

BILL NO. 25

ORDINANCE NO. 2884

AN ORDINANCE ENACTED BY THE CALDWELL CITY COUNCIL DELETING CHAPTER 13, ARTICLE 1, SECTIONS 13-01-01 THROUGH 13-01-15, INCLUSIVE, IN ITS ENTIRETY; ENACTING A NEW CHAPTER 13, ARTICLE 1, SECTIONS 13-01-01 THROUGH 13-01-07, INCLUSIVE, ENTITLED THE "CITY OF CALDWELL STORMWATER MANAGEMENT AND DISCHARGE CONTROL ORDINANCE"; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND REPEALING ALL ORDINANCES, RESOLUTIONS, ORDERS AND PARTS THEREOF IN CONFLICT HEREWITH.

BE IT ORDAINED by the Mayor and City Council of the City of Caldwell, County of Canyon, State of Idaho:

Section 1: That Chapter 13, Article 1, Sections 13-01-01 through 13-01-15, inclusive, of the Caldwell City Code, entitled "Storm Drainage," be deleted in its entirety.

Section 2: That a new Chapter 13, Article 1, Sections 13-01-01 through 13-01-07, inclusive, of the Caldwell City Code, entitled "City of Caldwell Stormwater Management and Discharge Control Ordinance," be enacted, as follows:

**CITY OF CALDWELL STORMWATER MANAGEMENT
AND DISCHARGE CONTROL ORDINANCE**

Sections:

- 13-01-01 TITLE, PURPOSE AND GENERAL PROVISIONS**
- 13-01-03 DISCHARGE REGULATIONS AND REQUIREMENTS**
- 13-01-05 STORMWATER MANAGEMENT PLANS AND COMPREHENSIVE DRAINAGE PLANS**
- 13-01-07 INSPECTION AND ENFORCEMENT**

Section 13-01-01 TITLE, PURPOSE AND GENERAL PROVISIONS

A. Title. This ordinance shall be known as the "City of Caldwell Stormwater Management and Discharge Control Ordinance" and may be so cited.

B. Purpose and Intent. The purpose and intent of this Ordinance is to:

1. Protect and enhance the water quality of the City of Caldwell's watercourses, water bodies, groundwater and wetlands in a manner pursuant to and consistent with the Clean Water Act.

2. Control non-stormwater discharges to storm drains and reduce pollutants in stormwater discharges.

3. Provide design, construction, operation, and maintenance criteria for permanent and temporary on-site stormwater management facilities to control stormwater runoff.

4. Encourage the recharge of ground water, where appropriate, and prevent the degradation of ground water quality.

Discharges into the municipal separate storm sewer system (MS4) may be subject to further regulation by the U.S. Environmental Protection Agency.

C. Definitions. The terms as used in this Ordinance shall have the following meanings:

1. **Authorized Enforcement Agent.** The Director of Public Works and/or any individual designated by the Director of Public Works as an Authorized Enforcement Agent.

2. **Best Management Practices ("BMPs").** Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

3. **Caldwell Municipal Stormwater Management Manual.** The most recently adopted version of the design standards manual prepared by the Caldwell Public Works Department which provides design, performance, and review criteria for stormwater management practices.

4. **Caldwell Non-Stormwater Disposal Best Management Practices.** Best management practices adopted by reference by this Ordinance for non-stormwater disposal.

5. **City.** The City of Caldwell, Idaho.

6. **CFR.** The Code of Federal Regulations.

7. Clean Water Act (CWA). Federal Water Pollution Control Act enacted by Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; 33 USC 1251 et seq.

8. Comprehensive Drainage Plan. A stormwater management plan that covers all current and anticipated development on a site greater than 10 acres and sites planned for phased development.

9. Development. Any construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure within the jurisdiction of the City of Caldwell as well as any manmade change or alteration to the landscape, including but not limited to, mining, drilling, dredging, grading, paving, excavating and filling.

10. Director of Public Works. The Director of the Caldwell Public Works Department.

11. Discharge. Any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the municipal storm sewer system (MS4), waters of the state, or into waters of the United States.

12. Discharger. Any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any operator of a construction site or industrial facility.

13. Fire Fighting Water. Any water, and any substance or materials contained therein, used in an emergency, to control or extinguish a fire.

14. Illicit Connection. Any physical connection to a publicly maintained storm drain system composed of non-stormwater which has not been permitted by the public entity responsible for the operation and maintenance of the system.

15. Illicit Discharge. Any discharge to a storm drain system that is not composed entirely of stormwater except discharges pursuant to a NPDES permit.

16. Impervious Surface. A surface which prevents or retards the penetration of water into the ground, including, but not limited to, roofs, sidewalks, patios, driveways, parking lots, concrete and asphalt paving, gravel, compacted native surfaces and earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of stormwater.

17. Major Modification. An alteration to an existing or planned stormwater drainage facility that does one or more of the following: changes the volume, surface area, depth, capacity, inflow rates, outflow rates or level of treatment by 5% or more; changes the treatment process; adds more than one thousand (1000) square feet of

impervious surface; or increases the tributary impervious drainage area to an individual drainage facility component by more than 10%.

18. **Municipal NPDES Permit.** An area-wide NPDES permit that is issued to a government agency or agencies for the discharge of pollutants from any point source into the waters of the United States.

19. **Municipal Separate Storm Sewer System (MS4).** A conveyance or system of conveyance (including roads with drainage systems, municipal streets, catch basin, curb, gutters, ditches, manmade channels, or storm drains) owned or operated by a public body (created under State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as sewer district, flood control district or drainage district, or similar entity that discharges to the waters of the United States and which are not part of a Publicly Owned Treatment Works ("POTW") as defined at 40 CFR Section 122.2.

20. **National Pollutant Discharge Elimination System (NPDES) Permit.** A permit issued by the U.S. EPA, Region X, in compliance with the federal Clean Water Act for the discharge of pollutants from any point source into the waters of the United States.

21. **Non-Stormwater Discharge.** Any discharge that is not entirely composed of stormwater.

22. **Owner or operator.** The owner or operator of any facility or activity subject to regulation under the federal NPDES program including operational and day-to-day control over facility activities.

23. **Person.** Any individual, firm, association, club, organization, corporation, partnership, business trust, company or other entity which is recognized by law as the subject of rights or duties.

24. **Pollutant.** Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials [except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)], heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water, and as otherwise defined in 40 CFR 122.2.

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

26. **Redevelopment.** A project for which a building permit is required that proposes to add, replace and/or alter impervious surfaces affecting the existing drainage

system, other than routine maintenance, resurfacing, or repair. A project which meets the criteria of a major modification as defined in this section shall be considered a redevelopment.

27. Stormwater. Water runoff and surface drainage associated with rain storm events and snow melt.

28. Stormwater Management. The process of collection, conveyance, storage, treatment, and disposal of stormwater to ensure control of the magnitude and frequency of runoff and to minimize the hazards associated with flooding. Also includes implementing controls to reduce the discharge of pollutants including management practices, control techniques and systems, design and engineering methods.

29. Stormwater Management Plan. Details of the drainage system, structures, BMPs, concepts and techniques that will be used to control stormwater, including drawings, engineering calculations, computer analyses, maintenance and operations procedures, and all other supporting documentation.

30. U.S. EPA. United States Environmental Protection Agency.

31. Variance. A modification of the requirements of the Ordinance.

32. Waters of the State. All the accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state.

33. Waters of the United States. Waters as defined in 40 CFR 122.2.

34. Wetland. An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

D. Applicability. This ordinance shall apply to all activities which may potentially affect the MS4, any private storm drain which may potentially affect the MS4, or any body of water within the City and any activity which discharges pollutants into such systems, except for those activities contained entirely on federal or state, or county lands and that do not impact adjacent jurisdictions. Additionally, permanent and temporary stormwater management controls and facilities, constructed as part of any activities listed in this section, which are located within the City limits, are also subject to this ordinance. The stormwater management standards shall apply to industrial, commercial, institutional, and multifamily residential development, as well as subdivision projects with private access.

E. Regulatory Consistency. This Ordinance shall be construed to assure consistency with the requirements of the federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and the Municipal NPDES Permit and any amendments, revisions or reissuance thereof. No permit or approval issued pursuant to this Ordinance shall relieve a person of the responsibility to secure permits and approvals required for activities regulated by any other applicable rule, code, act, permit or ordinance.

F. Severability. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstance shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 13-01-03 DISCHARGE REGULATIONS AND REQUIREMENTS. Any illicit discharge to any storm drain, including both the MS4 and private storm drains, is a violation of this ordinance unless exempted by provisions 13-01-03(F) and/or 13-01-03(G) of this ordinance.

A. General Requirements and Prohibitions.

1. Any person engaged in activities which will or may result in pollutants entering a storm drain shall undertake reasonable measures to reduce such pollutants. Examples of such activities include, but are not limited to: improper application, over use, and disposal of herbicides, pesticides, and fertilizers; activities related to automobile businesses including service stations, automobile dealerships, car washes, and body shops; and light industrial facilities which may be a source of pollutants.

2. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit or other drainage structures, parking area, or upon any public or private plot of land so that the same might be or become a pollutant.

3. No person shall cause or permit any dumpster, solid waste bin, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structures, business place, or upon any public or private plot of land in the City.

4. The occupant or tenant, the owner, lessee, or proprietor of any real property in the City where there is located a paved sidewalk or parking area shall maintain said paved surface free of dirt or litter to the extent reasonable and practicable and provide an adequate means for the disposal of refuse, rubbish, garbage, or other articles so as to prevent such matter from entering a storm drain. Sweepings from said

sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained on said real property.

5. No person shall throw or deposit any pollutant in any fountain, pond, lake, stream, or any other body of water in a park or elsewhere within the City, except as otherwise permitted under local, state or federal law.

B. Illicit Connections. It is prohibited to establish, use, maintain or continue illicit drainage connections to the MS4, or to commence or continue any illicit discharges to the MS4.

C. Parking Lots and Similar Structures.

1. Persons owning or operating a paved parking lot, gas station pavement, paved private street or road, or similar structure or conducting routine building wash downs, shall clean and maintain those structures consistent with the Caldwell Non-Stormwater Disposal Best Management Practices prior to discharging to a storm drain.

2. All water from non-stormwater sources or incidental stormwater sources (i.e. blown through openings and windows or transported on vehicles) that enter newly developed or significantly redeveloped covered parking garages are to be directed to the sanitary sewer disposal system unless that alternative is not reasonably feasible. Newly developed or significantly redeveloped covered permanent parking garages may drain into a storm drain when no feasible alternative is available, with the consent of the owner and operator and in accordance to this and other City Ordinances. The owner and operator of a storm drain may impose requirements including the construction of control structures to ensure the pre-treatment of such discharges prior to entry into the storm drain. All water from direct stormwater sources that enter uncovered parking garages is to go to a stormwater disposal system in accordance with Section 5 of this Article.

D. Outdoor Storage Areas - Commercial and Industrial Facilities. In outdoor areas, no person shall store grease, oil or other hazardous substances in a manner that will or may result in such substances entering a storm drain system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to a storm drain.

To prevent the discharge of hazardous substances to the MS4, the City may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

E. Construction Sites. Any person performing construction work in the City shall comply with the provisions of this Ordinance.

F. Limitations on Permit Coverage.

1. **Non-Storm Water Discharges.** Non-storm water discharges are not permitted, except where such discharges satisfy one of the following three conditions:

- a. The non-storm water discharges are in compliance with an applicable NPDES permit other than the City of Caldwell's NPDES permit;
- b. The non-storm discharges result from a spill and:
 - i. are the result of an unusual and severe weather event where reasonable and prudent measures have been taken to minimize the impact of such discharge; and
 - ii. consist of emergency discharges required to prevent imminent threat to human health or severe property damage, provided that reasonable and prudent measures have been taken to minimize the impact of such discharges.

or,

- c. The non-storm water discharges satisfy each of the following two conditions, and subject to compliance with current Idaho Water Quality Standards:
 - i. The discharges consist of uncontaminated water line flushing; potable water sources; landscape irrigation (provided all pesticides, herbicides and fertilizer have been applied in accordance with manufacturer's instructions); lawn watering; irrigation water; flows from riparian ground waters; uncontaminated ground water infiltration (as defined at 40 CFR § 35.4005(20)) to separate storm sewers; uncontaminated pumped ground water or spring water; foundation and footing drains (where flows are not contaminated with process materials such as solvents); uncontaminated air conditioning or compressor condensate; water from crawlspace pumps; individual residential car washing; dechlorinated swimming pool discharges; routine external building wash down which does not use detergents; street and pavement wash waters, where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed); fire hydrant flushing; or flows from emergency firefighting activities.

And where,

- i. The discharges are not sources of pollution to waters of the United States. A discharge is considered a source of pollution to waters of the United States for the purposes of this section if it:
 - a) Contains hazardous materials in concentrations found to be of public health significance or to impair beneficial uses in receiving waters. (Hazardous materials are those that are harmful to humans and animals from exposure, but not necessarily ingestion);
 - b) Contains toxic substances in concentrations that impair designated beneficial uses in receiving waters. (Toxic substances are those that can cause disease, malignancy, genetic mutation, death, or similar consequences);
 - c) Contains deleterious materials in concentrations that impair designated beneficial uses in receiving waters. (Deleterious materials are generally substances that taint edible species of fish, cause taste in drinking waters, or cause harm to fish or other aquatic life);
 - d) Contains radioactive materials or radioactivity at levels exceeding the values listed in 10 CFR Part 20 in receiving waters;
 - e) Contains floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or in concentrations that may impair designated beneficial uses in receiving waters;
 - f) Contains excessive nutrients that can cause visible slime growths or other nuisance aquatic growths that impair designated beneficial uses in receiving waters;
 - g) Contains oxygen-demanding materials in concentrations that would result in anaerobic water conditions in receiving waters;
 - h) Contains sediment above quantities specified in IDAPA 58.01.02.250.02.e or in the absence of specific sediment criteria, above quantities that impair beneficial uses in receiving waters; or
 - i) Contains material in concentrations that exceed applicable natural background conditions in receiving waters (IDAPA 58.01.01.200.09). Temperature levels may be increased above natural background conditions when allowed under IDAPA 58.02.02.401.

2. **Discharges Threatening Water Quality.** No person is authorized to discharge storm water that will cause, or have the reasonable potential to cause or contribute to an excursion above the Idaho water quality standards.

3. **Discharge Compliance with Anti-Degradation Policy.** No person is authorized to discharge storm water that does not comply with Idaho's anti-degradation policy for water quality standards.

4. **Snow Disposal to Receiving Waters.** No person is authorized to dispose of snow directly to waters of the United States or directly to the MS4. Discharges are authorized when such sites/practices are operated or performance in accordance with the City of Caldwell's Non-Stormwater Disposal Best Management Practices (BMPs).

5. **Storm Water Discharges Associated with Industrial and Construction Activity.** Discharge storm water associated with industrial activity (as defined in 40 CFR 122.26(b)(14)), and storm water associated with construction activity (as defined in 40 CFR 122.26(b)(14)(x) and (b)(15)), is authorized only when such discharges are otherwise authorized under an appropriate NPDES permit.

G. Discharge Pursuant to NPDES Permit. The prohibition of discharges shall not apply to any discharge regulated under a NPDES permit issued and administered by the EPA, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws or regulations. Compliance with an applicable NPDES permit governing discharges into the MS4 shall be considered compliance with this ordinance.

H. Compliance with NPDES Permits. Any discharge that would cause a violation of a Municipal NPDES Permit and any amendments, revisions or re-issuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and the City shall seek to have such persons defend, indemnify and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge as provided by applicable rules of law.

All persons in charge of a facility are to comply with applicable federal and state laws including facility personnel, training, training record maintenance, training records, maintenance of notification procedures, and implementation of notification requirements for spill response to assure containment, cleanup, and immediate notification to the City of Caldwell.

Individuals responsible for spills are to comply with applicable state and federal notification requirements to assure containment, clean up, and immediate notification to the City of Caldwell.

**Section 13-01-05 STORMWATER MANAGEMENT PLANS AND
COMPREHENSIVE DRAINAGE PLANS**

A. Requirements. To minimize the discharge and transport of pollutants to storm drains and prevent the deterioration of water quality, certain new developments and redevelopment projects will be required to submit for approval a stormwater management plan or a comprehensive drainage plan to control the quality, volume and rate of stormwater runoff. The Caldwell Municipal Stormwater Management Manual establishes standards and guidelines for implementing BMPs and stormwater management plans and is incorporated by reference and made part of this ordinance.

1. Stormwater management plans or comprehensive drainage plans are required for industrial, commercial, and institutional developments which require a building permit and multifamily residential developments that are not part of a larger subdivision project, as well as subdivision projects that have private access, which also require a building permit.

2. Redevelopment projects may be required to submit complete stormwater management plans or operation and maintenance plans if they meet the criteria found in the Caldwell Municipal Stormwater Management Manual.

3. Stormwater management plans and comprehensive drainage plans shall be developed in accordance with the Caldwell Municipal Stormwater Management Manual.

4. The Caldwell City Council reserves the right to amend, modify and/or add requirements to the Caldwell Municipal Stormwater Management Manual. References to the Caldwell Municipal Stormwater Management Manual in this ordinance are to the most currently adopted version.

B. Submission and Review Process.

1. Stormwater management plans and comprehensive drainage plans shall be submitted at the time building plans are submitted. The plans shall be submitted to the City Building Department as part of the building permit application package. In those instances where stormwater management plans and comprehensive drainage plans are required, but no building permit is required, said plans shall be submitted to the City Engineering Department. The plans shall be reviewed by the City Public Works Department for their compliance with the Caldwell Municipal Stormwater Management Manual and other applicable rules and standards. Plans developed to meet federal or state requirements may be submitted, and will be approved if they substantially conform to the requirements of this Ordinance. Where physical submission of plans would be too cumbersome, the Caldwell Public Works Department may waive the requirement for physical submission when granted full access to review the on-site plans.

- a. No plan shall be approved that increases the peak level of stormwater runoff from impervious areas, unless the plan identifies measures to control and limit runoff to peak levels no greater than would occur from the site if left in its natural, undeveloped condition.
- b. No development or use of land which requires a stormwater management plan or comprehensive drainage plan as per the Caldwell Municipal Stormwater Management Manual shall be permitted without the City Public Works approval of such plan.
- c. No building permit or final certificate of occupancy shall be issued without an approved stormwater management plan if required under this section.

2. The City shall be notified of the commencement of any development covered by a comprehensive drainage plan and the owner or responsible person shall be required to provide engineering certification that the development is in conformity with the previously approved comprehensive drainage plan.

3. Any modifications to comprehensive drainage plans shall be submitted to the City Public Works Department for approval, provided, however, for comprehensive drainage plans approved pursuant to this Ordinance as amended, only major modifications must be submitted for approval. All modifications to singular stormwater management plans must be submitted to the City Public Works Department with a request for approval and a new stormwater management plan shall be submitted upon request of the City Public Works Department.

4. Approval of the stormwater management plan or comprehensive drainage plan does not relieve the owner or responsible party from the duty to ensure the systems and their safety measures function as designed.

5. Approval may be suspended or revoked at any time if conditions are not as stated or shown in the approved application or implementation of the plan is not proceeding in the approved manner.

6. Approval of a stormwater management plan or a comprehensive drainage plan may be suspended if the project is not completed within a two year period or development has ceased for a period of more than two years; however, a one year extension may be granted upon a written request which provides the reason(s) for the delay or cessation of development and specifies a time frame for completion or commencement of development.

7. If suspension or revocation of approval is necessary, the owner will receive notice of this decision and may appeal to the City Public Works Director. A written

request for appeal and hearing must be made within ten days from the notice of suspension or revocation.

8. If approval is suspended or revoked, the owner shall be required to submit a new plan for approval, with the requisite fee, prior to starting or continuing the planned project or development.

9. If undue hardship would result from strict application of the requirements of this Ordinance, a person may request a variance.

- a. The variance request must be submitted in writing to the City Public Works Department with a fee in an amount provided for in a fee schedule adopted by resolution of the City Council.
- b. The person requesting a variance shall state in detail the reason for the request and provide supporting documentation.
- c. If a request for variance is denied by the City Public Works Department, the denial may be appealed to the City Council within ten days of notice of denial. The City Council shall provide the aggrieved party with a hearing date and an opportunity to present argument in favor of the variance request. The City Council will not accept additional supporting documentation if the information was reasonably available at the time the request for variance was made and could have been submitted to the City Public Works Department.
- d. A variance shall not be considered a right or special privilege.

10. Approval of any plans by the City Public Works Department shall not create a liability on the part of or cause of action against the City or any officer or employee thereof regarding the plan or its operation.

C. Maintenance of Stormwater Facilities.

1. Stormwater facilities shall be maintained by the owner or other responsible party and, when there is a potential to discharge stormwater, shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

2. Disposal of waste from maintenance of facilities shall be conducted in accordance with applicable federal, state and local laws and regulations.

3. Records of installation and maintenance and repair shall be retained by the owner or other responsible party for a period of five years and shall be made available to the City Public Works Department upon request.

4. Any failure to maintain facilities or correct problems with facilities after receiving due notice from the City may result in criminal or civil penalties and the City may perform corrective or maintenance work which shall be at the owner's expense.

Section 13-01-07 INSPECTION AND ENFORCEMENT

A. Inspections.

1. Stormwater systems shall be inspected by the City Public Works Department during and after construction to assure consistency with the approved stormwater management plan.

2. All stormwater systems shall be subject to the authority of the on-site detention inspection program of the City Public Works Department to ensure compliance with this Ordinance and may be inspected when deemed necessary.

3. The owner or other responsible party shall make annual inspections of the facilities and maintain records of such inspections for a period of five years.

4. Whenever necessary to make an inspection to enforce any of the provisions of this Ordinance, or whenever an Authorized Enforcement Agent has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this Ordinance, the agent may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the agent by this Ordinance; provided that (1) if such building or premises is occupied, he or she first shall present proper credentials and request entry; and (2) if such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

5. The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the agent is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

6. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this ordinance, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater pollution, illicit discharges, or similar factors.

B. Sampling. With the consent of the owner or occupant or with Court consent, any Authorized Enforcement Agent may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the agent

may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples.

C. Testing and Monitoring.

1. Whenever the City Director of Public Works or designee determines that any person engaged in any activity and/or owning or operating any facility may cause or contribute to an illicit discharge to the stormwater system, the City Director of Public Works or designee may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the City Director of Public Works or designee may recommend. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator, including costs of these activities, analyses and reports, shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order.

2. Within 20 days of the date of receipt of the order notice, the recipient shall respond personally or in writing advising the City of the recipient's position with respect to the Order's requirements. Thereafter, the recipient shall be given the opportunity to meet with the City Director of Public Works or designee to review the Order's requirements and revise the Order as the City Director of Public Works or designee deem necessary. Within 10 days of such meeting, the City Director of Public Works or designee shall issue a final written order. Final Orders of the City Director of Public Works or designee may be appealed to the City Council by the filing of a written appeal with the City Clerk within 10 days of receipt of the final Order. The appeal notice shall set forth the particular Order requirements or issues being appealed. The City Council shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the City Council shall be final.

3. In the event the owner or operator of a facility fails to conduct the monitoring and/or analyses and furnish the reports required by the Order in the time frames set forth therein, the City may cause such monitoring and/or analyses to occur and assess all costs incurred, including reasonable administrative costs and attorney's fees, to the facility owner or operator. The City may pursue judicial action to enforce the Order and recover all costs incurred.

D. Violations Constituting Misdemeanors. The knowing violation of any provision of this Ordinance, or knowing failure to comply with any of the mandatory requirements of this Ordinance shall constitute a misdemeanor, punishable as provided in Idaho Code §§ 50-302(1) and 18-113, as amended.

E. Continuing Violation. Unless otherwise provided, a person, firm, corporation or organization shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this Ordinance is committed, continued or permitted by the person, firm, corporation or organization and shall be punishable accordingly, as herein provided.

F. Concealment. Causing, permitting, aiding, abetting or concealing a violation of any provision of this Ordinance shall constitute a violation of such provision.

G. Acts Resulting in Violation of Federal Clean Water Act. Any person who violates any provision of this Ordinance, any provision of any permit issued pursuant to this Ordinance, or who discharges pollutants, waste or wastewater so as to cause an illicit discharge into the MS4, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.

H. Violations Deemed a Public Nuisance.

1. In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance by the City Director of Public Works or designee, and may be summarily abated and/or restored by the City and/or civil action taken to abate, enjoin or otherwise compel the cessation of such nuisance.

2. The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid.

3. If any violation of this Ordinance constitutes a seasonal and recurrent nuisance, the City Director of Public Works or designee shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further declaration.

4. In any administrative or civil proceeding under this Ordinance in which the City prevails, the City may be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit and reasonable attorneys' fees.

I. Civil Actions. In addition to any other remedies provided in this section, any violation of this section may be enforced by civil action brought by the City. In any such action, the City may seek, and the Court shall grant, as appropriate, any or all of the following remedies:

1. A temporary and/or permanent injunction.

2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection.

3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation.

4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life. Assessments under this subsection shall be paid to the City to be used exclusively for costs associated with monitoring and establishing stormwater discharge control systems and/or implementing or enforcing the provisions of this Ordinance.

J. Administrative Enforcement Powers. In addition to the other enforcement powers and remedies established by this ordinance, any Authorized Enforcement Agent has the authority to utilize the following administrative remedies.

1. Cease and Desist Orders. When an Authorized Enforcement Agent finds that a discharge has taken place or is likely to take place in violation of this Ordinance, the agent may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (a) comply with the requirement; (b) comply with a time schedule for compliance, and/or (c) take appropriate remedial or preventive action to prevent the violation from recurring.

2. Notice to Clean. Whenever an Authorized Enforcement Agent finds any oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain or a non-stormwater discharge to the storm drain, he or she may give notice to remove and lawfully dispose of such material in any manner that he or she reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein.

In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the City Director of Public Works or designee may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property.

K. Non-exclusivity of Remedies. Remedies under this Ordinance are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

L. Appeal. Any person, firm, corporation or organization notified of non-compliance with this Ordinance or required to perform monitoring, analyses, reporting and/or corrective activities who is aggrieved by the decision of the Authorized Enforcement Agent may appeal such decision in writing to the City Council within 10 days following the effective date of the decision. Upon receipt of such appeal, the City Clerk shall request a report and recommendation from the Authorized Enforcement Agent and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the City Council may hear additional evidence, and may revoke, affirm or modify the Authorized Enforcement Agent's decision. Such decision shall be final.

M. Disclaimer of Liability. The degree of protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this Ordinance does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This Ordinance shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

Section 3: All ordinances, resolutions, orders or parts thereof in conflict herewith are hereby repealed, rescinded and annulled.

Section 4: This ordinance shall be in full force and in effect from and after its passage, approval and publication, according to law.

Section 5: This ordinance is hereby declared to be severable. If any portion of this ordinance is declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purposes of the ordinance before the declaration of partial invalidity.

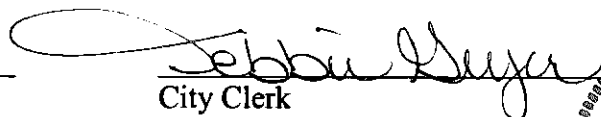
PASSED BY THE COUNCIL OF THE CITY OF CALDWELL, IDAHO, this 5th day of December, 2011.

APPROVED BY THE MAYOR OF THE CITY OF CALDWELL, IDAHO, this 5th of December, 2011.

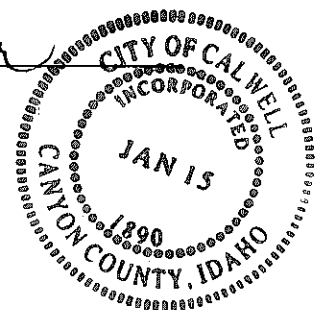
ATTEST:



Mayor Garret L. Nancolas



City Clerk



**ORDINANCES OF THE CITY OF CALDWELL
NOTICE OF ADOPTION AND SUMMARY OF
ORDINANCE NO. 2884**

AN ORDINANCE ENACTED BY THE CALDWELL CITY COUNCIL DELETING CHAPTER 13, ARTICLE 1, SECTIONS 13-01-01 THROUGH 13-01-15, INCLUSIVE, IN ITS ENTIRETY; ENACTING A NEW CHAPTER 13, ARTICLE 1, SECTIONS 13-01-01 THROUGH 13-01-07, INCLUSIVE, ENTITLED THE "CITY OF CALDWELL STORMWATER MANAGEMENT AND DISCHARGE CONTROL ORDINANCE"; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND REPEALING ALL ORDINANCES, RESOLUTIONS, ORDERS AND PARTS THEREOF IN CONFLICT HEREWITH.

Section 1: Provides that Chapter 13, Article 1, Sections 13-01-01 through 13-01-15, inclusive, of the Caldwell City Code, entitled "Storm Drainage," is deleted in its entirety.

Section 2: Provides that a new Chapter 13, Article 1, Sections 13-01-01 through 13-01-07, inclusive, of the Caldwell City Code, entitled "City of Caldwell Stormwater Management and Discharge Control Ordinance," be enacted, providing a title and for the purpose and intent of the ordinance; providing definitions; setting forth discharge regulations, requirements and prohibitions; prohibiting illicit connections; setting forth specific requirements for parking lots and similar structures, outdoor storage areas, commercial and industrial facilities, and construction sites; outlining limitations on permit coverage; requiring the submission of stormwater management plans and/or comprehensive drainage plans in connection with new development or redevelopment, and providing for their submission and review; requiring maintenance of stormwater facilities and the keeping of records relating to said maintenance; providing for inspection and enforcement, as well as for sampling, testing and monitoring; providing that any knowing violation of any of the mandatory requirements of the ordinance or any concealment thereof shall constitute a misdemeanor; providing that a violation of the ordinance may result in a violation of the federal Clean Water Act, subjecting the violator to civil and criminal penalties; providing that violations are deemed a public nuisance; providing for civil action by the city to remedy violations; providing for administrative enforcement; providing that all remedies are non-exclusive; providing for appeals; and, disclaiming liability on the part of the city.

Sections 3 through 5: Provides that this ordinance shall be in full force and effect from and after its passage, approval, and publication, according to law; provides for severability; repeals conflicting ordinances, resolutions and orders.

Ordinance No. 2884 provides an effective date, which shall be when published in the Idaho Press Tribune on the 12th day of December, 2011. Ordinance No. 2884 was passed by the Council and approved by the Mayor on the 5th day of December, 2011. The full text of the Ordinance is available at Caldwell City Hall, 411 Blaine Street, Caldwell, Idaho 83605. The Mayor and City Council approved the foregoing summary on the 5th day of December, 2011, for publication on the 12th day of December, 2011, pursuant to Idaho Code § 50-901A.

Mayor Garret L. Nancolas

ATTEST: Debbie Geyer, City Clerk

STATEMENT OF LEGAL ADVISOR

I have reviewed the foregoing summary and believe that it provides a true and complete summary of Ordinance No. 2884 and provides adequate notice to the public as to the contents of such ordinance.

DATED this 5th day of December, 2011
Mark Hilty, Attorney for City of Caldwell

AS