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MODEL STORM WATER ORDINANCE

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I. GENERAL PROVISIONS

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C. Abbreviations

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

- BMP - Best Management Practices
- BTEX - Benzene, Toluene, Ethylbenzene, and Xylene
- CFR - Code of Federal Regulations
- EPA - U.S. Environmental Protection Agency
- HHW - Hazardous Household Waste
- mg/l - Milligrams per liter
- MS4 - Municipal Separate Storm Sewer System
- NOI - Notice of Intent
- NOT - Notice of Termination
- NPDES- National Pollutant Discharge Elimination System
- ppb - Parts per billion
- PST - Petroleum Storage Tank
- [• RLA - Registered Landscape Architect]
- RPE - Registered Professional Engineer
- RQ - Reportable Quantity
- SWPPP- Storm Water Pollution Prevention Plan
- TPH - Total Petroleum Hydrocarbons
- USC - United States Code

D. Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated.

1. Agricultural storm water runoff. Any storm water runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.
2. Best management practices (BMP). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to

prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

3. City. The City of _____, Texas, or the City Council of _____.
4. City Engineer. The person appointed to the position of City Engineer by the City Council of the City of _____ or his/her duly authorized representative.
5. Coal pile runoff. The rainfall runoff from or through any coal storage pile.
6. Commencement of construction. The disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.
7. Commercial. Pertaining to any business, trade, industry, or other activity engaged in for profit.
8. Director of Public Works. The person appointed to the position of Director of Public Works by the City Council of the City of _____ or his/her duly authorized representative.
9. Discharge. Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.
10. Discharger. Any person who causes, allows, permits, or is otherwise responsible for, a discharge, including, without limitation, any operator of a construction site or industrial facility.
11. Domestic sewage. Human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.
12. 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.
13. Extremely hazardous substance. Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.
14. Facility. Any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.
15. 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.
16. Final stabilization. The status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent

structures has been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

17. Fire Department. The Fire Department of the City of _____ or any duly authorized representative thereof.
18. 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.
19. Garbage. Putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.
20. Harmful quantity. The amount of any substance that will cause pollution of water in the State.
21. Hazardous household waste (HHW). Any material generated in a household (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.
22. Hazardous substance. Any substance listed in Table 302.4 of 40 CFR Part 302.
23. Hazardous waste. Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
24. Hazardous waste treatment, disposal, and recovery facility. All contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.
25. Herbicide. A substance or mixture of substances used to destroy a plant or to inhibit plant growth.
26. Industrial waste. Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.
27. Motor vehicle fluids. Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.
28. 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 Texas Natural Resource Conservation Commission).
29. Municipal separate storm sewer system (MS4). The system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.

30. Municipal solid waste. Solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.
31. NPDES General Permit for Storm Water Discharges Associated with Industrial Activity (or Industrial General Permit). The Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.
32. NPDES General Permit for Storm Water Discharges from Construction Sites (or Construction General Permit). The Construction General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any subsequent modifications or amendments thereto.
33. NPDES permit. A permit issued by EPA (or by the State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
34. Non-point source. Any source of any discharge of a pollutant that is not a point source.”
35. Notice of Intent (NOI). The Notice of Intent that is required by either the industrial General Permit or the Construction General Permit.
36. Notice of Termination (NOT). The Notice of Termination that is required by either the industrial General Permit or the Construction General Permit.
37. Oil. Any kind of oil 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 waste.
38. Operator. The person or persons who, either individually or taken together, meet the following two criteria: (1) they have operational control over the facility specifications (including the ability to make modifications in specifications); and (2) they have the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.
39. Owner. The person who owns a facility or part of a facility.
40. Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.
41. 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).
42. Petroleum product. A petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including 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.]
43. Petroleum storage tank (PST). Any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.
 44. 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.
 45. Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term “pollutant” does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.
 46. Pollution. The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the State that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
 47. Qualified personnel. Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally-accepted industry standards for such activity.
 - [48. Registered landscape architect (RLA). A person who has been duly licensed and registered to practice landscape architecture by the Texas Board of Architectural Examiners.]
 49. Registered professional engineer (RPE). A person who has been duly licensed and registered by the State Board of Registration for Professional Engineers to engage in the practice of engineering in the State of Texas.
 50. Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or the waters of the United States.
 51. Reportable quantity (RQ). For any “hazardous substance,” the quantity established and listed in Table 302.4 of 40 CFR Part 302; for any “extremely hazardous substance,” the quantity established in 40 CFR Part 355 and listed in Appendix A thereto.

52. Rubbish. Nonputrescible solid waste, excluding ashes, that consist of (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 do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).
53. Sanitary sewer (or 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 the City sewage treatment plant (and to which storm water, surface water, and groundwater are not intentionally admitted).
54. Septic tank waste. Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.
55. Service station. Any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.
56. 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 the City sewage treatment plant for treatment.
57. 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.
58. Solid waste. Any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including, solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities.
59. State. The State of Texas.
60. Storm water. Storm water runoff, snow melt runoff, and surface runoff and drainage.
61. Storm water discharge associated with industrial activity. The discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is within one of the categories of facilities listed in 40 CFR § 122.26(b)(14), and which is not excluded from EPA's definition of the same term.
62. Storm water pollution prevention plan (SWPPP). A plan required by either the Construction General Permit or the Industrial General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity at the facility.
63. Uncontaminated. Not containing a harmful quantity of any substance.
64. Used oil (or used motor oil). Any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original

properties but that may be suitable for further use and is recyclable in compliance with State and federal law.

65. Water in the State (or water). Any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the State, 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 water courses and bodies of surface water, that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.
66. Water quality standard. The designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by the State to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code.
67. Waters of the United States. 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; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of “waters of the United States” at 40 CFR § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.
68. 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.
69. Yard waste. Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

II. GENERAL PROHIBITION

- A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (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 authorized by, and in full compliance with, an NPDES permit (other than the NPDES permit for discharges from the MS4);
 - 2. A discharge or flow resulting from fire fighting by the Fire Department;
 - 3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials [that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge];
 - 4. Agricultural storm water runoff;
 - 5. A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless [the total residual chlorine (TRC) has been reduced to less than _____ mg/l and] it contains no harmful quantity of [chlorine or] any [other] chemical used in line disinfection;
 - 6. A discharge or flow from lawn watering, [or] landscape irrigation [, or other irrigation water];
 - 7. A discharge or flow from a diverted stream flow or natural spring;
 - 8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
 - 9. Uncontaminated groundwater infiltration (as defined as 40 C.F.R. § 35.2005(20)) to the MS4;
 - 10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, footing drain [, or sump pump];
 - 11. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;

12. 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;
 13. A discharge or flow from individual residential car washing;
 14. A discharge or flow from a riparian habitat or wetland;
 15. A discharge or flow from water used in street washing that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
 - [16. 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;]
 17. Swimming pool water [that has been dechlorinated so that total residual chlorine (TRC) is less than _____ 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.
- C. No affirmative defense shall be available under Subsection B of this section if the discharge or flow in question has been determined by the [City Engineer] to be a source of a pollutant or pollutants to the waters of the United States [or to the MS4], written notice of such determination has been provided to the discharger, and the discharge has occurred more than 15[?] days beyond such notice. The correctness of the [City Engineer's] determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.

III. SPECIFIC PROHIBITIONS AND REQUIREMENTS

- A. The specific prohibitions and requirements in this section are not [necessarily] inclusive of all the discharges prohibited by the general prohibition in Section II.
- B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any state-issued discharge permit for discharges from its MS4.
- C. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, 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 fluid;
 2. Any industrial waste;

3. Any hazardous waste, including hazardous household waste;
4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
5. Any garbage, rubbish, or yard waste;
6. Any wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than 2[?] such vehicles;
7. Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
8. Any wastewater from a commercial mobile power washer 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 wastewater from [commercial?] floor, rug, or carpet cleaning;
10. Any wastewater from the washdown or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the washdown 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 blowdown from a boiler;
12. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or material from the cleaning of [commercial?] vehicles or equipment containing, or used in transporting or applying, such material;
13. Any runoff or washdown water from any animal pen, kennel, or fowl or livestock containment area [containing more than _____ animals];
14. Any filter backwash from a swimming pool, [or] fountain [, or spa];
15. Any swimming pool water containing [total residual chlorine (TRC) of _____ 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 discharge from water line disinfection by superchlorination or other means if [the total residual chlorine (TRC) is at ___ mg/l or more or if] it contains any harmful quantity of [chlorine or] any other chemical used in line disinfection;
 17. Any fire protection water containing oil or hazardous substances or materials [that the Fire Code in this Code of Ordinances requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. (This prohibition does not apply to discharges or flow from fire fighting by the Fire Department.)];
 18. Any water from a water curtain in a spray room used for painting vehicles or equipment;
 19. Any contaminated runoff from a vehicle salvage yard;
 20. Any substance or material that will damage, block, or clog the MS4;
 21. 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).
- D. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities [, or associated with landfilling 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 to the maximum extent practicable [under prevailing circumstances].
- E. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.

- F. No person shall cause or allow any pavement washwater from a service station to be discharged into the MS4 unless such washwater has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.
- G. Used Oil Regulation
1. No person shall:
 - (a) Discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course;
 - (b) Knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill;
 - (c) Apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.
- H. [A particular city may want to include, or retain from existing ordinances, certain “nuisance” provisions requiring removal of trash and debris from property, prohibiting stagnant water from being allowed to stand on property, and prohibiting storage of toxic or hazardous substances on property so as to allow exposure to precipitation and storm water runoff, etc.]
- I. [A particular city may want to include any provisions deemed necessary to protect special local features critical to control of storm water runoff -- for example, wetlands, swales, or ponds.]

IV. COMPLIANCE MONITORING

A. Right of Entry: Inspection and Sampling

The [City Engineer] shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4 or to waters of the United States to determine if the discharger is complying with all requirements of this Ordinance[, and with any state or federal discharge permit, limitation, or requirement]. Dischargers shall allow the [City Engineer] 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. Dischargers shall make available to the [City Engineer], upon request, any SWPPPs, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, Notices of intent, and any other records, reports, and other documents related to compliance with this Ordinance and with any state or federal discharge permit.

1. 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 with its security guards so that, upon presentation of suitable identification, the [City Engineer] will be permitted to enter without delay for the purposes of performing his/her responsibilities.
2. The [City Engineer] shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.
3. The [City Engineer] may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.
4. The [City Engineer] may require the discharger to install monitoring equipment as necessary [at the discharger's expense]. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the [City Engineer] and shall not be replaced. The costs of clearing such access shall be borne by the discharger.
6. Unreasonable delays in allowing the [City Engineer] access to the discharger's premises shall be a violation of this Ordinance.

B. Search Warrants

If the [City Engineer] has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance [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 Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the [City Engineer] may seek issuance of a search warrant from any court of competent jurisdiction.

V. ADMINISTRATIVE ENFORCEMENT REMEDIES

A. Warning Notice

When the [City Engineer] finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, the [City Engineer] may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of the [City Engineer] to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

B. Notification of Violation

When the [City Engineer] finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, the [City Engineer] may serve upon that person a written Notice of Violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the [City Engineer]. 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 [City Engineer] within ten (10) days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the [City Engineer] to take any action, including emergency action or any other enforcement action, without first issuing a Notice of Violation.

C. Consent Orders

The [City Engineer] may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in this Ordinance or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Subsections V.E. and V.F. and V.G. of this Ordinance and shall be judicially enforceable.

D. Show Cause Hearing

The [City Engineer] may order any person who has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, to appear before the [City Engineer] and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in paragraph VI.A.7 of this Ordinance. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

E. Compliance Orders

When the [City Engineer] finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, the [City Engineer] may issue an order to the violator directing that the violator come into compliance within a specified time limit. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the United States. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

F. Remediation, Abatement, and Restoration Orders

When the [City Engineer] finds that a person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, and that such violation has adversely affected the MS4, the waters of the United States or any other aspect of the environment, the [City Engineer] may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, the waters of the United States, or any other aspect of the environment, and/or to restore any part of the MS4, the waters of the United States, or any other aspect of the environment that has been harmed. Such remedial, abatement, and restoration action may include, but not be 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. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this Subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

G. Emergency Cease and Desist Orders

When the [City Engineer] finds that any person has violated, or continues to violate, any provision of this Ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) have caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the [City Engineer] may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

1. Immediately comply with all Ordinance requirements; 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 notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the [City Engineer] may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or

to the environment [, including immediate termination of a facility’s water supply, sewer connection, or other municipal utility services]. The [City Engineer] may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the [City Engineer] that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the [City Engineer] within ____ days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

H. “Red Tags”

Whenever the [City Engineer] finds that any operator of a construction site has violated, or continues to violate, any provision of Section V of this Ordinance, or any order issued thereunder, the [City Engineer] may order that a “Red Tag” be issued to the operator, posted at the construction site, and distributed to all City departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the [City Engineer], the “Red Tag” shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the City associated with a building permit, grading permit, [subdivision plat approval,] site development plan approval, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a “Red Tag” order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

VI. RIGHT TO RECONSIDERATION, HEARING, AND APPEAL

A. Reconsideration and Hearing

1. Any person subject to a Compliance Order under Subsection V.E, a Remediation, Abatement, or Restoration Order under Subsection V.F, an Emergency Cease and Desist Order under Subsection V.G, or a Red Tag Order under Subsection V.H of this Ordinance may petition the [City Engineer] to reconsider the basis for his/her order within _____ (__) days of the affected person’s notice of issuance of such an 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 evidence that supports the petitioner’s view of the facts, any alternative terms

of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.

4. The effect of any Compliance Order under Subsection V.E, Remediation, Abatement, or Restoration Order under Subsection V.F, and any Red Tag Order under Subsection V.H shall be stayed pending the [City Engineer's] reconsideration of the petition, and any hearing thereon, unless the [City Engineer] expressly makes a written determination to the contrary. The effectiveness of any Emergency Cease and Desist Order under Subsection V.G shall not be stayed pending the [City Engineer's] reconsideration, or any hearing thereon, unless the City Engineer expressly and in writing stays his/her emergency order.
5. Within _____ () days of the submittal of a petition for reconsideration, the [City Engineer] shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.
6. Written notice of any hearing set by the [City Engineer] pursuant to paragraph VI.A.5 above shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.
7. The [City Engineer] may himself/herself conduct the hearing and take evidence, or he/she may designate any employee of the City or any specially-designated attorney or engineer to:
 - (a) issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;
 - (b) take evidence;
 - (c) transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the [City Engineer] for action thereon.

At any hearing held pursuant to this Subsection, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

8. After the [City Engineer] has reviewed the evidence, he/she shall either (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The [City Engineer] may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

B. Appeal

1. Any person whose petition for reconsideration by the [City Engineer] has not been granted in its entirety and who remains adversely affected by the [City Engineer's] order, or who is subject to an order of the [City Engineer] issued following a Show Cause Hearing under Subsection V.D, may appeal the action of the [City Engineer] to the City Council by filing a written appeal with the City Council within _____ (__) days of the person's notice of the [City Engineer's] adverse action on the petition for reconsideration, or within _____ (__) days of the person's notice of the issuance of the order following the Show Cause Hearing, as the case may be.
2. Failure to submit a timely written appeal to the City Council shall be deemed to be a waiver of further administrative review.
3. In its written appeal to the City Council, the appealing party shall indicate the particular provisions of the order objected to, the particular determinations of the [City Engineer] that are contested, the reasons that the [City Engineer's] order and/or determinations are contested, and any alternative order that the appealing party would accept.
4. The effect of the [City Engineer's] order, as issued or modified, shall not be stayed pending the appeal to the City Council, unless the City Council expressly so states.
5. Within _____ (__) days of the submittal of a written appeal to the City Council, the City Council shall hear and consider the appeal in open meeting. The appellant shall be notified at least _____ (__) days in advance of the date and time of the City Council meeting at which the appeal will be heard and considered.
6. The appellant shall have the right to public appearance before the City Council to present oral and written statements in support of his/her appeal. [If the City Council wishes to consider testimony of witnesses or other evidence beyond that in the record of any hearing before the [City Engineer] the City Council may remand the matter to the [City Engineer] for the taking of additional testimony or other evidence.]

7. Upon consideration of any written and oral statements made to the City Council, as well as the record made before the [City Engineer], the City Council shall act on the appeal by affirming, vacating, or modifying the order of the [City Engineer], and/or by remanding the matter to the [City Engineer] for further action.
8. Following final action by the City Council on the appeal, any adversely affected party may challenge such action by the City Council in an appropriate court of competent jurisdiction.

VII. JUDICIAL ENFORCEMENT REMEDIES

A. Civil Remedies

1. Whenever it appears that a person has violated, or continues to violate, any provision of this Ordinance that relates to:
 - (a) the preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;
 - (b) the preservation of public health or to the fire safety of a building or other structure or improvement;
 - (c) the establishment of criteria for land subdivision or construction of buildings, including street design;
 - (d) dangerously damaged or deteriorated structures or improvements;
 - (e) conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
 - (f) point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into the MS4.

-- The City may invoke Sections 54.011 - 54.017 of the Texas Local Government Code and petition the State district court or the county court at law of _____ County, through the City Attorney, for either the injunctive relief specified in paragraph VII.A.2 or the civil penalties specified in paragraph VII.A.3 below, or both the specified injunctive relief and civil penalties.

2. Pursuant to Section 54.016 of the Texas Local Government Code, the City may obtain against the owner or the operator of a facility a temporary or permanent injunction, as appropriate, that:
 - (a) prohibits any conduct that violates any provision of this Ordinance that relates to any matter specified in subparagraphs VII.A.1.(a)-(f) above; or

(b) compels the specific performance of any action that is necessary for compliance with any provision of this Ordinance that relates to any matter specified in subparagraphs VII.A.1.(a)-(f) above.

3. Pursuant to Section 54.017 of the Texas Local Government Code, the City may recover a civil penalty of not more than \$1,000 per day for each violation of any provision of this Ordinance that relates to any matter specified in subparagraph VII.A.1.(a)-(e) above, and a civil penalty of not more than \$5,000 per day for each violation of any provision of this Ordinance that relates to any matter specified in subparagraph VII.A.1.(f) above, if the City proves that:

(a) the defendant was actually notified of the provisions of the Ordinance; and

(b) after the defendant received notice of the Ordinance provisions, the defendant committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance.

B. Criminal Penalties

1. Any person who has violated any provision of this Ordinance, or any order issued hereunder, shall be strictly liable for such violation [regardless of the presence or absence of a culpable mental state] and shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day [, or any greater fine authorized by State statute].

2. Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Ordinance, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Ordinance shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day [, or any greater fine authorized by State statute].

3. 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 knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

C. Civil Suit Under the Texas Water Code

Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of the Texas Water Code, or any rule, permit, or order of the Texas Natural Resource Conservation Commission, has occurred or is occurring within the jurisdiction of the City of _____, exclusive of its extraterritorial jurisdiction, the City, in the same manner as the Texas Natural Resource Conservation Commission, may have a suit instituted in a state district court through its City Attorney for the injunctive relief or civil penalties or both authorized in Subsection (a) of Section 26.123 of the Texas Water Code, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 26.124 of the Texas Water Code. In any suit brought by the City under this Subsection VII.C, the Texas Natural Resource Conservation Commission is a necessary and indispensable party.

D. Remedies Nonexclusive

The remedies provided for in this Ordinance are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. 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. These actions may be taken concurrently.