

Chapter 32

MUNICIPAL DRAINAGE UTILITY SYSTEM

Art. I. Municipal Drainage Utility System, §§ 32-1--32-19

Art. II. Illicit Discharge Prevention and Storm Water Protection, §§ 32-20--32-29

Div. 1. In General, §§ 32-20--32-24

Div. 2. Specific Prohibitions and Requirements, § 32-25

Div. 3. Compliance and Enforcement, §§ 32-26--32-29

ARTICLE I. MUNICIPAL DRAINAGE UTILITY SYSTEM

Sec. 32-1. Creation of municipal drainage utility.

In the interest of public health and safety and a more efficient and economic operation of drainage facilities of the city, a municipality drainage utility system is created, which shall be a public utility. The rules and provisions of chapter 552, subchapter C of the Texas Local Government Code, as amended which is adopted and incorporated into this chapter by reference, and any other provisions of this code relating to drainage shall govern the operation of the utility. Nothing in this section shall be construed to restrict the city council's ability to make other rules or policies governing the operation of the utility. The city shall have full authority to operate such municipal drainage utility system. Drainage service will be offered on nondiscriminatory, reasonable and equitable terms within the service area. (Ord. No. 01-50, § II, 10-9-01; Ord. No. 09-014, § I, 2-24-09)

Sec. 32-2. Dedication of assets to drainage utility system.

Existing drainage facilities, municipal real, personal, or mixed property, materials and supplies are incorporated in the drainage utility as permitted by section 552.046 of the Texas Local Government Code, as amended. (Ord. No. 01-51, § I, 10-9-01; Ord. No. 09-014, § I, 2-24-09)

Sec. 32-3. Drainage service area.

The service area for the drainage utility fund shall include the corporate limits of the city of Killeen, as those corporate limits are altered from time to time in accordance with state law and the charter and ordinances of the city. (Ord. No. 01-51, § I, 10-9-01)

Sec. 32-4. Creation of drainage utility fund.

A separate fund, within the city's fund structure, shall be created as of the effective date of the ordinance, known as the drainage utility fund, for the purpose of identifying and controlling all revenues and expenses attributable to municipal drainage services. All drainage fees collected by the city after the effective date of this ordinance and such other monies as may be available by or to the city for the purpose of drainage shall be deposited in the drainage utility fund. Such drainage revenues shall be used for the purpose of the creation, operation, planning, engineering, inspection, construction, repair, maintenance, improvement, reconstruction administration and other reasonable and customary charges associated with the operation of drainage services of the city. The income derived from the operation of municipal drainage services must be segregated

in one or more accounts and completely identifiable from other city accounts. (Ord. No. 01-51, § I, 10-9-01)

Sec. 32-5. Administration of municipal drainage services.

The city manager, acting through the director of public works, shall be responsible for the administration of this ordinance including, but not limited to, enacting any procedures necessary for the administration of the drainage charges and the consideration of variances, developing maintenance programs, and establishing drainage criteria and standards for operation of the drainage system. (Ord. No. 01-51, § I, 10-9-01)

Sec. 32-6. No assumed liability for floods and nonpoint source pollution.

Floods from drainage and storm water runoff may occasionally occur which exceed the capacity of the drainage system maintained and financed with the drainage charges. In addition, surface water stagnation and pollution arising from nonpoint source runoff may occasionally occur which exceed the capacity of the drainage system maintained and financed with drainage charges. This ordinance does not imply that properties subject to charges shall always be free from flooding or flood damage, surface water stagnation or nonpoint source pollution or that all flood control and water treatment projects to control the quantity and quality of runoff can be constructed effectively. Nothing whatsoever in this ordinance should be construed as or be deemed to create additional duties on the part of the city to hold the city liable for any damages incurred in a flood or from adverse water quality due to drainage runoff. Nothing in this ordinance shall be deemed to waive the city's immunity under state law or reduce the need or necessity for flood insurance by property owners within or without the city. (Ord. No. 01-51, § I, 10-9-01)

Sec. 32-7. Categories of developed use.

A drainage fee is imposed upon each developed lot and parcel with structural improvements within the city for drainage services and facilities provided by the city. For purposes of imposing the drainage fee, all benefited property shall mean an improved lot or tract to which drainage service is made available under this chapter categorized as "residential property" and "non-residential property:"

- A. "Residential property" shall mean any property platted or used for residential purposes that is within zoning district "A-R1" agricultural single-family residential district, district "R-1" single-family residential district, district "R1-A" single-family garden home, district "RM-1" residential modular home single-family district, district "RT-1" residential townhouse single-family district, district "R-2" two-family residential district, district "R-3" multifamily residential district, district "R-MP" mobile home and travel trailer park district, or district "R-MS" manufactured housing subdivision, under sec. 31, art. IV of the city of Killeen code of ordinances.
- B. "Non-residential property" shall mean a developed lot or parcel used for something other than residential purposes that is not identified in sec. 32-7 A. For purposes of this ordinance, "non-residential property" shall include but not be limited to property that is within zoning district "B-1" professional business district, district "B-2" local retail district, district "B-3" local business district, district "B-4" business district, district "B-5" business district, district "B-C-1" general business and alcohol sales district, district

“RC-1” restaurant and alcohol sales district, district “B-DC” business day care district, district “M-1” manufacturing district, or district “M-2” heavy manufacturing district, under sec. 31, art. IV of the city of Killeen code of ordinances, and any other non-residential zoning districts that may be added under sec. 31, art. IV of the city of Killeen code of ordinances.

(Ord. No. 01-51, § I, 10-9-01; Ord. No. 05-74, § I, 9-13-05; Ord. No. 07-077, § I, 9-11-07)

Sec. 32-8. Findings related to calculation of the drainage.

The city council finds that it is reasonable and equitable to assume that each water or wastewater utility customer in the service area is a user of a drainage-benefited property pursuant to chapter 552, subchapter C, Texas Local Government Code, as amended. The city council further finds that drainage attributable to a detached single-family residential land use is relatively uniform, and that non-single-family residential properties, including land used for multi-family properties, mobile home parks, commercial and industrial properties, have higher runoff factors and higher pollutant contributions than single-family residential development. (Ord. No. 01-51, § I, 10-9-01; Ord. No. 05-74, § I, 9-13-05; Ord. No. 09-014, § I, 2-24-09)

Sec. 32-9. Calculation of drainage fees.

A. The following schedule shall be used to determine the applicable drainage fee:

(1) Residential property:

- (a) each detached single-family residential property receiving utility service from the city shall pay a drainage fee of \$5.00 per month.
- (b) each duplex residential property receiving utility service from the city shall pay a drainage fee of \$8.89 per month.
- (c) each multi-family residential property (three or more units) receiving utility service from the city shall pay a drainage fee of \$3.88 per unit per month. The maximum multi-family residential property drainage fee shall be \$250.00 per month.

(2) Non-residential property:

- (a) a lot or parcel less than or equal to 10,000 square feet in total land area receiving utility service from the city shall pay a drainage fee of \$7.30 per month.
- (b) a lot or parcel greater than 10,000 square feet in total land area, and less than or equal to 50,000 square feet in total land area receiving utility service from the city shall pay a drainage fee of \$14.59 per month.
- (c) a lot or parcel greater than 50,000 square feet in total land area, and less than or equal to 100,000 square feet in total land area receiving utility service from the city shall pay a drainage fee of \$21.90 per month.
- (d) a lot or parcel greater than 100,000 square feet in total land area, and less than or equal to 200,000 square feet in total land area receiving utility service from the city shall pay a drainage fee of \$43.80 per month.
- (e) a lot or parcel greater than 200,000 square feet in total land area, and less than or equal to 350,000 square feet in total land area receiving utility service from the city shall pay a drainage fee of \$80.30 per month.

- (f) a lot or parcel greater than 350,000 square feet in total land area, and less than or equal to 700,000 square feet in total land area receiving utility service from the city shall pay a drainage fee of \$116.80 per month.
- (g) a lot or parcel greater than 700,000 square feet in total land area, and less than or equal to 1,000,000 square feet in total land area receiving utility service from the city shall pay a drainage fee of \$160.60 per month.
- (h) a lot or parcel greater than 1,000,000 square feet in total land area receiving utility service from the city shall pay a drainage fee of \$255.49 per month.

B. The following shall be exempt from the provisions of any rules or ordinances adopted by the city pursuant to chapter 552, subchapter C, Texas Local Government Code, as amended:

- (1) property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;
- (2) property held and maintained in its natural state, until such time that the property is developed and all of the public infrastructure constructed has been accepted by the city for maintenance; and
- (3) a subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the city.

C. Real property owned by the city and used for municipal purposes shall be exempt from the provisions of section 32-9 of this chapter.

D. The city council may review the foregoing schedule of fees at any time and may, by resolution, increase or decrease or otherwise alter the fee structure upon a determination that such increase or decrease is warranted.

E. The city council finds and determines that the drainage fees have been established in accordance with the provisions of the chapter 552, subchapter C, "Municipal Drainage Utility Systems" of the Texas Local Government Code, as amended.
(Ord. No. 01-51, § I, 10-9-01; Ord. No. 05-74, § I, 9-13-05; Ord. No. 06-102, § I, 9-12-06; Ord. No. 07-077, § I, 9-11-07; Ord. No. 09-014, § I, 2-24-09)

Sec. 32-10. Billing and payment; penalties.

A. Billing and payment.

- (1) Bills or statements for the drainage fee shall be rendered by the city for all properties subject to the fee. Bills shall be payable when rendered and shall be considered as received by the customer and/or owner, whether actually received or not, when deposited in the United States mail, postage prepaid, addressed to the utility customer.
- (2) Bills shall be rendered monthly.
- (3) Bills shall be for services for the preceding month.
- (4) Bills are due when rendered, and subject to late charges, disconnection of service, and reconnection fees authorized under the provisions relating to water and wastewater charges.
- (5) Drainage fees shall be billed with the city's water and wastewater billings and shall be identified separately on the bill as a drainage fee. Delinquent fee bills shall be

mailed to the customer at the address at which the owner receives other city utility services, or if no other city utility services are rendered, to any known address of the owner.

B. Penalties.

- (1) Any charge due hereunder which is not paid when due will subject the user to discontinuance of all utility services provided by the city of Killeen, including water, wastewater, and solid waste services.
- (2) Any drainage charge due hereunder which shall not be paid when due may be recovered in an action at law by the city. The employees of the city's drainage services shall have access, at all reasonable times, to any benefitted properties served by the drainage services for inspection, repair or enforcement of the ordinance.

C. Notice of the imposition of drainage fees shall be mailed to all customers of the city's water, wastewater, and solid waste services. Such notice shall state that drainage fees will be billed to the customer of each such service and that failure of a customer and/or owner to pay such fees may result in the discontinuance of all city water, wastewater and solid waste services. (Ord. No. 01-51, § I, 10-9-01)

ARTICLE II. ILLICIT DISCHARGE PREVENTION AND STORM WATER PROTECTION

DIVISION 1. IN GENERAL

Sec. 32-20. Purpose.

The purpose of this article is to protect the public health, safety, environment and general welfare through the regulation of non-storm water discharges to city's municipal separate storm sewer system (MS4) to the maximum extent practicable as required by Federal and State law. This article establishes methods for controlling the introduction of pollutants into the city's MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit and the Texas Pollutant Discharge Elimination System (TPDES) permit processes. The objectives of this ordinance are to:

- (a) Regulate the contribution of pollutants or contaminants to the city's MS4 or the waters in the State or U.S. by any person;
- (b) Prohibit illicit discharges and illegal connections to city's MS4;
- (c) Prevent non-storm water discharges, generated as a result of spills, releases, inappropriate dumping or disposal, to city's MS4;
- (d) Protect and preserve the functionality of water courses and ways located within the city; and,
- (e) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this article.

(Ord. No. 09-046, § II, 7-28-09)

Sec. 32-21. Applicability.

The provisions of this article shall apply to all water or substances entering the MS4 generated on any developed or undeveloped lands throughout the corporate limits of the city unless specifically exempted by this article. All references to local, State and Federal statutes and regulations, including the Code of Federal Regulations, reference any amendment to the same that may occur in the future. Ord. No. 09-046, § II, 7-28-09)

Sec. 32-22. Warning and disclaimer of liability.

The degree of storm water protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. This article does not intend nor imply that compliance will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the MS4. This article shall not waive immunity or create liability on the part of the city or any official or employee thereof for any damages that result from reliance on this article or any administrative decision lawfully made hereunder. Ord. No. 09-046, § II, 7-28-09)

Sec. 32-23. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meanings hereinafter designated. Additionally, all references to any Federal or State regulation or act shall refer to the current regulation or act and any amendments thereto.

Agricultural storm water runoff. Any storm water or tail water runoff from orchards, cultivated crops, pastures, range lands, forest lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 Code of Federal Regulations (C.F.R.) § 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 C.F.R. § 122.24.

Best management practices (BMPs). Best management practices include schedules of activities, prohibitions of practices, maintenance or monitoring procedures, structural controls, and other management practices to prevent or reduce the discharge of pollutants or contaminants into the city's MS4, the waters in the State or U.S. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, discharge or release, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

C.F.R. The Code of Federal Regulations, as amended.

Commercial. Pertaining to any business, trade, industry, or other activity engaged in for profit or as a non-profit entity.

Contamination. The presence of, or entry into a public water supply system, the MS4 or waters in the State or U.S. of any substance, including pollutants, which may be deleterious to the public health and/or the quality of the water.

Contaminant. Any substance deleterious to the public health and/or the quality of the water.

Conveyance. Curbs, gutters, natural and human-made or altered drainage channels or ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport storm water runoff.

Director. The executive director of public works or his/her duly authorized representative or designee.

Discharge. Any addition, introduction or release of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters in the State or U.S.

Domestic sewage. Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

Environmental Protection Agency (EPA). The United States Environmental Protection Agency, the regional office thereof, any federal department, agency, or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

Extremely hazardous substance. Any substance listed in the Appendices to 40 C.F.R. Part 355, Emergency Planning and Notification.

Facility. Any building, structure, installation, process, or activity from which there is or may be a discharge.

Fertilizer. A solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

Fire department. The fire department of the city of Killeen or any duly authorized representative thereof.

Fire protection water. Any water, and any substances or materials contained therein, used by any person other than the fire department to control or extinguish a fire.

Garbage. Waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

Harmful quantity. The amount of hazardous substance the discharge or spill of which is determined to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare by federal law and by the state law.

Hazardous household waste (HHW). Any waste generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreational areas) by a consumer which, except for

the exclusion provided in 40 C.F.R. § 261.4(b)(1), would be classified as a hazardous waste under 40 C.F.R. Part 261.

Hazardous substance. A material where either of the following conditions are met:

- (a) the elements, compounds, and hazardous wastes are listed in Table 302.4 of 40 C.F.R. Part 302; or
- (b) a solid waste, as defined in 40 C.F.R. § 261.2, which is not excluded from regulation as a hazardous waste under 40 C.F.R. § 261.4(b), if it exhibits any of the characteristics identified in 40 C.F.R. § 261.20 through § 261.24 (e.g., ignitability, corrosivity, reactivity, or toxicity).

Hazardous waste. Any waste identified or listed as a hazardous waste by the EPA under the Federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act (RCRA), 40 U.S.C. §§ 6901 et seq., or the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Article 361 et seq.

Hazardous waste treatment, disposal, and recovery facility. All land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

Herbicide. A substance or mixture of substances used to destroy a plant or to inhibit plant growth.

Illegal connection. Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the MS4 including, without limitation, any conveyances which allow any non-storm water discharge including sewage, processed wastewater or wash water to enter the MS4, regardless of whether such drain or conveyance has been previously allowed, permitted or approved by the city.

Illicit discharge. Any discharge to the MS4 that is not entirely composed of storm water, except discharges pursuant to this article, State or Federal law and discharges resulting from emergency fire fighting activities.

Industrial. Activities including manufacturing, processing, material storage, and waste material disposal (and similar activities where storm water can contact industrial waste) at an industrial facility described by the TPDES Multi Sector General Permit, TXR050000, or by another TCEQ or TPDES permit.

Industrial waste. Any waterborne liquid or solid waste or substance that results from any process of industry, manufacturing, mining, production, trade or business as more specifically defined in 40 C.F.R. 122.26 (b)(14).

Maximum extent practicable (MEP). The technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in storm water discharges that was established by the Federal Clean Water Act § 402(p). A discussion of MEP as it applies to the MS4 is found at 40 C.F.R. § 122.34.

Motor vehicle fluids. Any vehicle crankcase oil, motor oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

Municipal landfill (or landfill). An area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated by the TCEQ).

Municipal separate storm sewer system (MS4). A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, inlets, gutters, ditches, natural and human-made or altered drainage channels, or storm drains) owned or operated by the city and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage and which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R § 122.2.

Municipal solid waste. Waste resulting from or incidental to municipal community, commercial, institutional, or recreational activities, and including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other waste other than industrial waste.

NPDES permit. A permit issued by EPA that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable to an individual, group or generally on an area-wide basis.

Non-point source. Any source of any discharge of a pollutant that is not a point source.

Notice of intent (NOI). A written submission to the executive director of the TCEQ from an applicant requesting coverage under a general permit issued by the TCEQ. Each NOI shall also be submitted to the appropriate MS4 operator receiving the permitted discharge.

Notice of change (NOC). A written notification to the executive director of the TCEQ from a permittee authorized under a general permit issued by the TCEQ providing changes to information that was previously provided in a notice of intent. Each NOC shall also be submitted to the appropriate MS4 operator receiving the permitted discharge.

Notice of termination (NOT). A written submission to the executive director of the TCEQ from a permittee authorized under a general permit issued by the TCEQ seeking to terminate such permit coverage. Each NOT shall also be submitted to the appropriate MS4 operator receiving the permitted discharge.

Oil. Oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include used oil, petroleum product, or oil designated as a hazardous substance in 40 C.F.R. § 302.4.

Operator. An entity or individual who meets one of the following conditions:

- (a) the person or persons associated with a large or small construction activity that meets either of the following two criteria: (1) the person or entity having operational control

- over construction plans and specifications to the extent necessary to meet the requirements and conditions of a NPDES or TPDES permit; or (2) the person or entity having day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a Storm Water Pollution Prevention Plan (SWPPP) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other NPDES or TPDES permit conditions); or
- (b) the person or persons associated with a large or small construction activity that meets either of the following two criteria: (1) the person or entity having operational control over construction plans and specifications to the extent necessary to meet the requirements and conditions of a NPDES or TPDES permit; or (2) the person or entity having day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a Storm Water Pollution Prevention Plan (SWPPP) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other NPDES or TPDES permit conditions); or
 - (c) the owner, person or entity that is responsible for the management of an industrial facility subject to the provisions of a NPDES or TPDES permit.

Owner. The person or entity who owns a premises or part of a premises.

Person. An individual, organization, partnership, co-partnership, firm, company, corporation, association, joint stock company, business trust, estate, government, governmental subdivision or agency, or any other legal entity or association; or its legal representatives, agents, or assigns.

Pesticide. A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture Code, as amended).

Petroleum product. A petroleum substance obtained from distilling and processing crude oil and that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including but not limited to motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

Petroleum storage tank (PST). Any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

Point source. Any discernable, 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 storm water runoff (40 CFR 122.22).

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; motor oil and other automotive fluids; non-

hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; noxious or offensive matter of any kind; biochemical oxygen demand (BOD); sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation); oil and grease; and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4 (40 CFR 122.32(e)(3)). The term “pollutant” does not include tail water or rainwater runoff from cultivated or uncultivated rangeland, pastureland and farmland.

Pollution. The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the State or U.S. that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness of the public enjoyment of the water for any lawful or reasonable purpose.

Premises. Any site and/or facility, as defined under this article, or building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips, owned or operated by a person from which there has been, is or may be a discharge.

Release. Any spilling, leaking, pumping, pouring, emitting, emptying, injecting, escaping, leaching, dumping, or disposing of a pollutant or contaminant into the MS4 or water in the State or U.S.

Reportable quantity (RQ). For any “hazardous substance,” the quantity established and listed in Table 302.4 of 40 C.F.R. Part 302 (except for any discharge into water in the State where the Final RQ threshold is greater than 100 pounds, in this case the RQ threshold shall be 100 pounds); for any “extremely hazardous substance,” the quantity established in 40 C.F.R. Part 355 and listed in Appendix A thereto.

Rubbish. Non-putrescible solid waste, excluding ashes, that consists of both (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (b) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that will not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

Sanitary sewer. The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a publicly-owned treatment works facility (and to which storm water, surface water, and groundwater are not intentionally admitted).

Septic tank waste. Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Service station. Any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.

Sewage (or sanitary sewage). The domestic sewage and/or industrial waste that is discharged into the city sanitary sewer system and passes through the sanitary sewer system to a publicly-owned treatment works.

Site. The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Storm water and storm water runoff. Rainfall runoff, snow melt runoff, and surface runoff and drainage.

Storm water discharge associated with industrial activity. Storm water runoff that exits any system that is used for collecting and conveying storm water that originates from manufacturing, processing, material storage, and waste material disposal areas (and similar areas where storm water can contact industrial pollutants related to the industrial activity) at an industrial facility described by the applicable TPDES.

Storm water pollution prevention plan (SWPPP). A plan required by a NPDES or TPDES permit that describes and ensures the implementation of BMPs that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity at the regulated facility to water in the State and U.S.

Tail water. The runoff of irrigation water from the lower end of an irrigated field.

TCEQ. The Texas Commission on Environmental Quality including its successor or predecessor agencies.

TPDES permit. A permit issued by the State through the TCEQ, predecessor or any successor agency, under the authority delegated by EPA pursuant to 33 U.S.C § 1342(b) (Federal Clean Water Act) and pursuant to the Texas Water Code that authorizes the discharge of pollutants to water in the State or U.S., whether the permit is applicable to a person, group, or generally on an area-wide basis.

Uncontaminated. A substance that does not contain a harmful quantity of any substance.

Used oil (or used motor oil). Any oil that has been refined with crude oil, or any synthetic oil, that has been used, and, as a result of use, is contaminated by physical or chemical impurities.

Vehicle. For purposes of this article vehicle includes any vehicle held for personal use including automobiles, trucks, recreational vehicles, motorcycles of any type and boats or personal watercrafts.

Water in the state. Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark 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 inside the jurisdiction of the state, except that water in treatment systems which are authorized by State or

Federal law, regulation or permit, and which are created for the purpose of waste treatment are not considered to be water in the State.

Waters of the United States (or waters in the U.S.). Any water characterized as:

- (a) All waters that 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;
- (b) All interstate waters, including interstate wetlands;
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, 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:
 - (1) that are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (3) that are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) The territorial sea; and
- (g) Wetlands adjacent to waters (others than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems including treatment ponds or lagoons designed to meet the requirements of the Federal Clean Water Act are not waters of the United States. This exclusion applies only to manmade bodies of water that neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Water quality standards. Provisions that consist of a designated use or uses for the water in the State and water quality criteria for such waters based upon such uses. Water quality criteria consist of narrative provisions and numerical criteria deemed by the State to be necessary to protect those uses, as specified in 30 Texas Administrative Code (TAC) Article 307.

Watercourse. A watercourse includes a drainage path or way or the channel of a stream, to include, without limitation, waters in the State or U.S., in which water flows within a defined bed and banks, even though the same may be slight, imperceptible or even absent in places, and originates from a definite source or sources. The water need not always be present and may be intermittent if the latter occurs with some degree of regularity, depending on the characteristics of the sources (i.e.: water is present or flowing during and/or after a rainfall event).

Wetlands. Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Yard waste. Leaves, grass, grass clippings, bushes, shrubs, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

Ord. No. 09-046, § II, 7-28-09)

Sec. 32-24. General prohibition and requirements.

(a) No person shall introduce or cause to be introduced into the MS4 any discharge that is not composed entirely of storm water.

(b) It is an affirmative defense to any enforcement action for violation of subsection (a) of this section that the discharge was composed entirely of one or more of the following categories of discharges:

- (1) A discharge or flow from water line flushing, but not including a discharge from water line disinfection by hyperchlorination or other means unless the total residual chlorine (TRC) has been reduced to less than 0.10 milligrams per liter (mg/l) and it contains no harmful quantity of chlorine or any other chemical used in line disinfection;
- (2) Runoff or return flow from lawn watering, landscape irrigation and other irrigation utilizing potable water, groundwater, or surface water sources;
- (3) A discharge from a potable water source;
- (4) A discharge or flow from a diverted stream flow or natural spring;
- (5) A discharge or flow from rising ground waters and springs;
- (6) Uncontaminated groundwater infiltration (as defined as 40 C.F.R. § 35.2005(20)) to the MS4;
- (7) A discharge or flow from uncontaminated pumped ground water;
- (8) Uncontaminated discharge or flow from a foundation drain or footing drain;
- (9) A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant or contaminant;
- (10) Uncontaminated discharge or flow from a crawl space pump, or sump pump;
- (11) A discharge or flow from individual residential vehicle washing;
- (12) A discharge or flow from a riparian habitat or wetland;
- (13) Swimming pool water that has been de-chlorinated so that TRC is less than 0.10 mg/l and that contains no harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
- (14) A discharge or flow from water used in street washing;
- (15) A discharge or flow resulting from fire fighting activities by the fire department (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
- (16) Other allowable non-storm water discharges listed in 40 CFR 122.23(d)(2)(iv)(B)(1);
- (17) A discharge authorized by, and in full compliance with, a NPDES or TPDES permit. Such TPDES permit includes the TPDES Multi Sector General Permit and the TPDES Construction General Permit;

- (18) Other similar occasional incidental non-storm water discharges, unless the TCEQ develops permits or regulations addressing these discharges;
- (19) Agricultural storm water runoff;
- (20) A discharge or flow from a potable water source not containing any pollutant, contaminant or a harmful quantity of a substance or material from the cleaning or draining of a storage tank or other container;
- (21) Storm water runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber or filter or any other source of pollutant; and
- (22) A discharge or flow from water used in vehicle, exterior building, and pavement wash water where detergents and soaps are not used and where spills or leaks of hazardous substances or hazardous waste have not occurred (unless all spilled material is removed).

(c) The use of BMPs or the presence of pervious cover that filters pollutants or contaminants from a discharge before the discharge reaches the MS4 will be considered an additional affirmative defense if no pollutant or contaminant is present upon the discharges release into the MS4.

(d) No affirmative defense shall be available under subsection (b) of this section if the discharge, release or flow in question has been determined by the director to be a source of a pollutant or contaminant to water in the State or U.S. or the MS4, written notice of such determination has been provided to the discharger and the discharge has continued to occur seven (7) calendar days following receipt of such notice.

(e) *Illegal connections.* The construction, connection, use, maintenance or continued existence of any illegal connection to the MS4 is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person violates this article if the person connects a line conveying domestic or industrial sewage to the MS4, or allows such a connection to continue.
- (3) Illegal connections in violation of this article shall be disconnected and redirected, if necessary, by the owner or operator to an approved onsite wastewater management system or the sanitary sewer system upon approval of the director.
- (4) Any drain or conveyance that has not been documented in plans, maps or an equivalent, and which may be connected to the MS4, shall be located by the owner, occupant or operator of that property within three (3) calendar days following receipt of a written notice of violation (NOV) from the director. Such notice may grant a longer time period, not to exceed sixty (60) calendar days but shall require that the drain or conveyance be identified as a storm sewer, sanitary sewer or other type of conveyance, and that the outfall location or point of connection to the MS4, sanitary sewer system or other discharge point be identified. Results of these investigations shall be documented and provided to the director to confirm compliance with this article.

(f) *Nuisances.* An actual or threatened discharge to the MS4 or any condition caused or permitted to exist that violates or would violate this article is a threat to public health, safety and welfare and is hereby deemed to be a nuisance and may be summarily abated or restored at the

violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken in accordance with division 3 below.

(g) *NPDES/TPDES Required.* A person violates this article if the person discharges, or causes to be discharged, storm water without first having obtained a NPDES or TPDES permit to do so (if applicable) or fails to comply with paragraph (h) of this section.

(h) *Submission of SWPPP/NOI/NOC/NOT Required.* The operator or owner of a premises, including construction sites, required to have a NPDES or TPDES permit to discharge storm water shall submit a copy of the SWPPP to the director within two (2) business days of the time that the operator or owner submits notification to the TCEQ that a SWPPP is available, if applicable. The operator or owner shall also submit a copy of the applicable NOI, NOC and NOT to the director in accordance with the time frame provided for under the applicable TPDES or NPDES permit. Submission of a SWPPP under this section or under section 26-80 of this code (Land Disturbance Permit) shall constitute compliance with both sections in relation to the SWPPP.

(i) *Compliance with NPDES/TPDES.* A premises shall be operated in strict compliance with the requirements of any applicable and required NPDES or TPDES permit. A person violates this article if the person operates a premises in violation of a requirement of any such permit.

(j) *Modification of SWPPP.* The director may request that any operator or owner of a premises to consider modifying the applicable SWPPP if, in the best professional judgment of the director, the SWPPP does not comply with the requirements of the applicable NPDES or TPDES to discharge storm water. Any deficiencies so noted shall be provided to the operator or owner in writing and the director shall give the operator or owner a reasonable amount of time, not to exceed thirty (30) days, to consider and implement such changes to the SWPPP. If the operator or owner disagrees with the director, the operator or owner shall submit, in writing, the basis for such disagreement and non-implementation.

(k) *Notice of release required.* Notwithstanding any other requirements of local, State or Federal law, as soon as any person responsible for a premises or operation, or responsible for emergency response for a premises or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges of contaminants or pollutants into the MS4, the waters in the State or U.S. in any reportable or harmful quantity said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of household hazardous waste, hazardous substance(s) or hazardous waste said person shall immediately notify the director by telephone and other State or Federal emergency response agencies, if required. In the event of a release of non-hazardous materials, said person shall notify the director by phone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice within three (3) business days of the personal notification.

(l) *Watercourse protection.* Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that may pollute, contaminate, or adversely retard the flow of water through the watercourse.

(m) *Best management practices (BMPs) required.* The owner or operator of a commercial or industrial premises or any premises where a SWPPP is required by the TCEQ, shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4, waters in the State or U.S. or watercourses through the use of structural and non-structural BMPs. Further, any person responsible for a premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants or contaminants to the MS4. Compliance with all terms and conditions of a valid NPDES or TPDES permit authorizing the discharge of storm water associated with industrial activity, to the maximum extent practicable, shall be deemed compliance with the provisions of this paragraph. These BMPs shall be part of a SWPPP as necessary for compliance with the requirements of the NPDES or TPDES permit.

Ord. No. 09-046, § II, 7-28-09)

DIVISION 2. SPECIFIC PROHIBITIONS AND REQUIREMENTS

Sec. 32-25. Specific prohibitions and requirements.

(a) The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibitions in division 1 of this article.

(b) No person shall introduce, release or cause to be introduced any discharge into the MS4 that causes or contributes to causing the city to violate a water quality standard, the city's storm water permit coverage for discharges from its MS4, any applicable EPA or TCEQ regulation or State or Federal law.

(c) No person shall discharge, release, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4:

- (1) Any used motor oil, antifreeze, or any other motor vehicle fluids;
- (2) Any industrial waste;
- (3) Any hazardous substance or hazardous waste, including HHW;
- (4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
- (5) Any garbage, rubbish, or yard waste;
- (6) Any discharge from: a commercial carwash facility, vehicle dealership, rental agency, body shop, repair shop, maintenance facility, or commercial or public facility that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance from any vehicle washing, cleaning, or maintenance;
- (7) Any discharge from the washing, cleaning, de-icing, or other maintenance of aircraft;
- (8) Any discharge from a commercial mobile power washer including, without limitation, discharges from mobile vehicle detailing or cleaning equipment, or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
- (9) Any discharge from commercial or professional floor, rug, or carpet cleaning containing a harmful quantity of any pollutant or contaminant;
- (10) Any discharge from the wash down or other cleaning of pavement or the exterior of buildings that contains any soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash down or other cleaning of any pavement where any 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;
- (11) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;
 - (12) Any ready-mixed concrete, mortar, ceramic, or asphalt base material, or material from the cleaning of vehicles or equipment containing, or used in transporting or applying, such material;
 - (13) Any discharge or wash down water from any commercial animal pen, kennel, or fowl or livestock containment area, to include a livestock management facility as defined in chapter 6 of this code, containing more than five (5) animals;
 - (14) Any filter backwash from a swimming pool, fountain or spa;
 - (15) Any swimming pool water containing TRC of 0.10 mg/l or more or containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
 - (16) Any fire protection water containing oil or hazardous substances or materials, unless treatment adequate to remove pollutants and contaminants occurs before discharge (this prohibition does not apply to discharges or flow from fire fighting by the fire department);
 - (17) Any water from a water curtain in a spray room used for painting vehicles or equipment;
 - (18) Any substance or material that will damage, block, or clog the MS4;
 - (19) Any release from a petroleum storage tank (PST) or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge satisfies all of the following criteria:

- (a) Compliance with all State and Federal standards and requirements;
- (b) No discharge containing a harmful quantity of any pollutant; and
- (c) No discharge containing more than 50 parts per billion of benzene; 500 parts per billion combined total quantities of benzene, toluene, ethylbenzene, and xylene (BTEX); or 15 mg/l of total petroleum hydrocarbons (TPH).

- (20) Any amount of herbicides or pesticides that constitute a harmful quantity.

(d) No person shall introduce or cause to be introduced into the MS4 any sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, or associated with any land filling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained on site or captured by employing sediment and erosion control measures or other BMPs to the maximum extent practicable.

(e) *Motor vehicle fluids, oil, petroleum product and used oil regulation.* No person shall:

- (1) Discharge motor vehicle fluids, oil, petroleum products or used oil into the MS4 or a sewer drainage system, septic tank, surface water, groundwater, or watercourse;
- (2) Knowingly mix or commingle motor vehicle fluids, oil, petroleum products or used oil with any type of waste that is to be disposed of in a landfill or knowingly directly dispose of motor vehicle fluids, oil, petroleum products or used oil on land or in a landfill; or

- (3) Apply motor vehicle fluids, oil, petroleum products or used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces motor vehicle fluids, oil, petroleum products or used oil into the environment.

Ord. No. 09-046, § II, 7-28-09)

DIVISION 3. COMPLIANCE AND ENFORCEMENT

Sec. 32-26. Compliance monitoring.

(a) *Right of entry; inspection and sampling.* The director shall have the right to enter the premises of any person discharging into the MS4 or to waters in the State or U.S. to determine if the person is complying with all requirements of this article. A person shall allow the director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties necessary to ensure compliance with this article. A Person shall make available to the director, upon request, any NOIs, NOCs, NOTs, SWPPPs and any modifications thereto, self-inspection reports, monitoring records, compliance evaluations, and any other records, reports, or other documents related to compliance with this article or compliance with any State or Federal storm water discharge permit. (State law reference: Texas Water Code § 26.173.)

- (1) Where a person has security measures in force that require proper identification and clearance before entry into its premises, the person shall make necessary arrangements with its security personnel or employees so that, upon presentation of suitable city issued identification, the director shall be permitted to enter without unreasonable delay. Unreasonable delays, which shall be defined as delays in excess of forty-eight (48) hours of the initial request, shall be considered a violation of this article.
- (2) The director shall have the right to set up on the person's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the person's operations related to all discharges regulated by this article.
- (3) If the director has reason to believe that there is an actual or potential illicit discharge associated with a premises, the director may require any person to conduct specified sampling, testing, analysis, and other monitoring of such premises' discharges, and may specify the frequency and parameters of any such activities necessary to ensure compliance with this article. All required sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition. All such activities shall be at the person's sole expense.
- (4) Any temporary or permanent obstruction that obstructs safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the person at the written or verbal request of the director and shall not be thereafter replaced. The costs of providing such access shall be borne by the person.

(b) *Search warrants.* If the city is able to demonstrate probable cause to believe that there may be a violation of this article or that there is a need to inspect and/or sample a premises as part of a routine inspection and sampling program established by the city and designed to verify compliance with this article or any order issued hereunder, or to protect the public health, safety, and welfare of the community, then the city may seek issuance of a search warrant to gain entry from any court of competent jurisdiction.

Ord. No. 09-046, § II, 7-28-09)

Sec. 32-27. Administrative enforcement remedies.

(a) *Generally.* Nothing in this section shall limit the authority of the director to take any action, including emergency action or any other enforcement action, without first issuing any other type of notice or order provided under this section. Compliance with any notice or order issued hereunder in no way relieves the alleged violator of liability for any violations occurring before or after receipt of any notice or order.

(b) *Warning notice.* When the director finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the director may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting that the person immediately comply with this article or any order so issued.

(c) *Notification of violation (NOV).* When the director finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the director may serve upon that person a written NOV. Within ten (10) calendar days of the receipt of the NOV the person shall submit an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions and time lines for completion, to the director. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the director within the same time period. Receipt of the NOV is presumed to occur five (5) calendar days following the date the NOV is mailed. This subsection (c) shall not apply to a NOV issued pursuant to subsection (h) of this section 32-27.

(d) *Consent orders.* The director may enter into consent orders, assurances of voluntary compliance, or other similar agreements with any person responsible for the noncompliance with any provision in this article or any order issued hereunder. Such agreements may include specific action to be taken by the person to correct the noncompliance within a stated time period. Agreements entered into under this paragraph shall be judicially enforceable.

(e) *Compliance orders.* When the director finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the director may issue an order to the person directing the person to come into compliance with this article within a specified time limit. Compliance orders may contain requirements to address the actual or threatened violation and/or a reoccurrence thereof, including additional monitoring requirements and/or requiring the establishment of BMPs designed to eliminate or minimize the amount of pollutants discharged to the MS4 and surface water in the State or U.S. The compliance order may also contain requirements directing the person to remediate, abate and/or restore any environmental or other adverse effects associated with a particular discharge, including, but not being limited to, monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of city property or natural resources damaged by the violation. A compliance order may not extend the deadline for any compliance established by State or Federal requirements.

(f) *Stop work orders.* When the director finds that any owner or operator of a premises under construction has violated, continues to violate or threatens to violate any provision of this article, or any order issued hereunder, the director may issue a stop work order which shall be posted at the premises and distributed to all city departments and divisions whose decisions affect any continuing construction activity at the premises. Unless express written exception is made by the director, the stop work order shall prohibit any further construction activity at the premises and shall bar any further inspection or approval by the city associated with a building permit, grading permit, plat approval, site development plan approval, or any other city approval necessary to commence or continue construction or to assume occupancy at the premises.

(g) *Emergency cease and desist orders.* When the director finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, or that the person's past violation(s) are likely to reoccur, and that the person's violation(s) has caused or contributed to an actual or threatened discharge to the MS4 or surface water in the State or U.S. which reasonably appears to present an imminent or substantial threat to the health, safety or welfare of persons or to the environment, the director may issue an order to the person directing such person to immediately cease and desist all such violations and directing the person to:

- (1) Immediately comply with this article; and
- (2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person issued an emergency order shall immediately comply with the provisions of such order. In the event of a person's failure to immediately comply with the emergency order, the director may take such steps as deemed necessary to prevent or minimize harm to the MS4 or water in the State or U.S. including immediate termination of the premises' municipal utility services, seeking injunctive relief and/or any other remedies provided by this article or at law. The director may authorize the reconnection of municipal utility services, at the person's sole expense, and may authorize the person to recommence discharging into the MS4 when it has been demonstrated to the satisfaction of the director that the premises is in full compliance with this article and that the violation(s) will not reoccur. An emergency order issued under this section shall also require a person that is responsible, in whole or in part, for any discharge presenting an imminent or substantial threat to the health, safety or welfare of persons or the environment to submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the director within ten (10) calendar days of the receipt of the emergency order. Receipt is presumed to occur five (5) calendar days following the date the notice is mailed.

(h) *Nuisance abatement.* The city may, in conjunction with the administrative remedies provided in this section or as a separate action, abate a nuisance as follows:

(1) *Notice of violation: nuisance.*

- (a) Any owner of any lot, parcel of land, or premises within the city limits having on it a nuisance described in this article shall be required to remove, abate, or cure such nuisance within seven (7) calendar days from the date of receipt of a NOV declaring the same from the director. Receipt is presumed to occur five (5) calendar days following the date the NOV is mailed.

- (b) Any owner of any lot, parcel of land, or premises who receives the NOV described in this subsection (h) who cannot remove, abate or cure the nuisance due to weather conditions or who requires additional time to arrange a contractor to remove, abate or cure the nuisance may request and, at the director's discretion, may be granted an extension of time, not to exceed fourteen (14) calendar days.
 - (c) A NOV issued under this subsection (h) shall be given to the owner as follows:
 - (i) personally, in writing; or
 - (ii) by letter (regular mail) addressed to the owner at the owner's address as recorded in the tax appraisal district records of the appraisal district in which the property is located; or
 - (iii) if personal service cannot be obtained:
 - a. by publication at least once; or
 - b. by posting the notice on or near the front door of each building on the premises to which the violation relates; or
 - c. by posting the notice on a placard attached to a stake driven into the ground on the premises to which the violation relates, if the premises contains no buildings.
 - (d) A NOV issued under this subsection (h) may also be sent by letter (regular mail) to any operator, lessee, occupant or person in control of the property known to the director, as applicable.
 - (e) If the director mails a NOV to an owner in accordance with this subsection (h), and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.
- (2) *City authorized to abate.* If the owner fails to comply with the NOV issued under this subsection (h), within the period prescribed, the city may enter the premises and remove, abate, or cure such nuisance.
- (3) *Lien on property.* If the city abates a nuisance under this subsection (h), the owner of such premises shall be notified by regular mail of the expenses incurred therefrom and the administrative fee provided in paragraph (4) of this subsection (h). If such charges are not paid within thirty (30) calendar days of the date of such notice, the director shall cause to be filed with the county clerk documentation of such expenses sufficient to establish a lien against the premises on which the nuisance was abated.
- (4) *Remedies, expenses, and citation.* Any owner who violates this article shall be subject to abatement restitution, penal fine(s) or both, or any other relief provided by law. A person who fails to abate such nuisance within the time provided shall be required to pay an administrative fee of one hundred dollars (\$100.00) in addition to the expenses incurred by the city to abate the nuisance.

Section 32-28. Right to reconsideration and appeal.

(a) Reconsideration.

- (1) Any person subject to a compliance order, stop work order or an emergency cease and desist order issued pursuant to this article may petition the director to reconsider the basis for the director's order within ten (10) calendar days of the affected person's receipt of such order.
- (2) Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.
- (3) In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the facts that support the petitioner's view of the facts, and any alternative terms of any order that the petitioner would accept.
- (4) The effect of any compliance order shall be stayed upon the director's receipt of the petition pending the director's reconsideration of the petition unless the director expressly makes a written determination to the contrary. The effectiveness of any stop work order or emergency cease and desist order shall not be stayed pending the director's reconsideration unless the director expressly makes a written determination staying such order.
- (5) Within ten (10) calendar days of receipt of a petition for reconsideration, the director shall either (a) grant the petition and withdraw or modify the order accordingly; or (b) deny the petition and provide a written explanation detailing the reasons for the denial. The director's determination shall be personally served upon the petitioner, or his agent, or mailed, certified, return receipt requested, to the petitioner.
- (6) Nothing in this section shall limit the authority of the director to take any other enforcement action or prevent existing or further enforcement action from proceeding without first making the determination contemplated by this section.

(b) Appeal.

- (1) Any person whose petition for reconsideration by the director has not been granted in its entirety and who remains adversely affected by the director's order may appeal the action of the director to the city manager by filing a written appeal with the city secretary within ten (10) calendar days of receipt of the director's decision. Receipt is presumed to occur five (5) calendar days following the date the determination is mailed.
- (2) Failure to submit a timely written appeal to the city manager shall be deemed to be a waiver of further administrative review.
- (3) In its written appeal to the city manager, the appealing party shall indicate the particular provisions of the order objected to, the particular determinations of the director that are contested, the reasons that the director's order and/or determinations are contested, and any alternative order that the appealing party would accept.
- (4) The effect of the director's order, as issued or modified, shall not be stayed pending the appeal to the city manager, unless the city manager expressly makes a written determination staying the order.
- (5) Within thirty (30) calendar days of receipt of a written appeal to the city manager, the city manager shall consider the appeal and make a final written determination to the

appellant. Such determination shall be personally served upon the appellant, or his agent, or mailed, certified, return receipt requested, to the appellant.

- (6) Following final action by the city manager on the appeal, any adversely affected party may challenge such action by the city manager in an appropriate court of competent jurisdiction.
- (7) Nothing in this section shall limit the authority of the director to take any other enforcement action or prevent existing or further enforcement action from proceeding unless the same is expressly stayed by the city manager.

Ord. No. 09-046, § II, 7-28-09)

Sec. 32-29. Judicial enforcement remedies.

(a) *Civil remedies.* Whenever it appears that a person has violated, or continues to violate, any provision of this article relating to point source effluent limitations or the discharge of a pollutant or contaminant, other than from a non-point source, into the MS4, the city may petition the Bell County District Court for injunctive relief and/or civil penalties not to exceed \$5,000 per day. (State law reference: *Texas Local Government Code* §§ 54.012 and 54.017.)

(b) *Injunction.* Upon a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the owner or operator, the city may obtain a temporary or permanent injunction, as appropriate, against the owner or the operator of a premises that:

- (1) prohibits specific conduct that violates this article; and
- (2) requires specific conduct that is necessary for compliance with any provision of this article.

(State law reference: *Texas Local Government Code* § 54.016.)

(c) *Criminal penalties.*

- (1) *Penalty.* A person who violates, or causes or permits the violation of, any provision of this article, including knowingly making any false statement, representation, or certification in any application, record, report, plan, petition, appeal or other documentation filed, or required to be maintained, pursuant to this article, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this article, commits a Class C misdemeanor which shall be punishable under section 1-8 of this code. A fine not exceeding two thousand dollars (\$2,000.00) may be imposed for violation of the provisions of this article that govern fire safety or public health and sanitation. With respect to violations of this code that are continuous with respect to time, each day the violation continues is a separate offense. Proof of a culpable mental state, unless otherwise stated in this article, is not required for conviction of an offense under this article.
- (2) *Considerations.* In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the violator's knowledge, intent and/or negligence, and any other factor as justice requires.

(d) *Remedies nonexclusive.* The remedies provided for in this article are not exclusive of any other remedies that the city may have under State or Federal law or other city ordinances, including other civil actions provided under the Texas Water Code. The city may take any, all, or any combination of these actions against a violator. The city is empowered to take more than one enforcement action against any violator and these actions may be taken concurrently.

Ord. No. 09-046, § II, 7-28-09)