



Agenda Item #: \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Cohen and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Jim Arndt, Department of Public Works  
Raul Saenz, Utilities Manager

**DATE:** July 21, 2009

**SUBJECT:** Adoption of an Ordinance to revise Title 5 - Sanitation and Health - of the City of Manhattan Beach Municipal Code with the addition of Chapter 5.38 - Fats, Oils and Grease Management and Discharge Control.

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**RECOMMENDATION:**

Staff recommends that the City Council adopt Ordinance No. 2125, which will revise Title 5 - Sanitation and Health of the City of Manhattan Beach Municipal Code with the addition of Chapter 5.38 - Fats, Oils and Grease (FOG) Management and Discharge Control.

**FISCAL IMPLICATION:**

The *FOG Management and Discharge Control* ordinance will be implemented through the FOG Source Control Program. The Program will be self funded by the approximately 140 Food Service Establishments (FSEs) currently operating in the City from a \$174 fee (previously adopted by City Council Resolution) collected annually through the *FOG Wastewater Discharge Permit.*

**BACKGROUND:**

At the July 7, 2009 City Council meeting, City Council voted to waive formal reading and adopt Ordinance No. 2125 which will revise Title 5 - Sanitation and Health of the City of Manhattan Beach Municipal Code with the adoption of Chapter 5.38 - Fats, Oils and Grease (FOG) Management and Discharge Control.

**CONCLUSION:**

Staff recommends that the City Council adopt Ordinance No. 2125, which will revise Title 5 - Sanitation and Health of the City of Manhattan Beach Municipal Code with the adoption of Chapter 5.38 - Fats, Oils and Grease Management and Discharge Control.

By taking this action, the City Council is fulfilling its legal obligation, as mandated by the State Water Resources Control Board General Waste Discharge Requirements Order No. 2006-0003, to implement a FOG Source Control Program.

Attachment: Ordinance No. 2125

ORDINANCE NO. 2125

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MANHATTAN BEACH, CALIFORNIA, ADDING A NEW CHAPTER 5.38  
TO TITLE 5 OF THE MANHATTAN BEACH MUNICIPAL CODE  
REGARDING Fats, Oils and Grease Management and Discharge Control

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES  
ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings:

- A. Presently the Manhattan Beach Municipal Code provides that regular meetings of the City Council shall be held on the first and third Tuesdays of each month and that when such days are municipal election days the meeting shall automatically be moved to the following Wednesday;
- B. Rather than have a rigid meeting schedule with specific exceptions it is in the best interest of the public welfare to allow maximum flexibility by providing the City Council with the discretion to move any regular scheduled meeting to another date at their discretion, since, by State law, all such meetings must be noticed 72 hours in advance the public shall have adequate notice of any such alteration in schedule.

SECTION 2. The City Council of the City of Manhattan Beach hereby adds a new Chapter 5.38 to Title 5 the Manhattan Beach Municipal Code to read as follows:

**Chapter 5.38 Fats, Oil and Grease Management and Discharge Control**

**5.38.005 Purpose, Policy and Findings.**

- A. The Porter-Cologne Water Quality Act (California Water Code §§ 13000, et seq.) provides for the regulation and reduction of pollutants discharged into the waters of California.
- B. The City of Manhattan Beach is an Enrollee under the "General Waste Discharge Requirements for Sanitary Sewer Systems (Sewer WDRs) under Order No. 2006-003, dated May 2, 2006 issued by the State Water Resources Control Board. The City is required to adopt Chapters and implement procedures to reduce the amount of fats, oils and grease ["FOG"] discharged into the City's sanitary sewer collection system.
- C. Section D.13(iii) of the Sewer WDRs requires the City to demonstrate that it possesses the legal authority necessary to control discharges of FOG to and from those portions of the City's sanitary sewer collection system over which it has jurisdiction, so as to comply with the Sewer WDRs.
- D. Food Service Establishments (FSEs) or "Food Facilities", as defined in California Uniform Retail Food Facilities Law ("CURFFL"), Division 104 (Environmental Health), Part 7 (Retail Food), Chapter 4, Articles 1-20 of the California Health & Safety Code, produce FOG as a by-product of their operations. If not properly managed and disposed, FOG will create the potential for blockage of sanitary sewer lines, which can result in sanitary sewer overflows ("SSOs") that cause damage to both public and private property, and public health issues; and have the potential to pollute beaches and water courses in and around the City.
- E. Based on information collected by the Wastewater Division, FOG is one of the causes of sanitary sewer blockages and SSOs within the City of Manhattan Beach.
- F. The current edition of the Uniform Plumbing Code requires FSEs that have the potential to produce FOG in quantities that can effect line stoppage or hinder sewage treatment or private sewage disposal to have grease control devices. Many FSEs, such as restaurants within the City do not have grease control devices. These FSEs have the potential to require the City and the County Sanitation Districts of Los Angeles County (Sanitation Districts) to perform additional preventive maintenance on sewer lines that service these facilities, as well as respond to and cleanup blockages and SSOs caused by improper FOG disposal practices and grease control device maintenance.
- G. The purpose of this Chapter is to facilitate the maximum beneficial public use of the

City's sanitary sewer collection system while preventing blockages of sewer lines resulting from discharges of FOG to the system, and to specify appropriate FOG discharge requirements for FSEs discharging into the City's sewer system.

- H. This Chapter shall be interpreted in accordance with the definitions set forth in Section 5.38.010 of this Chapter. To the extent a term is not specifically defined in this Chapter, such term will be defined according to the definition set forth in Chapter 5.36 of Title 5 of this Code. The provisions of this Chapter shall apply to the direct or indirect discharge of all wastewater or waste containing FOG into City's sanitary sewer collection system.
- I. In order to manage and control, in a cost-effective manner, the discharge of FOG into the City's sanitary sewer collection system to the maximum extent practicable, the adoption of reasonable regulations, as set forth herein, is essential and it is the intent of this section to establish regulations for the disposal of FOG and other insoluble waste discharges from FSEs into the City's sewer system.
- J. To comply with Federal, State, and local policies and to allow the City to meet applicable standards, provisions are made in this Chapter for the regulation of wastewater and waste containing FOG discharges to the sewer facilities.
- K. This Chapter establishes quantity and quality standards on all wastewater and/or waste discharges containing FOG, which may alone or collectively cause or contribute to FOG accumulation in the sewer facilities causing or potentially causing or contributing to the occurrence of SSOs.

#### 5.38.010 Definitions.

- A. Unless otherwise defined herein, terms related to water quality shall be as defined in the Sewer WDRs and in the latest edition of Standard Methods for Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association and the Water Environment Federation. The testing procedures for waste constituents and characteristics shall be as provided in 40 CFR 136 (Code of Federal Regulations).
- B. Other terms not herein defined are defined as being the same as set forth in the latest adopted applicable editions of the California Codes applicable to building construction adopted pursuant to the California Building Standards Law.
- C. Subject to the foregoing provisions, the following words and phrases shall mean:
  1. *"Best Management Practices"*: schedules of activities, prohibitions of practices, maintenance procedures and other management practice to prevent or reduce the introduction of FOG to the sewer facilities.
  2. *"Director"*: the Director of the Department of Public Works, or his/her Designee.
  3. *"Discharger"*: any person who discharges or causes a discharge of wastewater directly or indirectly to a public sewer. Discharger shall mean the same as User.
  4. *"Domestic Wastewater"*: any liquid and solid waterborne wastes derived from the ordinary living processes of humans of such character as to permit satisfactory disposal, without special treatment, into the public sewer or by means of a private disposal system.
  5. *"Effluent"*: any liquid outflow from the food service establishment that is discharges to the sewer collection system.
  6. *"Fats, Oils, and Grease ("FOG")"*: any substance, such as a vegetable or animal product that is used in, or is a by product of, the cooking or food preparation process, and that turns or may turn viscous or solidifies with a change in temperature or other conditions.
  7. *"FOG Control Program"*: the FOG Control Program required by and developed pursuant to State Water Resources Control Board Order No. 2006-003, D13 (vii).

8. *"FOG Discharge Manual"*: the "Fats, Oil and Grease Discharge Manual", setting forth Best Management Practices for FSEs, as approved by the Director.
9. *"FOG Wastewater Discharge Permit"* or *"Discharge Permit"*: A permit issued by the City subject to the requirements and conditions established by the City authorizing the Permittee or discharger to discharge wastewater into the City's facilities or into sewer facilities which ultimately discharge into a City facility.
10. *"Food Grinder"*: any device installed in the plumbing or sewage system for the purpose of grinding food waste or food preparation by products for the purpose of disposing it in the sewer system.
11. *"Food Service Establishment ("FSE")"*: Facilities defined in California Uniform Retail Food Facility Law (CURFFL) Health & Safety Code § 113785, and any commercial or public entity within the boundaries of the City, operating in a permanently constructed structure such as a room, building, or place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, or manufacturing, packaging, or otherwise handling food for sale to other entities, or for consumption by the public, its members or employees, and which has any process or device that uses or produces FOG, or grease vapors, steam, fumes, smoke or odors that are required to be removed by a Type I or Type II hood, as defined in CURFFL. A limited food preparation establishment is not considered an FSE when engaged only in reheating, hot holding or assembly of ready to eat food products and as a result, there is no wastewater discharge containing a significant amount of FOG. A limited food preparation establishment does not include any operation that changes the form, flavor, or consistency of food.
12. *"Grab Sample"*: a sample taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.
13. *"Grease Control Device"*: any grease interceptor, grease trap or other mechanism, device, or process, which attaches to, or is applied to, wastewater plumbing fixtures and lines, the purpose of which is to trap or collect or treat FOG prior to it being discharged into the sewer system. A grease control device may also include any other proven mechanism to reduce FOG subject to the approval of the Director.
14. *"Grease Disposal Mitigation Fee"*: a fee charged to an Owner/Operator of an FSE, as provided in this Chapter, when there are physical limitations to the property that make the installation of the usual and customary grease interceptor or grease control device for the FSE under consideration impossible. The Grease Disposal Mitigation Fee is intended to cover the costs of increased maintenance of the sewer system for inspection and cleaning of FOG or other viscous or solidifying agents that a properly employed grease control device would otherwise prevent from entering the sewer system.
15. *"Grease Interceptor"*: a multi-compartment device that is constructed in different sizes and is generally required to be located, according to the California Plumbing Code, underground between an FSE and the connection to the sewer system. These devices primarily use gravity to separate FOG from the wastewater as it moves from one compartment to the next. These devices must be cleaned, maintained, and have the FOG removed and disposed of in a proper manner on regular intervals to be effective.
16. *"Grease Trap"*: a grease control device that is used to serve individual fixtures and have limited effect and should only be used in those cases where the use of a grease interceptor or other grease control device is determined to be impossible.
17. *"Infiltration"*: water entering a sewer system, including sewer service connections, from the ground through such means as defective pipes, pipe joints, connections, or manhole walls.

18. *"Inflow"*: Water entering a sewer system through a direct stormwater runoff connection to the sanitary sewer, which may cause an almost immediate increase in wastewater flows.
19. *"Inspector"*: a person authorized by the City to inspect any existing or proposed wastewater generation, conveyance, processing, and disposal facilities.
20. *"Interceptor"*: a grease interceptor.
21. *"Interference"*: any discharge which, alone or in conjunction with discharges from other sources, inhibits or disrupts the City's sewer system, treatment processes or operations; or is a cause of violation of the City's NPDES or Waste Discharge Requirements.
22. *"Local Sewer Agency"*: any public agency or private entity responsible for the collection and disposal of wastewater to the City's sewer facilities duly authorized under the laws of the State of California to construct and/or maintain public sewers.
23. *Major Operational Change"*: a physical change or operational change causing generation of an amount of FOG that exceeds the current amount of FOG discharge to the sewer system by the Food Service Establishment in an amount that alone or collectively causes or creates a potential for SSOs to occur.
24. *"New Construction"*: any structure planned or under construction for which a sewer connection permit has not been issued.
25. *"NPDES"*: The National Pollutant Discharge Elimination System: the permit issued to control the discharge to surface waters of the United States as detailed in Public Law 92-500, Section 402.
26. *"Permittee"*: a person who has received a permit to discharge wastewater into the City's sewer facilities subject to the requirements and conditions established by the City.
27. *"Public Agency"*: the State of California and/or any city, county, special district, other local governmental authority or public body of or within this State.
28. *"Public Sewer"*: a sewer owned and operated by the City, or other local Public Agency, which is tributary to the City's sewer facilities.
29. *"Regulatory Agency"*: regulatory agency or regulatory agencies shall mean those agencies having regulatory jurisdiction over the operations of the city, including, but not limited to:
  - a. United States Environmental Protection Agency, Region IX, San Francisco and Washington, DC (EPA).
  - b. California State Water Resources Control Board (SWRCB).
  - c. California Regional Water Quality Control Board, Los Angeles Region (Los Angeles RWQCB).
  - d. South Coast Air Quality Management District (SCAQMD).
  - e. California Department of Public Health (DOPH).
  - f. Any Public Agency.
30. *"Sewage"*: wastewater.
31. *"Sewer Facilities or System"*: any and all facilities used for collecting, conveying, pumping, treating, and disposing of wastewater and sludge operated by the City.

32. *"Sewer Lateral"*: a building sewer as defined in the latest edition of the California Plumbing Code. It is the wastewater connection between the building's wastewater facilities and a public sewer system. Sewer laterals between the buildings and the connection to the public sewer are owned and maintained by the property owner served by the lateral.
33. *"Sewer WDRs"*: the "General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003, issued by the State Water Resources Control Board, dated May 2, 2006, and any successor permit to such WDRs.
34. *"Sludge"*: any solid, semi-solid or liquid decant, subnate or supernate from a manufacturing process, utility service, or pretreatment facility.
35. *"User"*: any person who discharges or causes a discharge of wastewater directly or indirectly to a public sewer system. User shall mean the same as Discharger.
36. *"Waste"*: sewage and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation or of human or animal nature, including such wastes placed within containers of whatever nature prior to and for the purpose of disposal.
37. *"Waste hauler"*: any person carrying on or engaging in vehicular transport of waste as part of, or incidental to, any business for that purpose.
38. *"Wastewater"*: the liquid and water-carried wastes of the community and all constituents thereof, whether treated or untreated, discharged into or permitted to enter a public sewer.
39. *"Wastewater Constituents and Characteristics"*: the individual chemical, physical, bacteriological, and other parameters, including volume and flow rate and such other parameters that serve to define, classify or measure the quality and quantity of wastewater.
40. *"Water Minimization Practices"*: plans or programs intended to reduce or eliminate discharges to the sewer system or to conserve water, including, but not limited to, product substitutions, housekeeping practices, inventory control, employee education, and other steps as necessary to minimize wastewater produced.

#### **5.38.015 FOG Discharge Requirement.**

No FSE shall discharge or cause to be discharged into the sewer system FOG that exceeds a concentration level adopted by the City or that may accumulate and/or cause or contribute to blockages in the sewer system or at the sewer system lateral which connects the FSE to the sewer system.

#### **5.38.020 Prohibitions.**

The following prohibitions shall apply to all FSEs:

- A. No person shall discharge, or cause to be discharged any wastewater from FSEs directly or indirectly into the sewer system without first obtaining a FOG Wastewater Discharge Permit pursuant to this Chapter.
- B. Discharge of any waste, including FOG and solid materials removed from the grease control device to the sewer system, is prohibited.
- C. Discharge of any waste or FOG to the sewer system which fails to comply with the FOG Discharge Manual is prohibited.
- D. Discharge of any waste or FOG to the sewer system in a manner which either violates the Sewer WDRs or causes or contributes to a condition which fails to comply with the Sewer WDRs is prohibited.

**5.38.025 Food Grinders Prohibited.**

- A. No food grinder shall be installed in a plumbing system of new construction of an FSE.
- B. All food grinders shall be removed from an existing FSE upon: (i) major operational change to the FSE; or (ii) any construction requiring the issuance of a building permit for either remodeling or construction of the FSE valued at \$50,000 or more; (iii) All food grinders shall be removed from all existing FSEs within 180 days of the effective date of this Ordinance, except when expressly allowed by the Director.

**5.38.030 Best Management Practices Required.**

- A. All FSEs shall implement Best Management Practices in its operation to minimize the discharge of FOG to the sewer system.
- B. All FSEs must implement and demonstrate compliance with Best Management Practices (BMP) requirements as specified in the City's FOG Discharge Manual. Detailed requirements for Best Management Practices are specified in the FOG Discharge Manual and may include kitchen practices and employees training that are essential in minimizing FOG discharges.

**5.38.035 FOG Pretreatment Required.**

FSEs are required to install, operate and maintain an approved type and adequately sized grease interceptor necessary to maintain compliance with the objectives of this Chapter in accordance with the FOG Discharge Manual and the requirements of 40 CFR §403.5.

**5.38.040 Variance and Waiver of Grease Interceptor Requirement.**

A. Variance from Grease Interceptor Requirements

A variance or a conditional waiver from the grease interceptor requirements on such terms and conditions as may be established by the Director, consistent with the requirements of the Sewer WDRs, the City's FOG Control Program, the FOG Discharge Manual, and best construction, engineering, environmental and health and safety practices, to (1) allow alternative pretreatment technology that is, at least, equally effective in controlling the FOG discharge in lieu of a grease interceptor, may be granted by the Director to FSEs demonstrating to the Director's satisfaction that it is impossible to install, operate or maintain a grease interceptor; or (2) where the FSE demonstrates to the Director's satisfaction that any FOG discharge from the FSE is negligible and will have an insignificant impact to the sewer system.

B. Waiver from Grease Interceptor Installation with a Grease Disposal Mitigation Fee.

For FSEs where the installation of grease interceptor is not feasible and no equivalent alternative pretreatment can be installed, a waiver from the grease interceptor requirement may be granted with the imposition of a Grease Disposal Mitigation Fee as described in Section 5.38.050. The Director's determination to grant the waiver with a Grease Disposal Mitigation Fee will be based upon such considerations that the Director determines to be appropriate and consistent with the Sewer WDRs, the City's FOG Control Program, the FOG Discharge Manual, and best construction, engineering, environmental and health and safety practices. Provided, however, that a grease interceptor will be installed when the FSE either (i) applies for any discretionary permit, including but not limited to a conditional use permit; or (ii) conducts any remodeling to an FSE which involves construction valued at \$50,000 or more requiring a building permit and which involves any one or combination of the following: (1) under slab plumbing in the food processing area, (2) a 30% increase in the net public seating area, (3) a 30% increase in the size of the kitchen area, or (4) any change in the size or type of food preparation equipment. No discretionary permit, including but not limited to a conditional use permit, shall be issued to an FSE unless the applicant can demonstrate that a grease interceptor has been or will be installed at the FSE.

C. Application for Waiver or Variance of Requirement for Grease Interceptor

An FSE may submit an application for waiver or variance from the grease interceptor

requirement to the Director. Terms and conditions for issuance of a variance to an FSE shall be set forth in the permit. A waiver or variance may be revoked at any time when any of the terms and conditions for its issuance is not satisfied or if the conditions upon which the waiver was based change so that the justification for the waiver no longer exists.

D. Exemption (Conditional Waiver)

A conditional waiver from installation of a grease interceptor may be granted for Food Service Establishments that have been determined to have negligible FOG discharge and insignificant impact to the sewer system. The Director's determination to grant or revoke a conditional waiver shall be based upon, but not be limited to, evaluation of the following conditions:

1. Quantity of FOG discharge as measured or as indicated by the size of Food Service Establishment based on seating capacity, number of meals served, menu, water usage, etc.
2. Adequacy of implementation of Best Management Practices and compliance history.
3. Sewer size, grade, condition based on visual information (CCTV), FOG deposition in the sewer by the Food Service Establishment, and history of maintenance and sewage spills in the receiving sewer system.
4. Changes in operations that significantly affect FOG discharge.
5. Any other condition deemed reasonably appropriate by the Director.

**5.38.045 Multiple FSEs At Commercial Properties.**

For properties at which multiple FSEs are operated on a single parcel, each FSE operator shall be individually and separately responsible for installation and maintenance of the grease interceptor serving its FSEs and for compliance with this Chapter. Furthermore, owners of commercial properties at which multiple FSEs are operated on a single parcel shall be responsible for ensuring compliance by each FSE on the parcel. Such operators and/or property owner can comply with this Chapter by installing and maintaining a grease interceptor or grease interceptors serving multiple FSEs upon approval by the Director on such terms and conditions that the Director may establish in his sole discretion.

**5.38.050 Grease Disposal Mitigation Fee.**

- A. FSEs that operate without a grease control interceptor may be required to pay an annual Grease Disposal Mitigation Fee to equitably cover the costs of increased maintenance and administration of the sewer system as a result of the FSEs' inability to adequately remove FOG from its wastewater discharge. This Section shall not be interpreted to allow a new FSE, or existing FSEs undergoing remodeling or change in operations, to operate without an approved grease interceptor unless the Director has determined that it is impossible to install or operate a grease control interceptor for the FSE under the provisions of this Chapter.
- B. The Grease Disposal Mitigation Fee shall be established by Resolution of the City Council, and shall be based on the estimated annual increased cost of maintaining the sewer system for inspection and removal of FOG and other viscous or solidifying agents attributable to the FSE resulting from the lack of a grease interceptor or grease control device and such other costs that the City Council considers appropriate.
- C. The Grease Disposal Mitigation Fee may not be waived or reduced when the FSE does not comply with the minimum requirements of this Chapter and/or its discharge into the sewer system in the preceding 12 months has caused or potentially caused or contributed alone or collectively, in sewer blockage or an SSO in the sewer downstream, or surrounding the FSE prior to the waiver request.
- D. At a minimum, the Grease Disposal Mitigation Fee shall be equivalent to the City's cost to: 1.) Conduct quarterly inspections of FSE premises for compliance with this Chapter; 2.) Clean the City sewer line that is impacted by the FSEs waste water discharges twice a year; and 3.) Review the FSEs sewer lateral cleaning records.



**5.38.055 Sewer System Overflows, Public Nuisance, Abatement Orders and Cleanup Costs.**

Notwithstanding any waiver of grease interceptor requirements under this Chapter, FSEs determined by the Director to have contributed to a sewer blockage, SSOs or any sewer system interferences resulting from the discharge of wastewater or waste containing FOG, may be ordered by the Director to immediately install and maintain a grease interceptor, and may be subject to a plan determined by the Director to abate the nuisance and prevent any future health hazards created by sewer line failures and blockages, SSOs or any other sewer system interferences. SSOs may cause threat and injury to public health, safety, and welfare of life and property and are hereby declared public nuisances. Furthermore, sewer lateral failures and SSOs caused by FSEs alone or collectively are the responsibility of the private property owner and/or FSE, and individual(s) as a responsible officer or owner of the FSE. If the City must act immediately to contain and clean up an SSO caused by blockage of a private or public sewer lateral or serving an FSE, or at the request of the property owner or operator of the FSE, or because of the failure of the property owner or FSE to abate the condition causing immediate threat of injury to the health, safety, welfare, or property of the public, the City's costs for such abatement may be entirely borne by the property owner or operator of the FSE, and individual(s) as a responsible officer or owner of the FSE(s) and may constitute a debt to the City and become due and immediately payable upon the City's request for reimbursement of such costs.

**5.38.060 FOG Wastewater Discharge Permit Required.**

- A. FSEs proposing to discharge or currently discharging wastewater-containing FOG into the City's sewer system shall obtain a FOG Wastewater Discharge Permit from the City within either (i) 180 days from the effective date of this Chapter or (ii) at the time any FSE applies for or renews its annual business license from the City. Compliance with this Chapter must be demonstrated at the time any business license is issued, provided that the Director may extend the compliance date for no more than 90 days after the date of the issuance of the license.
- B. FOG Wastewater Discharge Permits shall be expressly subject to all provisions of this Chapter and all other regulations, charges for use, and fees established by the City. The conditions of FOG Wastewater Discharge Permits shall be enforced by the City in accordance with this Chapter and applicable State and Federal Regulations.
- C. The City shall not issue a certificate of occupancy for any new construction, or occupancy unless an FSE has fully complied with the provisions of this Chapter.

**5.38.065 FOG Wastewater Discharge Permit Application.**

Any person required to obtain a FOG Wastewater Discharge Permit shall complete and file with the City prior to commencing discharges, an application in a form prescribed by the Director and shall provide the City such plans, information, and documents as the Director determines is necessary and appropriate to properly evaluate the application. The applicable fees shall accompany this application. After evaluation of the data furnished, the Director may issue a FOG Wastewater Discharge Permit, subject to terms and conditions set forth in this Chapter and as otherwise determined by the Director to be appropriate to protect the City's sewer system.

**5.38.070 FOG Wastewater Discharge Permit Condition.**

The issuance of a FOG Wastewater Discharge Permit may contain any of the following conditions or limits as determined by the Director:

- A. Limits on discharge of FOG and other priority pollutants.
- B. Requirements for proper operation and maintenance of grease interceptors and other grease control devices.
- C. Grease interceptor maintenance frequency and schedule.
- D. Requirements for implementation of Best Management Practices and installation of adequate grease interceptor and/or grease control devices.
- E. Requirements for maintaining and reporting status of Best Management Practices.

- F. Requirements for maintaining and submitting logs and records, including waste hauling records and waste manifests.
- G. Requirements to self-monitor.
- H. Requirements for the FSE to construct, operate and maintain, at its own expense, FOG control device and sampling facilities.
- I. Consent by the operator of the FSE for the City and other Regulatory Agencies to inspect the FSE to confirm compliance with this Chapter, the NPDES Permit and other applicable laws, rules and regulations.
- J. Additional requirements as otherwise determined to be reasonably appropriate by the Director to protect the City's system or as specified by other Regulatory Agencies.
- K. Other terms and conditions, which may be reasonably applicable to ensure compliance with this Chapter as determined by the Director.

**5.38.075 FOG Waste Water Discharge Permit Fee.**

The FOG Wastewater Discharge Permit fee shall be paid annually by the applicant in an amount adopted by Resolution of the City Council. Payment of permit fees must be received by the City prior to issuance of either a new permit or a renewed permit. A Permittee shall also pay any delinquent invoices in full prior to permit renewal.

**5.38.080 FOG Wastewater Discharge Permit Modification of Terms and Conditions.**

- A. The terms and conditions of an issued permit may be subject to modification and change by the sole determination of the Director during the life of the permit based on:
  - 1. The discharger's current or anticipated operating data;
  - 2. The City's current or anticipated operating data;
  - 3. Changes in the requirements of Regulatory Agencies which affect the City; or
  - 4. A determination by the Director that such modification is appropriate to further the objectives of this Chapter.
- B. The Permittee may request a modification to the terms and conditions of an issued permit. The request shall be in writing stating the requested change, and the reasons for the change. The Director shall review the request, make a determination on the request, and respond in writing.
- C. The Permittee shall be informed of any change in the permit limits, conditions, or requirements at least 45 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

**5.38.085 FOG Wastewater Discharge Permit Duration and Renewal.**

FOG Wastewater Discharge Permits shall be issued for a period not to exceed 1 year. Upon expiration of the permit, the user shall apply for renewal of the permit in accordance with the provisions of this Chapter.

**5.38.090 Exemption from FOG Wastewater Discharge Permit.**

A limited food preparation establishment is not considered an FSE for the purposes of this Chapter and is exempt from obtaining a FOG Wastewater Discharge Permit.

**5.38.095 Non-Transferability of Permits.**

- A. FOG Wastewater Discharge Permits issued under this Chapter are for a specific FSE, for a specific operation and create no vested rights.
- B. No permit holder shall assign, transfer or sell any FOG Wastewater Discharge Permit issued under this Chapter nor use any such permit for or on any premises or for facilities

or operations or discharges not expressly encompassed within the underlying permit.

- C. Any permit, which is transferred to a new owner or operator or to a new facility, is void.

**5.38.100 FOG Wastewater Discharge Permit Charge for Use.**

In addition to the Discharge Permit application fee, a charge to cover all costs of the City for providing the sewer service and monitoring shall be established by Resolution of the City Council.

**5.38.105 Grease Interceptor Requirements.**

- A. No waste water discharges from FSEs shall be introduced into the sewer system until the required grease interceptors have been approved by the Director.
- B. Grease Interceptors shall be maintained in efficient operating condition in accordance with the FOG Discharge Manual.
- C. Grease interceptors must be cleaned, maintained, and FOG must be removed from grease interceptors at regular intervals.
- D. FOG removed from grease interceptors shall be waste hauled periodically as part of the operation and maintenance requirements for grease interceptors and disposed of at an approved location in a proper manner and at regular intervals.

**5.38.110 Monitoring and Reporting Conditions.**

- A. Monitoring for Compliance with FOG Wastewater Discharge Conditions and Reporting Requirements
  - 1. The Director may require periodic reporting of the status of implementation of Best Management Practices, in accordance with the FOG Control Program and the FOG Discharge Manual.
  - 2. The Director may require visual and other monitoring at the sole expense of the Permittee to observe the actual conditions of the FSEs sewer lateral and sewer lines downstream.
  - 3. The Director may require reports for self-monitoring of wastewater constituents and FOG characteristics of the Permittee needed for determining compliance with any conditions or requirements as specified in the FOG Wastewater Discharge Permit or this Chapter. Monitoring reports of the analyses of wastewater constituents and FOG characteristics shall be in a manner and form approved by the Director and shall be submitted upon request of the Director.
  - 4. Failure by the Permittee to perform any required monitoring, or to submit monitoring reports required by the Director constitutes a violation of this Chapter and shall be cause for the City to initiate all necessary tasks and analyses to determine the wastewater constituents and FOG characteristics for compliance with any conditions and requirements specified in the FOG Wastewater Discharge Permit or in this Chapter.
  - 5. The Permittee shall be responsible for any and all expenses of the City in undertaking such monitoring analyses and preparation of reports.
  - 6. Other reports may be required such as compliance schedule progress reports, FOG control monitoring reports, and any other reports deemed reasonably appropriate by the Director to ensure compliance with this Chapter.
- B. Record Keeping Requirements

The Permittee shall be required to keep all documents identified by the Director relating to its compliance with this Chapter, including manifests, receipts and invoices of all cleaning, maintenance, grease removal of/from the grease control device, disposal carrier and disposal site location for no less than 2 years. The Permittee shall, upon request, make the manifests, receipts and invoices available to any City representative, or inspector. These records may include:

1. A logbook of grease interceptor, and/or other grease control device cleaning and maintenance practices.
2. A record of Best Management Practices being implemented including employee training.
3. Copies of records and manifests of wastehauling interceptor contents.
4. Records of sampling data and sludge height monitoring for FOG and solids accumulation in the grease interceptors.
5. Any other information deemed appropriate by the Director to ensure compliance with this ordinance.

C. Falsifying Information or Tampering with Process

It shall be unlawful to make any false statement, representation, record, report, plan or other document that is filed with the City, or to tamper with or knowingly render inoperable any grease control device, monitoring device or method or access point required under this Chapter.

**5.38.115 Inspection and Sampling Conditions.**

- A. The Director may inspect or order the inspection and sample the wastewater discharges of any FSE to ascertain whether the intent of this Chapter is being met and the Permittee is complying with all requirements. The Permittee shall allow the City access to the FSE premises, during normal business hours, for purposes of inspecting the FSE's grease control devices and/or interceptor, reviewing the manifests, receipts and invoices relating to the cleaning, maintenance and inspection of the grease control devices or interceptor.
- B. The Director shall have the right to place or order the placement on the FSE's property or other locations as determined by the Director, such devices as are necessary to conduct sampling or metering operations. Where an FSE has security measures in force, the Permittee shall make necessary arrangements so that representatives of the City shall be permitted to enter without delay for the purpose of performing their specific responsibilities.
- C. For the Director to determine the wastewater characteristics of the discharger for purposes of determining the annual use charge and for compliance with permit requirements, the Permittee shall make available for inspection and copying by the City all notices, monitoring reports, waste manifests, and records including, but not limited to, those related to wastewater generation, and wastewater disposal without restriction but subject to the confidentiality provision set forth in this Chapter. All such records shall be kept by the Permittee a minimum of 2 years.

**5.38.120 Right of Entry.**

Persons or occupants of premises where wastewater is created or discharged shall allow the Director, or City representatives, reasonable access to all parts of the FSE and all wastewater generating and disposal facilities for the purposes of inspection and sampling during all times the discharger's facility is open, operating, or any other reasonable time. No person shall interfere with, delay, resist or refuse entrance to City representatives attempting to inspect any FSE or facility involved directly or indirectly with a discharge of wastewater to the City's sewer system.

**5.38.125 Notification of Spill.**

- A. In the event a Permittee is unable to comply with any permit condition due to a breakdown of equipment, accidents, or human error or the Permittee has reasonable opportunity to know that his/her/its discharge will exceed the discharge provisions of the FOG Wastewater Discharge Permit or this Chapter, the discharger shall immediately notify the City by telephone at the number specified in the Permit. If the material discharged to the sewer has the potential to cause or results in sewer blockages or SSOs, the discharger shall immediately notify the City, the Los Angeles County Department of Public Health, the Regional Water Quality Control Board, and the California State Office of Emergency Services if the SSO is 1000 gallons or more.

- B. Confirmation of this notification shall be made in writing to the Director at the address specified in the Permit no later than 5 working days from the date of the incident. The written notification shall state the date of the incident, the reasons for the discharge or spill, what steps were taken to immediately correct the problem, and what steps are being taken to prevent the problem from recurring.
- C. Such notification shall not relieve the Permittee of any expense, loss, damage or other liability which may be incurred as a result of damage or loss to the City or any other damage or loss to person or property; nor shall such notification relieve the Permittee of any fees or other liability which may be imposed by this Chapter or other applicable law.

#### **5.38.130 Enforcement.**

- A. The City Council finds that, in order for the City to comply with the laws, regulations, and rules imposed upon it by Regulatory Agencies and to ensure that the City's sewer facilities are protected and are able to operate with the highest degree of efficiency, and to protect the public health and the environment, specific enforcement provisions must be adopted to govern the discharges to the City's sewer system by FSEs.
- B. To ensure that all interested parties are afforded due process of law and that violations are resolved as soon as possible, a Permittee, or applicant for a permit may appeal any determination made by the Director, including but not limited to a denial of a discharge permit, a notice of violation; permit suspension or revocation; or a Compliance Schedule Agreement (CSA), pursuant to the procedures set forth in Section 5.38.185.
- C. The City, at its discretion, may utilize any one, combination, or all enforcement remedies provided in this Chapter in response to any FOG Wastewater Discharge Permit or Chapter violations.

#### **5.38.135 Violations.**

- A. The owner and operator of an FSE or Permittee shall be in violation of this Chapter if such owner or operator or Permittee:
  1. Fails to install an approved grease control device as required by this Chapter; or
  2. Makes any false statement, representation, record, report, plan or other document that is filed with the City; or
  3. Tampers with or knowingly renders inoperable any grease control device required under this Chapter; or
  4. Fails to clean, maintain or remove grease from a grease control device within the required time for such cleaning, maintenance or grease removal; or
  5. Fails to keep up-to-date and accurate records of all cleaning, maintenance, and grease removal and upon request to make those records available to any City Code Enforcement representative, or his or her designee, any representative of a local sanitation agency that has jurisdiction over the sanitary sewer system that services the Food Facility, or any Authorized Inspector that has jurisdiction under the Water Quality Chapter; or
  6. Refuses a City Code Enforcement representative, or his or her designee, a representative of a local sanitary sewer agency that has jurisdiction over the sanitary sewer system that services the Food Facility, or any Authorized Inspector, reasonable access to the Food Facility for the purposes of inspecting, monitoring, or reviewing the Grease Control Device manifests, receipts and invoices of all cleaning, maintenance, grease removal of/from the Grease Control Device, and/or to inspect the Grease Control Device; or
  7. Disposes of, or knowingly allows or directs FOG to be disposed of, in an unlawful manner; or
  8. Fails to remove all food grinders located in the Food Facility by the date specified by this Chapter; or

9. Introduces additives into a wastewater system for the purposes of emulsifying FOG without the written, specific authorization from the sanitary sewer agency that has jurisdiction of the sanitary sewer system that services the Food Facility; or
  10. Fails to pay the Grease Disposal Mitigation Fee as specified in this Chapter when due; or
  11. Fails to comply with the FOG Discharge Manual; or
  12. Otherwise fails to comply with the provisions of this Chapter or any permit issued by the City under this Chapter.
- B. Violations under this Section shall be subject to the procedures, penalties and remedies set out in this Chapter and Chapter 1.04. All costs for the investigations, enforcement actions, and ultimate corrections of violations under this Section, incurred by the City shall be reimbursed by the owner/operator of the FSE.

**5.38.140 Compliance Schedule Agreement (CSA).**

- A. Upon determination by the Director that a Permittee or other owner or operator of an FSE or owner of a Property is in noncompliance with the terms and conditions specified in its permit or any provision of this Chapter, or needs to construct and/or acquire and install a grease control device or grease interceptor, the Director may require the Permittee, owner or operator to enter into a CSA.
- B. The issuance of a CSA may contain terms and conditions as determine appropriate by the Director, including but not limited to requirements for installation of a grease control device, grease interceptor and facilities, submittal of drawings or reports, audit of waste hauling records, best management and waste minimization practices, payment of fees, or other provisions to ensure compliance with this Chapter.
- C. The Director shall not enter into a CSA until such time as all amounts owed to the City, including user fees, noncompliance sampling fees, or, or other amounts due are paid in full, or an agreement for deferred payment secured by collateral or a third party, is approved by the Director. If compliance is not achieved in accordance with the terms and conditions of a CSA during its term, the Director may issue an order suspending or revoking the discharge permit pursuant to this Chapter.

**5.38.145 Permit Suspension.**

- A. The Director may suspend any permit when it is determined that a Permittee:
  1. Fails to comply with the terms and conditions of a CSA order.
  2. Knowingly provides a false statement, representation, record, report, or other document to the City.
  3. Refuses to provide records, reports, plans, or other documents required by the City to determine permit terms or conditions, discharge compliance, or compliance with this Chapter.
  4. Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or sample collection method.
  5. Refuses reasonable access to the Permittee's premises for the purpose of inspection and monitoring.
  6. Does not make timely payment of all amounts owed to the City for user charges, permit fees, or any other fees imposed pursuant to this Chapter.
  7. Causes interference, sewer blockages, or SSOs with the City's collection, treatment, or disposal system.
  8. Violates grease interceptor maintenance requirements, any condition or limit of its discharge permit or any provision of this Chapter.

- B. When the Director has reason to believe that grounds exist for permit suspension, he/she shall give written notice thereof by certified mail to the Permittee setting forth a statement of the facts and grounds deemed to exist.
- C. Effect
  - 1. Upon an order of suspension by the Director, the Permittee shall immediately cease and desist its discharge and shall have no right to discharge any wastewater containing FOG directly or indirectly to the City's system for the duration of the suspension. All costs for physically terminating and reinstating service shall be paid by the Permittee.
  - 2. Any owner or responsible management employee of the Permittee shall be bound by the order of suspension.

**5.38.150 Permit Revocation.**

- A. Revocation. The Director may revoke any FOG Wastewater Discharge Permit when it is determined that a Permittee has failed to comply with this Chapter.
- B. Notice of Revocation. When the Director has reason to believe that grounds exist for the revocation of a permit, he/she shall give written notice by certified mail thereof to the Permittee setting forth a statement of the facts and grounds.
- C. Effect of Revocation.
  - 1. Upon an order of revocation by the Director becoming final, the Permittee shall permanently lose all rights to discharge any wastewater containing FOG directly or indirectly to the City's system. All costs for physical termination shall be paid by the Permittee.
  - 2. Any owner or responsible management employee of the Permittee shall be bound by the order of revocation.
  - 3. Any future application for a discharge permit at any location within the City by any person associated with an order of revocation will be considered by the City after fully reviewing the records of the revoked permit, which records may be the basis for denial of a new permit.
  - 4. An order of permit revocation issued by the Director of Public Works shall be final in all respects on the 16th day after it is mailed to the Permittee.

**5.38.155 Damages to Facilities or Interruption of Normal Operations.**

- A. Any person who discharges any waste, including but not limited to those listed under 40 CFR §403.5, which causes or contributes to any sewer blockage, SSOs, obstruction, interference, damage, or any other impairment to the City's sewer facilities or to the operation of those facilities shall be liable for all costs required to clean or repair the facilities together with expenses incurred by the City to resume normal operations. The total amount shall be payable within 45 days of invoicing by the City.
- B. Any person who discharges a waste which causes or contributes to the City violating its discharge requirements established by any Regulatory Agency incurring additional expenses or suffering losses or damage to the facilities, shall be liable for any costs or expenses incurred by the City, including regulatory fines, penalties, and assessments made by other agencies or a court.

**5.38.160 Public Nuisance.**

Discharge of wastewater in any manner in violation of this Chapter or of any order issued by the Director, as authorized by this Chapter, is hereby declared a public nuisance and shall be corrected or abated as directed by the Director. Any person creating a public nuisance is guilty of a misdemeanor.

**5.38.165 Termination of Service.**

- A. The City, by order of the Director, may physically terminate sewer service and water service to any FSE, as follows:
  - 1. On a term of any order of suspension or revocation of a permit; or
  - 2. Upon the failure of a person not holding a valid Discharge Permit to immediately cease the discharge, whether direct or indirect, to the City's sewer facilities after the notice and process as provided herein.
- B. All costs for physical termination shall be paid by the owner or operator of the FSE or Permittee as well as all costs for reinstating service.

**5.38.170 Emergency Suspension Order.**

The City may, by order of the Director, suspend sewer service and/or water service when the Director determines that such suspension is necessary in order to stop an actual or impending discharge which presents or may present an imminent or substantial endangerment to the health and welfare of persons, or to the environment, or may cause SSOs, sewer blockages, interference to the City's sewer facilities, or may cause the City to violate any State or Federal Law or Regulation. Any discharger notified of and subject to an Emergency Suspension Order shall immediately cease and desist the discharge of all wastewater containing FOG to the sewer system.

**5.38.175 Civil Penalties.**

- A. In addition to criminal penalties and administrative penalties authorized by this Municipal Code, all users of the City's system and facilities are subject to enforcement actions administratively or judicially by the City, U.S. EPA, State of California Regional Water Quality Control Board, or the County of Orange Los Angeles, and other Regulatory Agencies. Said actions may be taken pursuant to the authority and provisions of several laws, including but not limited to: (1) Federal Water Pollution Control Act, commonly known as the Clean Water Act (33 U.S.C.A. Section 1251 et seq.); (2) California Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.); (3) California Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); (4) Resource Conservation and Recovery Act of 1976 (42 U.S.C.A Section 6901 et seq.); and (5) California Government Code, Sections 54739-54740.
- B. In the event the City is subject to the payment of fines or penalties pursuant to the legal authority and actions of other regulatory or enforcement agencies based on a violation of law or regulation or its permits, and said violation can be established by the City, as caused by the discharge of any user of the City's system which is in violation of any provision of the City's Chapter or the user's permit, the City shall be entitled to recover from the user all costs and expenses, including, but not limited to, the full amount of said fines or penalties to which it has been subjected.
- C. Pursuant to the authority of California Government Code Sections 54739-54740, any person who violates any provision of this Chapter; any permit condition, prohibition or effluent limit; or any suspension or revocation order shall be liable civilly for a sum not to exceed \$25,000.00 per violation for each day in which such violation occurs. Pursuant to the authority of the Clean Water Act, 33 U.S.C. Section 1251 et seq., any person who violates any provision of this Chapter, or any permit condition, prohibition, or effluent limit shall be liable civilly for a sum not to exceed \$25,000.00 per violation for each day in which such violation occurs. The City Attorney of the City, upon request of the Director, shall petition the Superior Court to impose, assess, and recover such penalties, or such other penalties as the City may impose, assess, and recover pursuant to Federal and/or State legislative authorization.

**D. Administrative Civil Penalties**

Pursuant to the authority of California Government Code Sections 54740.5 and 54740.6, the City may issue an administrative complaint to any person who violates:

- 1. any provision of this Chapter;



2. any permit condition, prohibition, or effluent limit; or
3. any suspension or revocation order.

**5.38.180 Criminal Penalties.**

Any person who violates any provision of this Chapter is guilty of a misdemeanor, which upon conviction is punishable by a fine not to exceed \$1,000.00, or imprisonment for not more than 6 months, or both. Each violation and each day in which a violation occurs may constitute a new and separate violation of this Chapter and shall be subject to the penalties contained herein.

**5.38.185 Appeals to the City Manager.**

Any FSE, permit applicant, or Permittee adversely affected by a decision made by the Director may appeal the decision by filing, within 10 days, a written request for hearing before the City Manager accompanied by an appeal fee in an amount established by resolution. The request for hearing shall set forth in detail all the issues in dispute, and all facts supporting appellant's request. A hearing shall be held by the City Manager within 65 days. If the matter is not heard within the required time, the order of Director shall be deemed final. The appeal fee shall be refunded if the City Manager reverses or modifies, in favor of the appellant, the order of the Director. After the hearing, the City Manager shall uphold, modify, or reverse the decision. The written decision shall be sent by certified mail to the appellant or its legal counsel/representative at the appellants business address. The City Manager's decision shall be final.

**5.38.190 Payment of Charges.**

- A. Except as otherwise provided, all fees, charges and penalties established by this Chapter are due and payable upon receipt of notice thereof. All such amounts are delinquent if unpaid 45 days after date of invoice.
- B. Any charge that becomes delinquent shall have added to it a penalty in accordance with the following:
  1. Forty-six days after date of invoice, a basic penalty of 10% of the base invoice amount, not to exceed a maximum of \$1,000.00; and
  2. A penalty of 1.5% per month of the base invoice amount and basic penalty shall accrue from and after the 46th day after date of invoice.
- C. Any invoice outstanding and unpaid after 90 days shall be cause for immediate initiation of permit revocation proceedings or immediate suspension of the permit.
- D. Penalties charged under this Section shall not accrue to those invoices successfully appealed, provided the City receives written notification of said appeal prior to the payment due date.
- E. Payment of disputed charges is still required by the due date during the City review of any appeal submitted by Permittees.
- F. Collection of delinquent accounts shall be in accordance with the City's policy resolution establishing procedures for collection of delinquent obligations owed to the City, as amended from time to time by the City Council. Any such action for collection may include an application for an injunction to prevent repeated and recurring violations of this Chapter.

**5.38.195 Judicial Review.**

- A. Pursuant to Section 1094.6 of the California Code of Civil Procedure, the City hereby enacts this part to limit to 90 days following final decisions in adjudicatory administrative hearings the time within which an action can be brought to review such decisions by means of administrative mandamus.
- C. Notwithstanding the foregoing, and pursuant to Government Code Section 54740.6, judicial review of a final order of the City Manager or the Director imposing administrative civil penalties pursuant to this Chapter may be made only if the petition for writ of mandate is

filed not later than the 30th day following the day on which such order becomes final."

SECTION 3. If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

SECTION 4. Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

SECTION 5. This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 6. The City Clerk shall cause this Ordinance to be published and, if appropriate, posted, as provided by law. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 21<sup>st</sup> day of July, 2009.

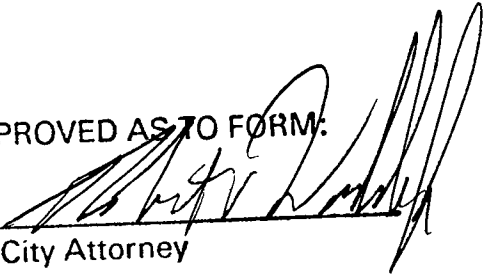
AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor, City of Manhattan Beach, California

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By   
City Attorney