

AN ORDINANCE

AN ORDINANCE OF THE CITY OF FAIR OAKS RANCH AMENDING CHAPTER 1 “GENERAL PROVISIONS” BY ADDING A NEW ARTICLE ENTITLED “STORMWATER POLLUTION PREVENTION”; PROVIDING FOR SEVERABILITY AND REPEAL CLAUSES; PROVIDING FOR A CIVIL AND/OR CRIMINAL PENALTY NOT EXCEEDING \$2000 PER VIOLATION FOR NONCOMPLIANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to the Clean Water Act and Texas Pollution Discharge Elimination System General Permit TXR040000, as it may be amended, the City of Fair Oaks Ranch is required to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants into the City’s streets, gutters, ditches, and storm drains, and to the surface waters of the state, and the waters of the United States, to the maximum extent practicable; and

WHEREAS, the City of Fair Oaks Ranch recognizes that protecting and improving water quality within the City’s Municipal Separate Storm Sewer System boundaries will contribute to an improved quality of life and the general welfare of the residents of Fair Oaks Ranch; and

WHEREAS, the City Council of the City of Fair Oaks Ranch deems it necessary to amend Chapter 1 General Provisions by adding a new article titled Stormwater Pollution Prevention.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

- PART 1. Chapter 1 “General Provisions” is hereby amended as set forth in the attached Exhibit A.
- PART 2. That the recitals contain in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.
- PART 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.
- PART 4. That it is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.
- PART 5. A penalty provision section is established in Section 1.10.015 of the attached Exhibit “A”.
- PART 6. This ordinance shall take effect immediately from and after its second reading, passage and publication as may be required by governing law.

PART 7. The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

PART 8. The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

PASSED and APPROVED on first reading this the 6th day of January 2022.

PASSED, APPROVED and ADOPTED on second reading this the 20th day of January 2022.

Gregory C. Maxton, Mayor

ATTEST:

APPROVED AS TO FORM:

Christina Picioccio, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

Exhibit A

The City's Code of Ordinances Chapter 1 General Provisions is hereby amended by the addition of the following Article:

STORMWATER POLLUTION PREVENTION

Division 1. Generally

Sec. 001 Policy, purpose, and intent

- (a) Pursuant to the Clean Water Act and Texas Pollution Discharge Elimination System General Permit TXR040000, as it may be amended, the City of Fair Oaks Ranch is required to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants into the City's streets, gutters, ditches, and storm drains, and to the surface waters of the state, and the waters of the United States, to the maximum extent practicable.
- (b) The City of Fair Oaks Ranch recognizes that protecting and improving water quality within the City's Municipal Separate Storm Sewer System boundaries will contribute to an improved quality of life and the general welfare of the residents of Fair Oaks Ranch.

Sec. 002-009 Reserved

Division 2. Regulations

Sec. 010 Abbreviations

The following abbreviations when used in this chapter shall have the designated meanings:

BMP	Best management practices
BOD	Five-day Biochemical oxygen demand
CFR	Code of Federal Regulations
COFOR	City of Fair Oaks Ranch
CWA	Clean Water Act
EPA	United States Environmental Protection Agency
MEP	Maximum extent practicable
Mg/l	Milligrams per liter
MS4	Municipal separate storm sewer system
MSGP	Multi-Sector General Permit
NOI	Notice of intent
NPDES	National Pollution Discharge Elimination System
pH	Measure of acidity and alkalinity

SWP3	Stormwater pollution prevention plan
TCEQ	Texas Commission on Environmental Quality
TPDES	Texas Pollutant Discharge Elimination System

Sec. 011 Definitions

For the purposes of this Ordinance, the following definitions shall apply unless the context of their usage clearly indicates otherwise:

Best management practices. Activities, prohibitions, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants.

Clean Water Act. The Federal Water Pollution Control Act, as codified at 33 U.S.C. 1251-1376.

Common plan of development. A construction activity that is completed in separate stages or phases or in a combination with other construction activities. A common plan of development is identified by plats, blueprints, marketing plans, contract, building permit applications, a public notice or hearing, zoning requests, or other similar documentation.

Construction activity (large)(more than 5 acres). Construction activities including clearing, grading, and excavating that result in land disturbance of five or more acres of land. Large construction activity also includes the disturbance of less than five acres of land area that is part of a common plan of development that will ultimately disturb five acres or more of land.

Construction activity (small)(more than 1 less than 5 acres). Construction activities including clearing, grading, and excavating that result in land disturbance of one acre or more but less than five acres of land. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development if the larger common plan will ultimately disturb one acre or more but less than five acres of land.

Construction site operator. The person or persons associated with a small or large construction project that is either:

- (1) The person or persons that have operational control over construction plans and specifications including approval of revisions to the extent necessary to meet the requirements and conditions of state and federal law, including TPDES or NPDES permits allowing stormwater discharge; or
- (2) The person or persons that have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a stormwater pollution prevention plan for the site.

Conveyance. Streets, curbs, gutters, manmade channels and ditches, drains, pipes, and other constructed features designed or used for drainage or flood control or to otherwise transport stormwater runoff.

Discharge. The drainage, release, or disposal of pollutants in stormwater and certain non-stormwater from areas where land disturbing activities, construction materials, equipment storage or maintenance, or other industrial activities are located.

Final stabilization. Where the following conditions are met:

- (1) All soil disturbing activities have been completed and a uniform perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
- (2) For individual lots in a residential construction site either:
 - (A) The homebuilder completes final stabilization as specified in subsection (1) above; or
 - (B) The homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and informs the homeowner of the need for, and benefits of, final stabilization.
- (3) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to a surface water and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of subsection (1) above.

Groundwater infiltration. Groundwater that enters the MS4 (including storm sewer and foundation drains) through such means as defective pipes, pipe joints, connections, or manholes.

Illicit connection. Any human-made conveyance connecting an illicit discharge directly to the MS4.

Illicit discharge. Any discharge to the MS4 that is not entirely composed of stormwater, except discharges allowed pursuant to state or federal law, including TPDES or NPDES permits allowing stormwater discharge or a separate authorization.

Industrial activities. Manufacturing, processing, material storage and disposal areas, and similar areas where stormwater can contact industrial pollutants related to the industrial activity at an industrial facility described by the TPDES Multi-Sector General Permit, TXR050000, as it may be amended, or by another TPDES or NPDES permit.

Land disturbance (or soil disturbance). Any activity which involves the physical movement or disturbance of earth material by mechanized means. This includes excavating, filling, stockpiling, clearance of vegetation, grading, compaction of soil, creation of borrow pits, or combination thereof. Land disturbance does not include plowing, seeding, planting, cultivating, or harvesting on a farm, including lands that have been lying fallow as part of a conventional rotational cycle. Land disturbance does not include routine maintenance performed to maintain the original line and grade, hydraulic capacity and purpose of a ditch, channel or other similar stormwater conveyance. Land disturbance does not include routine grading of existing dirt roads, asphalt overlays of existing roads, routine clearing of existing rights-of-way or other similar maintenance activities.

Maximum extent practicable. Established by the Clean Water Act, the technology-based discharge standard for MS4s to reduce pollutants in stormwater discharges by selecting and implementing effective BMPs.

Municipal separate storm sewer system (MS4). The conveyance or system of conveyances including roads, streets, catch-basins, curbs, gutters, ditches, manmade channels, or storm drains that are located within the City of Fair Oaks Ranch and that are designed or used for collecting or conveying stormwater; but which are not a combined sewer (sanitary sewer and stormwater) and are not part of the city's sanitary sewer collection system.

MS4 operator. For the purpose of this article, the City of Fair Oaks Ranch.

Point source. Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutants of concern. Those pollutants identified as a cause of impairment and including biochemical oxygen demand (BOD), and sediment or parameters that address sediment such as total suspended solids, turbidity or siltation.

Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into groundwater, subsurface soils, surface soils, the MS4, the surface water of the state, or the waters of the United States.

Site development permit. A permit issued by the city for the alteration of the ground for the construction or installation of utilities, streets, sidewalks, structures designed to control erosion and run-off and other grading activities that are not a part of a project that requires a building permit.

Stormwater management program (SWMP). A comprehensive program to manage the quality of discharges into and from the City's MS4.

Stormwater runoff. Rainfall runoff, snowmelt runoff, and surface runoff and drainage.

Structural controls. A pollution prevention practice that requires the construction or use of a device to capture or prevent pollution in stormwater runoff. Structural controls and practices may include but are not limited to: wet ponds, bio-retention, infiltration basins, stormwater wetlands, silt fences, earthen dikes, drainage swales, vegetative lined ditches, vegetative filter strips, sediment traps, check dams, subsurface drains, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

Surface water in the state. Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico from the mean high water level out 10.36 miles into the Gulf, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

TPDES. Texas Pollution Discharge Elimination System.

Waters of the United States.

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate wetlands;
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (A) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (B) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (C) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the U.S.;
- (5) Tributaries of waters identified in subsections (1) through (4) of this definition;
- (6) The territorial sea;
- (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subsections (1) through (6) of this definition; and
- (8) Waste treatment systems, including manmade treatment ponds, lagoons or wetlands designed to meet the requirements of CWA are not waters of the United States.

Wetland. An area that is inundated or saturated by surface or groundwater 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.

Sec. 012 Pollution prevention and erosion control at construction sites

- (a) All construction site operators, at a minimum, must:
 - (1) As a precondition to receiving a building permit for a small or large construction site, prepare and submit a stormwater pollution prevention plan (SWP3).
 - (2) For projects that do not require a building permit, but will require excavation, fill or grading of more than one acre of land, such as the construction or installation of utilities, new drainageways, streets, or sidewalks, must prepare and submit a SWP3.

- (3) Submission of a SWP3 is not required in order to perform emergency work needed to protect life or property.
- (4) For construction sites that will disturb less than one acre of land, the following provisions apply:
 - (A) No SWP3 need be prepared or submitted.
 - (B) Construction site operators are responsible for retaining all soil and sediment on site and off of adjacent properties and the public right-of-way. This includes dust control and control of vehicle tracking of dirt off site.
 - (C) Soil and sediment that leaves the construction site must be cleaned-up daily.
 - (D) Proper provision for solid waste, construction debris and sanitary waste must be made and maintained.
- (5) The operator of a construction site, required to have a TPDES permit to discharge stormwater shall submit a copy of the Notice of Intent (NOI) to the City at the same time the operator submits the original NOI to the TCEQ. The copy of the NOI may be delivered to the City either in person or by mailing it to: Public Works Director, City of Fair Oaks Ranch, 7286 Dietz Elkhorn, Fair Oaks Ranch, TX 78015.

(b) Stormwater pollution prevention plan (SWP3).

- (1) Prior to commencing large or small construction activity and prior to receiving a building or site development permit from the city, construction site operators that are required by the NPDES or the TPDES to obtain a permit to discharge stormwater must:
 - (A) Develop and submit for review and approval a SWP3 that covers the entire site;
 - (B) Post a signed copy of the NOI at the construction site where it can be readily viewed;
 - (C) Ensure the project specifications allow or provide that adequate BMPs will be developed and modified as necessary to meet the requirements of the SWP3; and
 - (D) Ensure all contractors and sub-contractors are aware of the requirements of the SWP3, that on-site personnel are responsible for the day-to-day implementation of and adherence to the SWP3, and who to contact concerning SWP3 compliance; and
- (2) The SWP3 must:
 - (A) Be completed and initially implemented prior to commencing activities that result in land disturbance;
 - (B) Provide for compliance with the terms and conditions of this article and the NPDES and TPDES for stormwater;
 - (C) Be available at the construction site or readily available at the time of an on-site inspection to TCEQ; the EPA, or city personnel;
 - (D) Be amended whenever there is a change in design, construction, operation, or maintenance that may have a significant effect on the discharge of pollutants or that

was not previously addressed in the SWP3; or because inspections by the site operator, TCEQ, EPA or city indicate the SWP3 is ineffective in eliminating or minimizing pollutants in discharges;

(E) Identify the person or persons responsible for implementation of the plan.

(c) Issuance of a building permit or site development permit. Before authorizing the issuance of a building permit or a site development permit, the city will review the proposed site plan and SWP3, as well as construction documents, for compliance with this article and the NPDES and TPDES for stormwater.

(d) City inspection of construction sites. The city building inspector, code compliance officer, city engineer, environmental program manager, and designees are hereby authorized to inspect construction sites for the purpose of ensuring compliance and enforcement of control measures contained in the SWP3s and this article.

(e) Contents of stormwater pollution prevention plan. The stormwater pollution prevention plan (SWP3) required pursuant to this article, the Clean Water Act, NPDES, and TPDES must include the following information:

(1) The SWP3 report must include all the information required from the current General Permit to Discharge Under the Texas Pollutant Discharge Elimination System TXR150000 which includes but is not limited to the following:

(A) The nature of the construction activity, potential pollutants and sources;

(B) The intended schedule or sequence of major activities that will disturb soils;

(C) The number of acres of the entire construction site property and the total number of acres of the site where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas;

(D) The soil type and the quality of any existing discharge from the site;

(E) A map showing the general location of the site (e.g. a portion of a city or county map);

(F) A detailed site map indicating the following:

(i) Drainage patterns and approximate slopes anticipated after major grading activities;

(ii) Areas where soil disturbance will occur;

(iii) Areas which will not be disturbed;

(iv) Locations of all major structural controls either planned or in place;

(v) Locations where stabilization practices are expected to be used;

(vi) Locations of construction support activities including off-site material, waste, borrow or equipment storage areas;

(vii) Surface waters (including wetlands) either at, adjacent, or in close proximity to the site; and also indicate whether those water are impaired;

- (viii) Locations where stormwater discharges from the site directly to a surface water body.
 - (ix) Vehicle wash areas
 - (x) Designated points on the site where vehicles will exit onto paved roads (for instance, this applies to construction transition from unstable dirt areas to exterior paved roads)
- (G) The location and description of asphalt plants and concrete plants (if any) providing support to the construction site and that are also authorized under the general permit TXR150000, as it may be amended; and
- (H) The name of receiving waters at or near the site that will be disturbed or that will receive discharges from disturbed areas of the project.
- (2) The following records must be either attached to or referenced in the SWP3 and made readily available upon request to the city, TCEQ or the EPA:
- (A) The dates when major grading activities occur;
 - (B) The dates when construction activities temporarily or permanently cease on a portion of the site; and
 - (C) The dates when stabilization measures are initiated.
- (3) The SWP3s must identify and describe the best management practices (BMPs) that will be used, the general timing or sequence for implementation of such BMPs, and the party responsible for implementation. At a minimum, the description must include erosion and sediment controls designed to retain sediment on site to the maximum extent practicable with due consideration for local topography and rainfall.
- (A) Control measures must be selected, installed, and maintained according to the manufacturer's or designer's specifications.
 - (B) Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%.
 - (C) If sediment escapes the site, accumulations must be removed at a frequency to minimize further negative effects and, whenever feasible, prior to the next rain event.
 - (D) Controls must be specified that limit off-site transport of litter, construction debris and construction materials.
- (4) The SWP3 must describe interim and permanent stabilization practices and a schedule of when the stabilization practices will be implemented. Site plans should ensure that existing vegetation is preserved where it is possible.
- (A) Stabilization practices may include but are not limited to: establishment of temporary vegetation, establishment of permanent vegetation, mulching, geotextiles, sod stabilization, vegetative buffer strips, and protection of existing trees and vegetation.

- (B) Stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, and except as provided in subsections (i) and (ii) below, must be initiated no more than fourteen (14) days after the construction activity in that portion of the site has temporarily or permanently ceased.
 - (i) Where the initiation of stabilization measures is precluded by seasonably arid conditions, drought, excessive rainfall, or other weather or climatic conditions, stabilization measures must be initiated as soon as practicable.
 - (ii) Where construction activity on a portion of the site is temporarily ceased but earth-disturbing activities will be resumed within twenty-one (21) days, temporary stabilization measures do not have to be initiated on that portion of site.
- (5) The SWP3 must include a description of any structural controls that will be used to divert flows away from exposed soils, to limit the contact of runoff with disturbed areas, or to lessen the off-site transport of eroded soils.
 - (A) Sediment basins are required, where feasible, for common drainage locations that serve an area with ten or more acres that are disturbed at any one time. Sediment basins may be either temporary or permanent but must be designed to store either the calculated volume of runoff from a 2-year, 24-hour storm, or designed to provide 3,600 cubic feet of storage per acre drained. When calculating the volume of runoff from a 2-year, 24-hour storm event, it is not required to include the flows from off-site areas and flow from on-site areas that are either undisturbed or have already undergone final stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area on site, and public safety. Where sediment basins are not feasible, equivalent control measures, which may include a series of smaller sediment basins, must be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries and for those side slope boundaries as dictated by individual site conditions of the construction area.
 - (B) Sediment traps and sediment basins may be used to control solids in stormwater runoff for drainage locations serving less than ten (10) acres. At a minimum, silt fences, hay bales, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction. Alternatively, a sediment basin providing storage for a calculated volume of runoff from these areas for a 2-year, 24-hour storm or 3,600 cubic feet of storage per acre drained may be provided.
- (6) Other controls:
 - (A) The SWP3 must describe how off-site vehicle tracking of sediment and the generation of dust will be minimized.

- (B) The SWP3 must include a description of construction and waste materials expected to be stored on site and a description of controls to reduce pollutants from these materials.
 - (C) The SWP3 must include a description of pollutant sources from areas other than construction (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those sites to minimize pollutant discharges.
- (7) The SWP3 must commit to ongoing maintenance to keep all erosion and sediment control and other protective measures identified in the SWP3 in effective operating condition.
- (8) Site inspections:
- (A) The construction site operator shall provide for regular inspections by persons familiar with the SWP3 of the disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, all structural control measures, and locations where vehicles enter or exit the site for evidence of effectiveness and necessary maintenance. Inspections must occur at least once every seven (7) calendar days; and within twenty-four (24) hours of the end of a storm event of 0.5 inches or greater.
 - (B) The construction site operator must inspect all accessible discharge locations to determine if erosion control measures are effective in preventing visually noticeable changes to receiving waters, including persistent cloudy appearance in water color and noticeable accumulation of sediments. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. The frequency for these inspections must be established in the SWP3 with consideration for local rainfall and soil, but must occur at least once during the construction activity if a discharge occurs.
 - (C) The SWP3 must be modified based on the results of inspections, as necessary, to better control pollutants in runoff. Revisions to the SWP3 must be completed within seven calendar days following the inspection. If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule must be described in an amendment to the SWP3 and wherever possible those changes implemented before the next storm event. If implementation before the next anticipated storm event is impracticable, these changes must be implemented as soon as practicable.
 - (D) A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, and major observations relating to the implementation of the SWP3 must be made and retained as part of the SWP3. Major observations should include:
 - (i) The locations of discharges of sediment or other pollutants from the site;
 - (ii) Locations of BMPs that need to be maintained;
 - (iii) Locations of BMPs that failed to operate as designed or proved inadequate for a particular location;
 - (iv) Locations where additional BMPs are needed; and

(v) Identification and location of the BMPs that are working effectively.

(E) Actions taken as a result of inspections must be described within and retained as an amendment to the SWP3. Reports must identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report must contain a certification that the facility or site is in compliance with the SWP3 and this permit.

(9) The SWP3 must identify and ensure the implementation of pollution prevention measures for all eligible non-stormwater components of the discharge. This article prohibits, and all SWP3s will be presumed to prohibit:

(A) The discharge from a construction site of any water or other liquid having a pH value lower than 6.0 or higher than 10.5;

(B) The discharge of any type of industrial waste from construction sites;

(C) The deposit of any garbage, rubbish, or yard waste other than at a facility licensed to receive such debris;

(D) The discharge of paint or paintbrush cleaning water or solvents, thinners or turpentine or any combination thereof;

(E) Unused construction materials or used construction materials or debris remaining on the site after construction is completed

(F) The washing of any type of trucks, including, but not limited to, ready-mix trucks or material supply trucks on or around the construction site.

(f) Effective date of coverage. Operators of construction activities eligible for coverage under TXR150000, as it may be amended, are authorized to discharge stormwater associated with construction activity upon issuance by the city of the building permit or site development permit.

(g) Retention of records. The construction site operator must retain a copy of the SWP3 and all reports and actions required by this article and state and federal law, including NPDES, TPDES and general permit No.150000, for a minimum period of three years from the date that final stabilization has been achieved on all portions of the site.

Sec. 013 Illicit discharges

(a) Intent. The intent of this section is to prohibit, detect, and eliminate illicit discharges to the city's MS4.

(b) Allowable non-stormwater discharges. The following non-stormwater sources are not considered illicit discharges to the MS4:

(1) Discharges from firefighting activities (but excluding washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);

(2) Uncontaminated fire hydrant flushings from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (but excluding

discharges of hyper chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life and excluding flushing where recycled wastewater is used);

- (3) Water from the routine external washing of vehicles, the external portion of buildings or structures, and pavement, where detergents and soaps are used and where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, or dust;
- (4) Uncontaminated water used to control dust;
- (5) Potable water including waterline flushings (but excluding discharges of hyperchlorinated water, unless the water is first dechlorinated, and discharges are not expected to adversely affect aquatic life);
- (6) Uncontaminated air-conditioning condensate;
- (7) Uncontaminated groundwater or spring water, including foundation or footing drains and water from crawl space pumps where flows are not contaminated with industrial materials such as solvents;
- (8) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
- (9) Diverted stream flows;
- (10) Uncontaminated groundwater infiltration;
- (11) Uncontaminated pumped groundwater;
- (12) Individual residential vehicle washing;
- (13) Flows from wetlands and riparian habitats;
- (14) Dechlorinated swimming pool discharges; and
- (15) Street wash water.

(c) Prohibited discharges.

- (1) No person shall deposit, release, throw, drain, cause or allow to be deposited, released, thrown, drained, or discharged, or otherwise cause to enter the MS4, or any other drainage device which connects with the MS4, any of the following described materials or substances:
 - (A) Any acidic waste materials (having a pH value lower than 6);
 - (B) Any alkaline waste materials (having a pH value higher than 10.5);
 - (C) Any water or waste containing floating, or insoluble oil;
 - (D) Gasoline, naphtha, fuel oil, mineral oil or other flammable or explosive liquid, solid or gas;

- (E) Any noxious, malodorous, poisonous, or reactive substance which, either singularly or by interaction with other substances, or by its accumulation in the MS4 becomes injurious or potentially injurious to human, plant or animal life, or property; or
 - (F) Any domestic wastewater or industrial wastewater.
- (2) It shall be a defense to prosecution under this section that such person was authorized to commit any act, under a valid permit from the TCEQ or the US EPA, which would otherwise constitute a violation at the time of commission.
- (3) No person shall place or drop or cause or allow to be placed or dropped, brush cuttings, clippings, or rubbish within the MS4 or on any street in the city in such a manner that the same may be washed by the flow of water into the MS4.
- (4) No person shall connect a line conveying sanitary sewage, domestic waste, or industrial effluent to the MS4 or allow such a connection to continue.
- (5) No person shall discharge or release, or allow or permit the discharge or release of any of the following substances in a manner or location by which such substance may enter the city's MS4:
- (A) Any wash water or wastewater from cleaning of any pavement where a spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed or pretreated;
 - (B) Gasoline, motor oil, used oil filters, wax, grease, antifreeze or any other motor vehicle fluids;
 - (C) Any contaminated water or waste from a commercial carwash facility, from any vehicle washing, cleaning, or maintenance area at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, maintenance facility, or from any washing, cleaning, or maintenance area of any commercial or public service vehicle, including any truck, bus, or piece of heavy equipment, by any business or public entity;
 - (D) Any contaminated water or waste from commercial establishments including but not limited to gas stations, service stations, and auto repair shops with areas exposed to weather conditions;
 - (E) Material from an oil/water separator or an oil/water interceptor, grit trap or grease trap. Any oil/water separator or interceptor users who are discharging to the MS4 shall notify the city of the existence of such connections to the MS4 within sixty (60) days of the effective date of this article. If such notification is not made during the allocated sixty (60) days, then the detected connections to MS4 of a oil/water separator or interceptor shall be considered an illicit connection and the city reserves the right to terminate such connection immediately, without prior notice;
 - (F) Any release from a petroleum underground storage tank (PUST), or any leachate or runoff from soil contaminated by a leaking PUST, or any discharge of pumped, confined, or partially treated wastewater from the remediation of any such PUST unless release satisfies all of the following criteria:

- (i) Is in compliance with all municipal, state, and federal laws;
- (ii) No discharge contains any harmful quantity of any pollutant; and
- (iii) The discharge shall not have a pH value lower than 6.0 or higher than 10.5;

(G) Any public or private underground utility manhole, including but not limited to electric power, gas pipeline, cable companies, telephone companies, the collected water, due to rain, surface runoff, cross connection, or illegal discharge;

(H) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;

(I) Any type of wastewater from residential, commercial or industrial sources, any domestic sewage or septic tank waste;

(J) Any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;

(K) Any swimming pool water or filter backwash from a swimming pool or fountain, discharge from a water line if it has been disinfected by super-chlorination, any other chemical has been used in line disinfection, or other means and the total residual chlorine exceeds the Surface Water Quality Standard of the State of Texas .

(6) No person shall apply used oil or other vehicle fluid to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil contamination into the environment;

(7) No person shall introduce any type of hazardous waste generated in and around a household including, but not limited to batteries, used paints, solvents, used pesticide, and used toiletries into the MS4;

(8) No person shall use, dispose of, discard, store, or transport an insecticide, herbicide, or fertilizer, in a manner inconsistent with the proper usage, storage, transport and disposal set out in the labeling in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), such that a harmful quantity of the pesticide, herbicide, or fertilizer may enter the MS4.

(9) No person shall wash a commercial dumpster, or residual ready-mix concrete from concrete mixing trucks, in an area where it discharges into MS4.

(d) Mandatory reporting and clean-up of any discharge or release.

(1) The person in charge of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, disposing, or any other release of any of the following quantities of any of the following substances that may enter the MS4, surface water of the state or waters of the U.S., shall immediately notify by telephone the police department concerning the incident:

(A) An amount equal to or in excess of a reportable quantity of any hazardous or extremely hazardous substance, as established under 40 CFR parts 302 and 355, respectively;

- (B) An amount of oil that either: (i) violates applicable water quality standards; or (ii) causes a film or sheen upon or discoloration of the surface of the water or an adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline; or
 - (C) Any harmful quantity of any pollutant.
- (2) Upon receipt of the police incident report, the Public Works department will work with the point of contact to gather the following information:
- (A) The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance;
 - (B) The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;
 - (C) The time and duration (thus far) of the release;
 - (D) An estimate of the quantity and concentration (if known) of the substance released;
 - (E) The source of the release;
 - (F) Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;
 - (G) Any precautions that should be taken as a result of the release;
 - (H) Any steps that have been taken to contain and/or clean up the released material and minimize its impacts; and
 - (I) The names and telephone numbers of the person or persons to be contacted for further information.
- (3) Within fifteen (15) days following such reportable release, the responsible person in charge of the facility, vehicle, or other source of the release shall submit, unless waived by the city, a written report containing the information specified above in subsection (2) above as well as the following additional information:
- (A) The ultimate duration, concentrations, and quantity of the release;
 - (B) All actions taken to respond to, contain, and clean up the released substances, and all precautions taken to minimize the impacts;
 - (C) Any known or anticipated acute or chronic health risks associated with the release;
 - (D) The identity of any governmental/private sector representatives responding to the release; and
 - (E) The measures taken or to be taken by the responsible persons to prevent similar future occurrences.
- (4) The notifications required by subsections (2) and (3) shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of

the release, including any liability for damage to the city, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to city ordinance, or state or federal law.

- (5) Any person responsible for any release as described in this subsection shall comply with all state, federal, and local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.
- (6) Any person responsible for a release described in this subsection shall reimburse the city for any cost incurred by the city in responding to the release.

Sec. 014 Right of entry; inspections; and sampling

- (a) The city building officials, code compliance officer, city engineer, environmental program manager, and designees are authorized to enter and inspect sites and facilities subject to regulation under this article or discharging stormwater to the city's MS4 to determine if the discharger is complying with all requirements of this article and any state or federal discharge permit, limitation, or requirement.
- (b) Facility operators shall allow such city staff access to all parts of the premises for the purposes of inspection, sampling, records examination, photo recording, and copying of records that must be kept under this article, NPDES, TPDES or TXR150000, as it may be amended, permit to discharge stormwater, including pollution control measures or modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports, or documents related to compliance with this article and with any state or federal stormwater discharge permit.
- (c) City staff shall have the right to set-up on any permitted facility such devices as are necessary in the opinion of the staff to monitor and/or sample the facilities or the site's stormwater discharge.
- (d) Any temporary or permanent obstruction to safe and easy access to the facility or site to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city staff and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (e) The City may require, at its reasonable discretion, any discharger to conduct specified sampling, testing, analysis, and other monitoring of its stormwater discharges, and may specify the frequency and parameters of any such required monitoring.
- (f) The City may require, at its reasonable discretion, the discharger to install monitoring equipment at the discharger's expense. The facility's sampling and monitoring equipment shall be always maintained in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow, wastewater and quality shall be calibrated to ensure their accuracy.
- (g) Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements

so that, upon presentation of suitable identification, the city staff will be permitted to enter without delay for the purposes of implementing and enforcing this article.

- (h) The city inspector may seek issuance of a search warrant from any court of competent jurisdiction if the city inspector has been refused access to any part of the premises from which stormwater is discharged, and is able to demonstrate probable cause to believe that there may be a violation of this article or any state or federal discharge permit, limitation or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety and welfare of the community.

Sec. 015 Schedule of penalties

(a) Administrative penalties and stop-work orders.

- (1) If the City finds a person in violation with this article, it may order compliance by providing written notice of violation to the responsible person or may issue a stop work order. The notice shall provide a description of the violation, actions required for compliance, and any remediation requirements. If the property must be remediated, the notice must establish a deadline to restore the site. The notice must further advise that, if the violator fails to remediate the site by the deadline, a designated governmental agency or contractor may restore the site at the expense of the violator.
- (2) Notice of violations and assessments of administrative penalties made pursuant to this article shall be hand delivered, sent by courier service or mail to the property owner, site operator, or contractor informing them of the violation and assessment of penalties. Notices sent by regular mail shall be deemed delivered within three business days after their placement with the United State Postal Service.
- (3) The City hereby establishes an administrative penalty in the amount of \$500 for each day a violation exists. The administrative penalty shall be assessed beginning the first day of violation.

(b) Appeal of Notice of Violation.

- (1) An aggrieved person may request an appeal hearing before a hearing officer(s) appointed by the City Manager within fifteen (15) business days after the date on the notice provided in compliance with article. The hearing officer(s) shall evaluate all information offered by the aggrieved person at the hearing. The aggrieved person shall bear the burden of proof to show why, by preponderance of the evidence, the administrative penalty should not be assessed. The hearing officer(s) shall render a decision in writing within three (3) business days of the conclusion of the hearing. Receipt of the decision of the hearing officer(s) by the aggrieved person is presumed on the third business day after the city mails the decision of the hearing officer(s) to the aggrieved person.
- (2) The aggrieved person may appeal the decision from the hearing officer(s) in writing to the City Manager within seven (7) business days from the date the City mails the

decision of the hearing officer(s) to the aggrieved person. In the written appeal, the aggrieved person shall provide the factual basis for the appeal and describe why the decision of the hearing officer(s) is not supported by the evidence. The City Manager shall promptly review the appeal. The decision by the City Manager is final.

(3) If the violation remains uncorrected after 10 calendar days pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, the City or its authorized representatives may enter the regulated property to take the necessary actions to abate the violation and/or restore the property. The City shall provide notice of the cost of abatement with such costs being payable to the City within thirty (30) days. If the charges are not paid as required, the charges shall become a special assessment against the property and shall constitute a lien on the property for the assessment.

- (c) Civil Penalty. Pursuant to Texas Local Government Code, Chapter 54, the City may authorize the filing of a lawsuit seeking injunctive relief and court imposed civil penalties up to five thousand dollars (\$5,000.00) a day for discharges in violation of this article.
- (d) Criminal Penalty. A conviction for a violation of any provision of this Ordinance shall constitute a class C misdemeanor. A person convicted of a violation of any provision of this Ordinance shall be fined an amount not to exceed two thousand dollars (\$2,000.00) per violation. Each violation of this Ordinance shall constitute a separate offense, and each day a violation continues shall be considered a new offense.
- (e) Other remedies. The remedies provided for in this subdivision are cumulative of each other and of any other remedy provided for or allowed by law. In addition to any other remedy allowed by law, the City may seek injunctive relief in any court of proper jurisdiction to restrain or enjoin a violation of any provision of this Ordinance.