RESOLUTION 2016-18

A RESOLUTION OF TOWN COUNCIL OF GUADALUPE DECLARING CERTAIN DOCUMENTS A PUBLIC RECORD

The Town Council of Guadalupe, Arizona hereby declares the following documents a public record and instructs the Town Clerk to keep three (3) copies of said documents available for public inspection:

1. Town of Guadalupe Ordinance No. 2016-02 concerning the Town stormwater pollution prevention program as set forth in Chapter 19 of the Guadalupe Town Code as amended.

2. The Town Code of Guadalupe including Chapter 19 as amended.

PASSED AND ADOPTED this 8th day of September, 2016, by the Town Council of Guadalupe, Arizona.

Mayor Angie Perez

Attest:

Rose Mary Arellano
Town Clerk, Interim Town Manager

APPROVED AS TO FORM:

David E. Ledyard, Town Attorney

ORDINANCE NO. 2016-02

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, AMENDING THE TOWN CODE OF GUADALUPE TO ADD TITLE 19 ENTITLED STORM WATER, TO PROVIDE FOR THE ELIMINATION AND/OR REDUCTION IN STORM WATER POLLUTION; ESTABLISH DEFINITIONS; PROVIDE PERMIT REQUIREMENTS; CLEAN UP AND NOTIFICATION REQUIREMENTS; INSPECTIONS ENFORCEMENT AND PENALTIES.

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

WHEREAS, The Town of Guadalupe is adopting a storm water management plan and said plan requires the Town to adopt a policy or ordinance intended to prohibit, prevent, and/or minimize pollution for storm water runoff and the Town is therefore adopting such an ordinance to assist in enforcement:

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Guadalupe as follows:

1. That certain document known as the Town of Guadalupe Storm Water Pollution Prevention Ordinance is declared to be a public record and the Town Clerk shall keep three copies of said ordinance on file at the office of the Town Clerk.

2. The Town of Guadalupe Town Code shall be amended by adopting by reference that public record entitled the Town of Guadalupe Storm Water Pollution Prevention ordinance, said ordinance to be added to the Town Code as Chapter 19 and is hereby adopted and incorporate herein by reference.

3. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance or any part of the Town Code adopted hereby by reference are repealed.

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

5. Any person found guilty of violating any portion of this Ordinance shall be guilty of a class one misdemeanor and upon conviction shall be punished by a fine not to exceed $2,500.00 per day for each violation and/or incarceration for up to six months in jail. Each day a violation continues shall be a separate offense punishable as herein described.

6. In addition to any other enforcement authority contained in this Ordinance or the Town Code of Guadalupe the Director may issue a civil citation to any person who has violated or continues to violate any provision of this Ordinance or the Town Code of Guadalupe, Chapter 19, or any other related laws or regulations. A person who violates any requirement of this Ordinance, the Town Code of Guadalupe, Chapter 19 or any applicable NPDES or AZPES Storm Water Permit Condition shall be civilly liable to the Town for a sum not to exceed $500 per day for each violation.

PASSED AND ADOPTED by the Common Council of the Town of Guadalupe, Arizona, on this 8 day of September, 2016.

Mayor Angie Perez

Attest:

Rosemary Arellano, Town Clerk
Interim Town Manager

Approved as to Form:

David E. Ledyard, Esq.

RESOLUTION 2016-19

A RESOLUTION OF TOWN COUNCIL OF GUADALUPE CONCERNING STORMWATER POLLUTION PREVENTION

The Town Council of Guadalupe hereby approves, adopts and passes the following measures concerning Stormwater Pollution Prevention and authorizes the Mayor and/or the Town Clerk to sign such documents as may be necessary to implement a Stormwater Pollution Program. Said measures are:

1. Any agreement, order, and/or consent decree with the Arizona Department of Environmental Quality concerning stormwater pollution prevention.

2. Town of Guadalupe Ordinance No. 2016-02 entitled "**AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, AMENDING THE TOWN CODE OF GUADALUPE TO ADD TITLE 19 ENTITLED STORM WATER, TO PROVIDE FOR THE ELIMINATION AND/OR REDUCTION IN STORM WATER POLLUTION; ESTABLISH DEFINITIONS; PROVIDE PERMIT REQUIREMENTS; CLEAN UP AND NOTIFICATION REQUIREMENTS; INSPECTIONS ENFORCEMENT AND PENALTIES".**

3. The Town Clerk shall keep three (3) copies of all such documents available for public inspection.

PASSED AND ADOPTED this 8th day of September, 2016, by the Town Council of Guadalupe, Arizona.

Angie Perez
Mayor Angie Perez

Attest:

Rose Mary Arellano
Town Clerk, Interim Town Manager

APPROVED AS TO FORM:

David E. Ledyard, Town Attorney

TOWN OF GUADALUPE
STORM WATER POLLUTION PREVENTION ORDINANCE

Chapter 19 Buildings and Construction

Chapter 19.1 STORM WATER POLLUTION PREVENTION

Sections:

19.19.010	**Purpose.**
19.19.020	**Definitions.**
19.19.030	**Delegation of authority for administration and enforcement.**
19.19.040	**Prohibition of non-storm water discharge to the public storm drain system; exemptions.**
19.19.050	**Operating facilities or activities.**
19.19.060	**Construction sites.**
19.19.070	**Post-construction;**
19.19.080	**Cleanup and notification requirements.**
19.19.090	**Inspections.**
19.19.100	**Enforcement and penalties.**

19.19.010 Purpose.

This chapter sets forth the requirements for the control *of* pollutants that are or may be discharged to the public storm drain system. The purpose of this chapter is to enable the town to comply with all applicable state and federal laws related to storm water management, including but not limited to; the clean water act (33 U.S.C. 1251 et sec), the national pollutant discharge elimination system regulations (40 C.F.R part 122), and the Arizona pollutant discharge elimination system (AZPDES) permit (AAC R18-19-A902).

19.19.020 Definitions.

For the purposes of this chapter, the following words and terms Shall be defined as follows:

Arizona Department of Environmental Quality (ADEQ) means the state agency charged with enforcement of environmental laws and regulations.

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

Best Management Practices (BMPS) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water. BMPS also include treatment requirements, operating

procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from outdoor storage areas.

Clean Water Act means the federal water pollution control act, as amended. 22 U.S.C. 1251 et seq.

Director means the Town Manager or her designee.

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

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

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

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

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

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

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

Public storm drain system means all or any part of the publicly-owned and maintained roads, streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains, and dry wells located within public easements. right-of-way, parks, common areas, retention areas, or other publicly-owned or maintained real property designed or used for collecting, holding, or conveying storm water.

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

19.19.030 Delegation of authority for administration and enforcement.

The Town Manager is delegated the authority to exercise the powers and perform the duties set forth in this chapter and to administer and enforce provisions of this chapter. The Town Manager may designate other employees to exercise such powers and perform such duties, as he deems appropriate.

19.19.040 Prohibition of non-storm water discharge to the public storm drain system; exemptions.

A. Unless expressly authorized or exempted by this chapter, no person shall cause or allow the discharge to a public right-of-way or public storm drain system of any substance that is not composed entirely of storm water.

B. Unless expressly authorized or exempted by this chapter, no person shall use, store, spill, dump, or dispose of materials in a manner that those materials could cause or contribute to the addition of pollutants to storm water.

C. Exemptions. The following discharges are exempt from the prohibitions set forth in subsections (a) and (b) of this section:

1. Discharges authorized by a separate NPDES or AZPDES permit,

2. The following categories of-non-storm water discharges are permissible unless otherwise prohibited under Subsections (c) (3), (c)(4) or (c)(5):

    a. Water line flushing,
    b. Landscaping irrigation,
    c. Diverted stream flows,
    d. Rising groundwaters,
    e. Uncontaminated groundwater Infiltration as defined in 40 C.F.R § 35.2005(20),
    f. Uncontaminated pumped groundwater,
    g. Discharges from potable water sources,
    h. Foundation drains,
    i. Air conditioning condensation,
    j. Irrigation water,
    k. Springs,
    l. Water from crawl space pumps,
    m. Footing drains,
    n. Lawn watering,
    o. Individual residential car washing,
    p. Flows from riparian habitats and wetlands,
    q. Dechlorinated swimming pool discharges,
    r. Street wash water,
    s. Discharges from emergency fire fighting activity,

t. Dust control watering; or
u. Any other activity that the director identifies is not a significant contributor of pollutants during the town's AZPDES storm water permit term. (40 C.F.R. § 122.34(b)(3)(iii)).

3. No person shall discharge to the public storm drain system any exempted discharge under this subsection if the director or assigned designee identifies and provides written notice to the person that the discharge has the potential to be a source of pollutants to receiving waters, waterways, or groundwater.

4. *No* person shall discharge to the public storm drain system that would result in or contribute to a violation of the AZPDES storm water permit issued to the town. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge.

5. No person shall establish, use, maintain, or continue any connection to the public storm drain system, which has caused or is likely to cause a violation of this section. This prohibition is retroactive and shall apply to any connection that was made in the past, regardless of whether it was made under permit or other authorization, or whether it was permissible under the law or practices applicable or prevailing at the time of the connection.

19.19.50 Operating facilities or activities.

A. All persons owning or operating premises or engaged in activities. who are required by federal Or state law to submit to EPA and/or ADEQ a Notice of Intent (NOI) to comply with an NPDES or AZPDES storm water permit shall provide a copy of such notice to the director upon request Facilities required to apply for a storm water permit are identified in 40 C.F.R. 122.26(b)(14).

B. All persons engaged in activities which will or may reasonably be expected to result in pollutants entering the public storm drain system shall institute best management practices (BMPS) to minimize such pollutants, shall provide protection from accidental discharge of pollutants to the public storm drain system and comply with the cleanup and notification requirements of this chapter. Such measures shall include the requirements imposed by federal, state, county, or local authorities. BMPS are site-specific and are described in the document "Storm Water Management for Industrial Activities: Developing Pollution Prevention plans and Best Management Practices" (EPA 832-r-92-006) or other guidance documents available from EPA and/or ADEQ.

C. If a Best Management Practice is required by ADEQ's standards to prevent a pollutant from entering the public storm drain system, the person receiving the notice of such a requirement may petition the director to reconsider the application of the BMP to the premises or activity. The written petition must be received within ten (10) working days setting forth any reasons and proposed alternatives. The director will

act within thirty (30) days of the petition, but during the time a final decision is made, the applicant shall:

1. Fully observe the aforementioned BMP, or
2. Abstain from the pollutant-producing activity in question.

19.19.060 Construction sites.

A. All persons engaged in construction activities who are required by federal or state law to submit to EPA and/or ADEQ a notice of intent to comply with an NPDES or AZPDES storm water permit, shall provide the town with copies of the NOI and the NPDES storm water permit issued by ADEQ as one of the pre-conditions for permitting. Construction activities that will disturb one acre or more of land area or smaller land areas if they are part of a larger common plan of development or sale are required to apply for a storm water permit (40 C.F.R. 122.26(b)(15).

B. Any person performing construction shall not cause or contribute to a violation of the AZPDES storm water permit issued to the town. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge. Any person performing construction shall undertake Best Management Practices to minimize pollutants (including sediments) from leaving the construction site, shall provide protection from accidental discharge of pollutants to the public storm drain system, and comply with the cleanup and notification requirements of this chapter. Site operator shall ensure erosion and sediment control and control waste and properly dispose of wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality. Such measures shall include the requirements imposed by federal, state, county or local authorities. BMPS are site-specific and are described in the document "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices" (EPA 832-r-92-005) or other guidance documents available from EPA and/or ADEQ.

C. If a Best Management Practice is required by the director to prevent a pollutant from entering the public storm drain system, the person receiving the notice of such a requirement may petition the director to reconsider the application of the BMP to the premises or activity, The written petition must be received within ten (10) working days setting forth any reasons and proposed alternatives, the director will act within thirty (30) days of receipt of the petition, but during the time a final decision is made, the applicant shall:

1. Fully observe the aforementioned BMP, or
2. Abstain from the pollutant-producing activity in question.

19.19.070 . Post-construction.

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

19.19.080 Clean-up and notification requirements.

A. As soon as any owner or operator has actual or constructive knowledge of any discharge which may result in pollutants entering the public storm drain system, such person shall promptly take all necessary steps to ensure the discovery of the source and the extent and proceed with containment and cleanup of such discharge.

B. The owner or operator shall notify the director of the discharge in both of the following manners:

1. By telephone as soon as practical but no later than 24 hours after discovery if non-hazardous materials are involved or by calling 9-1-1 immediately upon discovery if hazardous materials are involved; and

2. By written report within 10 days after the initial notice identifying the discharge source, extent, pollutant, measures taken to mitigate the discharge, and preventative measures put in place to prevent a subsequent discharge.

19.19.090 Inspections.

A. Authority to inspect. Upon presentation of credentials and at all reasonable or necessary hours, all authorized employees of the town shall have access to all premises and to all records pertaining to those premises for purposes of ensuring compliance with this chapter. Inspection, interviewing, copying, sampling, photographing, and other activities conducted on the premises shall be limited to those which are reasonably needed by the town in determining compliance with the requirements of this chapter. All persons shall allow such activities under safe and non-hazardous conditions with a minimum of delay.

B. Monitoring activities. The director may order any person engaged in any activity or owning or operating on any premises which may cause or contribute to discharges of pollutants to the public storm drain system in violation of this chapter or any applicable NPDES or AZPDES storm water permit condition to undertake such monitoring activities and analyses and furnish such reports as the director reasonably may specify. The costs of such activities; analyses, and reports shall be borne by the recipient of the order.

C. Access refusal. If an authorized employee of the town has been refused access to any premises, 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, interview, copy, photograph or sample as part of an inspection and sampling procedure of the town to determine

compliance with the requirements of this chapter or any related laws or regulations, or to protect the environment and the public health, safety and welfare of the community, then the director may seek issuance of a search warrant from the town municipal court.

19.19.100 Enforcement and penalties.

A. Charges levied pursuant to this chapter shall be collected by the Director. The director shall make and enforce economic and efficient protection of the town's storm drain system.

B. Owner of record. The owner of record of the property upon which a violation of this chapter occurs shall be presumed to be a person having lawful control over the activity or premises unless it is demonstrated that another person has knowingly and in good faith accepted responsibility for the activity at issue. If more than one person is identified as the owner, such persons shall be presumed to be jointly and severally in lawful possession and control of the activity or premises.

C. Change in Ownership or Control. Should there be a change of ownership or control of any property subject to this Chapter, the previous owner or person or entity having previously had control of said property shall promptly file a notice with the Director stating the ownership or control of said property has changed, and provide complete contact information for the new owner and/or person or entity having control. The new owner and/or person or entity in control of property shall, within 10 days of acquiring ownership or control, file with the Director a sworn statement which provides full contact information and acknowledges the location of all facilities and equipment, including but not limited to dry wells, storm piping and other infrastructure, required by the Storm Water Ordinance and this Chapter. In addition to the foregoing, the sworn statement shall state that the new owner or person or entity in control will continue with their operation and maintenance. Failure to provide the notices and/or sworn statements required by this Chapter shall subject the violator to civil and criminal penalties as set forth hereafter.

D. Notice of violation. The director may issue a written notice of violation to any person who has violated or is in violation of this chapter. Failure to comply with any act required in the notice of violation shall be a separate violation for each day beyond the thirtieth (30th) day following the notice of violation. Nothing in this section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. In appropriate situations the director may notify the person orally either in person or by telephone prior to, and in some cases' in lieu of, written notification.

E. Consent orders. The director may enter into consent orders, assurances of voluntary compliance, negotiated settlement agreements or other similar documents establishing an agreement with any person responsible for noncompliance. Such documents will include specific action to be taken by the person to correct the noncompliance within a time period specified by the document, including an identification and description'

of the best management practices and measures to utilize in implementing the order. Such documents shall have the same force and effect as any other orders issued under this chapter and shall be judicially enforceable.

F. Cease and desist orders. When the director finds that a person has violated, or continues to violate, any provision of this chapter or any related laws, or regulations, or that the person's past violations are likely to recur, the director may issue an order to the person directing them to cease and desist all such violations and direct the person to immediately comply with all requirements; and take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation. Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person. A person's failure to comply with an order of the Director issued pursuant to this chapter shall constitute a violation of this chapter.

G. Civil penalties. In addition to any other enforcement authority contained in this chapter, the director may issue a civil citation to any person who has violated, or continues to violate, any provision of this chapter or any related laws or regulations. A person who violates any requirement of this chapter or any applicable NPDES or AZPDES storm water permit condition shall be civilly liable to the town for a sum not to exceed $500 per day for each violation.

H. Criminal penalties. A person who willfully or negligently violates any provision of this chapter, or any related laws or regulations shall, upon conviction, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed $2,500 per day for each violation and/or by imprisonment for a period not to exceed six months.

I. Criminal prosecution. Some intentional violations may constitute criminal violations of federal, state, and town law, and that under such circumstances, the director may seek the assistance of the EPA, the state or the town prosecutor to commence civil and/or criminal action against any person who violates any requirement of this chapter or any applicable NPDES or AZPDES storm water permit condition.

J. Revoking or withholding of permit. In addition to or in lieu of all other available penalties, the town may revoke or withhold any permit, approval or license to construct improvements to real property or operate a business in the town if the holder of such permit, approval, or license is in violation of any requirement of this chapter or any applicable NPDES or AZPDES storm water permit condition.

K. Liability for costs. The director may assess liability for costs to any person in violation of this chapter for all actual costs incurred by the town in surveillance, sampling and testing, abatement, and remediation associated with a discharge. Additionally, the director may assess liability for costs to any person whose discharge resulted in a violation of the town's AZPDES storm water permit.