

**CITY OF TOLLESON  
ORDINANCE NO. 453 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TOLLESON, ARIZONA, AMENDING THE TOLLESON MUNICIPAL CODE, CHAPTER 7, BUILDING, BY ADDING A NEW ARTICLE 7-13, STORM WATER POLLUTION PREVENTION, TO REGULATE ACTIVITIES TO PREVENT AND/OR MINIMIZE POLLUTION FROM STORM WATER RUNOFF; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.**

**WHEREAS**, the Clean Water Act, among other things, regulates storm water and urban runoff to protect water quality; and

**WHEREAS**, the City of Tolleson adopted a Storm Water Management Plan on March 27, 2007 in order to comply with the Clean Water Act (33 U.S.C. 1251 et seq.) and its implementing regulations for storm water management (40 C.F.R. Part 122), and to comply with the Arizona Pollutant Discharge Elimination System (AZPDES) permit issued by the Arizona Department of Environmental Quality (ADEQ).

**WHEREAS**, the City has determined to adopt an ordinance intended to prohibit, prevent and/or minimize pollution resulting from storm water runoff.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TOLLESON, ARIZONA** as follows:

Section I. The Tolleson Municipal Code, Chapter 7, Building is hereby amended by adding a new Article 7-13 Storm Water Pollution Prevention to read as follows:

Article 7-13 Storm Water Pollution Prevention.

Sec. 7-13-1. Purpose

This Article sets forth the requirements for the control of pollutants that are or may be discharged to the City of Tolleson Public Storm Drain System. The purpose of this Article is to enable the City to comply with all applicable state and federal laws related to storm water management, including but not limited to, the Clean Water Act (33 United States Code Section 1251 et seq.) the National Pollutant Discharge Elimination System Regulations (40 Code of Federal Regulations Part 122), and the City's Arizona Pollutant Discharge Elimination System (AZPDES) Permit (Arizona Administrative Code R18-9-A902).

Sec. 7-13-2. Definitions

For the purposes of this Article, the following words and terms shall be defined as follows:

*Arizona Department Of Environmental Quality (ADEQ)* means the State Agency charged with enforcement of Environmental Laws And Regulations.

*Arizona Pollutant Discharge Elimination System (AZPDES) Storm Water Permit* means a permit issued by ADEQ which authorizes the discharge of storm water pursuant to Arizona Administrative Code R18-9-A902, which incorporates 40 C.F.R. § 122.32.

*Best Management Practices (BMPS)* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water. BMPS also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from outdoor storage areas.

*Clean Water Act* means the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 *et seq.*

*Director* means the Public Works Director.

*Discharge* means any spilling, leaking, pumping, pouring, emitting, emptying, injecting, placing, releasing, leaching, dumping, or disposing into or on any land in a manner that may cause pollution.

*Environmental Protection Agency (EPA)* means the federal agency charged with enforcement of environmental laws and regulations.

*National Pollutant Discharge Elimination System (NPDES) Storm Water Permit* means a permit issued by EPA which authorizes the discharge of storm water pursuant to the Clean Water Act § 402 (33 U.S.C. §1342).

*Notice of Intent (NOI)* means a form submitted to ADEQ notifying of person's intent to be covered under a separate AZPDES Storm Water Permit, as required by federal and state law.

*Person* means any individual, partnership, co-partnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns.

*Pollutant* shall have the same meaning as defined in 40 C.F.R. § 122.2, and includes but is not limited to any solid, liquid, gas, or other substance that can alter the physical or chemical properties of water including, but not limited to fertilizers, solvents, sludge, petroleum and petroleum products, solid waste, garbage, biological materials, radioactive materials, sand, dirt, animal waste, acids, and bases.

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

*Public Storm Drain System* means all or any part of the publicly-owned and maintained roads, streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains, and

dry wells located within public easements, right-of-way, parks, common areas, retention areas, or other publicly-owned or maintained real property designed or used for collecting, holding, or conveying storm water.

*Storm Water* means storm water runoff, surface runoff and drainage.

Sec. 7-13-3. Delegation Of Authority For Administration And Enforcement

The Director of Public Works is delegated the authority to exercise the powers and perform the duties set forth in this Article and to administer and enforce provisions of this Article. The Director Of Public Works may designate other employees to exercise such powers and perform such duties, as the Director deems appropriate.

Sec. 7-13-4. Prohibition Of Non-Storm Water Discharge To The Public Storm Drain System; Exemptions

- (a) Unless expressly authorized or exempted by this Article, no person shall cause or allow the discharge to a public right-of-way or public storm drain system of any substance that is not composed entirely of storm water.
- (b) Unless expressly authorized or exempted by this Article, no person shall use, store, spill, dump, or dispose of materials in a manner that those materials could cause or contribute to the addition of pollutants to storm water.
- (c) Exemptions. The following discharges are exempt from the prohibitions set forth in subsections (a) and (b) of this section:
  - 1. Discharges authorized by a separate NPDES or AZPDES permit.
  - 2. The following categories of non-storm water discharges are permissible unless otherwise prohibited under subsections (c)(3), (c)(4) or (c)(5):
    - a. water line flushing,
    - b. landscaping irrigation,
    - c. diverted stream flows,
    - d. rising groundwaters,
    - e. uncontaminated groundwater infiltration as defined in 40 C.F.R. § 35.2005(20),
    - f. uncontaminated pumped groundwater,
    - g. discharges from potable water sources,

- h. foundation drains,
  - i. air conditioning condensation,
  - j. irrigation water,
  - k. springs,
  - l. water from crawl space pumps,
  - m. footing drains,
  - n. lawn watering,
  - o. individual residential car washing,
  - p. flows from riparian habitats and wetlands,
  - q. dechlorinated swimming pool discharges,
  - r. street wash water,
  - s. discharges from emergency fire fighting activity,
  - t. dust control watering; or
  - u. any other activity that the Director identifies is not a significant contributor of pollutants during the City's AZPDES Storm Water Permit term. (40 C.F.R. § 122.34(b)(3)(iii)).
3. No person shall discharge to the public storm drain system any exempted discharge under this subsection if the Director or assigned designee identifies and provides written notice to the person that the discharge has the potential to be a source of pollutants to receiving waters, waterways, or groundwater.
  4. No person shall discharge to the public storm drain system that would result in or contribute to a violation of the AZPDES Storm Water Permit issued to the City. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge.
  5. No person shall establish, use, maintain, or continue any connection to the public storm drain system which has caused or is likely to cause a violation of this section. This prohibition is retroactive and shall apply to any connection that was made in the past, regardless of whether it was made under permit or other

authorization, or whether it was permissible under the law or practices applicable or prevailing at the time of the connection.

Sec. 7-13-5. Operating Facilities or Activities

- (a) All persons owning or operating premises or engaged in activities who are required by federal or state law to submit to EPA and/or ADEQ a Notice of Intent (NOI) to comply with an NPDES or AZPDES Storm Water Permit shall provide a copy of such notice to the Director upon request. Facilities required to apply for a Storm Water Permit are identified in 40 C.F.R. § 122.26(b)(14).
- (b) All persons engaged in activities which will or may reasonably be expected to result in pollutants entering the public storm drain system shall undertake best management practices (BMPS) to minimize such pollutants, shall provide protection from accidental discharge of pollutants to the public storm drain system and comply with the cleanup and notification requirements of this Article. Such measures shall include the requirements imposed by federal, state, county, or local authorities. BMPS are site-specific and are described in the document "Stormwater Management For Industrial Activities: Developing Pollution Prevention Plans And Best Management Practices" (EPA 832-R-92-006) or other guidance documents available from EPA and/or ADEQ.
- (c) If a best management practice is required by the Director to prevent a pollutant from entering the public storm drain system, the person receiving the notice of such a requirement may petition the Director to reconsider the application of the BMPS to the premises or activity. The written petition must be received within ten (10) working days setting forth any reasons and proposed alternatives. The Director will act within thirty (30) days of the petition.

Sec. 7-13-6. Construction Sites

- (a) All persons engaged in construction activities who are required by federal or state law to submit to EPA and/or ADEQ a Notice of Intent to comply with an NPDES or AZPDES Storm Water Permit, shall provide the City with copies of the NOI and the NPDES Storm Water Permit issued by ADEQ. Construction activities that will disturb one acre or more of land area or smaller land areas if they are part of a larger common plan of development or sale are required to apply for a Storm Water Permit (40 C.F.R. § 122.26(b)(15)).
- (b) Any person performing construction shall not cause or contribute to a violation of the AZPDES Storm Water Permit issued to the City. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge. Any person performing construction shall

undertake best management practices to minimize pollutants (including sediments) from leaving the construction site, shall provide protection from accidental discharge of pollutants to the public storm drain system, and comply with the cleanup and notification requirements of this Article. Site operator shall ensure erosion and sediment control and control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. Such measures shall include the requirements imposed by federal, state, county or local authorities. BMPS are site-specific and are described in the document "Stormwater Management For Construction Activities: Developing Pollution Prevention Plans And Best Management Practices" (EPA 832-R-92-005) or other guidance documents available from EPA and/or ADEQ.

- (c) If a best management practice is required by the Director to prevent a pollutant from entering the public storm drain system, the person receiving the notice of such a requirement may petition the Director to reconsider the application of the BMPS to the premises or activity. The written petition must be received within ten (10) working days setting forth any reasons and proposed alternatives. The Director will act within thirty (30) days of receipt of the petition.

Sec. 7-13-7. Post-Construction.

Property owners or operators shall ensure long-term operation and maintenance of post-construction storm water runoff control mechanisms, such as retention basins, dry wells and other measures described in 40 C.F.R. § 122.34(b)(5)(iii).

Sec. 7-13-8. Cleanup and Notification Requirements

- (a) As soon as any owner or operator has actual or constructive knowledge of any discharge which may result in pollutants entering the public storm drain system, such person shall promptly take all necessary steps to ensure the discovery of the source and the extent and proceed with containment and cleanup of such discharge.
- (b) The owner or operator shall notify the Director of the discharge in both of the following manners:
  - (1) By telephone as soon as practical or by calling 9-1-1 if hazardous materials are involved; and
  - (2) By written report identifying the discharge source, extent, pollutant, measures taken to mitigate the discharge, and preventative measures put in place to prevent a subsequent discharge.

Sec. 7-13-9. Inspections

- (a) Authority to Inspect. Upon presentation of credentials and at all reasonable or necessary hours, all authorized employees of the City shall have access to all premises and to all records pertaining to those premises for purposes of ensuring compliance with this Article. Inspection, interviewing, copying, sampling, photographing, and other activities conducted on the premises shall be limited to those which are reasonably needed by the City in determining compliance with the requirements of this Article. All persons shall allow such activities under safe and non-hazardous conditions with a minimum of delay.
- (b) Monitoring Activities. The Director may order any person engaged in any activity or owning or operating on any premises which may cause or contribute to discharges of pollutants to the public storm drain system in violation of this Article or any applicable NPDES or AZPDES Storm Water Permit condition to undertake such monitoring activities and analyses and furnish such reports as the Director reasonably may specify. The costs of such activities, analyses, and reports shall be borne by the recipient of the order.
- (c) Access Refusal. If an authorized employee of the City has been refused access to any premises, and is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect, interview, copy, photograph or sample as part of an inspection and sampling procedure of the City designed to determine compliance with the requirements of this Article or any related laws or regulations, or to protect the environment and the public health, safety and welfare of the community, then the Director may seek issuance of a search warrant from the City Municipal Court.

Sec. 7-13-10. Enforcement and Penalties

- (a) Charges levied pursuant to this Article shall be collected by the Department of Public Works. The Director shall make and enforce economic and efficient management and protection of the City's storm drain system.
- (b) Owner of Record. The owner of record of the property upon which a violation of this Article occurs shall be presumed to be a person having lawful control over the activity or premises unless it is demonstrated that another person has knowingly and in good faith accepted responsibility for the activity at issue. If more than one person is identified as the owner, such persons shall be presumed to be jointly and severally in lawful possession and control of the activity or premises.
- (c) Notice of Violation. The Director may issue a written notice of violation to any person who has violated or is in violation of this Article. Failure to comply with any act required in the notice of violation shall be a separate

violation for each day beyond the thirtieth (30th) day following the notice of violation. Nothing in this section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. In appropriate situations the Director may notify the person orally either in person or by telephone prior to, and in some cases in lieu of, written notification.

- (d) Consent Orders. The Director may enter into consent orders, assurances of voluntary compliance, negotiated settlement agreements or other similar documents establishing an agreement with any person responsible for noncompliance. Such documents will include specific action to be taken by the person to correct the noncompliance within a time period specified by the document, including an identification and description of the best management practices and measures to utilize in implementing the order. Such documents shall have the same force and effect as any other orders issued under this Article and shall be judicially enforceable.
- (e) Cease and Desist Orders. When the Director finds that a person has violated, or continues to violate, any provision of this Article or any related laws or regulations, or that the person's past violations are likely to recur, the Director may issue an order to the person directing them to cease and desist all such violations and direct the person to immediately comply with all requirements; and take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person. A person's failure to comply with an order of the Director issued pursuant to this Article shall constitute a violation of this Article.
- (f) Civil Penalties. In addition to any other enforcement authority contained in this Article, the Director may issue a civil citation to any person who has violated, or continues to violate, any provision of this Article or any related laws or regulations. A person who violates any requirement of this Article or any applicable NPDES or AZPDES Storm Water Permit condition shall be civilly liable to the City for a sum not to exceed \$25,000 per day for each violation.
- (g) Criminal Penalties. A person who willfully or negligently violates any provision of this Article, or any related laws or regulations shall, upon conviction, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$25,000 per day for each violation and/or by imprisonment for a period not to exceed six months.
- (h) Criminal Prosecution. Some intentional violations may constitute criminal violations of federal, state, and city law, and that under such circumstances, the Director may seek the assistance of the EPA, the state or the City prosecutor to commence civil and/or criminal action against



any person who violates any requirement of this Article or any applicable NPDES or AZPDES Storm Water Permit condition.


- (i) Revoking or Withholding of Permit. In addition to or in lieu of all other available penalties, the City may revoke or withhold any permit, approval or license to construct improvements to real property or operate a business in the City if the holder of such permit, approval, or license is in violation of any requirement of this Article or any applicable NPDES or AZPDES Storm Water Permit condition.
- (j) Liability for Costs. The Director may assess liability for costs to any person in violation of this Article for all actual costs incurred by the City in surveillance, sampling and testing, abatement, and remediation associated with a discharge. Additionally, the Director may assess liability for costs to any person whose discharge resulted in a violation of the City's AZPDES Storm Water Permit.

Section II. Providing for Repeal of Conflicting Ordinances. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

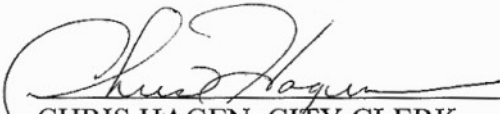
Section III. Providing for Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Penalties. Any person found guilty of violating any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine or by imprisonment, or both such fine and imprisonment as specified herein. Each day that a violation continues shall be a separate offense punishable as herein described.

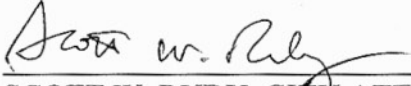
Mark **APPROVED** by this City Council of the City of Tolleson this 27th day of March, 2007.

  
ADOLFO E. GAMEZ, MAYOR

ATTEST:

  
CHRIS HAGEN, CITY CLERK

APPROVED AS TO FORM:

  
SCOTT W. RUBY, CITY ATTORNEY