

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Ordinance Amendments to update City Code.

SUMMARY: Approval of the Ordinance will update City Code to make Franchise Agreement Application Fee current with the City Fee Schedule; and update the City Storm Water Code to conform with current State Law.

FISCAL AND/OR ASSET IMPACT: The maximum fiscal impact associated with the passage of the proposed contracts is \$0.

STAFF RECOMMENDATION:
Staff recommends approval of these City Code updates.

MOTION RECOMMENDED:

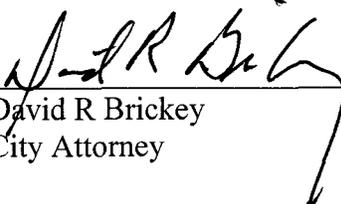
“I move to approve Ordinance 16-39, authorizing the Mayor to execute this Ordinance which updates City Code to refer to the City Fee Schedule and to bring City Storm Water Code into compliance with state law.”

[Roll Call vote required]

Prepared by:


Craig R Kleinman
Deputy City Attorney

Reviewed by:


David R Brickey
City Attorney

Recommended by:


Mark R Palesh
City Manager

BACKGROUND DISCUSSION:

In reviewing City Code requirements for a franchise agreement, City Attorney's Office noticed that the City Code required a \$500.00 application fee for a new franchise agreement. However, the City Fee Schedule requires \$1,000.00. For this reason, the City Code should be amended to only state the fee required "as set forth by the City Fee Schedule". This way, when changes occur to the City Fee Schedule, there will be no need to update the City Code.

Also, Public Works was informed by the Utah State Division of Water Quality that the City Storm Water Code was out of date because it needs to refer to the Utah Pollutant Discharge Elimination System (UPDES) instead of the Federal system.

City staff recommends passing the Ordinance to update City Code so as to conform with current standards.

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

ORDINANCE NO. 16-~~38~~³⁹
[FEE SCHEDULE, STORM WATER (UPDES)]

**AN ORDINANCE
AMENDING 8, "PUBLIC WORKS, PUBLIC WAYS AND PROPERTY,"
TO CLEAN UP INCONSISTENCES WITH CITY CODE AND CITY FEE
SCHEDULE AND UPDATE CITY STORM WATER DISCHARGE
ORDINANCE TO COMPLY WITH THE UTAH DEPARTMENT OF
ENVIRONMENTAL QUALITY REGULATIONS.**

WHEREAS, City staff found that City Code § 8-9-3 incorrectly states that application fee for a franchise agreement is "five hundred dollars (\$500.00)" (the "Fee"); and

WHEREAS, the City Fee Schedule states that the Fee is One Thousand Dollars (\$1,000.00); and

WHEREAS, it is more efficient to have the City Code refer to the City Fee Schedule rather than to state the amount of the Fee in the City Code; and

WHEREAS, the City was notified by the Utah Department of Environmental Quality that certain sections of City Code do not comply with their current regulations; and

WHEREAS, the City desires to comply with the Utah Department of Environmental Quality regulations; and

WHEREAS, the City of West Jordan adopted a City Code in 2009, for the purpose of carrying into effect and discharging all powers and duties conferred by law upon the city and its officers, employees and inhabitants, and to provide for the safety, preserve the health, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the city and its inhabitants, and to protect property in the city; and

WHEREAS, the West Jordan City Council finds and determines that the purpose of the 2009 City Code, and the public health and welfare, will best be reached by the adoption of the following amendments to Title 8, Chapter 9 and Chapter 11 of the 2009 City Code.

NOW THEREFORE, IT IS ORDAINED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH:

Section 1. Title 8, Chapter 9, Section 3 of the 2009 City Code shall hereafter read as follows:

8-9-3: COMPENSATION AND OTHER PAYMENTS:

A. Compensation: As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:

1. Application Fee: In order to offset the cost to the city to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the city, at the time of application, the required fee as set forth by the City Fee Schedule as a nonrefundable application fee.
 2. Franchise Fee: The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license fee or business license tax enacted by the city.
 3. Excavation Permits: The provider shall also pay fees required for an excavation permit as provided in section 8-8-3 of this title. (2001 Code § 82-2-301)
- B. Timing: Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within forty five (45) days of the close of each calendar month. (2001 Code § 82-2-302)
 - C. Fee Statement And Certification: Unless a franchise agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy. (2001 Code § 82-2-303)
 - D. Future Costs: A provider shall pay to the city or to third parties, at the direction of the city, an amount equal to the reasonable costs and reasonable expenses that the city incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or provider initiated renegotiation, or amendment of this chapter or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Any costs associated with any work to be done by the power and public works department to provide space on city owned poles shall be borne by the provider. (2001 Code § 82-2-304)
 - E. Taxes And Assessments: To the extent taxes or other assessments are imposed by taxing authorities, other than the city on the use of the city property as a result of a provider's use or occupation of the rights of way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this chapter. (2001 Code § 82-2-305)
 - F. Interest On Late Payments: If any payment is not actually received by the city on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes. (2001 Code § 82-2-306)
 - G. No Accord And Satisfaction: No acceptance by the city of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the city may have for additional sums payable. (2001 Code § 82-2-307)

- H. Not In Lieu Of Other Taxes Or Fees: The fee payment is not a payment in lieu of any tax, fee or other assessment, except as specifically provided in this chapter, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the city owned poles are not waived and remain applicable. (2001 Code § 82-2-308)
- I. Continuing Obligation And Holdover: If a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this chapter and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the city as a result of such continued operation after the term, including, but not limited to, damages and restitution. (2001 Code § 82-2-309)
- J. Costs Of Publication: A provider shall assume any publication costs associated with its franchise that may be required by law. (2001 Code § 82-2-310; amd. Ord. 16-___, 09-21-2016)

Section 2. Title 8, Chapter 11 Section 2 of the 2009 City Code shall delete the definition “National Pollutant Discharge Elimination System (NPDES) Permit” and amend definition “Industrial Activity” to read as follows:

INDUSTRIAL ACTIVITY: Any activity subject to UPDES industrial permits as defined by the State of Utah. (Ord. 10-21, 7-28-2010; amd. Ord. 16-___, 09-21-2016)

Section 3. Title 8, Chapter 11 Section 3 and 4 of the 2009 City Code shall hereafter read as follows:

8-11-3: PROHIBITED DISCHARGES:

- A. Illicit Discharges Prohibited: No person shall deliberately or mistakenly discharge, or cause or allow to be discharged into the city storm drain system or watercourses any materials other than stormwater, including, but not limited to, pollutants or waters containing pollutants, whether by direct or indirect connection.
- B. Exceptions: The following discharges to the storm drain system shall be exempt from the prohibitions of this section:
 - 1. Discharges regulated under a valid state pollutant discharge elimination system (UPDES) permit, provided that the discharge complies with the terms of the permit.
 - 2. Discharges from water line flushing or other potable water sources.
 - 3. Discharges from sprinkled landscape irrigation or sprinkled lawn watering.
 - 4. Discharges from individual residential vehicle or watercraft washing.
 - 5. Discharges from natural riparian habitat or wetland flows.

6. Discharges from natural groundwater flows directly to a piped storm drain system.
 7. Discharges from emergency firefighting activities or emergency management activities.
 8. Discharges of dechlorinated water from swimming pools.
 9. Discharges from foundation drains, footing drains, or crawl space or basement pumps if the discharges have been approved in writing by the city.
 10. Other discharges approved pursuant to a permit issued by the city.
- C. Discontinue Discharge: After written notification is mailed, personally delivered or posted, the city may require a responsible person to immediately, or by a specified date, eliminate or discontinue the illicit discharge, and the city, if necessary as the result of an imminent or pending storm event, may take immediate measures to eliminate the source of the illicit discharge. If the discharge is not discontinued in the time specified, the city may take any enforcement measure described in this chapter and steps reasonably necessary to eliminate the source of the illicit discharge or to prevent the reoccurrence of future illicit discharges. (Ord. 10-21, 7-28-2010; amd. Ord. 16-~~39~~, 09-21-2016)

8-11-4: USE OF BEST MANAGEMENT PRACTICES:

- A. Required: Any person engaged in any land use, activity, business or operations utilizing a storm drain connection, or owning or responsible for the property served by the connection, whether temporary or permanent, including, but not limited to, property owners, developers, builders, tenants, and facility operators, shall employ best management practices and comply with an individualized BMP plan or preapproved BMPs promulgated by the city, to reduce to the maximum extent practicable the discharge of pollutants.
- B. Commercial And Industrial Establishments: The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of pollutants, prohibited materials or other wastes into the storm drain system or watercourses through the use of structural and nonstructural BMPs.
- C. Permitted Discharge: Compliance with all terms and conditions of a valid UPDES permit authorizing the discharge of nonstormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section, provided that BMPs shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the UPDES permit.
- D. City Requirements: The city may adopt requirements identifying appropriate BMPs, and the terms and content of a BMP plan for any land use, activity, business, operation, or facility which may cause or contribute to the discharge of a pollutant to, or contamination of, the storm drain system. If BMPs have been prepared and promulgated by the city, or any federal, state or regional agency, for certain activities, operations, or facilities, every person undertaking such a designated activity or operation, or owning or operating such facility shall comply with relevant BMPs. (Ord. 10-21, 7-28-2010; amd. Ord. 16-~~39~~, 09-21-2016)

Section 4. Title 8, Chapter 11 Section 9 of the 2009 City Code shall hereafter read as follows:

8-11-9: INDUSTRIAL AND CONSTRUCTION ACTIVITY DISCHARGES:

A. Compliance With Permit: Any person subject to a permit issued under UPDES or the city's land disturbance ordinance shall comply with all provisions of such permit. Proof of compliance may be required in a form acceptable to the city prior to allowing any new or continued discharge to the city's storm drain system.

B. Accidental Discharge:

1. Training: The responsible person shall train personnel, maintain records of training and maintain notification procedures to assure that immediate notification is provided to the city upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste that may enter the storm drain system.

2. Containment: As soon as any responsible person, or other person 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 discharges or pollutants entering the storm drain system, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

3. Notification Required: The responsible person or person responsible for emergency response shall immediately notify emergency response agencies of any release of hazardous materials via emergency dispatch services. In the event of a release of nonhazardous materials, the responsible person or person responsible for emergency response shall notify the city in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city within three (3) business days of the phone notice. If the illicit discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

4. Effect On Other Requirements: The notification shall be in addition to any other notification requirements set forth in federal, state and local regulations and laws.

5. Additional BMPs: The city may require implementation, at the expense of the responsible person, of additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm drain system. (Ord. 10-21, 7-28-2010; amd. Ord. 16-

Section 5. Title 8, Chapter 11 Section 12 of the 2009 City Code shall hereafter read as follows:

8-11-12: INSPECTIONS, TESTING AND MONITORING:

- A. Inspections: All new and existing stormwater management facilities shall be subject to periodic inspection by the city to document maintenance and repair needs and to ensure compliance with the stormwater management regulations.
- B. Compliance Assessments: The city may inspect property for the purpose of verifying compliance with this chapter, including, but not limited to, the following:
 - 1. Identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property;
 - 2. Identifying point(s) of discharge of all wastewater, process water systems and pollutants;
 - 3. Investigating the natural slope at the location, including drainage patterns and manmade conveyance systems (including roads with drainage systems, catch basins, curbs, gutters, channels and storm drains);
 - 4. Establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system;
 - 5. Locating any illicit connection or the source of any illicit discharge;
 - 6. Evaluating compliance with any stormwater pollution control plan;
 - 7. Evaluating compliance with any permit issued pursuant to this chapter.
- C. Records Review: The city may demand the production of such records as necessary to determine compliance with the provisions of this chapter and for the purpose of examination and copying.
- D. Sample And Test:
 - 1. For the purpose of determining the potential for contribution of pollutants to the storm drain system, the city may inspect, sample and test any of the following: area runoff; soils within the source property; liquids, discharge, or materials within any storage area (including any container contents); and treatment system discharge.
 - 2. The city may investigate the structural integrity and condition of all new and existing storm drains, sanitary sewer facilities/systems or other tanks, reservoirs or pipelines on the property using appropriate tests, including, but not limited to, smoke and dye tests and video surveys. The city's authorized representative may take photographs or videotape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.

3. The responsible person shall provide copies of test results to the city and, on submission of a written request to the city, be entitled to a copy of the test results conducted by the city.

E. Monitoring:

1. For the purpose of measuring any discharge or potential source of discharge to the storm drain system, the city may undertake a monitoring program and other analysis, which may include both the installation and maintenance of monitoring devices.

2. Whenever the city determines that there is any illicit discharge to the storm drain system, the city may, by written notice, order that the responsible person undertake such monitoring activities or analyses and furnish such reports as the city may recommend. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and analyses and reports required. The responsible person shall be responsible for the costs of these activities, analysis and reports. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order.

3. In the event that a responsible person fails to conduct the monitoring and analyses and furnish the reports required by the order in the time frames set forth therein, the city may cause such monitoring and analyses to occur and assess all costs incurred, including reasonable administrative costs and attorney fees, to the responsible person. The city may pursue judicial action to enforce the order and recover all costs incurred.

F. Right To Enter To Inspect, Monitor And Test:

1. New Facility Or Connection: When any new stormwater management facility is installed on private property, or when any new connection is made between private property and the city's storm drain system, the property owner shall grant to the city the right to enter the private property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter the property for compliance assessments and when the city has a reasonable basis to believe that a violation of this chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.

2. Notice Of Entry: Upon presenting identification and an oral request to enter made to any person who appears to be in possession or control of any operation, business or real property, or where no such person is present, after a written request to enter is mailed, personally delivered, or faxed to a responsible person, the city has the right to, and is hereby granted the power and right to, enter onto the exterior/out of doors (or areas not being within a fully enclosed structure) of private property within the city solely for the purpose to inspect, monitor or investigate the possible or potential source of an illicit discharge to the storm drain system or watercourses. Except for occupied residential property, such right to enter shall be exercisable at any time. For an occupied residential property, such entry shall be made only during daylight hours.

3. Industrial Activity: The city shall be permitted to enter and inspect facilities as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city. Facility operators shall allow the city ready access to all parts of the premises for the purpose of inspection, sampling, examination and copying of records that must be kept under the conditions of an UPDES permit, and the performance of any additional duties as defined by state and federal law.

4. Unreasonable Delays: Unreasonable delays in allowing the city access to a permitted facility is a violation of any storm drain connection permit and this chapter. A person who is the operator of a facility with an UPDES permit associated with industrial activity is in violation of this chapter if the person denies the city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

5. Obstructions: Any temporary or permanent obstruction to safe and easy access to the facility to be inspected or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Search Warrants: If the city has been refused access to a building, structure, property or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect, monitor or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this chapter or any permit or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of an administrative inspection or criminal search warrant from any court of competent jurisdiction.

G. Correction Of Deficiencies: Any maintenance and repair deficiencies shall be corrected within such time period as is determined to be reasonable by the city, and the inspection and maintenance requirements may be increased as deemed necessary to ensure proper functioning of the stormwater management facility. Additional inspections may be required as determined to be appropriate by the city. (Ord. 10-21, 7-28-2010; amd. Ord. 16-~~31~~, 09-21-2016)

Section 6. Additions or amendments to the 2009 City Code when passed in such form as to indicate the intention of the city council to make the same a part of the 2009 City Code shall be deemed to be incorporated in the 2009 City Code, so that reference to the 2009 City Code hereafter includes the additions and amendments.

Section 7. This Ordinance shall become immediately effective.

Passed and adopted by the City Council of the City of West Jordan, Utah this 21st day of September, 2016.

CITY OF WEST JORDAN

By: _____
KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council	“AYE”	“NAY”
Council Member Dirk Burton	_____	_____
Council Member Jeff Haaga	_____	_____
Council Member Zach Jacob	_____	_____
Council Member Chris McConnehey	_____	_____
Council Member Chad Nichols	_____	_____
Council Member Sophie Rice	_____	_____
Mayor Kim V. Rolfe	_____	_____

CITY CLERK/RECORDER'S CERTIFICATE OF PUBLICATION

I, Melanie S. Briggs, certify that I am the City Clerk/Recorder of the City of West Jordan, Utah, and that the foregoing ordinance was published in the Legal Section, of the Salt Lake Tribune, on the _____ day of _____, 2016, pursuant to Utah Code Annotated, 10-3-711.

MELANIE S. BRIGGS, MMC
City Clerk/Recorder

[SEAL]

Legislative

8-9-3: COMPENSATION AND OTHER PAYMENTS:

- A. Compensation: As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:
1. Application Fee: In order to offset the cost to the city to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the city, at the time of application, ~~five hundred dollars (\$500.00)~~ the required fee as set forth by the City Fee Schedule as a nonrefundable application fee.
 2. Franchise Fee: The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license fee or business license tax enacted by the city.
 3. Excavation Permits: The provider shall also pay fees required for an excavation permit as provided in section 8-8-3 of this title. (2001 Code § 82-2-301)
- B. Timing: Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within forty five (45) days of the close of each calendar month. (2001 Code § 82-2-302)
- C. Fee Statement And Certification: Unless a franchise agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy. (2001 Code § 82-2-303)
- D. Future Costs: A provider shall pay to the city or to third parties, at the direction of the city, an amount equal to the reasonable costs and reasonable expenses that the city incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any renewal or provider initiated renegotiation, or amendment of this chapter or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Any costs associated with any work to be done by the power and public works department to provide space on city owned poles shall be borne by the provider. (2001 Code § 82-2-304)
- E. Taxes And Assessments: To the extent taxes or other assessments are imposed by taxing authorities, other than the city on the use of the city property as a result of a provider's use or occupation of the rights of way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this chapter. (2001 Code § 82-2-305)
- F. Interest On Late Payments: If any payment is not actually received by the city on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes. (2001 Code § 82-2-306)

- G. No Accord And Satisfaction: No acceptance by the city of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the city may have for additional sums payable. (2001 Code § 82-2-307)
- H. Not In Lieu Of Other Taxes Or Fees: The fee payment is not a payment in lieu of any tax, fee or other assessment, except as specifically provided in this chapter, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the city owned poles are not waived and remain applicable. (2001 Code § 82-2-308)
- I. Continuing Obligation And Holdover: If a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this chapter and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the city as a result of such continued operation after the term, including, but not limited to, damages and restitution. (2001 Code § 82-2-309)
- J. Costs Of Publication: A provider shall assume any publication costs associated with its franchise that may be required by law. (2001 Code § 82-2-310; amd. Ord. 16-~~39~~, 09-21-2016)

8-11-2: DEFINITIONS:

BEST MANAGEMENT PRACTICES (BMP OR BMPs): Schedules of activities, prohibitions of practices, general good housekeeping 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.

CONNECTION PERMIT, PERMIT OR STORM DRAIN CONNECTION PERMIT: A permit issued by the city pursuant to this chapter authorizing connection to the city's storm drain system.

DISCHARGE: Any addition or potential addition of stormwater or nonstormwater to the city's storm drain system, regardless of method of conveyance (i.e., by surface runoff, channel, pipe or otherwise).

HAZARDOUS MATERIALS: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLICIT CONNECTION: Either of the following: a) any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to, any conveyances which allow any nonstormwater to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the city; or b) any drain or conveyance connected to the storm drain system which has not been approved by the city.

ILLICIT DISCHARGE: Any direct or indirect nonstormwater discharge to the storm drain system, except as exempted in section 8-11-3 of this chapter.

INDUSTRIAL ACTIVITY: Any activity subject to NPDES UPDES industrial permits as defined in 40 CFR section 122.26(b)(14) by the State of Utah.

LAND DISTURBANCE PERMIT: A permit issued by the city pursuant to title 11 of this code.

~~NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT: A permit issued by the United States environmental protection agency or by the state pursuant to its delegated authority that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area wide basis.~~

NONSTORMWATER DISCHARGE, NONSTORMWATER RUNOFF: Any discharge to the storm drain system that is not composed entirely of stormwater.

OWNER OR OPERATOR: The owner or operator of any facility or activity subject to regulation under the stormwater management regulations.

POLLUTANT: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

RESPONSIBLE PERSON: Any person engaged in any land use, activity, business or operations utilizing a storm drain connection, or owning or responsible for the property served by the connection, whether temporary or permanent, including, but not limited to, property owners, developers, builders, tenants, and facility operators. If there is more than one responsible person, they shall be jointly and severally responsible and liable for compliance with or violation of this chapter and the connection permit.

SITE: Real property where stormwater is generated; the land or water area where any regulated facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

STORM DRAIN SYSTEM, CITY'S STORM DRAIN SYSTEM, CITY STORM DRAIN SYSTEM OR CITY SYSTEM: Publicly owned facilities by which stormwater is collected or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and humanmade or altered drainage channels, reservoirs, and other drainage structures identified on the city's storm drain master plan.

STORMWATER: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORMWATER MANAGEMENT REGULATIONS: Any and all federal, state and local laws, ordinances and regulations, city standards, city specifications and master plans, and federal, state and local permits, including, but not limited to, UPDES permit number UTS000001, which are related to stormwater and storm drain management.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP): A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, storm drain systems and receiving waters to the maximum extent practicable.

UPDES: Utah pollutant discharge elimination system per Utah administrative code R317-8.

WATERCOURSE: A natural or artificial channel through which water can flow.

WATERS OF THE STATE: All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state of Utah or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitutes a nuisance, or a public health hazard, or a menace to fish or wildlife, shall not be considered to be waters of the state. The exception for confined bodies of water does not apply to waters of the United States. Waters are considered to be confined to and retained within the limits of private property only if there is no discharge or seepage to either surface water or groundwater. Waters of the state includes wetlands as defined in the federal clean water act.

WATERS OF THE UNITED STATES (WATERS OF THE U.S.): Waters of the United States as defined in 40 CFR 230.3(s). (Ord. 10-21, 7-28-2010; amd. Ord. 16-____, 09-21-2016)

8-11-3: PROHIBITED DISCHARGES:

- A. Illicit Discharges Prohibited: No person shall deliberately or mistakenly discharge, or cause or allow to be discharged into the city storm drain system or watercourses any materials other than stormwater, including, but not limited to, pollutants or waters containing pollutants, whether by direct or indirect connection.
- B. Exceptions: The following discharges to the storm drain system shall be exempt from the prohibitions of this section:
1. Discharges regulated under a valid national state pollutant discharge elimination system (~~NPDES~~) (UPDES) permit, provided that the discharge complies with the terms of the permit.
 2. Discharges from water line flushing or other potable water sources.
 3. Discharges from sprinkled landscape irrigation or sprinkled lawn watering.
 4. Discharges from individual residential vehicle or watercraft washing.
 5. Discharges from natural riparian habitat or wetland flows.
 6. Discharges from natural groundwater flows directly to a piped storm drain system.
 7. Discharges from emergency firefighting activities or emergency management activities.
 8. Discharges of dechlorinated water from swimming pools.

9. Discharges from foundation drains, footing drains, or crawl space or basement pumps if the discharges have been approved in writing by the city.

10. Other discharges approved pursuant to a permit issued by the city.

C. Discontinue Discharge: After written notification is mailed, personally delivered or posted, the city may require a responsible person to immediately, or by a specified date, eliminate or discontinue the illicit discharge, and the city, if necessary as the result of an imminent or pending storm event, may take immediate measures to eliminate the source of the illicit discharge. If the discharge is not discontinued in the time specified, the city may take any enforcement measure described in this chapter and steps reasonably necessary to eliminate the source of the illicit discharge or to prevent the reoccurrence of future illicit discharges. (Ord. 10-21, 7-28-2010; amd. Ord. 16-~~31~~, 09-21-2016)

8-11-4: USE OF BEST MANAGEMENT PRACTICES:

A. Required: Any person engaged in any land use, activity, business or operations utilizing a storm drain connection, or owning or responsible for the property served by the connection, whether temporary or permanent, including, but not limited to, property owners, developers, builders, tenants, and facility operators, shall employ best management practices and comply with an individualized BMP plan or preapproved BMPs promulgated by the city, to reduce to the maximum extent practicable the discharge of pollutants.

B. Commercial And Industrial Establishments: The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of pollutants, prohibited materials or other wastes into the storm drain system or watercourses through the use of structural and nonstructural BMPs.

C. Permitted Discharge: Compliance with all terms and conditions of a valid NPDES UPDES permit authorizing the discharge of nonstormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section, provided that BMPs shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the NPDES UPDES permit.

D. City Requirements: The city may adopt requirements identifying appropriate BMPs, and the terms and content of a BMP plan for any land use, activity, business, operation, or facility which may cause or contribute to the discharge of a pollutant to, or contamination of, the storm drain system. If BMPs have been prepared and promulgated by the city, or any federal, state or regional agency, for certain activities, operations, or facilities, every person undertaking such a designated activity or operation, or owning or operating such facility shall comply with relevant BMPs. (Ord. 10-21, 7-28-2010; amd. Ord. 16-~~31~~, 09-21-2016)

8-11-9: INDUSTRIAL AND CONSTRUCTION ACTIVITY DISCHARGES:

A. Compliance With Permit: Any person subject to a permit issued under NPDES, UPDES or the city's land disturbance ordinance shall comply with all provisions of such permit. Proof of compliance may be required in a form acceptable to the city prior to allowing any new or continued discharge to the city's storm drain system.

B. Accidental Discharge:

1. Training: The responsible person shall train personnel, maintain records of training and maintain notification procedures to assure that immediate notification is provided to the city upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste that may enter the storm drain system.

2. Containment: As soon as any responsible person, or other person 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 discharges or pollutants entering the storm drain system, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

3. Notification Required: The responsible person or person responsible for emergency response shall immediately notify emergency response agencies of any release of hazardous materials via emergency dispatch services. In the event of a release of nonhazardous materials, the responsible person or person responsible for emergency response shall notify the city in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the city within three (3) business days of the phone notice. If the illicit discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

4. Effect On Other Requirements: The notification shall be in addition to any other notification requirements set forth in federal, state and local regulations and laws.

5. Additional BMPs: The city may require implementation, at the expense of the responsible person, of additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the storm drain system. (Ord. 10-21, 7-28-2010; amd. Ord. 16-37, 09-21-2016)

8-11-12: INSPECTIONS, TESTING AND MONITORING:

A. Inspections: All new and existing stormwater management facilities shall be subject to periodic inspection by the city to document maintenance and repair needs and to ensure compliance with the stormwater management regulations.

B. Compliance Assessments: The city may inspect property for the purpose of verifying compliance with this chapter, including, but not limited to, the following:

1. Identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property;

2. Identifying point(s) of discharge of all wastewater, process water systems and pollutants;

3. Investigating the natural slope at the location, including drainage patterns and manmade conveyance systems (including roads with drainage systems, catch basins, curbs, gutters, channels and storm drains);

4. Establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system;

5. Locating any illicit connection or the source of any illicit discharge;

6. Evaluating compliance with any stormwater pollution control plan;

7. Evaluating compliance with any permit issued pursuant to this chapter.

C. Records Review: The city may demand the production of such records as necessary to determine compliance with the provisions of this chapter and for the purpose of examination and copying.

D. Sample And Test:

1. For the purpose of determining the potential for contribution of pollutants to the storm drain system, the city may inspect, sample and test any of the following: area runoff; soils within the source property; liquids, discharge, or materials within any storage area (including any container contents); and treatment system discharge.
2. The city may investigate the structural integrity and condition of all new and existing storm drains, sanitary sewer facilities/systems or other tanks, reservoirs or pipelines on the property using appropriate tests, including, but not limited to, smoke and dye tests and video surveys. The city's authorized representative may take photographs or videotape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.
3. The responsible person shall provide copies of test results to the city and, on submission of a written request to the city, be entitled to a copy of the test results conducted by the city.

E. Monitoring:

1. For the purpose of measuring any discharge or potential source of discharge to the storm drain system, the city may undertake a monitoring program and other analysis, which may include both the installation and maintenance of monitoring devices.
2. Whenever the city determines that there is any illicit discharge to the storm drain system, the city may, by written notice, order that the responsible person undertake such monitoring activities or analyses and furnish such reports as the city may recommend. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and analyses and reports required. The responsible person shall be responsible for the costs of these activities, analysis and reports. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order.
3. In the event that a responsible person fails to conduct the monitoring and analyses and furnish the reports required by the order in the time frames set forth therein, the city may cause such monitoring and analyses to occur and assess all costs incurred, including reasonable administrative costs and attorney fees, to the responsible person. The city may pursue judicial action to enforce the order and recover all costs incurred.

F. Right To Enter To Inspect, Monitor And Test:

1. New Facility Or Connection: When any new stormwater management facility is installed on private property, or when any new connection is made between private property and the city's storm drain system, the property owner shall grant to the city the right to enter the private property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter the property for compliance assessments and when the city has a reasonable basis to believe that a violation of this chapter is occurring or has occurred and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.

2. Notice Of Entry: Upon presenting identification and an oral request to enter made to any person who appears to be in possession or control of any operation, business or real property, or where no such person is present, after a written request to enter is mailed, personally delivered, or faxed to a responsible person, the city has the right to, and is hereby granted the power and right to, enter onto the exterior/out of doors (or areas not being within a fully enclosed structure) of private property within the city solely for the purpose to inspect, monitor or investigate the possible or potential source of an illicit discharge to the storm drain system or watercourses. Except for occupied residential property, such right to enter shall be exercisable at any time. For an occupied residential property, such entry shall be made only during daylight hours.

3. Industrial Activity: The city shall be permitted to enter and inspect facilities as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city. Facility operators shall allow the city ready access to all parts of the premises for the purpose of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES UPDES permit, and the performance of any additional duties as defined by state and federal law.

4. Unreasonable Delays: Unreasonable delays in allowing the city access to a permitted facility is a violation of any storm drain connection permit and this chapter. A person who is the operator of a facility with an NPDES UPDES permit associated with industrial activity is in violation of this chapter if the person denies the city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this chapter.

5. Obstructions: Any temporary or permanent obstruction to safe and easy access to the facility to be inspected or sampled shall be promptly removed by the operator at the written or oral request of the city and shall not be replaced. The costs of clearing such access shall be borne by the operator.

6. Search Warrants: If the city has been refused access to a building, structure, property or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect, monitor or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this chapter or any permit or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of an administrative inspection or criminal search warrant from any court of competent jurisdiction.

G. Correction Of Deficiencies: Any maintenance and repair deficiencies shall be corrected within such time period as is determined to be reasonable by the city, and the inspection and maintenance requirements may be increased as deemed necessary to ensure proper functioning of the stormwater management facility. Additional inspections may be required as determined to be appropriate by the city. (Ord. 10-21, 7-28-2010; amd. Ord. 16-~~31~~, 09-21-2016)