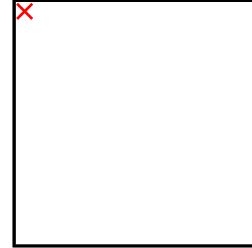


## CITY OF FLAGSTAFF STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:**  
**Co-Submitter:** Chris Kirkendall  
**Date:** 11/27/2018  
**Meeting Date:** 12/04/2018



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### TITLE:

**Consideration and Adoption of Resolution No. 2018-43 and Ordinance No. 2018-32:** An ordinance and resolution amending the Flagstaff City Code, Title 7, *Health and Sanitation*, and Title 12, *Floodplains*, to adopt an Enforcement Response Plan related to enforcement of water, pretreatment, wastewater, and stormwater regulations, including administrative fines and/or penalties for violations

### STAFF RECOMMENDED ACTION:

At the December 4, 2018 Council Meeting:

- 1) Adopt Resolution No. 2018-43
- 2) Read Ordinance No. 2018-32 by title only for the final time
- 3) City Clerk reads Ordinance No. 2018-32 by title only (if approved above)
- 4) Adopt Ordinance 2018-32

### Executive Summary:

Flagstaff Water Services has developed an Enforcement Response Plan (ERP) and drafted code changes to meet the requirements of a state-issued stormwater general permit and City Code requirements for the industrial pretreatment program in Title 7.

The ERP provides clear guidance and direction to both City staff and our regulated customers which will take any guesswork out of the enforcement process. The draft ERP was organized to establish escalating enforcement procedures and penalties and identify staff roles and responsibilities. It was written to provide our regulated customers every opportunity to return to compliance prior to any escalated enforcement proceedings.

Flagstaff Water Services solicited comments to the ERP from our customers and from the Flagstaff Water Commission. Beginning August 7, 2018, the draft ERP was posted on the Flagstaff Water Services Website, posted in the AZ Daily Sun, posted on the Flagstaff Water Services Facebook page and provided to our permitted industrial users thru Email. Flagstaff Water Services also presented the ERP to the Flagstaff Water Commission in August 2018 and again in October, 2018.

### Financial Impact:

The ERP establishes an administrative fine schedule for violation of specific regulations. Any person violating the regulations may be subject to the fines. The City may collect some fines where in the past it did not pursue financial recourse for violations. The anticipated financial impact to the City is nominal.

**Policy Impact:**

The proposed ERP supports City compliance with the Clean Water Act and protection of water supplies and water services facilities.

**Connection to Council Goal, Regional Plan and/or Team Flagstaff Strategic Plan:**

**ENVIRONMENTAL AND NATURAL RESOURCES**

Actively manage and protect all environmental and natural resources.

**CODE COMPLIANCE**

Achieve comprehensive and equitable code compliance.

**Has There Been Previous Council Decision on This:**

No, no prior adoption of an ERP. Council is considering the ERP at a work session on November 13, 2018.

**Background and History:**

The Arizona Department of Environmental Quality (ADEQ) issued a new small Municipal Separate Storm Sewer System (MS4) general permit on September 30, 2016. The City of Flagstaff is required to meet the conditions of the new permit, which includes developing an Emergency Response Plan (ERP) and enforcement procedures. Additionally, Flagstaff City Code requires an ERP for the Industrial Pretreatment program. Water Services staff has developed a draft ERP that meets both of these requirements by incorporating the pretreatment and stormwater programs. Additionally, the ERP also incorporates the Cross-Connection Control program, which is part of the Industrial Pretreatment Program.

The ERP was written to set escalating enforcement procedures and penalties for code violations to the Stormwater and Industrial Pretreatment Programs. The language was drafted to allow violators to return to compliance with no penalties, provided the issues are corrected within a calendar quarter or the violator has entered into an administrative agreement with the City to correct the issues. The ERP provides clear guidance and direction to City staff and provides the expectations to the regulated industry and penalties/corrective action for non-compliance. The ERP takes any guesswork out of the enforcement process.

The ERP was developed to meet the following criteria:

- Respond to and comply with changes in state law
- Set escalating enforcement procedures and penalties (prioritization) for code violations.
- Identify staff Roles and Responsibilities by Position Title
- Sets how the City will exercise its legal authority to comply with the State stormwater permit and pretreatment code.

Escalating enforcement procedures are as follows:

- Inspection Report/Warning Letter
- Notice of Violation/Corrective Action Notice
- Administrative Order/Stop Work Order
- Administrative fines/penalties

- Civil Litigation – At Discretion of City Attorney's Office

Changes to Title 7 and 12 of existing City Code were also required to implement and enforce provisions of the ERP. Changes to the stormwater code in Title 12 were needed to provide the ability to enter into consent agreements or administrative orders, establish a civil penalty authority, and the authority to impose criminal sanctions. The pretreatment code in Title 7 also needs some revisions to clean up the authority to match the ERP. Title 7 was organized by adding a separate chapter to include all enforcement for Water Services in Title 7, Chapter 1. Changes were made in Title 7, Chapter 2 to clean up definitions, fix broken links to other Code, as a result of renumbering changes and change the name of Industrial Waste to Industrial Pretreatment. The enforcement process in title 12, chapter 3 of the stormwater code matches that found in title 7, chapter 1 of the Water Services Code.

Flagstaff Water Services solicited comments from our customers on the draft ERP. Beginning August 7, 2018, the draft ERP was posted on the Flagstaff Water Services Website, posted in the AZ Daily Sun, posted on the Flagstaff Water Services Facebook page and provided to our permitted industrial users thru Email. Additionally, flyers were printed and handed out by inspectors in the field. Flagstaff Water Services also presented the ERP to the Flagstaff Water Commission in August 2018 and again in October.

### **Key Considerations:**

The City is required to adopt an Enforcement Response Plan (ERP) to comply with the ADEQ state general permit issued for Municipal Separate Storm Sewer Systems (MS4);

The proposed ERP creates a uniform enforcement process for industrial pretreatment, cross-connection, and/or stormwater regulations.

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**Attachments:**     Res. 2018-43  
                             Draft ERP  
                             Exhibit A Part 1 pretreatment regs  
                             Exhibit A Part 2 stormwater  
                             Ord. 2018-32