and activities that are for replacement are considered construction activities and are not considered routine maintenance. Repaving activities where underlying or surrounding soil is cleared, graded, or excavated as part of the repaving operation are construction activities. ~~Activities subject to NPDES (see definition of National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permits) construction permits. These include construction projects resulting in land disturbance of one acre or more. Activities include, but are not limited to, clearing and grubbing, grading, excavating and demolition.~~

CONTROL MEASURES: Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of State

waters. Control measures also include treatment, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal, or drainage from material storage. Additionally, control measures include structural and nonstructural controls and may be temporary or permanent.

DIRECTOR: The Director of Public Works or the Director of Public Works' authorized representative.

HAZARDOUS MATERIALS: Any material, including any substance, waste, or combination thereof, defined as hazardous material or hazardous waste by the Federal Clean Water Act, Colorado State statutes or regulations, the City Code, or the NPDES ~~MS4~~ permit.

~~ILLEGAL~~ **ILLCIT DISCHARGE: Any discharge to an MS4 (see definition of Municipal Separate Storm Sewer System Or MS4) that is not composed entirely of stormwater except the following: discharges specifically authorized by a Colorado discharge permitting system (CDPS) permit and allowable nonstormwater discharges under the City's Municipal stormwater discharge permit (MSDP) MS4 permit.**

ILLICIT CONNECTIONS: Either of the following:

(A) Any drain or conveyance, whether on the surface or subsurface, which allows an ~~illegal~~ **illicit** discharge to enter the MS4 including, but not limited to, any conveyances which allow any stormwater discharge including sewage, process wastewater and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether the drain or connection had been previously allowed, permitted or approved by a government agency; or

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INDUSTRIAL ACTIVITY: Activities **required to obtain a Colorado Discharge Permit System (CDPS)** ~~subject to NPDES industrial permits as defined in accordance with CCR 61.3(2)(e)(iii) 40 CFR section 22.26(b)(14).~~

MS4 PERMIT: The permit issued by CDPHE through the Colorado Discharge Permit System (CDPS) and identified as Permit No. COS000004. The permit authorizes discharges from the City's MS4.

MUNICIPAL SEPARATE STORM SEWER SYSTEM OR MS4: A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) **owned or operated by the State, city, town, county, district, association, or other public body and designed or used for collecting or conveying stormwater:**

~~(A) Owned or operated by the State or a city, town, county, district, association or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including a sewer district, flood control district or drainage district, or similar special districts under State law, or a~~

~~designated and approved management agency under section 208 of the Clean Water Act that discharges to State waters;~~

~~(B) — Designed or used for collecting or conveying stormwater;~~

~~(A)(C)~~ Which is not a combined sewer; and

~~(B)(D)~~ Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR section 122.2 and 5 CCR 1002-20, 4.3.7.X(3-91).

* * *

PERMANENT CONTROL MEASURES (PCMs): Control measures designed to permanently mitigate water quality impacts due to development and redevelopment projects. Examples of permanent control measures include, but are not limited to, extended detention basins, sand filters, rain gardens, and underground vaults. Permanent control measures include green infrastructure measures used to provide permanent water quality treatment on a site following the volume reduction treatment standard.

~~POLLUTANT: Includes~~ **POLLUTANT:** dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, ~~municipal or agricultural waste.~~

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SE MANAGER: The Stormwater Enterprise Manager or the Stormwater Enterprise Manager's designated representative.

~~STATE WATERS: Any and all surface and subsurface waters which are contained in or flow in or through this State, but~~ **STATE WATERS:** Any and all surface and subsurface waters which are contained in or flow in or through this State, but **does** not include ~~sewage~~ waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed. **This definition can include water courses that are usually dry. State waters do not include subsurface waters. State waters are also known as waters of the State.**

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3.8.104: APPLICABILITY:

This article shall apply to all **discharges that enter or may enter the MS4** ~~water entering the MS4~~ generated on or flowing from any developed ~~and~~ undeveloped lands lying within the City of Colorado Springs.

3.8.105: RESPONSIBILITY FOR ADMINISTRATION:

The **SE Manager** ~~City Engineer~~ shall administer, implement and enforce the provisions of this article. Any powers granted or duties imposed upon the **SE Manager** ~~City Engineer~~

may be delegated in writing by the **SE Manager**~~City Engineer~~ to persons or entities (~~collectively, the "City Engineer"~~) acting in the beneficial interest of or in the employ of the City.

Nothing in this chapter shall be construed to preclude the SE Manager from seeking other enforcement actions or remedies in addition to or in lieu of the remedies granted by this article. Enforcement actions or remedies provided in this article shall be cumulative and in addition to any other remedies which may be available to the SE Manager.

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Section 2. Part 2 (Discharge Prohibitions) of Article 8 (Stormwater Quality Management and Discharge Control Code) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

3.8.201: PROHIBITION OF ~~ILLEGAL~~**ILLCIT** DISCHARGES:

(A) **It is prohibited to discharge, contribute to discharge** ~~It shall be unlawful to discharge or cause to be discharged into the MS4 any materials, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards or that could cause the City to be in violation of its MSDP4 permit other than stormwater. It shall be unlawful~~ **is prohibited to spill, store, handle or apply any pollutant in a manner that will may cause exposure to rainfall or runoff and discharge or may discharge to the MS4 and to State waters or waters of the United States. It is prohibited to allow another to store, handle or apply any pollutant on any property in a manner that may cause exposure to rainfall or runoff and discharge or may discharge to the MS4 and to State waters or waters of the United States.**

(B) * * *

~~(1) Discharges pursuant to an NPDES (CDPS) permit and discharges due to firefighting activities.~~

~~(21) Discharges from the following activities will not be considered a source of pollutants to the MS4 and to State waters when properly managed to ensure that no potential pollutants are present, and shall not be considered illegal~~ **illicit discharges as long as these discharges do not come in contact with unpermitted construction or industrial activities prior to discharge to the MS4, or unless determined by the City to be significant contributors of pollutants to the MS4, or to cause a violation of the provisions of the Clean Water Act, the MS4 permit, or this article: landscape irrigation, lawn watering, diverted stream flows, irrigation return flow, rising ground waters, uncontaminated groundwater infiltration to separate**

storm sewers, uncontaminated pumped groundwater, springs, flows from riparian habitats, Water line flushing in accordance with CDPHE's Low Risk Policy Discharge Guidance: Potable Water, discharges from potable water sources in accordance with CDPHE's Low Risk Discharge Guidance: Potable Water, foundation drains, water from crawl space pumps, and footing drains, air conditioning condensation, individual residential car washing, dechlorinated swimming pool and hot tub discharges in accordance with CDPHE's Low Risk Discharge Guidance: Discharges from Pools, Fountains and Other Similar Type Facilities that are Fed Solely by Potable Water, water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction, dye testing in accordance with the manufacturers' recommendations, stormwater runoff with incidental pollutants, discharges resulting from emergency firefighting activities, discharges authorized by a CDPS or NPDES stormwater discharge permit, agricultural stormwater runoff, discharges that are in accordance with CDPHE's Low Risk Policy guidance documents or other policies and guidance documents where CDPHE has stated that it will not pursue permit coverage or enforcement for specified point source discharges landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering (excluding overwatering), individual residential car washing, individual residential swimming pool and hot tub discharges, individual residential street washing, water line flushing, flows from riparian habitats and wetlands, uncontaminated water from irrigation system meter pits and flows from emergency firefighting activities. Before applying the listed exceptions, the City shall make a determination on a case by case basis as to what is considered significant contributors of pollutants. In addition, the following non-stormwater discharges need not be prohibited from entering the MS4, provided CDPHE approved control measures to minimize the impacts from the sources are implemented: Municipally owned swimming pool discharges, Municipal water tank draining and water from street washing (including sidewalks and medians) that is conducted by City staff or under contract with the City. These discharges may still require a CDPS permit, such as a minimal industrial discharge (MINDI) permit landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering (excluding overwatering), individual residential car washing, individual residential swimming pool and hot tub discharges, individual residential street washing, water line flushing, flows from riparian habitats and wetlands, uncontaminated water from

~~irrigation system meter pits and flows from emergency firefighting activities. Before applying the listed exceptions, the City shall make a determination on a case by case basis as to what is considered significant contributors of pollutants. In addition, the following nonstormwater discharges need not be prohibited from entering the MS4, provided CDPHE approved control measures to minimize the impacts from the sources are implemented: Municipally owned swimming pool discharges, Municipal water tank draining and water from street washing (including sidewalks and medians) that is conducted by City staff or under contract with the City. These discharges may still require a CDPS permit, such as a minimal industrial discharge (MINDI) permit.~~

(32) This prohibition shall not apply to any non-stormwater discharge permitted under an NPDES **stormwater discharge** permit **or CDPS Permit**, waiver or waste discharge order issued to the discharger and administered by the State of Colorado under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations.

~~(4) With written concurrence of the City Council by ordinance, resolution or motion, the City Engineer may exempt in writing other nonstormwater discharges which are not a source of pollutants to the City's MS4 or waters of the United States.~~

3.8.204: DISCHARGES IN VIOLATION OF **A CDPS INDUSTRIAL, OR CONSTRUCTION ACTIVITY PERMIT OR NPDES STORMWATER DISCHARGE PERMIT:**

Any person subject to an **CDPS industrial permit** or ~~construction activity~~, **an NPDES stormwater discharge permit** shall comply with all provisions of that permit. ~~In addition, all City requirements for grading and erosion control shall be complied with in accord with the City Code.~~ **It shall be unlawful to fail to comply with a CDPS permit or NPDES stormwater discharge permit.**

Section 3. Part 3 (Regulations and Requirements) of Article 8 (Stormwater Quality Management and Discharge Control Code) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows. The Codifier is also directed to repeal and reserve Section 304 of the same Part:

3.8.301: REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORMWATER POLLUTANTS:

(A) Watercourse Protection: Every person owning property through which a watercourse passes, or that person's lessee, shall keep and maintain all parts of the

watercourse within that property reasonably free of trash, debris, excessive vegetation and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the property owner or lessee will maintain any existing privately owned structures within or adjacent to that watercourse, so that those structures will not become a hazard to the use, function or physical integrity of the watercourse. The property owner or lessee will not remove healthy bank vegetation beyond that actually necessary for maintenance, or remove that vegetation so as to increase the vulnerability of the watercourse to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within the property owner's property boundaries in order to protect against any erosion and degradation of the watercourse originating or contributed from their property.

~~(A)~~ **(B)** New Development And Redevelopment: The City has adopted requirements identifying appropriate ~~BMPs~~ **PCMs** to control the volume, rate, and potential pollutant load of stormwater runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants (see section 7.7.1501 et seq., of this Code).

~~(B)~~ **(C)** Responsibility To Implement ~~BMPs~~ **PCMs**: Any person or entity engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering stormwater, the MS4 or State waters shall implement ~~BMPs~~ **PCMs as required by the Drainage Criteria Manual** to the maximum extent practicable to provide protection from discharge into the MS4. ~~BMPs~~ **PCMs** shall be provided and maintained at the owner's or operator's expense **unless otherwise approved by the SE Manager**. The ~~SE Manager~~ **City Engineer** shall have the authority to require the installation, operation and/or maintenance of ~~BMPs~~ **PCMs**. The ~~SE Manager~~ **City Engineer** shall also have the authority to require the removal of ~~a temporary control measure~~ **BMPs and replacement with a PCM at the owner's or operator's expense.**

3.8.302: REQUIREMENT TO ELIMINATE ~~ILLCIT~~ **ILLEGAL** DISCHARGES:

The ~~SE Manager~~ **City Engineer** may require by written notice that a person or entity responsible for an ~~illegal~~ **illicit** discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future ~~illegal~~ **illicit** discharges.

3.8.303: REQUIREMENT TO ELIMINATE OR SECURE APPROVAL FOR ILLICIT CONNECTIONS:

(A) The ~~SE Manager~~ **City Engineer** may require by written notice that a person or entity responsible for an illicit connection to the MS4 comply with the requirements of this article to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this article.

(B) If, subsequent to eliminating a connection found to be in violation of this article, the responsible person or entity can demonstrate that an ~~illegal~~ **illicit** discharge will no longer occur, that person or entity may request City approval to reconnect. The

reconnection or reinstallation of the connection shall be at the responsible person's or entity's expense.

3.8.304: WATERCOURSE PROTECTION

3.8.305: REQUIREMENT TO REMEDIATE:

Whenever the ~~SE Manager~~~~City Engineer~~ finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of stormwater, the MS4 or State waters, **or a violation of this article has occurred**, the ~~SE Manager~~~~City Engineer~~ may remediate the pollution at the owner's or responsible person's or entity's expense, or may require by written notice to the owner of the property ~~and/or~~ the responsible person or entity that the pollution be remediated and the affected property restored within a specified time pursuant to the provisions of this article and using a remediation plan preapproved by the ~~SE Manager~~~~City Engineer~~. Remediation plans must be submitted by the owner or responsible person or entity to the ~~SE Manager~~~~City Engineer~~ and approved by the ~~SE Manager~~~~City Engineer~~ prior to the start of the remediation. The plan shall be submitted on or before a mutually agreed date and time **but not to exceed one (1) business day from the date of the written notice**; however, if, in the sole opinion of the ~~SE Manager~~~~City Engineer~~, **additional time is warranted, the SE Manager may extend the deadline for submission by two (2) business days**~~mutual agreement is not reached on a date and time for submittal of the plan, then the City Engineer shall designate a date and time for submittal~~. The plan shall include at a minimum a remediation schedule, list of personnel performing remediation work and list of equipment to be used.

3.8.306: REQUIREMENT TO MONITOR AND ANALYZE:

The ~~SE Manager~~~~City Engineer~~ may require by written notice that any person engaged in any activity ~~and/or~~ owning or operating any facility which may cause or contribute to stormwater pollution, ~~illicit~~~~legal~~ discharges ~~and/or~~ non-stormwater discharges to the MS4 or State waters, **or a violation of this article has occurred**, undertake at the person's or owner's expense monitoring and analyses by a State certified laboratory pursuant to the provisions of this article, and furnish reports to the City of Colorado Springs as deemed necessary to determine compliance with this article.

3.8.307: NOTIFICATION OF SPILLS:

Notwithstanding other requirements of law, as soon as any owner or person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in ~~illicit~~~~legal~~ discharges or pollutants discharging into stormwater, the MS4, or State waters from that facility, that person shall take all necessary steps to ensure the discovery, containment and cleanup of the release. In the event of a release of a hazardous waste or material, the person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release not requiring an emergency response, that person shall notify the ~~SE Manager~~~~City Engineer~~ via the City's nonemergency dispatch telephone number, ~~which~~

~~shall also serve as the Spill Hotline, or by calling the City's Stormwater Drainage Team within the City Engineering Division~~**Stormwater Enterprise**. If the discharge of prohibited materials emanates from a commercial or industrial establishment, an on site written record of the discharge and the actions taken to prevent its recurrence must be kept. These records shall be retained for at least three (3) years.

Section 4. Part 4 (Inspection and Monitoring) of Article 8 (Stormwater Quality Management and Discharge Control Code) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

3.8.401: AUTHORITY TO INSPECT:

Whenever necessary to enforce any provision of this article, or whenever the ~~City Engineer~~**SE Manager** has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this article, the ~~City Engineer~~**SE Manager** may enter the premises at all reasonable times to inspect the premises and to inspect and copy records related to stormwater compliance. In the event the owner of any property within the City or the occupant refuses entry by City personnel after a request to enter and inspect has been made, the ~~City Engineer~~**SE Manager** may make application to any Judge of the Municipal Court for the issuance of a warrant to inspect the property ~~or carry out other duties, including the abatement of violations~~ in accord with CMCR 241 **and City Code § 11.3.115**. The ~~sworn~~ application for entry and inspection **warrant, with a sworn affidavit**, shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to **probable cause to the belief**~~believe~~ that a condition which is a violation of the City Code, the requirements of this article or the ~~City's NPDES~~**MS4** permit exists on the premises, ~~or that a violation of the City Code in fact exists and must be abated. Any warrant issued shall command the owner and occupant to permit entry to the City Engineer for the purposes stated in the application.~~

3.8.402: AUTHORITY TO SAMPLE, ESTABLISH SAMPLING DEVICES AND TEST:

During any inspection provided by this article, the ~~City Engineer~~**SE Manager** may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

Section 5. Part 5 (Enforcement) of Article 8 (Stormwater Quality Management and Discharge Control Code) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

SECTION:

- 3.8.501: ~~Public Nuisance~~**Abatement Of Illicit Discharge; Notice Of Violation and Order**
- 3.8.502: **Failure To Comply With Notice And Order; Reinspection Fees**
- 3.8.503~~2~~: Appeal
- 3.8.504: ~~Charging Cost Of Abatement; Liens~~**Appeal Hearing Decision**
- 3.8.503~~5~~: Abatement By The City
- 3.8.505~~6~~: Emergency Abatement
- 3.8.507: **Charging Cost Of Abatement; Liens**
- 3.8.506~~8~~: **Unlawful Acts**~~Violations~~
- 3.8.507~~9~~: **Additional Remedies**~~Compensatory Action~~
- 3.8.508~~10~~: Acts Potentially Resulting In A Violation Of The Federal Clean Water Act:

3.8.501: PUBLIC NUISANCE ABATEMENT OF ILLICIT DISCHARGE; NOTICE OF VIOLATION AND ORDER:

(A) ~~Any~~The protection of clean water being essential to the health, safety and welfare of the public, a violation of this article is declared to be a public nuisance, and may be summarily abated, restored or remediated by the City at the violator's expense. The **SE Manager**~~City Engineer~~ is authorized to take any action, including, but not limited to, **informal education, and training outreach, and entering agreements** to abate, enjoin or otherwise compel the cessation of the nuisance~~illicit discharge~~.

(B) In addition to any other provision of the City Code for the abatement of **an illicit discharge**~~public nuisance~~, whenever the **SE Manager**~~City Engineer~~ finds that a person has violated a prohibition or failed to meet a requirement of this article, the **SE Manager**~~City Engineer~~ may order compliance by written **Notice and Order** of violation to the person. That notice shall provide a description of the violation or failure and may require, without limitation**The Notice and Order shall:**

- (1) **Be in writing.**
- (2) **Be personally served whenever feasible on the owner, agent of the owner, other persons with an interest in the property, or occupant of the premises. When personal service is not feasible, the Notice and Order must either be posted conspicuously at the premises and mailed to the last known address of the owner, agent of the owner, other persons with an interest in the property, or occupant of the premises by certified mail, return receipt requested.**
- (3) **Describe with particularity the asserted violation existing at the location which gives rise to the issuance of the Notice and Order.**
- (4) **Specify the period within which the violation must be abated or otherwise corrected or within which a remediation plan shall be developed, approved by the SE Manager and implemented, and the remediation or restoration completed.**
- (5) **State that an appeal will be heard by the Director of Public Works provided that a written notice of appeal and application is made to the Director within**

fourteen (14) days from the date of mailing, posting or personal service of the Notice and Order.

(6) The Notice and Order may require, as an example but without limitation:

~~(a1.)~~ * * *

~~(b2.)~~ * * *

~~(c3.)~~ * * *

~~(d4.)~~ * * *

~~(e5.)~~ **The Payment of the cost of abatement** ~~payment of a fine to cover administrative and remediation costs;~~

~~(f6.)~~ The implementation ~~and/or~~ maintenance of source control or treatment BMPs **control measures**; ~~and~~

(g) **The installation or maintenance of PCMs; or**

~~(h7.)~~ The application for a State discharge permit **and submittal of the issued permit.**

(7) ~~If abatement of a violation and/or restoration or remediation of affected property is required, the notice shall set a deadline within which a remediation plan shall be developed, approved and implemented, and the remediation or restoration completed. The notice shall further advise that, should the person fail to abate, remediate or restore within the established deadline, the work may be done by the City or a contractor designated by the SE Manager City Engineer and the expense of abatement shall be charged to the person.~~ **property owner.** The notice shall include a date which shall be identified as the "date of notice of violation" for purposes of appeal rights.

3.8.502: FAILURE TO COMPLY WITH NOTICE AND ORDER; REINSPECTION FEES:

(A) **The SE Manager may assess an inspection fee for any inspections that are required to review compliance with a Notice and Order.**

(B) **Compliance Failure; Fee: Notwithstanding the provisions of subsection C of this section, a person who has never previously been issued a Notice and Order for a violation of this article, and who fails to comply with a Notice and Order, may be assessed a first offense reinspection fee of one hundred dollars (\$100.00) for every reinspection necessitated by the person's continued noncompliance with the Notice and Order.**

(C) **Reinspection:**

(1) For purposes of this part, "repeat offender" is defined as the person previously issued a Notice and Order for one or more violations of this part at least two (2) or more times during any successive six (6) month period. For purposes of this part, "reinspection" is defined as any and all inspections subsequent to an inspection after issuance of the first Notice and Order to the person for a violation of this part.

(2) The SE Manager shall be authorized to assess an inspection fee of not less than one hundred fifty dollars (\$150.00) for each reinspection necessitated by a repeat offender's continued violation and failure comply with a Notice and Order.

(3) In the event one or more reinspection fees are assessed and the person or person's agent fails to pay the fee(s) within twenty (20) days, the SE Manager is authorized to file a lien against the property for fee(s) in accord with section 3.8.507 of this part.

3.8.5032: APPEAL:

~~(A) Any person receiving a notice of violation under section 3.8.501 of this part may appeal the determination of the City Engineer to the Director of Public Works or the Director's designee (the "Director"). The notice of appeal must be received by the Director within ten (10) City business days from the date of the notice of violation. A hearing on the appeal before the Director or the Director's designee shall take place within fifteen (15) City business days from the date the City actually receives a timely notice of appeal. An appeal of the Director's determination can be made to the Mayor. The notice of appeal must be received by the Mayor within ten (10) City business days from the date of the Director's determination. A de novo hearing on the appeal before the Mayor, or the Mayor's designee, shall take place within fifteen (15) City business days from the date the Mayor actually receives a timely notice of appeal of the Director's determination. The decision of the Mayor, or the Mayor's designee, shall be final.~~**Any person aggrieved by the issuance of a Notice and Order issued pursuant to section 3.8.501 of this part by the SE Manager may appeal the Notice and Order or assessment of fees to the Director by filing a notice of appeal with the Director within fourteen (14) days of the service of the Notice and Order or assessment of fees. The written notice of appeal shall be submitted on a form that will be made available by the SE Manager. The form must be completed in full, specify the grounds for the appeal and include the following:**

(1) A citation to the explicit ordinance provisions which are in dispute; or

(2) An explanation of how the Notice and Order or the assessment of fees was improperly issued due to one or more of the following:

(a) It was against the express language of the City Code; or

(b) It is not supported by the facts.

(B) Any person pursuing an appeal of the issuance of a Notice and Order or assessment of fees shall be responsible for the payment of all fees and for the completion of all prescribed forms. Failure to properly complete any required form shall be deemed a waiver of the right to appeal.

(C) The hearing date before the Director shall take place within twenty-one (21) days from the date of filing of the notice of appeal. The Director shall notify the SE Manager of the hearing date, time and location and the SE Manager shall post public notice of the hearing date, time and location conspicuously upon the affected premises and send notice to the appealing party by certified mail or email to the addresses provided by the appealing party in the appeal form. The SE Manager or designee may appear at the hearing but is not required to do so. The hearing may be continued upon stipulation of all aggrieved parties but shall be set as soon as practicable.

(D) Before rendering a decision, the Director shall hold a public hearing on the matter raised in the notice of appeal. As an appeal hearing is a quasi-judicial proceeding, no subpoena may be issued to compel the attendance of any person. The Director may require an oath or affirmation prior to the giving of testimony. The Director shall not be bound by the Colorado Rules of Civil Procedure or the Colorado Rules of Evidence. The Director may consider hearsay evidence, or any other evidence reasonably calculated to assist in rendering a decision and may give it whatever weight is deemed appropriate. The Director may admit any relevant evidence that a reasonable and prudent person would rely upon in the conduct of everyday affairs. Depending upon the nature or complexity of the appeal, the Director may direct or order that the SE Manager and appellant submit, prior to the hearing, any documentary or demonstrative evidence that they plan to present during the hearing, which shall be subject to discovery to the other party.

(E) A verbatim record of the public hearing shall be kept and the Director shall preserve the findings of fact and conclusions of law in the record for each item or matter heard for at least sixty (60) days after final agency action by the Director.

(F) A perfected appeal shall operate as a stay of the enforcement action unless the SE Manager certifies in writing under oath that a stay would cause or result in an imminent hazard to the public health, safety, and welfare.

3.8.504: APPEAL HEARING DECISION:

(A) The Director shall make a decision on each appeal after considering the evidence presented at the hearing. The Director shall determine whether:

- (1) The Notice and Order or assessment of fees was properly issued in accord with the provisions of this Code, and**
- (2) There are grounds for the ordered abatement.**

(B) The Director shall render the decision by making findings of fact and conclusions of law that support the decision. Whenever particular review criteria are set forth in this Code, the Director shall apply the findings of fact to the criteria.

(C) The Director's decision shall be final agency action.

3.8.5035: ABATEMENT BY THE CITY:

If the violation has not been abated pursuant to the requirements set forth in the ~~a~~**Notice and Order** of the violation, or an emergency situation exists in the sole determination of the ~~City Engineer~~, then the **SE Manager**~~City Engineer~~ or a contractor engaged by the City may enter upon the subject ~~private~~ property and shall be authorized to take any and all measures necessary to abate the violation, remediate and/or restore the property. **If permission to enter the property is not granted by the property owner, the City may obtain a warrant pursuant to City Code § 11.3.115 and CMCR 241.**

~~3.8.504: CHARGING COST OF ABATEMENT; LIENS:~~

~~A. Within thirty (30) City business days after abatement of the violation by City, the City Engineer shall notify in writing the property owner of the cost of abatement, including administrative costs. The City Engineer's notice shall include an "official notice date". The property owner may file a written protest objecting to the amount of the assessment with the City Clerk within fifteen (15) City business days of the "official notice date". The City Clerk shall set the matter for public hearing by the City Council. The decision of the City Council shall be set forth by resolution and shall be final. In addition to any lien placed upon real property, the cost of abatement, cost including administrative costs, shall be deemed a joint and severable personal debt of the property owner and the responsible party.~~

~~B. If the amount due is not paid within ten (10) City business days of the decision of the City Council or the expiration of the time in which to file an appeal under this section if no appeal is filed, the charges shall become a special assessment against the property and shall constitute a priority lien on the property for the amount of the assessment. This lien shall be deemed in priority of, and superior to, any and all liens then existing on the property or later levied upon the property. A copy of the resolution shall be filed with the County Assessor and the County Treasurer so that the Assessor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the tax collector shall include the amount of the full amount of the assessment on the bill for taxes levied against the parcel of land.~~

3.8.5056: EMERGENCY ABATEMENT:

The **SE Manager**~~City Engineer~~ is authorized to require immediate abatement of any violation of this article which, in the **SE Manager's**~~City Engineer's~~ sole determination, constitutes an **exigent circumstance that is an** immediate threat to the health, safety or welfare of the public. If any violation is not abated immediately as directed by the **SE Manager**~~City Engineer~~, the City is authorized to enter onto the affected property and to take any and all measures required to remediate the violation. Any expense related to abatement, restoration or remediation undertaken by the City shall be fully reimbursed

by the property owner and/or responsible party. Any relief obtained under this section shall not prevent City from seeking other and further relief authorized under this article or under Federal or State law.

3.8.507: CHARGING COST OF ABATEMENT; LIENS:

(A) Authority: When a person fails or refuses to comply with an order to abate in the Notice and Order and the SE Manager has reinspected and removed, corrected or abated the violation, the SE Manager is hereby authorized to commence lien assessment proceedings against the property in accord with the provisions of this section. In addition, the SE Manager is further authorized to assess an administrative surcharge of twenty five percent (25%) of the cost of abatement proceedings. The lien created hereby shall be superior and prior to all other liens excepting liens for general and special taxes.

(B) Notice: Prior to the imposition of any lien, the SE Manager shall send the property owner a notice of lien assessment which shall contain the following information:

(1) The address of the property to be assessed and the name and address of the property owner;

(2) The dates of the Notice and Order, any reinspections and the issuance of the order to abate, or emergency abatement pursuant to this part;

(3) The name of the contractor that abated the condition giving rise to the issuance of the Notice and Order;

(4) The total amount of the assessment, including reinspection fees, the cost of abatement and the amount of the administrative surcharge;

(5) A due date for payment of the assessment which is not less than twenty (20) days after the date of the notice of lien assessment ;

(6) A statement that failure to pay the assessment within the time period set forth in the notice of lien assessment will result in the imposition of a lien against the property; and

(7) A statement explaining the appeal procedure for the notice of lien assessment.

(C) Service Of The Notice Of Assessment:

(1) **Mailing:** The notice of assessment shall be mailed to the property owner via certified first class U.S. mail, return receipt requested. A return receipt signed by the property owner or an agent of the property owner shall be prima facie evidence of service on the date indicated by the owner, agent or U.S. Postal Service.

(2) **Posting:** In the event the property owner or an agent of the property owner fails to receive service of the notice of lien assessment via certified first class U.S. mail, return receipt requested, the SE Manager is authorized to post the notice in a conspicuous place on the property to be assessed.

(D) Appeal And Hearing:

(1) **Time:** A property owner must appeal a notice of lien assessment in writing within fourteen (14) days of its date of mailing, posting or personal service on the property owner or the owner's agent. The Director shall not consider a late appeal.

(2) **Contents:** The notice of appeal must state the name and address of the property owner, the address of the property assessed and the grounds for appeal.

(3) **Procedure and Hearing:** The appeal of a notice of lien assessment shall be heard by the Director, in accord with the procedures set forth City Code § 3.8.502.

(4) **Decision:** The Director may, after hearing the property owner's objections, make any modification or change to the assessment as may seem equitable and just, or may confirm the assessment.

(5) **Lien Assessment:** If not appealed, the total assessment shall then be levied, assessed and charged against the property upon which abatement action was taken not less than fourteen (14) days from its date of mailing, posting or personal service after the property owner's or agent's mailed receipt of the notice of lien assessment or posting on the property to be assessed. If appealed, the Director's determination of the total assessment shall then be levied, assessed and charged against the property upon which abatement action was taken not less than fourteen (14) days after the date of the Director's determination. In either event, the assessment shall become a perpetual lien against the property, superior and prior to all other liens and encumbrances excepting liens for general and special taxes. The SE Manager shall notify the Chief Financial Officer who shall certify any lien assessment to the El Paso County Treasurer who shall collect the lien assessment in the same manner as ad valorem taxes are collected.

3.8.5068: UNLAWFUL ACTS VIOLATIONS:

(A) **Illicit Discharge:** It is unlawful for any person to cause or contribute to an illicit discharge in the City.

(B) **Failure to Comply with Notice and Order:** It is unlawful for any person to fail to comply with a Notice and Order issued pursuant to this article.

(C) **It is unlawful for any person to commit any act prohibited by this article or fail to perform any act required under this article.**

(DA) **Penalties:** An offense under this section must be punished in accordance with City Code §§ 1.1.201 and 1.1.202. Except as otherwise stated in this article, a separate and

distinct offense is committed for each twenty-hour (24) hour period of violationIt shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. A violation of or failure to comply with any of the requirements of this article shall constitute a misdemeanor. Except as otherwise stated in this article, each twenty four (24) hour period of violation, or part thereof, shall be considered a separate offense. Except as otherwise stated in this article, upon conviction in the Municipal Court, the fine for each violation shall be not less than five hundred dollars (\$500.00), and may also include imprisonment in jail for a period not exceeding ninety (90) days or a combination of the fine and imprisonment. In the case of multiple violations, a conviction of ten (10) consecutive violations, that is, continuing violations over ten (10) consecutive calendar days, shall carry a mandatory period of jail of not less than three (3) days nor more than ninety (90) days in addition to any penalty imposed for the individual violations.

(E) Restitution: In addition to any other sentence imposed or restitution ordered upon conviction for a violation of this section, the court must sentence the defendant to pay restitution in an amount equal to the cost incurred by the City to abate, remediate, and restore any affected property.

~~(FB.)~~ Authority To Issue Summons: The **SE Manager or SE Manager designee** ~~City Engineer or the Engineer's designee~~ shall have the authority to issue a municipal summons to the Municipal Court for any violation of this article. All summons issued under this subsection shall be prosecuted in the Municipal Court by the Office of the City Attorney.

~~(GC.)~~ * * *

3.8.5079: ADDITIONAL REMEDIES~~COMPENSATORY ACTION:~~

(A) The remedies provided in this part shall be cumulative and in addition to any other remedies which may be available to the SE Manager. Nothing contained herein shall be construed to preclude the SE Manager from seeking other remedies in addition to, or in lieu of, the remedies granted in this part.

(B) After consideration of the facts and circumstances, the SE Manager may authorize that no action be taken on a complaint of an alleged violation.

(C) The SE Manager shall have the authority to effectuate the abatement of violations of this Article through informal meetings or conversations ~~In lieu of enforcement proceedings, penalties and remedies authorized by this article, the City Engineer may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.~~

3.8.50810: ACTS POTENTIALLY RESULTING IN A VIOLATION OF THE FEDERAL CLEAN WATER ACT:

* * *

Section 6. Any person violating Article 8 (Stormwater Quality Management and Discharge Control Code) of Chapter 3 (Public Property and Public Works) of the Code of the City of Colorado Springs 2001, as amended, shall be subject to the penalties and remedies, as applicable, provided in Section 201 (General Penalty) and 202 (Minor Offenders), of Part 2 (General Penalty), of Article 1 (Administration) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended.

Section 7. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 8. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2026

Finally passed: _____

Lynette Crow-Iverson, Council President

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Blessing A. Mobolade, Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.
- Council action on _____ failed to override the Mayor's veto.

Lynette Crow-Iverson, Council President

ATTEST:

Sarah B. Johnson, City Clerk