

# City of Fountain

## AGENDA ITEM COMMENTARY

JULY 10, 2007

### AGENDA ITEM #12

**ITEM TITLE:** Discussion of Rate Options for the City of Fountain's Storm Water Utility Enterprise

**INITIATOR:** Public Works Director/City Engineer

### NATURE OF ACTION REQUESTED FROM COUNCIL:

- For Council Action  
 For Council Information  
 As Report to Council

**RECOMMENDED MOTION:** N/A

### BACKGROUND INFORMATION:

The City is required to manage storm water facilities and address Federal Environmental Protection Agency clean water mandates as part of a State of Colorado permit. The City must fully implement a storm water management program by the end of this year to avoid being in violation of our permit and thus being subject to potential fines and penalties. Currently the City does not have adequate resources to properly implement the required programs. Colorado state law allows municipalities to form storm water utility enterprises to collect fees as long as the revenue is restricted to expenses attributed to storm water drainage activities and are not used for general purposes.

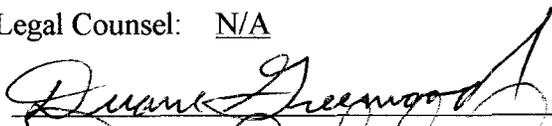
The City of Fountain established Jimmy Camp Creek Drainage Basin Study drainage impact fees for new development in order to complete specific Jimmy Camp Creek channel improvements. However, the City has not established an overall service fee to implement the mandated city-wide storm water management program. The City also continues to accept storm water facilities and infrastructure without adequate resources to even maintain older existing public infrastructure. The City currently relies upon limited general funds to manage storm water facilities and programs.

Attachment: Storm Water Utility Enterprise Study

Individual(s) who will attend the Council meeting and speak on the item:

**Public Works Dir/City Engineer and Gary Haynes – Municipal Engineering Consultant**

Reviewed by Legal Counsel: N/A

Reviewed by:  \_\_\_\_\_

Approved by:  \_\_\_\_\_ (Acting City Manager)

Council Member Brown made a motion to direct staff not to enforce the rooftop signs until the Zoning Ordinance is reviewed; seconded by Mayor Pro Tem Burke. All members voted yes (7-0); the motion carried.

**Agenda Item #11.** Second Reading of Ordinance No. 1382, An Ordinance Approving a Change in Zoning From Small Office/Warehouse District (SO) to Multi-Family Residential District (MF) for Independence Place, Generally Located on the West Side of State Highway 85 and North of Duckwood Road and Hereinafter More Specifically Described in Exhibit "A" and Exhibit "B".

Acting City Manager Smedsrud reported there have been no changes to the ordinance since first reading.

Council Member Ortega made a motion to approve Ordinance No. 1382 on second reading; seconded by Council Member Craighead. All members voted (7-0); the motion carried.

**Agenda Item #12.** Discussion of Rate Options for the City of Fountain's Storm Water Utility Enterprise.

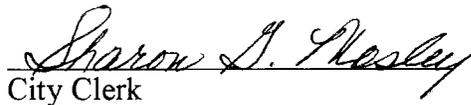
City Engineer Greenwood reported that the City is required to manage storm water facilities and address Federal Environmental Protection Agency clean water mandates as part of a State of Colorado permit. He stated that the City must fully implement a storm water management program by the end of this year to avoid being in violation of our permit and being subject to potential fines and penalties. Mr. Greenwood stated that currently the City does not have adequate resources to properly implement the required programs. Colorado state law allows municipalities to form storm water utility enterprises to collect fees as long as the revenue is restricted to expenses attributed to storm water drainage activities and not used for general purposes. Mr. Greenwood reported that the City did this by approving Ordinance No. 1158. He reported that the City of Fountain established Jimmy Camp Creek Drainage Basin Study drainage impact fees for new development in order to complete specific Jimmy Camp Creek channel improvements. He stated however that the City has not established an overall service fee to implement the mandated city-wide storm water management program. The City also continues to accept storm water facilities and infrastructure without adequate resources to even maintain older existing public infrastructure. Mr. Greenwood reported that Gary Haynes, the City's interim engineer, has extensive experience in this area and has completed a study of existing stormwater utility enterprises in Colorado. He will review several options for the City Council.

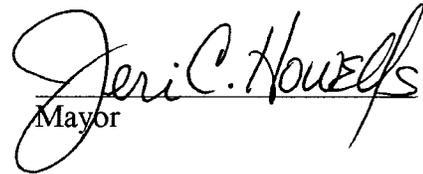
Gary Haynes reported that at least 24 cities in Colorado have adopted a stormwater utility enterprise to generate revenue for the management of stormwater facilities and address the EPA cleanwater mandate. The monthly, quarterly, or annual fee is a service charge covering the costs for the municipality to manage the stormwater runoff from developed

property. Mr. Haynes reported that Colorado state law allows municipalities to form stormwater utility enterprises to collect fees as long as the revenue is restricted to expenses attributed to stormwater drainage activities and are not used for general purposes. He stated that runoff leaving each property is related to the impervious surfaces on the property. Mr. Haynes explained that impervious surfaces include rooftops, driveways, patios, and sidewalks. He stated that engineers compute the amount of impervious surface in order to design the size of stormwater conveyance facilities downstream of the property. The impervious surface then has become the standard for measurement of the amount of runoff generated by each property and the impact of the runoff can be computed into the monthly fee. Mr. Haynes reported that typical monthly fees for stormwater utility enterprises in Colorado range from \$2.00 to \$14.26 with an average of \$4.43 for a residential single family property. Mr. Haynes stated that the discrepancy in the fees is due in part to the various uses of the fee revenue found in various cities. He reported that the common uses of the revenue include: maintenance of existing drainage facilities; purchase of maintenance equipment; design and construction of new drainage facilities; monitoring and safeguarding stormwater quality; revisions; updates, or expansion of fold delineation maps; debt service for debt incurred for stormwater management activities; staffing; and equipment. Mr. Haynes stated that a stormwater fee is a fee for service not a tax and should be fair and reasonable. He reported that the most common methods utilized in Colorado are: 1) Flat Rate; 2) Parcel Area x Runoff Coefficient and 3) Measured Impervious Area. He reviewed the three (3) methods. Mr. Haynes reported that staffing for the stormwater utility enterprise varies from municipality to municipality dependent upon each utilities' business plan. He stated that staff position most utilized for the utilities include billing clerks, GIS technicians, engineers, maintenance workers and inspectors. He stated that the actual number of employees will be dependent upon the services included in the final business plan selected by the city. Mr. Haynes reported that the implementation of a stormwater utility enterprise varies however, for municipalities approximately the size of Fountain, the costs ranged from \$70,000 to \$100,000. He stated that city, county, and state street, road, and alley rights-of-way and railroad rights-of-way are usually exempted from payment of the fees. Other properties exempted by some utilities include: public parks, cemeteries, dedicated open space, undeveloped land, city property, and other governmental property. Mr. Haynes stated that there are several stormwater utility enterprises in Colorado addressing local communities' drainage needs. A variety of approaches to assessing equitable monthly charges for services have been employed. He reported that an assessment of the needs in Fountain should begin with determining the extent of existing drainage problems, an inventory of existing drainage facilities, the annual cost of maintaining the existing facilities, the annual cost of compliance with the environmental permit, and the need for staff to operate and maintain the stormwater system. Mr. Haynes reported that this assessment can then be used to determine the amount of annual revenue needed to manage the stormwater program efficiently and effectively.

Discussion was held regarding the implementation costs. Council Member Craighead stated he preferred the flat rate method. Mayor Pro Tem Burke stated that there are some areas in Fountain that are not on the Fountain water system. Council Member Brown asked how it is handled in the County. Mr. Haynes reported that the Counties fall under the laws of the State. City Engineer Greenwood stated he would bring back a recommendation to the City Council.

There being no further business Mayor Howells declared the meeting adjourned at 11:22 P.M.

  
City Clerk

  
Mayor

**ORDINANCE NO. 1384**

**AN ORDINANCE AMENDING TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE FOUNTAIN MUNICIPAL CODE BY ADDING A NEW CHAPTER 12.10 (STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL CODE) AND AMENDING PARAGRAPH B (REQUIREMENTS) OF SECTION 12.04.160 (GRADING, EROSION, AND STORM WATER QUALITY) OF CHAPTER 12.04 (CONSTRUCTION GENERALLY) OF THE FOUNTAIN MUNICIPAL CODE BY ADDING NEW REQUIREMENTS**

**WHEREAS**, Section 6.2 of the Home Rule Charter of the City of Fountain, Colorado provides that the City Council, with regard to those legislative enactments which are of a permanent nature, shall be by ordinance; and

**WHEREAS**, in accordance with the Federal Water Pollution Control Act, the Colorado Department of Public Health and Environmental Water Quality Control Division issued to the City of Fountain an MS4 Municipal Storm Water Discharge Permit #90008; and

**WHEREAS**, the City of Fountain MS4 Storm Water Discharge Permit requires the establishment of a Storm Water Quality Management and Discharge Control code; and

**WHEREAS**, the City of Fountain has developed a Storm Water Quality Management and Discharge Control Code consistent with a code already adopted by the City of Colorado Springs [Article 8 (Storm Water Quality Management and Discharge Control Code) of Chapter 3 of the Code of the City of Colorado Springs 2001, as amended]; and

**WHEREAS**, the purpose and intent of the Storm Water Quality Management and Discharge Control Code is to ensure the health, safety and general welfare of citizens, and to protect the water quality of water courses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act by reducing pollutant in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges to the City's Municipal Separate Storm Sewer System (MS4).

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Fountain, Colorado:

**Section 1.** The recitals set forth in this ordinance are incorporated herein and made a part of this ordinance.

**Section 2.** Title 12 (Streets, Sidewalks and Public Places) of the Fountain Municipal Code is hereby amended by adding a new Chapter 12.10 (Storm Water Quality Management and Discharge Control Code) as follows:

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## **CHAPTER 12.10**

### **STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL CODE**

#### **I GENERAL PROVISIONS**

##### **2.10.101: TITLE:**

This chapter shall be known as the *STORM WATER QUALITY MANAGEMENT AND DISCHARGE CONTROL CODE* and may be so cited.

##### **12.10.102: PURPOSE AND INTENT:**

The purpose and intent of this chapter is to ensure the health, safety and general welfare of citizens, and to protect the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 USC section 1251 et seq.) by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges to the City's Municipal separate storm sewer system.

##### **12.10.103: DEFINITIONS:**

The terms used in this chapter shall have the following meanings:

**BEST MANAGEMENT PRACTICES OR BMPs:** Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment, operating procedures, and practices to control site runoff, spillage or leaks, waste disposal or drainage from material storage. BMPs include structural and nonstructural controls.

**CDPHE:** The Colorado Department of Public Health and Environment.

**CITY:** The City of Fountain.

**CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 USC section 1251 et seq.), and any subsequent amendments.

**CONSTRUCTION ACTIVITY:** Activities subject to NPDES (see definition of National Pollutant Discharge Elimination System (NPDES) Storm Water 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.

**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 Fountain Municipal Code, or the City's NPDES permit.

**ILLEGAL DISCHARGE:** Any discharge to an MS4 (see definition of Municipal Separate Storm Sewer System Or MS4) that is not composed entirely of storm water except the following: discharges specifically authorized by a Colorado Discharge Permitting System (CDPS) permit and allowable non-storm water discharges under the City's Municipal Storm Water Discharge Permit (MSDP).

**ILLICIT CONNECTIONS:** Either of the following:

A. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 including, but not limited to, any conveyances which allow any storm water 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

B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps or equivalent records and approved by the City.

**INDUSTRIAL ACTIVITY:** Activities subject to NPDES industrial permits as defined in 40 CFR, section 22.26(b)(14).

**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, manmade channels or storm drains):

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, storm water 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 storm water;

C. Which is not a combined sewer; and

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).

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMITS:** General, group and individual storm water discharge permits which regulate facilities defined in Federal NPDES regulations pursuant to the Clean Water Act. NPDES permits are issued by the State of Colorado as Colorado Discharge Permitting System (CDPS) permits.

**POLLUTANT:** Includes 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.

**POLLUTION:** Manmade, man induced or natural alteration of the physical, chemical, biological and radiological integrity of water.

**PREMISES:** Any building, lot, parcel of land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**STATE WATERS:** Any and all surface and subsurface waters which are contained in or flow in or through this State, but not including 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.

**STORM WATER:** Precipitation induced surface runoff and drainage.

**WATERS OF THE UNITED STATES:** Surface watercourses and water bodies as defined at 40 CFR section 122.2 including all natural waterways and definite channels and depressions in the earth that may carry water, even though the waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

#### **12.10.104: APPLICABILITY:**

This chapter shall apply to all water entering the MS4 generated on or flowing from any developed and undeveloped lands lying within the City of Fountain.

#### **12.10.105: RESPONSIBILITY FOR ADMINISTRATION:**

The City Engineer shall administer, implement and enforce the provisions of this article. Any powers granted or duties imposed upon the City Engineer may be delegated in writing by the City Engineer to persons or entities (collectively, the "City Engineer") acting in the beneficial interest of or in the employ of the City.

### **12.10.106: SEVERABILITY:**

The provisions of this chapter are severable. If any provision, clause, sentence or paragraph of this article or its application to any person, establishment or circumstances shall be held invalid, the invalidity shall not affect the other provisions or application of this article.

### **12.10.107: REGULATORY CONSISTENCY:**

This chapter shall be construed to assure consistency with the requirements of the Clean Water Act and Federal acts amending or supplementing the act, or any applicable Federal regulations.

### **12.10.108: ULTIMATE RESPONSIBILITY OF DISCHARGER:**

The standards set forth in and promulgated pursuant to this chapter are minimum standards. This chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution or unauthorized discharge of pollutants into waters of the United States caused by that person. This chapter shall not create liability on the part of the City of Fountain, or any City agent or employee for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made pursuant to this chapter.

## **II DISCHARGE PROHIBITIONS**

### **12.10.201: PROHIBITION OF ILLEGAL DISCHARGES:**

- A. 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 MSDP, other than storm water. It shall be unlawful to store, handle or apply any pollutant in a manner that will cause exposure to rainfall or runoff and discharge to the MS4 and to State waters or waters of the United States.
- B. The commencement, conduct or continuance of any discharge not composed entirely of storm water to the MS4 is prohibited except as described as follows:
  - 1. Discharges pursuant to an NPDES (CDPS) permit and discharges due to firefighting activities.
  - 2. 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 discharges 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 or this article: 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 over watering), 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-storm water 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.

3. This prohibition shall not apply to any non-storm water discharge permitted under an NPDES 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 non-storm water discharges which are not a source of pollutants to the City's MS4 or waters of the United States.

#### **12.10.202: PROHIBITION OF ILLICIT CONNECTIONS:**

- A. The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.
- B. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

#### **12.10.203: WASTE DISPOSAL PROHIBITIONS:**

No person shall throw, deposit, leave, maintain, wash or rinse, keep, or permit to be thrown, deposited, left, or maintained, washed or rinsed, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the MS4, or State waters, any pollutants so that the same may cause or contribute to pollution. Wastes deposited in streets and contained in waste receptacles for the purposes of collection are exempted from this prohibition.

**12.10.204: DISCHARGES IN VIOLATION OF INDUSTRIAL OR CONSTRUCTION ACTIVITY NPDES STORM WATER DISCHARGE PERMIT:**

Any person subject to an industrial or construction activity NPDES storm water 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 Fountain Municipal Code.

**III REGULATIONS AND REQUIREMENTS**

**12.10.301: REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORM WATER POLLUTANTS:**

- A. New Development and Redevelopment: The City has adopted requirements identifying appropriate BMPs to control the volume, rate, and potential pollutant load of storm water runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants (see Fountain Municipal Code chapter 12.04). New Development and Redevelopment shall utilize low impact permanent water quality drainage Best Management Practices (BMPs) including Full Spectrum Extended Detention Basin Sedimentation Facility design standards (see Fountain Municipal Code Section 12.04.160 Paragraph B).
- B. Responsibility to Implement BMPs: Any person or entity engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering storm water, the MS4 or State waters shall implement BMPs to the maximum extent practicable to provide protection from discharge into the MS4. BMPs shall be provided and maintained at the owner's or operator's expense. The City Engineer shall have the authority to require the installation, operation and/or maintenance of BMPs. The City Engineer shall also have the authority to require the removal of temporary BMPs.

**12.10.302: REQUIREMENT TO ELIMINATE ILLEGAL DISCHARGES:**

The City Engineer may require by written notice that a person or entity responsible for an illegal 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 discharges.

**12.10.303: REQUIREMENT TO ELIMINATE OR SECURE APPROVAL FOR ILLICIT CONNECTIONS:**

- A. The 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 chapter 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 chapter.
- B. If, subsequent to eliminating a connection found to be in violation of this chapter, the responsible person or entity can demonstrate that an illegal 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.

#### **12.10.304: 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 owner or lessee shall 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 owner or lessee shall 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.

#### **12.10.305: REQUIREMENT TO REMEDIATE:**

Whenever the City Engineer finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of storm water, the MS4 or State waters, the 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 chapter and using a remediation plan pre-approved by the City Engineer. Remediation plans must be submitted by the owner or responsible person or entity to the City Engineer and approved by the City Engineer prior to the start of the remediation. The plan shall be submitted on or before a mutually agreed date and time; however, if, in the sole opinion of the City Engineer, 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.

#### **12.10.306: REQUIREMENT TO MONITOR AND ANALYZE:**

The 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 storm water pollution, illegal discharges and/or non-storm water discharges to the MS4 or State waters, 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 Fountain as deemed necessary to determine compliance with this chapter.

#### **12.10.307: 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 illegal discharges or pollutants discharging into storm water, 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 City Engineer via the City's non-emergency dispatch telephone number, which shall also serve as the Spill Hotline, or by calling the City's Storm Water Drainage Team within the City Public Works Department. 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.

### **IV INSPECTION AND MONITORING**

#### **12.10.401: AUTHORITY TO INSPECT:**

Whenever necessary to enforce any provision of this chapter, or whenever the City Engineer has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter, the City Engineer may enter the premises at all reasonable times to inspect the premises and to inspect and copy records related to storm water 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 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. The sworn application for entry and inspection 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 the belief that a condition which is a violation of the Fountain Municipal Code, the requirements of this chapter or the City's NPDES permit exists on the premises, or that a violation of the Fountain Municipal 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.

## **12.10.402: AUTHORITY TO SAMPLE, ESTABLISH SAMPLING DEVICES AND TEST:**

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

## **V ENFORCEMENT**

### **12.10.501: PUBLIC NUISANCE; NOTICE OF VIOLATION:**

- A. The protection of clean water being essential to the health, safety and welfare of the public, a violation of this chapter is declared to be a public nuisance, and may be summarily abated, restored or remediated by the City at the violator's expense. The City Engineer is authorized to take any action, including, but not limited to, education and training, to abate, enjoin or otherwise compel the cessation of the nuisance.
- B. In addition to any other provision of the Fountain Municipal Code for the abatement of a public nuisance, whenever the City Engineer finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the City Engineer may order compliance by written notice of violation to the person. That notice shall provide a description of the violation or failure and may require, without limitation:
  - 1. The elimination of illicit connections or discharges;
  - 2. The performance of monitoring, analyses and reporting;
  - 3. The person to cease and desist any discharges, practices or operations in violation of this chapter;
  - 4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
  - 5. The payment of a fine to cover administrative and remediation costs;
  - 6. The implementation and/or maintenance of source control or treatment BMPs; and
  - 7. The application for a State discharge permit.

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 City Engineer and the expense of abatement shall be

charged to the person. The notice shall include a date which shall be identified as the "date of notice of violation" for purposes of appeal rights.

### **12.10.502: APPEAL:**

Any person receiving a notice of violation under section 12.10.501 of this Chapter may appeal the determination of the City Engineer to the City Manager or the Manager's designee (the "City Manager"). The notice of appeal must be received by the Manager within ten (10) City business days from the date of the notice of violation. A hearing on the appeal before the Manager or the Manager'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 Manager determination can be made to the City Council. The notice of appeal must be received by the City Clerk within ten (10) City business days from the date of the Manager's determination. A de novo hearing on the appeal before the City Council shall take place within fifteen (15) City business days from the date the City Manager's actually receives a timely notice of appeal of the Manager's determination. The decision of the City Council shall be final.

### **12.10.503: ABATEMENT BY THE CITY:**

If the violation has not been abated pursuant to the requirements set forth in the notice of violation, or an emergency situation exists in the sole determination of the City Engineer, then the 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.

### **12.10.504: 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.

#### **12.10.505: EMERGENCY ABATEMENT:**

The City Engineer is authorized to require immediate abatement of any violation of this chapter which, in the City Engineer's sole determination, constitutes an immediate threat to the health, safety or welfare of the public. If any violation is not abated immediately as directed by the 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 chapter or under Federal or State law.

#### **12.10.506: VIOLATIONS:**

- A. Penalties:** It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. A violation of or failure to comply with any of the requirements of this chapter shall constitute a misdemeanor. Except as otherwise stated in this chapter, each twenty four (24) hour period of violation, or part thereof, shall be considered a separate offense.
- B. Authority to Issue Summons:** The 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 chapter. All summonses issued under this subsection B shall be prosecuted in the Municipal Court by the Office of the City Attorney.
- C. Enforcement by The City Attorney:** The City Attorney is authorized to enforce this chapter in the Municipal Court and in the Colorado State courts. The City Attorney is authorized to call upon the United States Attorney for Colorado for the prosecution of any violations of the Federal Clean Water Act or permits, and the State's Fourth Judicial District Attorney or the Attorney General for the prosecution of any violations of State clean water statutes or permits occurring within the City limits or upon property owned, leased, controlled, regulated or otherwise held by the City under authority of the local, State or Federal law.

#### **12.10.507: COMPENSATORY ACTION:**

In lieu of enforcement proceedings, penalties and remedies authorized by this chapter, the City Engineer may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

## **12.10.508: ACTS POTENTIALLY RESULTING IN A VIOLATION OF THE FEDERAL CLEAN WATER ACT:**

Any person who violates any provision of this chapter or any provision of any requirement issued pursuant to this chapter may also be in violation of the Clean Water Act or other Federal law, and may be subject to the sanctions of that act or Federal law, including civil and criminal penalties, in addition to the City's enforcement of this chapter.

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**Section 3:** Paragraph B (Requirements) of Section 12.04.160 (Grading, Erosion, and Stormwater Quality) of Chapter 12.04 (Construction Generally) of Title 12 (Streets, Sidewalks and Public Places) is hereby amended to read as follows:

B. Requirements- any land disturbance by owner, developer, contractor, or other person shall comply with the basic grading, erosion, and storm water quality requirements and general prohibitions listed below and comply with the City of Colorado Springs Drainage Criteria Manual, Volume 2, Stormwater Quality Policies, Procedures, and Best Management Practices (BMPs).

1. All persons engaged in soil disturbance shall implement and maintain acceptable soil erosion and sediment control measures including BMPs in conformance with the erosion control technical standards of the manual and in compliance with the erosion and storm water quality control plan approved by the City, if required.
2. Stormwater discharges from construction sites shall not cause or threaten to cause pollution, contamination or degradation of State waters.
3. Concrete wash water shall not be discharged to or allowed to runoff to State waters, including any surface or subsurface drainage system or appurtenance thereto.
4. Building, construction, excavation, or other waste materials shall not be temporarily placed or stored in the street, alley, or other public way unless in conformance with an approved traffic control plan. A best management practice (BMP) may be required by the City Engineer if deemed necessary based upon specific conditions and circumstances.
5. Vehicle tracking of soils off site shall be minimized.
6. The owner, site developer, contractor, and/or their authorized agents shall be responsible for the removal of all construction debris, dirt, trash, rock, sediment and sand that may accumulate in the storm sewer or other drainage conveyance system as a result of site development.
7. No person shall cause the impediment of the storm water flow line of curb and gutter, including the temporary ramping with materials for vehicle access.
8. Individuals shall comply with the "Colorado Water Quality Control Act" Article 8 of Title 25 C.R.S. and "Clean Water Act" (33 USC, Section

1344), the City MS4 Permit requirements, Phase II EPA Regulations, other regulations promulgated, certifications, or permits issued, in addition to the requirements included in the BMP manual.

9. The quantity of materials stored on the project site shall be limited, as much as practical, to the quantity required to perform the work in an orderly sequence. All materials on site shall be stored in a neat, orderly manner, in their original containers, with manufacturer's labels. Materials shall not be stored in a location where they can be carried by storm water runoff into State water at any time.
10. A copy of a Storm Water Management Plan (SWMP) shall be submitted to and kept on file by the City Engineer.
11. A copy of a Storm Water Management Plan (SWMP) shall be kept on the Construction Site until Construction is complete and accepted by the City.
12. New Development and Redevelopment shall utilize low impact permanent water quality drainage Best Management Practices (BMPs) including Full Spectrum Extended Detention Basin Sedimentation Facility design standards. The following additions to the Storm Water Quality Management and Discharge Control Code are hereby adopted by reference:
  - a. "Peak Flow Control for Full Spectrum of Design Storms" Urban Drainage & Flood Control District (UDFCD), Denver, Colorado Concept Paper Dated January 1, 2005;
  - b. Full Spectrum Detention Design Standards from UDFCD, Denver, Colorado Criteria Manual Volume 2 Chapter 10 & Detention Volume Estimating Workbook Dated June 2007;
  - c. Full Spectrum Detention Design Standards from Arapahoe County Colorado Storm Water Management Manual Chapters 13 & 14 Dated March 2007
13. All storm sewer facilities shall be cleaned, video camera/DVD inspected and repaired (if needed) at developer expense prior to City acceptance.
14. All new development and redevelopment storm sewer inlet and outlet control structures shall include an 4-inch diameter disc storm drain marker with a centered fish emblem and the wording above/below stating "No Dumping – Drains to Creek" as approved by the City.

**Section 4.** This ordinance shall be in full force in effect from and after its passage and publication as provided by the City Charter.

Introduced, read by title, and passed on second and final reading, as amended, this 14th day of August, 2007, signed by the Mayor, and ordered published by title with a summary of the amendment with a statement that a copy of the amendment is available for public inspection and acquisition in the office of the City Clerk in the El Paso County Advertiser and News, a newspaper of general circulation in the City of Fountain, Colorado, in accordance with the City Charter.

ATTEST:

Jeri C. Howell  
Mayor 8-14-07

Sharon S. Masley  
City Clerk