ORDINANCE NO. 2008-249

AN ORDINANCE OF THE TOWN OF WINDSOR AMENDING TITLE IX OF THE WINDSOR MUNICIPAL CODE BY RETITLING TITLE IX AND CHAPTER 1 THEREOF AND BY ADDING CHAPTER 4 "STORM WATER QUALITY" THERETO

THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title IX "Floodplain Management" of the Windsor Municipal Code is retitled "Flood Damage, Flood Control, and Drainage."

SECTION 2. Chapter 1 "General" of Title IX of the Windsor Municipal Code is retitled "Floodplain Management."

SECTION 3. Chapter 4 "Storm Water Quality" is added to Title IX of the Windsor Municipal Code, to read as follows:

CHAPTER 4. STORM WATER QUALITY

Article I. Title, Purpose, and General Provisions

9-4-100 Title, Purpose, and Intent

This Chapter shall be known as the "Storm Water Quality Ordinance" of the Town of Windsor (Town) and may be so cited.

The purpose and intent of this Chapter is to protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. §1251 et seq.) by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm-water discharges to the storm drain system.

9-4-105 Definitions

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

"Best Management Practices" means activities, practices, and procedures to prevent or reduce the discharge of pollutants directly or indirectly to the municipal storm drain system and waters of the United States. Best Management Practices (BMPs) include, but are not limited to: treatment facilities to remove pollutants from storm water; operating and maintenance procedures; facility management practices to control runoff, spillage or leaks of non-storm water, waste disposal, and drainage from materials storage; erosion and sediment control practices; and the prohibition of specific activities, practices, and procedures and such other provisions as the Town determines appropriate for the control of pollutants.

"Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

"Construction activity" means activities subject to National Pollutant Discharge Elimination System (NPDES) Construction Permits. These include construction projects resulting in land disturbance of 1 or more acres. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

"Discharger" means any individual or private or public facility that releases, spills, leaks, pumps, flows, dumps, or disposes of any substance into the Town's storm drain system.

"Hazardous materials" means 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 (California Health and Safety Code §25117).

"Illegal discharge" means any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Sections 9-4-200(b)(1) through 9-4-200(b)(3).

"Illicit connections" is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-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 said drain or connection had been previously allowed, permitted, or approved by a government agency; or

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

"Industrial activity/discharger" means any public or private activity/facility which is associated with any of the 11 categories of activities defined by 40 CFR, Section 122.26 (b)(14), and required to obtain an NPDES permit.

"National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits" means general, group, and individual storm water discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act. The California Regional Water Quality Control Board, North Coast Region (hereinafter, Regional Board) and the State Water Resources Control Board have adopted general storm water discharge permits, including but not limited to the General Construction Activity and General Industrial Activity permits.

"Non-storm water discharge" means any discharge to the storm drain system that is not composed entirely of storm water or any release of pollutants that potentially or actually discharges to the Town's storm drain system.

"Pollutant" means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous 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 (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

"Pollution" means the human-made or human-induced alteration of the quality of waters by waste to a degree which unreasonably affects, or has the potential to unreasonably affect, either the waters for beneficial uses or the facilities which serve these beneficial uses (California Water Code §13050).

"Porter-Cologne Act" means the Porter-Cologne Water Quality Control Act and as amended (California Water Code §13000 et seq.).

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

"Storm drain system" means publicly-owned facilities operated by the Town by which storm water is collected and/or conveyed, including but not limited to any roads with or without discrete drainage systems, ditches (including but not limited to roadside ditches), streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered watercourses, drainage channels, reservoirs, and other drainage structures which are within the Town and are not part of a publicly owned treatment works as defined at 40 CFR Section 122.2.

"Storm water" means any surface flow, runoff, and drainage consisting entirely of water from rainstorm events.

"Town" means the Town of Windsor.

"Waters of the United States" means surface watercourses and water bodies as defined at 40 CFR 122.2 including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

9-4-110 Applicability

This Chapter shall apply to all water entering the storm drain system which has been generated on or which has flowed over, under, or through any developed and undeveloped lands lying within the Town.

9-4-115 Responsibility for Administration

The Town Manager shall administer, implement, and enforce the provisions of this Chapter. Any powers granted or duties imposed upon the Town Manager may be delegated in writing by the Town Manager to persons or entities acting in the beneficial interest of or in the employ of the Town.

Article II. Discharge Prohibitions

9-4-200 Prohibition of Illegal Discharges

(a) The release of non-storm water discharges to the Town's storm drain system is prohibited.

(b) The following discharges are exempt from the prohibition set forth in subsection (a) of this section:

(1) Any discharge in compliance with a National Pollution Discharge Elimination System (NPDES) permit issued to the discharger and administered by the State of California under the authority of the United States Environmental Protection Agency.

(2) Discharges from the following activities will not be considered a prohibited discharge to the Town's storm drain system when properly managed:

1. Flushing of potable water from potable water lines and other discharges from potable water sources;
2. Minor amounts of incidental runoff and overspray from landscape irrigation and lawn watering;
3. Dechlorinated swimming pool/spa discharges;
4. Emergency fire fighting discharges;
5. Runoff from residential car washing;
6. Diverted stream flows;
7. Rising groundwaters, uncontaminated groundwater infiltration, and uncontaminated pumped ground water;
8. Foundation and footing drains;
9. Water from crawl space pumps;
10. Air conditioning condensation;
11. Springs and flows from riparian habitats and wetlands, and;

12. Other flows necessary for implementing BMPs directed or approved by the Town Manager or designee.

(3) With written concurrence of the Regional Board, the Town may exempt in writing other non-storm water discharges that are neither a source of pollutants to the storm drain system nor waters of the United States.

(c) Any discharge that would result in, or contribute to, a violation of any NPDES permit for storm water discharges within the Town is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge.

(d) No person shall deposit any hazardous materials or wastes, yard debris, refuse, or other discarded or abandoned objects or articles in or upon any component of the storm drain system or upon any public or private plot of land in the Town, so that the same may cause or contribute to pollution.

(e) It is unlawful to establish, use, maintain, or continue unauthorized drainage connections to the Town's storm drain system, or any drainage connections that are or may be a source of prohibited discharges.

Article III. Regulations and Requirements

9-4-300 Requirements for Reducing Pollutants in Storm Water

(a) Each industrial discharger, discharger associated with construction activity, or other discharger described in any general storm water permit addressing such discharges as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the Regional Board shall provide the notice of intent, comply with, and undertake all other activities required by any general storm water permit applicable to such dischargers.

(b) The Town Manager or designee may require any business in the Town that is engaged in activities that may result in prohibited discharges to develop and implement a storm water pollution prevention plan. Business activities which may require a storm water pollution prevention plan include, but are not limited to, maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading or fueling, or cleanup procedures which are carried out partially or wholly out of doors.

(c) The Town may adopt 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. The Town shall incorporate such requirements in any land use entitlement and construction or building-related permit to be issued relative to such development or redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required in this Chapter.

(d) Persons owning, operating, or maintaining a paved parking lot, the paved areas of a gas station, a paved private street, road, or driveway and related storm drain systems shall clean those structures as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the storm drain system.

(e) Every person owning or leasing property through which a watercourse passes shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse.

(f) The occupant or tenant, or in the absence of occupant or tenant, the owner or proprietor of any real property in the Town in front of which there is a paved sidewalk shall maintain that portion of the sidewalk in front of the property free of dirt or litter to the maximum extent practicable. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway or any element of any drainage system, but shall be disposed of in receptacles maintained as required for the disposal of solid waste.

9-4-305 Requirement to Eliminate Illegal Discharges

The Town Manager or designee may require by written notice that a person 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.

9-4-310 Requirement to Eliminate or Secure Approval for Illicit Connections

The Town Manager or designee may require by written notice that a person responsible for an illicit connection to the storm drain system 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.

9-4-315 Requirement to Remediate

Whenever a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of storm water, the storm drain system, or waters of the United States, the Town Manager or designee may require by written notice to the owner of the property and/or the responsible person that the pollution be remediated and the affected property restored within a specified time.

9-4-320 Requirement to Monitor and Analyze

The Town Manager or designee 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 storm drain system or waters of the United States, undertake at said person's expense such monitoring and analyses and furnish such reports to the Town as deemed necessary to determine compliance with this Chapter.

9-4-325 Notification of Spills

Notwithstanding other requirements of law, as soon as any 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 storm drain system, or waters of the United States from said facility, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of a release of a hazardous material said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of non-hazardous materials, said person shall notify the Town's Public Works Department. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town's Public Works Department within three business days of the initial notice. If the discharge of prohibited materials 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 years.

Article IV. Inspection and Monitoring

9-4-400 Authority to Inspect

Whenever it is necessary to make an inspection to enforce any provision of this Chapter, or whenever there is cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Chapter, an authorized Town employee may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the Town is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

9-4-405 Authority to Sample, Establish Sampling Devices, and Test

Inspections by the Town shall be based upon such reasonable selection process as may be deemed necessary to carry out the objectives of this article, including, but not limited to, dry-weather flow inspections, random sampling and/or sampling in areas where there is evidence of storm water contamination, discharge of non-storm water to the storm drain system, or similar activities. Such inspections may also be done in conjunction with other routine inspections conducted by the Town, including but not limited to inspections related to zoning and use permit compliance, industrial waste activities, or construction activities.

During any inspection as provided herein, any authorized Town employee may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

Article V. Enforcement

9-4-500 Notice of Violation

Whenever a person has violated a prohibition or failed to meet a requirement of this Chapter, the Town Manager or designee may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

(a) The performance of monitoring, analyses, and reporting;

(b) The elimination of illicit connections or discharges;

(c) That violating discharges, practices, or operations shall cease and desist;

(d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

(e) Payment of a fine to cover administrative and remediation costs;

(f) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the Town or a contractor designated by the Town and the expense thereof shall be charged to the violator.

9-4-505 Appeal

Notwithstanding the provisions of Section 9-4-520 below, any person receiving a Notice of Violation under Section 9-4-500 above, may appeal the determination of the Town Manager or designee to the Town Council by filing an appeal with the Town Clerk within seven (7) calendar days of the date of service of the Notice of Violation. Hearing of the appeal by the Town Council shall take place within 30 calendar days from the date of Town's receipt of the notice of appeal. The decision of the Town Council shall be set forth by resolution and shall be final.

9-4-510 Abatement by Town

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in the event of an appeal under Section 9-4-505, within 10 days of the decision upholding the decision of the Town Manager or designee, the Town or designated contractor may enter upon the subject private property and be authorized to take any and all measures

necessary to abate the violation and/or restore the property. Should any person, owner, agent or person in possession of any premises refuse to allow the Town or designated contractor to enter upon the premises for the purposes set forth above, the Town or designated contractor shall obtain a warrant to enter the subject property.

9-4-515 Charging Cost of Abatement/Liens

Within 30 days after abatement of the nuisance by Town, the Town Manager or designee shall notify the property owner of the cost of abatement, including administrative costs (including but not limited to staff costs and attorneys fees). The property owner may file a written protest objecting to the amount of the assessment with the Town Clerk within 15 days of said notification. The Town Clerk shall set the matter for hearing by the Town Council. The decision of the Town Council shall be set forth by resolution and shall be final.

If the amount due is not paid within 10 days of the decision of the Town Council or the expiration of the time in which to file an appeal under this section, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. A copy of the resolution shall be turned over to the County Auditor so that the auditor 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 assessment on the bill for taxes levied against the parcel of land.

9-4-520 Urgency Abatement

The Town Manager or designee is authorized to require immediate abatement of any violation of this Chapter that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately, the Town is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Town shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent Town from seeking other and further relief authorized under this Chapter.

9-4-525 Violations

(a) 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.

(b) Any person who submits a report required by this Chapter, which she or he knows, or should have reason to know, contains falsified data shall be subject to a fine not to exceed the amount that the Town may be fined by the State Water Resources Control Board or the amount of any civil liability imposed on the Town for noncompliance with the municipal storm water discharge permit.

(c) Every day or any portion thereof any violation of this Chapter continues shall constitute a separate offense.

(d) Concealing, aiding, or abetting a violation of any provision of this Chapter shall constitute a violation of such provision.

9-4-530 Compensatory Action

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

9-4-535 Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the Town at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the Town.

9-4-540 Acts Potentially Resulting in a Violation of the Federal Clean Water Act and/or California Porter-Cologne 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 and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this Chapter shall also include written notice to the violator of such potential liability.

9-4-545 Remedies Are Not Exclusive

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

SECTION 4. Severability

If any part of this Ordinance or the application thereof to any person is held invalid, the remainder of the Ordinance and the application of such provisions to other persons shall not be affected thereby.

SECTION 5. Effective Date

This Ordinance shall take effect and be in force 30 days following its adoption.

SECTION 6. Posting

The Town Clerk of the Town of Windsor shall cause this Ordinance to be published or to be posted in at least three (3) public places in the Town of Windsor in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED, AND ADOPTED this 3rd day of December 2008, by the following vote:

AYES:	**COUNCILMEMBERS ALLEN, FUDGE, SALMON, SCHOLAR AND MAYOR GOBLE**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

ROBIN GOBLE, MAYOR

ATTEST:

BRIGITTE GRAHAM, DEPUTY TOWN CLERK