

ORDINANCE NO. 1570

An Ordinance of the City Council of the City of Pearland amending Chapter 30, *Utilities*, of the City Code of Ordinances by adding Article VI, *Illicit Discharge Prohibitions*; establishing illicit discharge regulations as required by U.S. Environmental Protection Agency guidelines and standards adopted by the Texas Commission on Environmental Quality; having a savings clause, a severability clause, a penalty clause and a repealer clause; providing for publication, codification, and an effective date.

WHEREAS, the Environmental Protection Agency of the United States (the "EPA") mandates the regulation of storm water discharge in accordance with the Clean Water Act (the Act, 40 CFR 122.34); and

WHEREAS, the EPA authorizes the Texas Commission on Environmental Quality ("TCEQ") to adopt rules to carry out its powers and duties under the Act in accordance with Tex. Admin. Code, Title 30, Ch. 281.25 (b) (5); and

WHEREAS, the Act, at the discretion of the TCEQ, further requires municipalities in the State of Texas to implement and enforce water management practices to ensure that storm water pollution is minimized in accordance with applicable Federal and State laws; and

WHEREAS, the City has a duty and responsibility under Federal and State law to establish methods for controlling discharge that is not composed entirely of storm water into the storm drainage system to the maximum extent practicable.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEARLAND, TEXAS:

Section 1. That Chapter 30, *Utilities*, of the city Code of Ordinances, is hereby amended to add an Article VI, *Illicit Discharge Prohibitions*, as follows:

"Article VI. Illicit Discharge Prohibitions

Section 30- 140. Purpose

The purpose of this Article is to provide for the health, safety, and general welfare of the citizens of the City of Pearland, Texas, as well as comply with the regulations mandated by both the United States Environmental Protection Agency and the Texas Commission on Environmental Quality, through the regulation of non-storm water discharges into the City's storm drainage system to the maximum extent practicable through the establishment of

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methods for controlling the introduction of pollutants into the Municipal Separate Storm Sewer System in order to comply with requirements of the National Pollutant Discharge Elimination System and Texas Pollutant Discharge Elimination System permit process by:

Section 30-141. Abbreviations

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

- (1) BMP - Best Management Practices
- (2) CFR – Code of Federal Regulations
- (3) EPA – U.S. Environmental Protection Agency
- (4) MEP – Maximum Extent Practicable
- (5) MCM – Minimum Control Measure
- (6) MS4 - Municipal Separate Storm Sewer System
- (7) NPDES- National Pollutant Discharge Elimination System
- (8) NOI – Notice of Intent
- (9) NOT – Notice of Termination
- (10) SWPPP – Storm Water Pollution Prevention Plan
- (11) TAC – Texas Administrative Code
- (12) TCEQ – Texas Commission on Environmental Quality
- (13) TPDES – Texas Pollutant Discharge Elimination System
- (14) U.S.C. – United States Code

Section 30-142. Definitions

Unless stated otherwise, the following terms and phrases referenced herein shall have the following meanings:

- (1) *Best Management Practices*: 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 shall 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.
- (2) *Catch Basin*: Storm drain inlet and curb inlet to the City's storm drain system. Catch basins may include a grate or curb inlet that may accumulate sediment, debris, and other pollutants.
- (3) *City*: The City of Pearland, Texas.
- (4) *City Engineer*: The City Engineer/Director of Engineering or his/her designee
- (5) *Commercial*: Pertaining to any business, trade, industry, or similar activity.
- (6) *Construction Activity*: Soil disturbances, including, but not limited to clearing, grading, and excavating; and other construction related activities (e.g., stockpiling of fill material, demolition, and reconstruction); but not including routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g. the routine grading of existing dirt roads, asphalt overlays of

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existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities). Regulated construction activity shall be defined in terms of small and large construction activities:

- (a) *Small Construction Activity:* Construction activity that results in land disturbance equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity shall also include the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger common plan ultimately disturbs an area equal to or greater than one (1) and less than five (5) acres of land.
 - (b) *Large Construction Activity:* Construction activity that results in land disturbance of equal to or greater than five (5) acres of land. Large construction activity shall also include the disturbance of less than five (5) acres of total land area that is part of a larger common plan of development or sale if the area common plan ultimately disturbs an area equal or greater than five acres of land.
- (7) *Control Measure:* Any BMP or other method used to prevent or reduce the discharge of pollutants into the MS4.
 - (8) *Conveyance:* Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport storm water runoff.
 - (9) *Discharge:* Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the MS4 or into waters of the United States.
 - (10) *Domestic Sewage:* Human excrement, gray water, and other wastewater discharged from the sanitary conveniences of a Facility that is free from industrial waste.
 - (11) *Facility:* Any residential or commercial building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.
 - (12) *Final Stabilization:* The status achieved when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70 percent 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.
 - (13) *Garbage:* 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.
 - (14) *Gray Water:* Liquid from home clothes washing, bathing, showers, dishwashing, or food preparation.
 - (15) *Hazardous Substance:* Any substance identified or listed in Table 302.4 of 40 CFR Part 302.
 - (16) *Hazardous Waste:* Any substance identified or listed as a hazardous waste by the

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EPA pursuant to 40 CFR Part 261.

- (17) *Illicit Connection*: Any man-made conveyance connecting an Illicit Discharge directly to an MS4.
- (18) *Illicit Discharge*: Any discharge into an MS4 not entirely composed of storm water, except discharges pursuant to an authorized permit and discharges resulting from emergency firefighting activities.
- (19) *Industrial Waste*: Any liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.
- (20) *Land Disturbance Activity*: Any activity which changes the volume or discharge rate of storm water runoff from the land surface. Land Disturbance Activity includes grading, digging, cutting, scrapping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.
- (21) *Maintenance Agreement*: A formal contract between a local government and a property owner to guarantee long-term maintenance of storm water management practices.
- (22) *Maximum Extent Practicable (MEP)*: The technology-based discharge standard, for MS4s designed to reduce pollutants in storm water discharges that was established by the Clean Water Act § 402(p).
- (23) *Municipal Landfill (or Landfill)*: An area of land or an excavation in which municipal solid waste is placed for permanent disposal, but which is not a land treatment facility, a surface impoundment, an injection well, or a pile as such terms are defined in regulations promulgated by the Texas Water Commission.
- (24) *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, but which is not used for collecting or conveying sewage.
 - a. Phase I - An MS4 permitted by the EPA after November 16, 1990.
 - b. Phase II - An MS4 permitted by the EPA after December 8, 1999.
- (25) *NPDES Permit*: A permit issued by EPA (or by the State of Texas 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.
- (26) *Notice of Intent (NOI)*: The Notice of Intent required by either the Industrial General Permit or the Construction General Permit issued by the TCEQ.
- (27) *Notice of Termination (NOT)*: A written submission from a permittee authorized under the Construction General Permit requesting termination of coverage.

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- (28) *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.
- (29) *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.
- (30) *Premise*: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (31) *Pollutant*: Solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical waste; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; or industrial, municipal, and agricultural waste discharged into water. The term "pollutant" shall not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.
- (32) *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.
- (33) *Release*: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 or the waters of the United States.
- (34) *Rubbish*: Non-decaying 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).
- (35) *Sanitary Sewer (or Sewer)*: The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from Facilities, 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).
- (36) *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 City sewage treatment plant for treatment.
- (37) *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.

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- (38) *Solid Waste*: Any and all garbage trash refuse and other discarded materials held or accumulated in containers including without limitation animal and waste materials resulting from the preparation processing or consumption of food combustible waste materials such as paper rags cartons boxes plastics noncombustible materials such as glass crockery and metal cans. Solid waste shall not include Hazardous.
- (39) *State*: The State of Texas.
- (40) *Stormwater*: Stormwater runoff, snow melt runoff, and surface runoff drainage.
- (41) *Storm Water Pollution Prevention Plan*: 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 discharge associated with construction or industrial activity.
- (42) *Texas Pollutant Discharge Elimination System Storm Water Discharge Permit (TPDES permit)*: A permit issued by the TCEQ, under the authority of Texas Water Code Sections 26.027 or 26.040 authorizing the discharge of pollutants into or adjacent water in the State.
- (43) *Used Oil (or Used Motor Oil)*: Any oil that has been refined from crude oil or 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 under State and Federal law.
- (44) *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 described in Chapter 307 of Title 30 of the Texas Administrative Code.
- (45) *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" in 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.
- (46) *Wetland*: An area that 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.

SECTION 30-143. ILLICIT CONNECTIONS AND DISCHARGE

- (a) No person shall introduce or cause to be introduced into the MS4 any discharge not

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composed entirely of storm water and other allowable discharges.

- (b) Allowable non-storm water discharges listed in TPDES General Permit No. TXR040000: the following non-storm water sources may be discharged from the Phase II MS4 and are not required to be addressed in the Phase II MS4's Illicit Discharge and Detection or other minimum control measures (MCMs), unless it is determined by the permittee or the TCEQ to be significant contributors of pollutants to the Phase II MS4, or such discharges are otherwise prohibited by the MS4 operator:

- (1) Water line flushing (excluding discharges of hyper-chlorinated water, unless the water is first dechlorinated and discharges not expected to adversely affect aquatic life);
- (2) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
- (3) Discharges from potable water sources not in violation of Texas Surface Water Quality Standards, Title 30, Texas Admin. Code. Ch. 307;
- (4) Diverted stream flows, which the City does not maintain, but are maintained by the Brazoria County Drainage District No. 4;
- (5) Rising ground waters and springs;
- (6) Uncontaminated ground water infiltration;
- (7) Uncontaminated pumped ground water;
- (8) Foundation and footing drains;
- (9) Air conditioning condensation;
- (10) Water from crawl space pumps;
- (11) Individual residential vehicle washing;
- (12) Flows from wetlands and riparian habitats;
- (13) Dechlorinated swimming pool discharges not in violation of Texas Surface Water Quality Standards Title 30, Texas Admin. Code. Ch. 307;
- (14) Street wash water, excluding street sweeper waste water;
- (15) Discharges or flows from emergency firefighting activities (firefighting activities shall not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
- (16) Allowable non-storm water discharges identified in 40 CFR § 122.26 (d) (2) (iv)(B)(1);
- (17) Non-storm water discharges that are identified and listed in the TPDES Multi Sector General Permit (MSGP) TXR050000 or the TPDES Construction General Permit (CGP) TXR150000;
- (18) Discharges authorized by a TPDES or NPDES permit and discharges not required to be permitted; and
- (19) Other similar occasional incidental non-storm water discharges such as spray park water.

- (c) No affirmative defense shall be available to any person under Subsection B of this section provided the discharge or flow in question has been determined by the City Engineer to be a source of a pollutant(s) to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and a discharge has occurs more than fifteen (15) days following receipt of the notice.

SECTION 30-144. SPECIFIC PROHIBITIONS AND REQUIREMENTS

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- (a) The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition in Section 2.
- (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 TPDES permit, or any state-issued discharge permit for discharges from its MS4.
- (c) This prohibition includes, without limitation, an Illicit Connection made in the past, regardless of whether the connection was permissible under law or practices applicable or controlling at the time of connection. Such connection shall be forced to comply with the requirements of this Ordinance during the process of making an improvement when such improvement requires the issuance of a City issued permit.
- (d) 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 discharge that is not composed entirely of stormwater to the Phase II MS4.
- (e) Used Oil Regulation: No person shall discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course; 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; or apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.

SECTION 30-145. COMPLIANCE MONITORING

(a) Right of Entry: Inspection and Sampling

The City Engineer shall have the right to enter the premises of any person or entity discharging stormwater into the MS4 or to waters of the United States to determine if the discharger is complying with all requirements of this Ordinance. 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 required to carry out the intent and purpose of this Ordinance. 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 that limit access to the premises, the discharger shall make necessary arrangements to allow the City Engineer to be permitted to enter the premises without delay.
- (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) When pollutants have been discharged, 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 stormwater 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

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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 by the discharger.

- (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 obstruction and providing access shall be the sole responsibility of the discharger.
- (6) Any delays in allowing the City Engineer access to the discharger's premises shall be a violation of this Ordinance.

(b) Search Warrants

In the event the City Engineer is 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 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.

(c) Requirement to prevent, control and reduce storm water pollutants

The City has adopted Best Management Practices (BMPs) for activities, operations and facilities which may cause or contribute to pollution or contamination of storm water, the municipal separate storm sewer systems or water of the United States. The owner or operator of a commercial or industrial establishment shall provide, at the owner's or operator's expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or a watercourse through the use of these structural and nonstructural BMPs. Any person responsible for a property or premises which is or may be, the source of an Illicit Discharge may be required to implement, at the person's sole cost and expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4 or a water course. 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 article. The BMPs shall be part of a storm water pollution prevention plan as necessary for compliance with requirements of the NPDES or TPDES permit. In the event of conflict between the terms and conditions of this ordinance or a storm water pollution prevention plan and a NPDES or TPDES permit, then the terms and conditions of the NPDES and/or TPDES permit shall control.

(d) Watercourse Protection

The landowner or drainage easement holder to a property through which a water course passes or to which a watercourse is adjacent shall keep and maintain that part of the watercourse within or adjacent to the property, in such a manner to maintain the function of the watercourse, by removing trash, debris, excessive vegetation and other obstacles that could pollute, contaminate or significantly impair the flow of water through the watercourse. In addition, the landowner or drainage easement holder shall maintain existing privately-owned structures within or adjacent to a watercourse in such a manner that such structures shall not become a hazard to the use, function or physical integrity of a watercourse.

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(e) Notification of Spills

- (1) The person in charge of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, disposing, or any other release of any of the following quantities of any of the following substances that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States, shall immediately contact and notify the City Engineer concerning the details of a release or described herein:
 - a. An amount equal to or in excess of a reportable quantity of any hazardous substance, as established under 40 CFR Part 302, as amended;
 - b. An amount equal to or in excess of a reportable quantity of any extremely hazardous substance, as established under 40 CFR Part 355, as amended;
 - c. An amount of oil that either: (a) violates applicable water quality standards; or (b) causes a film or sheen upon or discoloration of the surface of the water or an adjoining shoreline or causes a sludge or emulsion to be deposited beneath the surface of the water or upon an adjoining shoreline; or
 - d. Any harmful quantity of any pollutant.

- (2) The notification shall include the following information:
 - a. The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance;
 - b. The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;
 - c. The time and duration of the release;
 - d. An estimate of the quantity and concentration of the substance released;
 - e. The source of the release;
 - f. Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals;
 - g. Any precautions that should be taken as a result of the release;
 - h. Any steps that have been taken to contain and/or clean up the released material and minimize its impacts; and
 - i. The names and telephone numbers of the person or persons to be contacted for additional information.

- (3) Within fourteen (14) calendar days following such release, the responsible person in charge of the facility, vehicle, or other source of the release shall, unless waived by the City Engineer, shall submit a written report containing each of the items of information specified in subsection (2) above, as well as the following additional information:
 - a. The ultimate duration, concentration, and quantity of the release;
 - b. All actions taken to respond to, contain, and clean up the released substances, and all precautions taken to minimize the impacts;
 - c. Any known or anticipated acute or chronic health risks associated with the release;
 - d. When appropriate, information regarding medical attention necessary for exposed individuals;
 - e. The identity of any governmental/private sector representatives responding to the release; and
 - f. The measures taken or to be taken by the responsible person(s) to prevent similar

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future occurrences.

- (4) The notifications required by subsections (2) and (3) above shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the city, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to this article or to state or federal law.
- (5) Any person responsible for any release as described in subsection (1) above shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.
- (6) Any person responsible for a release described in subsection (1) above shall be responsible for reimbursing the City for all costs incurred by the City in responding to the release.

SECTION 30-146. STORM WATER DISCHARGE ASSOCIATED WITH CONSTRUCTION ACTIVITY

(a) Introduction and Purpose

- (1) During the construction process, soil is vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causes the silting of aquatic habitats for fish and other species. Eroded soil also necessitates repair of sewers and ditches and the dredging of waterways. Clearing and grading during construction causes the loss of native vegetation necessary for terrestrial and aquatic habitats and for the provision of a healthy living environment for citizens of the City.
- (2) The purpose of the regulations contained in this Section are to safeguard persons, protect property, prevent damage to the environment and promote the public welfare by regulating any development or other activity which disturbs or breaks the topsoil or results in the movement of earth or land in the City.

(b) Applicability

- (1) This section shall be applicable to all subdivision, or site plan applications in the City and to all activities as defined in Section 1 herein for Construction Activity. Each erosion and sediment control plan subject to this Section ensure that established water quality standards will be maintained during and after development of the site and that post construction runoff levels are consistent with any local and regional watershed plans.
- (2) To prevent the adverse impacts of storm water runoff, the performance standards required by this Ordinance shall be applied at new development sites where any construction activity disturbs one or more acres of land.
- (3) For site development plans submitted and that qualify as redevelopment projects, decisions on permitting and on-site storm water requirements shall be governed by Chapter 5 of City's Engineering Design Criteria Manual.

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(4) This section shall not apply to the following:

- a. An addition or modification to an existing single family structure;
- b. The repair to any storm water treatment facility deemed necessary by the City.

(c) Permits

(1) It shall be unlawful for a person to conduct any land disturbing activity in the absence of a City issued permit authorizing such work. Such permits include, without limitation, site work permit, building permits, grading permits, and major construction improvement permits.

(2) For Large Construction Activity, the operator of a development shall maintain an NPDES or TPDES general permit to discharge stormwater associated with construction activity. The following information shall be provided to the City Engineer prior to obtaining a construction permit from the City for that activity:

- a. Copy of the Notice of Intent (NOI) submitted to the EPA or TCEQ;
- b. Copy of a site plan detailing the location of erosion control measures; and
- c. Copy of the construction site stormwater pollution prevention plan (SWPPP) developed in compliance with applicable NPDES or TPDES permit requirements.

(3) For Small Construction Activity, the operator of a development shall comply with an NPDES or TPDES permit to discharge stormwater associated with construction activity. The following information shall be provided to the City Engineer prior to obtaining a construction permit from the City for that activity:

- a. A copy of the small construction site notice posted at the construction site in accordance with applicable NPDES or TPDES permit requirements;
- b. A copy of a site plan detailing the location of erosion control measures; and
- c. A copy of the construction site stormwater pollution prevention plan (SWPPP) developed in compliance with applicable NPDES or TPDES permit requirements.

(4) For construction activity disturbing less than one acre, the operator of a development shall implement and maintain a copy of the City approved erosion control plan at the site.

(5) For construction sites subject to this division but not subject to an NPDES or TPDES permit, such as oil and gas activities, operators shall provide the City Engineer the following information prior to obtaining a construction permit from the City:

- a. Copy of the state required construction site notice with the following minimum information:
 1. Site location.
 2. Site operator(s).
 3. Site operator contact phone number(s).
 4. Description of construction activity.
 5. Anticipated duration of construction activity.
- b. Copy of a site plan detailing the location of erosion control measures
- c. Install and maintain required erosion control measures throughout the life of the construction activity until final stabilization is achieved or until the City has been notified in accordance with this Section.

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- (6) If a person is required to submit a Notice of Termination (NOT) to EPA or TCEQ pursuant to an NPDES or TPDES permit to discharge stormwater associated with construction activity, the operator shall submit a copy of the NOT to the City Engineer at the same time the operator submits the NOT to the EPA or the TCEQ, as applicable. If final stabilization as required by EPA or TCEQ has not been achieved at the time the operator submits the NOT, the operator shall also submit a copy of the NOI for the operator who assumes responsibility for the site.
 - (7) Construction activity shall be conducted in strict compliance with the requirements of NPDES or TPDES permit to discharge stormwater associated with construction activity.
 - (8) Each permit authorizing land disturbing activity shall include a requirement that any land clearing, construction or development involving the movement of earth shall be in accordance with the erosion and sediment control plan and that a site operator shall be on site each day where construction or grading activity takes place.
 - (9) Compliance with the requirements of this Section must occur prior to the issuance of any building, grading or other land development permit required for land disturbing activity.
- (d) Review and Approval
- The City Engineer shall review each storm water pollution prevention plan to determine its conformance with the provisions of this Ordinance. The City Engineer shall, in writing:
- (1) Approve the plan;
 - (2) Approve the plan subject to such reasonable conditions as may be necessary to secure the objectives of this Ordinance and issue the approval subject to such conditions; or
 - (3) Disapprove the plan indicating the deficiencies and the procedure for submitting a revised application and/or submission.
- (e) Modification of Plan
- Amendments to the erosion and sediment control plan shall be submitted to the City Engineer, and shall be processed and approved or disapproved in the same manner as the original plans. Field modifications of a minor nature must be authorized in writing by the City Engineer.
- (f) Unpermitted Discharges
- It is an offense if a storm water runoff discharge associated with construction activity occurs without a NPDES or TPDES permit having first been obtained for such storm water discharge associated with construction activity.
- (g) Submission of Notice of Intent / Construction Site Notice
- The owner or operator of a facility shall possess a properly issued NPDES or TPDES permit in order discharge storm water associated with construction activity. The owner

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or operator shall submit to the City copy of the a Notice of Intent (NOI) submitted to the EPA or TCEQ or a copy of the Construction Site Notice for small construction activity, and a copy of a site plan detailing the location of erosion control measures to the City Engineer prior to obtaining a construction permit for that activity.

- (h) A person commits an offense if the person operates a facility that is discharging storm water runoff associated with construction activity without having first submitted a copy of the NOI related to such discharge to the City.
- (i) Design Requirements
All grading plans shall comply with the City's Unified Development Code and Engineering Design Criteria Manual (EDCM). Erosion control practices and sediment control practices shall comply with the design criteria set forth in the most recent version of the City's EDCM, Specifications, and shall be adequate to prevent transportation of sediment from the site.
- (j) Clearing and Grading
Clearing and grading activities shall be allowed only when in compliance with all other sections of this Ordinance. Clearing techniques that retain natural vegetation and retain natural drainage patterns, as described in the most recent EPA SWPPP guide shall be used. Such techniques include minimizing the disturbed area and protecting natural features and soil, phasing construction activity, controlling stormwater flowing onto and through the project using ditches, berms, or other applicable BMPs, stabilizing soils promptly, and protecting slopes with erosion control blankets or turf reinforcement mats, among other approved techniques.
- (k) Inspection
 - (1) The City Engineer may inspect the work and may either approve that portion of the work completed or notify the permittee that the work fails to comply with the Storm Water Pollution Prevention Plan as approved. Plans for grading, stripping, excavating and fill work bearing the stamp of approval of the City Engineer shall be maintained at the site during the progress of the work.
 - (2) The permittee or the permittee's agent shall inspect all control measures in accordance with the inspection schedule set forth in the approved SWPPP. The purpose of such inspections are to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be documented in writing and submitted to the City Engineer as specified in the permit.
 - (3) The City Engineer may enter the property of the applicant, as deemed necessary and appropriate, to confirm the accuracy of the reports filed in accordance with subsection (b) of this section.
- (l) Stop work order; revocation of permit
When reasonable cause exists that a permitted for land disturbing activity has violated

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the terms of the permit or implemented site development in such a manner that materially adversely affects the health, welfare or safety of persons residing or working in the development site or nearby area or is materially detrimental to the public welfare or injurious to property or improvements in the neighborhood or nearby area, the City Engineer, upon notice to the person holding the permit may suspend or revoke the permit, in addition to invoking any other penalty provisions contained in this article

(m) Submission of Notice of Termination

The owner or operator of a site requesting to terminate coverage under the construction general permit must submit to the City a signed copy of a completed Notice of Termination (NOT) on a form supplied by the TCEQ meeting the requirements of the construction general permit. The NOT must be submitted to TCEQ, and a copy of the NOT provided to the City, within 30 days of the occurrence of any the following conditions:

- (1) Final stabilization has been achieved on all portions of the site that are the responsibility of the permittee;
- (2) Transfer of operational control has occurred; or
- (3) The operator has obtained alternative authorization under an individual TPDES permit or alternative TPDES general permit.

SECTION 30-147. POST-CONSTRUCTION STORM WATER RUNOFF

Post-construction storm water management in new or redevelopment projects shall include stormwater protection measures that comply with Chapter 8 of the City's Engineering Design Criteria Manual: Stormwater Management, the City's BMP's and City Code of Ordinances Section 13-23; *Stormwater Storage Facilities Maintenance*.

(a) Operation and Maintenance Agreement

Infrastructure plans shall be provided to the City Engineer for all new and redevelopment projects prior to final approval of a project. In all cases, prior to plan approval of detention facilities, the owner of the site shall execute the City's Stormwater Facility Maintenance Agreement ("Agreement") that shall be binding on all current and subsequent owners of the site, portions of the site, and all lots or parcels served by the detention facility.

The Agreement shall require the owner or owners to maintain, repair, and if necessary, reconstruct structural components of a detention facility, and shall state the terms, conditions, and establish a schedule of maintenance for the detention facility. In addition, the agreement shall grant to the City a right of entry to inspect, monitor, maintain, repair, reconstruct, or discontinue the use of the detention facility; however, in no case shall the right of entry, confer an obligation on the City to assume any responsibility associated with the detention facility.

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The Agreement must be approved by the City Engineer prior to plan approval. The executed Agreement shall be recorded by the City with the appropriate County Deed Records, and the recording information shall be referenced on the final plat.

SECTION 30-148. ENFORCEMENT

Notice of Violation

Whenever the City Engineer finds that a person has failed to meet a requirement of this Ordinance, the City Engineer may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of Illicit Connections or Discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of costs to cover administrative and remediation costs;
- (6) Withholding of certificate of occupancy for subject property or properties; and/or
- (7) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be performed by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

SECTION 30-149. APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation from the City Engineer may appeal the City Engineer's determination. The notice of appeal must be in writing and received within ten (10) days from the date of the Notice of Violation is delivered to the violator. The City Council shall hear the appeal within thirty (30) days from the date of receipt of the notice of appeal. The decision of the City Council shall be final.

SECTION 30-150. ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten days following the decision of the City Council upholding the decision of the City Engineer, then representatives of the City may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City Engineer, the City Engineer and/or any contractor designated by the City Engineer to enter upon the premises for the purposes set forth above.

SECTION 30-151. COST OF ABATEMENT OF THE VIOLATION

Within ten (10) days following abatement of the violation by the City, the owner of the property

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shall be notified of the cost of abatement, including administrative costs ("Notice of Costs"). The property owner may file a written protest objecting to the amount of the assessment within five (5) days ("Appeal Period") following the date the Notice of Costs is delivered to the violator. If the costs are not paid by the expiration of the Appeal Period, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation.

SECTION 30-152. INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the City may petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

SECTION 30-153. VIOLATIONS DEEMED A PUBLIC NUISANCE

In addition to the enforcement processes and penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed 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.

SECTION 30-154. REMEDIES NOT EXCLUSIVE

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

Section 2. Penalty. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not more than Five Hundred Dollars.

Section 3. Savings. All rights and remedies which have accrued in favor of the City under this Chapter and amendments thereto shall be and are preserved for the benefit of the City.

Section 4. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid, unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and

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independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 5. Codification. It is the intent of the City Council of the City of Pearland, Texas, that the provisions of this ordinance shall be codified in the City's official Code of Ordinances as provided hereinabove.

Section 6. Publication and Effective Date. The City Secretary shall cause this ordinance, or its caption and penalty, to be published in the official newspaper of the City of Pearland, upon passage of such ordinance. The ordinance shall then become effective ten (10) days from and after its publication, or the publication of its caption and penalty, in the official City newspaper.

PASSED and APPROVED ON FIRST READING this the 10th day of December, A. D., 2018.



TOM REID
MAYOR

ATTEST:



YOUNG LORFING
CITY SECRETARY

APPROVED AS TO FORM:


DARRIN M. COKER
CITY ATTORNEY


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PASSED and APPROVED ON SECOND AND FINAL READING this the 17th day of December,
A. D., 2018.



TOM REID
MAYOR


ATTEST:



YOUNG LORFING, TRMC
CITY SECRETARY



APPROVED AS TO FORM



DARRIN M. COKER
CITY ATTORNEY

VOTING RECORD SECOND AND FINAL READING

December 17, 2018

Voting "Aye" - Councilmembers Carbone, Reed, Moore,
Hernandez, Little, and Owens

Voting "No" - None.

Motion passes 6 to 0. Councilmember Perez absent.

PUBLICATION DATE December 19, 2018

EFFECTIVE DATE: December 28, 2018

PUBLISHED AS REQUIRED BY SECTION 3.10
OF THE CHARTER OF THE CITY OF PEARLAND, TEXAS