

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 46 “STORMWATER MANAGEMENT” OF THE CITY OF BRYAN CODE OF ORDINANCES, BY REPEALING AND REPLACING ARTICLE III, MUNICIPAL STORMWATER MANAGEMENT, OF THE BRYAN CITY CODE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR CODIFICATION; PROVIDING FOR PENALTIES; PROVIDING FOR PUBLICATION IN THE NEWSPAPER AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan is permitted through the Texas Pollution Discharge Elimination System (TPDES) for management and operation of its municipal separate storm sewer system (MS4); and

WHEREAS, the City is required through its TPDES permit to maintain legal authority necessary to implement and enforce the requirements of its TPDES permit;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN:

1.

That Chapter 46, “Stormwater Management” of the Bryan Code of Ordinances is hereby amended by repealing Article III, “Municipal Stormwater Management” in its entirety and replacing with the following:

Article III. MUNICIPAL STORMWATER MANAGEMENT

DIVISION 1. IN GENERAL

Sec. 46-100. Purpose and intent

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

- (1) Regulate the contribution of pollutants into the MS4 system by any person or entity;
- (2) Prohibit illicit discharges and illegal connections to the MS4;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, into the MS4; and,
- (4) To enforce legal authority to carry out all inspections, surveillance, monitoring and enforcement procedures necessary to ensure compliance with the City of Bryan s TPDES permit.

Sec. 46-101-46-109. Reserved.

DIVISION 2. DEFINITIONS

Sec. 46-110. Definitions

In this article:

Administrator shall mean the public works director of the City of Bryan or designee.

Best management practices (BMP) shall mean schedules of activities, prohibitions of practices, general housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater receiving waters, or municipal separate storm system. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

City shall mean the City of Bryan.

City manager shall mean city manager of the City of Bryan or designee.

Commercial pertains to any business, trade, industry, or other activity engaged in for profit activities.

Common plan of development means a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as a “common plan of development or sale”) is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate “common plans,” with only the interconnected parts of a project being considered part of a “common plan” (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same “common plan” is not included in the area to be disturbed.

Construction or construction activity shall mean soil disturbance activities, including clearing, grading, and excavating; and does not include 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 existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

Construction site notice (CSN) means the statewide form that must be completed and displayed on small and large construction activity as defined by this section.

Development Permit means the city permit issued for any construction activity within the City of Bryan corporate limits or within the extra-territorial jurisdiction of the city, by which compliance with stormwater quality regulations are tracked.

Discharge is any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the MS4 or into waters of the United States.

Discharger is 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.

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

Garbage shall mean 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.

Harmful quantity is the amount of any substance that will cause pollution of waters of the State, state water, or MS4.

Household hazardous waste (HHW) is any material generated in a household (including single and multiple residences, hotels, and motels, camp grounds, picnic ground, 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 40 CFR Part 261.

Hazardous materials are any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit discharge is any direct or indirect non-stormwater discharge to the MS4, except as exempted in section 46-120 herein.

Illicit connection means any drain or conveyance connecting an illicit discharge directly to the MS4, whether on the surface or subsurface, which allows an illicit discharge to enter the stormwater system, including, but not limited to, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial activity means any of the ten (10) categories of industrial activities included in the definition of “stormwater discharges associated with industrial activity” as defined in the TPDES multi sector general permit.

Industrial waste is any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

Large construction activity means construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than five (5) acres of land. Large construction activity also includes 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 larger common plan will ultimately disturb equal to or greater than five (5) acres of land. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (for example, the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.)

Municipal separate storm sewer system (MS4) is 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 stormwater, and which is not used for collecting or conveying sewage.

Notice of intent (NOI) means a written submission to the executive director of the TCEQ (Texas Commission of Environmental Quality) from an applicant requesting coverage under a TCEQ general permit requesting coverage.

Notice of change (NOC) means a written submission to the executive director of the TCEQ (Texas Commission on Environmental Quality) from a discharge authorized under a TCEQ general permit requesting change of coverage.

Notice of termination (NOT) means a written submission to the executive director of the TCEQ (Texas Commission of Environmental Quality) from a discharger authorized under a TCEQ general permit requesting termination of coverage.

Non-stormwater discharge is any discharge to the stormwater drain system that is not composed entirely of stormwater runoff.

Person shall mean any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or the owner's agent.

Pollutant shall mean anything that causes or contributes to pollution. Pollutants may include, but are not limited to the following: paints, varnishes, and solvents; oil and other automotive or marine vessel fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects; articles and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli, form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Pollution (from Texas Water Code (TWC) §26.001(14)) shall mean the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Premises shall mean any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

Public owned treatment works (POTW) means sewage or wastewater treatment works as defined by the Federal Clean Water Act and owned by the city. The definition includes any devices or systems

used in the collection, storage, treatment, recycling, and reclamation of sewage sludge or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

Release shall mean any spilling, leakage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate stormwater system (MS4) or the waters of the United States.

Small construction activity means construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres of land. Small construction activity also includes 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 will ultimately disturb equal to or greater than one (1) and less than five (5) acres of land. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (for example, the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.)

Stormwater is any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater pollution prevention plan (SWP3) shall mean a document that describes the best management practices and activities to be implemented by a person or entity to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyances system, and/or receiving waters to the maximum extent practicable. Such plan shall include an erosion and sedimentation control plan specific to the property the SWP3 is intended to cover.

Texas Pollutant Discharge Elimination System (TPDES) shall mean the regulatory program delegated to the State of Texas by the EPA pursuant to 33 USC § 1342(b).

Uncontaminated shall mean not containing a harmful quantity of any substance.

Vehicle shall mean any object used for transportation of persons or cargo, regardless of whether self-propelled or attached to another vehicle for transport.

Wastewater means liquid and water-carried wastes and sewage from residential dwellings, commercial buildings, institutions, and industrial or manufacturing facilities, whether treated or untreated, which are contributed to the POTW.

Waters of the United States means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate wetlands;
- (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

- (a) which are or could be used by interstate or foreign travelers for recreational or other purposes;
- (b) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
- (c) which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) all impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) tributaries of waters identified in paragraphs (a) through (d) of this definition; (f) the territorial sea; and
- (f) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of Clean Water Act (other than cooling ponds as defined in 40 CFR §423.11(m) which also meet the criteria of this definition) are not waters of the U.S. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the U.S. (such as disposal area in wetlands) nor resulted from the impoundment of waters of the U.S. Waters of the U.S. do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Yard waste is any leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

Secs. 46-111-46-119. Reserved.

DIVISION 3. PROHIBITIONS

Sec. 46-120. Discharge prohibitions.

- (1) *Prohibition of illicit discharges:* It shall be unlawful for any person to discharge or cause to be discharged into the MS4 or watercourses any materials, including, but not limited to pollutants or waters containing pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.
- (2) *Exceptions:* The commencement, conduct or continuance of any illicit discharge to the MS4 is prohibited, except as described as follows:
 - (a) Flushing of water lines or other potable water sources;
 - (b) Landscape irrigation or lawn watering;
 - (c) Diverted stream flows;
 - (d) Rising ground water;

- (e) Uncontaminated pumped ground water;
 - (f) Foundation or footing drains (not including active groundwater dewatering systems);
 - (g) Crawl space pumps;
 - (h) Springs;
 - (i) Individual residential vehicle washing;
 - (j) Natural riparian habitat or wetland flows;
 - (k) Firefighting activities;
 - (l) Agricultural stormwater runoff;
 - (m) Any other water source not containing pollutants.
- (3) Any non-stormwater discharge permitted under a TPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ), provided that the discharger is in full compliance with all the requirements of the permit, waiver, or order and other applicable laws and regulations, and provided further that written approval has been granted for any discharge to the MS4.
- (4) *Specific prohibitions and requirements:*
- (a) It shall be unlawful to construct, use, maintain or continue the existence of illicit connections to the MS4.
 - (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under the laws or practices applicable or prevailing at the time of connection.
 - (c) A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
 - (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 of the following substances into the MS4:
 - i. Any used motor oil, antifreeze, or any other motor vehicle or marine vehicle fluid;
 - ii. Any industrial waste;
 - iii. Any hazardous waste, including household hazardous waste;
 - iv. Any domestic sewage or septic tank waste, grease trap waste, sludge or grit trap waste;

- v. Any garbage, rubbish, or yard waste;
 - vi. Any dumpster or trailer overflow.
- (f) Any wastewater from any of the following sources: commercial carwash facility; 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;
 - (g) Any wastewater from a commercial mobile power washer or from the washing or cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
 - (h) Any wastewater from commercial floor, rug, or carpet cleaning;
 - (i) Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, Degreaser, emulsifier, dispersant, or any other harmful cleaning substances; or any wastewater from the wash down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released materials have been previously removed;
 - (j) Any effluent from cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;
 - (k) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro-mulch material, or from cleaning of vehicles or equipment containing, or used in transporting or applying, such material;
 - (l) Any substance or material that will damage, block, or clog the MS4;
 - (m) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, sludge, or other material associated with clearing, grading, excavation, or other construction activities, or associated with land filling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable.
 - (n) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.

Sec. 46-121. Emergency suspension of utility service and municipal stormwater drainage system access.

- (1) The city may, without prior notice, suspend water service, sanitary sewer service or MS4 discharge access to a person discharging to the MS4, waters of the United States, when such suspension is necessary to stop an actual or threatened discharge which:
 - (a) Presents or may present imminent and substantial danger to the environment or to the health or welfare of persons; or

- (b) Presents or may present imminent and substantial danger to the MS4 or waters of the United States.
- (2) As soon as is practicable after the suspension of service or MS4 discharge access, the administrator will notify the violator of the suspension and order the violator to cease the discharge immediately.
- (3) If the violator fails to comply with an order issued, the administrator may take such actions as the administrator deems necessary to prevent or minimize harmful discharges to the MS4, waters of the United States, or to persons or wildlife.
- (4) The city will not reinstate suspended services or MS4 access to the violator until:
 - (a) The violator presents proof, satisfactory to the administrator that the noncomplying discharge has been eliminated and its cause determined and corrected;
 - (b) The violator reimburses the city for all costs the city incurred in suspending and reinstating water service, sanitary sewer connection, and MS4 access; and
 - (c) The violator reimburses the city for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the MS4 incurred by the city while responding to, abating, and remediating the discharge or threatened discharge.
- (5) A violator whose service or access has been suspended or disconnected may appeal the enforcement action to the city manager's attention, in writing, within ten (10) days of notice of the suspension. The city manager will render a decision within seven (7) days upon written receipt of the petition.
- (6) The remedies provided by this section are in addition to any other remedies set out in this article. Exercise of this remedy is not a bar against, or a prerequisite for, taking other action against a violator.
- (7) A person commits an offense if the person reinstates water service, sanitary sewer service, or MS4 access to premises terminated pursuant to this section, without the prior approval of the administrator.

Sec. 46-122. Nonemergency suspension of utility service and municipal stormwater drainage system access.

- (1) The city may suspend the city provided water supply, sanitary sewer connection, or MS4 access for any person failing to comply with previous notices to cease discharges to the MS4 in violation of this article. Utilities will be subject to suspension if such measures would abate or reduce the discharge.
- (2) The administrator will notify a violator of the proposed suspension of its water supply, sanitary sewer connection or MS4 access. The violator may petition the administrator for a reconsideration and hearing before the city manager.
- (3) The city will not reinstate suspended services or MS4 access to the discharger until:

- (a) The violator presents proof, satisfactory to the administrator, that the noncomplying discharge has been eliminated and its cause determined and corrected;
 - (b) The violator reimburses the city for all costs the city incurred in suspending and reinstating water service, sanitary sewer connection, and MS4 access; and
 - (c) The violator reimburses the city for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the MS4 incurred by the city while responding to, abating, and remediating the discharge or threatened discharge.
- (4) The remedies provided by this section are in addition to any other remedies set out in this article. Exercise of this remedy is not a bar against, or a prerequisite for, taking other action against a violator.
- (5) A person commits an offense if the person reinstates water service, sanitary sewer service, or MS4 access to premises terminated pursuant to this section, without the prior approval of the administrator.

Sec. 46-123. Industrial or construction activity discharges.

- (1) Any person subject to an industrial or construction TPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required by the administrator prior to allowing discharges to the MS4.
- (2) The operator of a facility that is required to have a TPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the NOI to the city at the same time the operator submits the original NOI to the TCEQ, as applicable. The copy of the NOI may be delivered to the administrator either in person or by mail.
- (3) A person commits an offense if the person operating a facility that is discharging stormwater associated with an industrial activity without having submitted a copy of the NOI to do so to the administrator.

Sec. 46-124. Construction activity permit and application.

- (1) No person shall commence construction activities meeting the requirements of the TPDES general construction permit without a development permit issued by the city. A person shall make application for a permit to the city on forms furnished by the city and shall provide the following information:
 - (a) Name, legal name of business or entity, business address, and telephone number of the applicant.
 - (b) Site-specific SWP3 for the construction activity.
 - (c) A copy of the NOI and/or CSN depending on the area (e.g. acreage) disturbed by the construction activity.
 - (d) A copy of the TCEQ-issued TPDES permit number for the project (if applicable).

- (2) *Fees.* All fees required under this section will be set by resolution of the city council.
- (3) *Permit decisions.* The city will evaluate the data furnished by the applicant and may require additional information. Within 7 calendar days of receipt of a completed permit application, the city will determine whether or not to issue a development permit. The city may deny an application or a permit for any of the following grounds:
- (a) Failing to provide all of the information required by the city;
 - (b) The applicant's past record of ordinance violations;
 - (c) Safety record of the applicant or any driver, based on such things as civil and criminal lawsuits and violations of environmental laws and ordinances;
 - (d) Providing false, misleading or inaccurate information to the city.
- (4) *Permit.*
- (a) Permits shall remain active until final stabilization for the construction activity has been achieved.
 - (b) A new permit application is required to be submitted within fifteen (15) days of the following, whereupon the previous permit will be voided and the previous permit canceled:
 - i. When ownership of the operating entity is changed; or
 - ii. The city determines that operations or management methods are no longer adequately described by the existing permit application.
 - iii. The effective date of the renewed TPDES construction general permit.
 - (c) Permits are not transferrable.
 - (d) Suspension or revocation of permit. A permit may be revoked by the city for any violation of this section.
 - (e) *Appeals.* An applicant has the right to appeal a determination made by the administrator to the city manager by submitting a written appeal to the city secretary, with a copy to the administrator, not more than five (5) days after receiving notice of the suspension or denial of permit. The city manager or his or her designee will hear the appeal and issue a written finding not more than twenty (20) days after the notice was delivered to the city secretary. The city manager's determination is final.

Sec. 46-125. Planning requirements for site construction.

- (1) The SWP3 shall describe and ensure the implementation of practices that will be used to reduce the pollutants in stormwater discharges associated with construction activity at the construction site and assure compliance with the terms and conditions of a TCEQ stormwater permit.

- (2) A SWP3 is not required when a portion of a previously developed tract of land is redeveloped, unless the redevelopment will result in the disturbance of more than one acre of existing vegetation or impervious cover.
- (3) The SWP3 must be prepared at the time of submission of the NOI or CSN to the city.
- (4) The SWP3 must identify any environmentally sensitive areas that will receive any pollutants carried by stormwater from the site.
- (5) The following requirements apply to development of sites five (5) acres and greater or development of sites regardless of size that are part of a common plan of development:
 - (a) Obtain a city-issued development permit.
 - (b) A copy of the operator's SWP3, NOI provided to TCEQ, and CSN must be provided to the city before the construction activity commences.
 - (c) A copy of the operator's NOT provided to TCEQ must be provided to city after final stabilization has been achieved.
 - (d) The area of the development will be based upon any or all of the following: platted lot(s), site plan of the development, phased-in name of the development and/or ownership of the property or, if not platted, based upon the area of the tract owned by the developer, including all contiguous property owned by the same person.
- (6) The following requirements apply to development of sites disturbing between one (1) acre and five (5) acres:
 - (a) Obtain a city-issued development permit.
 - (b) A copy of the operator's SWP3 and CSN must be provided to the city before the construction activity commences.
 - (c) A copy of the operator's notification of closure for the CSN must be provided to city when final stabilization has been achieved.
 - (d) The area of the development will be based upon any or all of the following: platted lot(s), site plan of the development, phased-in name of the development and/or ownership of the property or, if not platted, based upon the area of the tract owned by the developer, including all contiguous property owned by the same person.
- (7) The following requirements apply to development of sites less than one acre, if not part of a common plan of development:
 - (a) Obtain a city-issued development permit.
 - (b) A copy of the operator's SWP3 must be provided to the city before the construction activity commences.
 - (c) The area of the development will be based upon platted lot(s), site plan of the development, phased-in name of the development, and/or ownership of the property

or, if not platted, based upon the area of the tract owned by the developer, including all contiguous property owned by the same person.

- (8) Minimum requirements of a SWP3 can be found in the most recent TPDES construction general permit.

Sec. 46-126. - Pollution control measures.

- (1) The responsible party of any construction site within the city shall implement measures necessary to control erosion, sedimentation, debris, and stormwater pollution. The responsible party is responsible for the maintenance and performance of the temporary pollution control measures until permanent measures are in place. The pollution controls are designed and should be selected by the responsible party to achieve the best results in controlling the pollution.

- (2) *Temporary pollution control measures (during construction).* This subsection provides examples of temporary pollution control measures that can be used to control erosion and sedimentation.

(a) Structural control of soil erosion.

- i. Stilt fences may be utilized, where necessary, to retain the sediments from disturbed areas within the site and decrease the velocity of sheet flows.
- ii. Straw bales may be utilized, where necessary, to retain sediments from disturbed areas within the site and decrease the velocity of sheet flows. Straw bales are particularly useful in paved areas where silt fences cannot be erected.
- iii. Stabilized construction entrances shall be designed to reduce the amount of soil tracked off the construction site by vehicles leaving the site. A stabilized construction entrance should be utilized to control tracking of material from the site. The responsible party shall ensure that vehicles entering and leaving the construction site use the stabilized construction entrance. The owner or operator of a vehicle entering or leaving a construction site may not track soil off the construction site.
- iv. Vegetative buffer strips, of appropriate size, should be maintained, where necessary and practical, to aid in reducing the velocity of stormwater and in trapping sediments in the stormwater leaving the site. A vegetative buffer will usually suffice as a structural control until final stabilization is accomplished.
- v. Inlet protection barriers must be installed around all inlets to the storm sewer system and remain in place until the area surrounding the inlet is paved or stabilized sufficiently to prevent silt laden runoff from entering the storm sewer system.

- (b) *Waste Controls.* Waste disposal must be accompanied in a manner so that no solid wastes, including building materials, hazardous substances, oil, or packaging leave the site, except for disposal at an appropriate, approved solid waste management

facility, in conformance with the Texas Solid Waste Disposal Act. To the extent practicable, no solid waste, including building materials, hazardous substances, or oil may be allowed to enter the city MS4, city streets, or waters of the United States. Building materials include, but are not limited to, uncovered stockpiles of soil, sand, dry cement, lumber, bricks, packaging or other products used in construction. The general contractor and/or builder, to whom the development permit and/or building permit is issued, is responsible for the conduct of all subcontractors with regards to disposal of wastes generated by the construction activities at the site.

- (c) Dust control. Reasonable measures shall be taken to control dust, particulate matter, and windblown debris.
 - (d) *Hazardous Material Storage*. Chemicals, paints, solvents, fertilizers, and other toxic materials must be stored in waterproof containers. Except during applications, the contents must be kept in trucks or in storage facilities. Runoff containing such materials shall be collected, removed from the site, and disposed of at an approved solid waste or chemical disposal facility.
 - (e) *Concrete Trucks*. The responsible party may not allow the owner or operator of a concrete truck to wash out or discharge surplus concrete or drum wash water at a construction site, unless the surplus concrete or drum wash water in concrete trucks is discharged at a facility on the construction site that will retain all concrete wash waters or leachates, including any wash waters or leachates mixed with stormwater. Concrete wash waters and leachates may not be allowed to enter the MS4, city streets, adjacent properties, the waters of the United States, or ground waters.
- (3) *Final pollution control measures (post construction)*. These measures, specific to the type of site, provide final stabilization of the construction sites:
- (a) All soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
 - (b) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface water and areas which are not being returned to their pre-construction agricultural use must meet the final stabilization conditions of condition 3(a) above.
 - (c) Acceptance of improvements by the city can occur before the final stabilization coverage requirement is met, if the developer agrees to maintain the stabilization until coverage is achieved and all other permanent measures are complete (i.e. performance bond).
 - (d) Once final stabilization has been achieved, the responsible party shall notify the administrator, or designated representative that final stabilization has been achieved.

- (e) Erosion control structures must be provided where necessary to control erosive velocities in unlined channels or swales leaving the site.
 - (f) Sediment traps must be provided on the site, as necessary, to control sedimentation from concentrated storm water discharges into an environmentally sensitive area. Individual assessments must be made on a site-specific basis. However, a rock rubble low berm must be installed around an outfall that discharges directly into an environmentally sensitive area, unless this requirement is waived by the administrator because the responsible party has installed another type of sediment trap that provides equal or better protection.
- (4) *Scheduling of control measures.* pollution control measures must be implemented in a sequence that will provide maximum stormwater pollution control based on the following principles:
- (a) Down slope and side slopes perimeter controls must be installed before land disturbing activity occurs.
 - (b) The responsible party shall not disturb the site until the responsible party is ready for construction to proceed.
 - (c) Efforts to provide cover or stabilize disturbed areas must occur as soon as possible.
 - (d) Temporary perimeter controls may not be removed until all upstream areas are permanently stabilized.
- (5) Inspection of pollution control measures. The responsible party shall inspect all pollution control measures every fourteen (14) days and within twenty four (24) hours following a rainfall of 0.5 inches or greater, at the site. The inspection reports are to be considered part of the operator's SWP3, and as such, are subject to the same record retention schedule and availability requirements of the SWP3. The inspection reports, as well as, the entire SWP3 shall be made available for inspection by a representative of the city, during normal business hours.
- (6) Maintenance of pollution control measures.
- (a) The responsible party shall maintain and ensure adequate performance of the temporary pollution control measures until permanent pollution control measures are in place.
 - (b) Whenever the temporary or permanent pollution control measures do not keep soil, sediment, and debris on the construction site, such as excessive tracking of dirt offsite by vehicles and runoff of sediments from the site over sidewalks and into the streets and gutters, etc., the responsible party shall remove the soil, sediment, and debris from streets, sidewalks, inlets, or other areas including private property impacted such as determined by the administrator, return the soil and sediment to the areas to be stabilized, and properly dispose of the debris.
 - (c) The responsible party is responsible for the maintenance of any permanent pollution control measures located on the site, unless the owner has dedicated the permanent pollution control measure to the city and has provided the city with any easements

necessary to allow access to the permanent pollution control measure and to conduct any required maintenance activities.

Sec. 46-127. Monitoring of discharges.

- (1) *Applicability* This section applies to all facilities that have stormwater discharges associated with industrial and construction activities.
- (2) *Access to facilities:*
 - (a) The administrator shall be permitted to enter and inspect facilities subject to regulation under this article as often as necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access.
 - (b) Facility operators shall allow the administrator ready access to all parts of the premises for the purpose of the inspection, sampling, examination and copying of records that must be kept under the conditions of a TPDES permit to discharge stormwater, and to the performance of any additional duties as defined by the state and federal law.
 - (c) The administrator shall have the right to set up on any permitted facility such devices as are necessary in their opinion to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (d) The administrator has the right to require the discharger to install monitoring equipment as necessary. 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 stormwater flow and quality shall be calibrated to ensure their accuracy.
 - (e) 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 operator at the written or oral request of the administrator and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 - (f) If the administrator has been refused access to any part of the premises from which stormwater is discharged, and the administrator is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the administrator may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 46-128. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for an emergency response for a facility or operation has information of any known or suspected release of materials which are resulting, or may result in illegal discharges or pollutants discharging into stormwater or the storm drainage system, or waters of the United States, said person

shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mail[ed] to the administrator within three business days of the phone notification. If the discharge of prohibited materials emanates from a commercial or industrial facility, the owner or operator of such facility shall also retain an on-site written record of the discharge and the actions taken to prevent its reoccurrence. Such records shall be retained for at least three years.

Division 4. Enforcement.

Sec. 46-129. Penalty.

A person who violates any section of this article is guilty of a misdemeanor and upon conviction is punishable in accordance with section 1-14.

Sec. 46-130. Notice.

The city will serve persons operating in violation of this article with written notice stating the nature of the violation and providing a reasonable time limit for satisfactory compliance. Failure of the city to provide such notice does not limit the authority of the city to take any action deemed appropriate.

Sec. 46-131. Recovery of costs incurred by the city.

Any person violating any of the provisions of this article; causing damage to or impairing the MS4; or cause impairment or damage to the MS4 will be liable to the city for any expense, loss, or damage caused by such violation or action. The city will bill the person for the costs incurred for any cleaning, repair, replacement, or remediation work caused by the violation or action. Refusal to pay the assessed costs shall constitute a violation of this division enforceable under the provisions of this article.

2.

That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

3.

The Bryan City Code, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

4.

If any section, paragraph, sentence, clause, phrase or word of this ordinance is declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this ordinance are declared to be severable.

5.

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Section 551.001, *et seq.*, of the Texas Government Code, and that advance public notice of the time, place and purpose of said meetings was given.

6.

It is the intention of the City Council that this ordinance shall become a part of the Bryan City Code and it may be renumbered and codified therein accordingly.

7.

That a person who violates any section of this ordinance is guilty of a misdemeanor and upon conviction is punishable in accordance with Section 1-14 of the City of Bryan Code.

8.

That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in compliance with the provisions of the City Charter, which publication shall be sufficient if it contains the title of this ordinance, the penalty provided therein for violation thereof, and the effective date of the ordinance.

9.

That this ordinance shall take effect from and after its final passage and publication as required by law. The effective date of this Ordinance will be _____, 2016.

PRESENTED AND GIVEN first reading the 15th day of December , 2015, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 12th day of January , 2016, by a vote of ____ ayes and ____ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary
City of Bryan

Jason P. Bienski, Mayor
City of Bryan

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney
City of Bryan