



Office of the City Manager

ACTION CALENDAR

January 22, 2019

*(Continued from December 11, 2018)*

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development Department  
Phil Harrington, Director, Public Works Department

Subject: Companion Report to Referral Response: Mandatory and Recommended  
Green Stormwater Infrastructure in New and Existing Redevelopments or  
Properties

RECOMMENDATION

Express appreciation for the intent of the Community Environmental Advisory Commission (CEAC) recommendation to develop and implement measures to help reduce runoff from private property when rain exceeds two inches in a 24-hour period, and allow staff to continue existing efforts to implement Municipal Regional Stormwater Permit regulations in coordination with the 14 other local governments and agencies that participate in the Alameda Countywide Clean Water Program.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts from adopting the recommendation in the City Manager's companion report. Implementation of the CEAC recommendation could entail significant costs in staff time for analysis and enforcement, and to homeowners and developers of projects which would incur significant additional costs in project design and City fees.

CURRENT SITUATION AND ITS EFFECTS

In response to a referral from 2015, CEAC has recommended that the City Manager develop and adopt requirements for stormwater runoff abatement and retention which would go significantly beyond current requirements, and would include projects of much smaller scope than are covered by existing requirements.

Projects in Berkeley and throughout Alameda County are currently governed by Municipal Regional Stormwater NPDES<sup>1</sup> Permit (MRP 2.0) regulations. While the City of Berkeley is an individual permittee and is responsible for its own compliance with MRP 2.0, the City has joined with 13 other Alameda County cities, the county itself, the Alameda County Flood Control and Water Conservation District, and Zone 7 Water Agency to form the Alameda Countywide Clean Water Program (the ACCWP). City of Berkeley staff from the Public Works Department, the Toxic Management Division of the

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<sup>1</sup> National Pollutant Discharge Elimination System

Planning Department, and the Environmental Health Division of the Health, Housing, and Community Services Department attend meetings on at least a monthly basis for the various subcommittees of the ACCWP. Many MRP 2.0 compliance documents, tools, and methodologies are worked on collaboratively through the ACCWP. Implementation of the CEAC recommendation would require the City to duplicate many efforts of the ACCWP, increasing the City's costs and diminishing the value of the City's membership in the ACCWP.

Current MRP regulations cover new developments, maintenance of commercial and industrial facilities, construction-related practices, municipal requirements for stormwater treatment and trash control, enforcement practices, and reporting requirements. Current regulations generally require development projects that create or replace 10,000 square feet or more of impervious surface to incorporate stormwater treatment measures, such as flow-through planters, bioswales, or permeable pavement. For projects between 2,500 and 10,000 square feet, applicants are required to install at least one of six site design measures, such as directing roof runoff to rain barrels or vegetated areas; directing runoff from sidewalks, walkways, parking lots to vegetated areas; constructing sidewalks, walkways and parking lots with permeable surfaces, etc. These requirements follow section C.3 of MRP 2.0. Compliance is monitored and verified by the Public Works Department, conditions are written into Land Use Planning approvals, and are reviewed by Building and Safety Division staff during the plan check process.

Staff believe that lowering area thresholds covered by stormwater requirements would represent a departure from the regional cooperation under MRP 2.0, which has made significant strides in improving stormwater practices. The lower thresholds proposed by CEAC would result in significant added costs for smaller development projects, which in most cases would need to retain additional professional hydrology expertise in the project development phase. Such projects would further incur additional costs by the fees the City would need to impose to cover project review and enforcement activities, the extent of which would be exponentially larger in scale as staff would need to review and enforce several orders of magnitude more qualifying projects. For example, CEAC's proposal to require an additional permit for all paving and repaving activities on private properties would represent an enormous enforcement challenge which could not be met with existing staff resources.

As mandated by MRP 2.0, the City is currently preparing a Green Infrastructure Plan that will set goals for the amount of impervious area within the City to be treated by green infrastructure by 2030 and 2040. Current and future City efforts to incorporate green infrastructure in City Capital Improvement Projects will have the effect of detaining significant stormwater runoff from all sources, including private property.

### BACKGROUND

The federal Clean Water Act (CWA) was amended in 1987 to address urban stormwater runoff pollution of the nation's waters. In 1990, the United States Environmental Protection Agency (US EPA) promulgated rules establishing Phase 1 of the National NPDES stormwater program. The Phase 1 program for Municipal Separate Storm Sewer System (MS4s) requires operators that serve populations of 100,000 or greater to implement a stormwater management program as a means to control polluted discharges from these MS4s.

The San Francisco Bay Regional Water Quality Control Board (the Regional Water Board) issued county-wide municipal stormwater permits in the early 1990s to operators of MS4s serving populations over 100,000 (Phase 1). On November 19, 2015, the Regional Water Board re-issued these county-wide municipal stormwater permits as one Municipal Regional Stormwater NPDES Permit (MRP 2.0) to regulate stormwater discharges from municipalities and local agencies in Alameda, Contra Costa, San Mateo, and Santa Clara counties, and the cities of Fairfield, Suisun City, and Vallejo. The City of Berkeley works with the Alameda Countywide Clean Water Program (ACCWP) and the Bay Area Stormwater Management Agencies Association (BASMAA) to ensure compliance with MRP 2.0.

### ENVIRONMENTAL SUSTAINABILITY

The CEAC recommendation and the staff recommendation are both consistent with City environmental sustainability goals. Staff resources are currently allocated to compliance with the environmental protection requirements of MRP 2.0.

### RATIONALE FOR RECOMMENDATION

Existing enforcement mechanisms and oversight bodies are designed to remediate stormwater runoff in the most cost-effective manner, without imposing significant additional costs on development and staff enforcement capacity.

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