

## ORDINANCE 2017-02

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF BURNET, TEXAS CHAPTER 98, SUBDIVISIONS BY ADOPTING ARTICLE VIII, NON-POINT SOURCE POLLUTION; ADOPTING NPS TECHNICAL MANUAL; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING AN EFFECTIVE DATE; AND FINDING PROPER NOTICE OF MEETING.**

**WHEREAS**, the City Council of the City of Burnet, Texas (the "City") seeks to provide for the health, safety and welfare of its citizens; and

**WHEREAS**, the Council finds that the drainage ways and creeks of the City are subject to the potential for periodic pollution which may result in the loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for pollution reduction and protection, all of which adversely affect the public health, safety and general welfare; and

**WHEREAS**, the Council seeks to protect the drainage ways, creeks, rivers, and lake areas of the City from non-point source pollution; and

**WHEREAS**, the City has the authority to regulate non-point source pollution ("NPS") within the City's corporate limits pursuant to Texas Local Government Code Chapters 51, 212, 401, and 402, the Texas Water Code Chapters 7 and 26, and sections 2.01 and 2.05 of the City Charter; and

**WHEREAS**, the Council seeks to amend that portion of the City Code of Ordinances relating to non-point source pollution and add a new Article related to the regulation of non-point source pollution control;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BURNET, TEXAS:**

**Section 1.** Findings: The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

**Section 2.** Sec. 98-41 Repealed and replaced: Section 98-41, Drainage improvements of Code of Ordinances Chapter 98, Article IV is hereby repealed in its entirety and replaced by a new Sec. 98-41 as follows:

**Sec. 98-41 Storm water collection and conveyance systems.**

- (a) *Required Permits and Authorizations.* Unless otherwise exempt under the terms of this chapter, all property owners subject to these land use regulations shall obtain all permits or authorizations required herein.
- (b) *System design requirements.* Drainage improvements shall be designed so as to

not cause damage to other property, shall accommodate Runoff from the upstream drainage area in its anticipated maximum "build-out" condition, and shall be designed in accordance with the most recently adopted Drainage Criteria Manual to prevent overloading the capacity of the downstream drainage system. The City may require the phasing of development, the use of control methods such as retention or detention, or the construction of off-site drainage improvements in order to mitigate the impact of the proposed development. No storm water collection system shall be constructed unless it is designed in accordance with the Drainage Criteria Manual by a Licensed Professional Engineer, and unless it is reviewed and approved by the City Engineer. All plans submitted to the City shall include a layout of the drainage system together with supporting calculations for the design of the system.

- (c) All Erosion and Sedimentation controls shall conform to the Non-point Source Pollution Control Technical Manual (the "NPS Technical Manual"), as amended, a copy of which is on file at the City.
- (d) No person, individual, partnership, firm or corporation shall deepen, widen, Fill, reclaim, reroute or change the course or location of any existing ditch, channel, stream or drainage-way without first obtaining written permission of the City Engineer and any other applicable agency (such as FEMA or the U.S. Army Corps of Engineers) having jurisdiction. The City Engineer may, at his or her discretion, require preparation and submission of a FEMA or flood study for a proposed development if there are concerns regarding storm drainage on the subject property or upstream or downstream from the subject property. The costs of such study, if required, shall be borne by the Developer.
- (e) In order to help reduce storm water Runoff, and resulting Erosion, Sedimentation and conveyance of non-point source Pollutants, the layout of the street network, lots and building sites shall, to the greatest extent possible, be sited and aligned along natural contour lines, and shall minimize the amount of cut and Fill on Slopes in order to minimize the amount of land area that is disturbed during construction.
- (f) No concentrated surface cross-street flow (i.e., perpendicular to traffic flow) of storm water Runoff shall be allowed unless approved by the City Engineer. When and if such drainage flow is allowed, it must be across a concrete street (i.e., valley gutter) and as approved by the City Engineer.

All storm water treatment facilities shall be designed using materials and techniques as established in the NPS Technical Manual, or as may be required by the City Engineer.

**Section 3. Sec. 98-65 established: The Burnet Code of Ordinances is hereby amended by the addition of a new Section 98-65 (entitled "Storm drainage and Water Quality Controls") which shall read as follows:**

**Sec. 98-65. Storm drainage and Water Quality Controls.**

- (a) An adequate storm Sewer system, consisting of inlets, pipes and other

underground Structures with approved outlets, as outlined in Drainage Criteria Manual, shall be designed where Runoff of storm water and the prevention of Erosion cannot be accomplished satisfactorily by surface drainage facilities.

- (b) Areas subject to flood conditions or inadvertent storm water retention, such as standing or pooling water, as established by the City Engineer, will not be considered for development until adequate drainage has been provided.
- (c) In no case shall storm water drainage be diverted artificially to adjacent properties or across roadways except that such artificially diverted drainage may flow onto another property, or properties under separate ownership provided it does not harm or damage, or otherwise pose an inconvenience to said other property or properties, is specifically approved by the City Engineer, and conveyed across said property, or properties in a drainage easement procured from the Owner(s) of affected property or properties.
- (d) The criteria for use in designing Water Quality Control Structures, and other Best Management Practices (“BMPs”) for non-point source pollution control shall conform to Chapter 98 – Subdivisions and Article VIII – Non-point Source Pollution of the Code.
- (e) The Landowner or Developer shall ensure that all drainage improvements within public Easements or Rights-of-Way are functioning properly prior to the expiration of the maintenance bond. The Developer shall be responsible for removing any significant build- up of Sediment or debris from drainage improvements, with the exception of backlot and side lot drainage Swales, at the eleventh month of the second year for the required two- year maintenance bond for the applicable facilities. The City shall inspect the improvements to determine any maintenance or correction of deficiencies at the conclusion of this period.
- (f) Water Quality Control Structures, retention and detention facilities, and BMPs for non-point source pollution control permitted by the City under Chapter 98 of this Code shall be maintained and inspected in accordance with Chapter 98 of this Code, and any permits or authorizations issued thereunder.

**Section 4. Sec. 98-66 established: A new Sec. 98-66 “Appendix D to Chapter 98 – SUBDIVISIONS, said Appendix D, titled Non-Point Source Pollution, is hereby established as follows:**

**APPENDIX D: NON-POINT SOURCE POLLUTION CONTROL TABLE OF CONTENTS  
ARTICLE 1. GENERAL PROVISIONS**

Sec. 98-90	Authority
Sec. 98-91	Scope of Authority and Jurisdiction
Sec. 98-92	Findings of Fact
Sec. 98-93	Statement of Purpose
Sec. 98-94	Reserved

- Sec. 98-95 Non-Point Source (NPS) Pollution Control Technical Manual  
Sec. 98-96 through 98-99 [Reserved]

## **ARTICLE 2. DEFINITIONS**

## **ARTICLE 3. NON-POINT SOURCE POLLUTION CONTROL MEASURES**

- Sec. 98-101 Non-Point Source Pollution Control Management Prohibitions  
Sec. 98-102 Regulation of Pesticides, Herbicides, and Fertilizers  
Sec. 98-103 Used Oil Regulation  
Sec. 98-104 Impervious Cover  
Sec. 98-105 - 98-109 [Reserved]

## **ARTICLE 4. NPS POLLUTION CONTROL AUTHORIZATIONS**

- Sec. 98-110 Projects Exempt for Article 4  
Sec. 98-111 Non-Point Source Pollution Control Approval  
Sec. 98-112 Operating Permit  
Sec. 98-113 Required Plans  
Sec. 98-114 Maintenance Requirements  
Sec. 98-115 TPDES Notice of Intent and Stormwater Pollution Prevention Plan  
Sec. 98-116 NPS Pollution Control and BMP Performance Standards and Design Requirements  
Sec. 98-117 Water Quality Buffer Zones  
Sec. 98-118-98-119 [Reserved]

## **ARTICLE 5. ADMINISTRATIVE PROVISIONS**

- Sec. 98-120 Charges and Fees  
Sec. 98-121 Variances  
Sec. 98-122 Release Reporting and Cleanup  
Sec. 98-123 Access for Maintenance and Monitoring  
Sec. 98-124 Compliance Monitoring – Right of Entry and Inspection  
Sec. 98-125 Fiscal Security  
Sec. 98-126 Supplemental Enforcement Action  
Sec. 98-127 Stop Orders  
Sec. 98-128 Permit or Authorization Revocation  
Sec. 98-129 Denial of Approvals and Permits  
Sec. 98-130 Penalties and Injunctive Relief  
Sec. 98-131-98-139 [Reserved]

## **CHAPTER 98 – APPENDIX D: NON-POINT SOURCE POLLUTION CONTROL**

### **ARTICLE 1. GENERAL PROVISIONS**

#### **Sec. 98-90 Authority**

This appendix is promulgated under the authority of sections 2.01 and 2.05 of the Charter of Burnet, Texas, Texas Local Government Code Chapters 51, 212, 401, and 402, and Texas Water Code Chapters 7 and 26.

#### **Sec. 98-91 Jurisdiction and Scope of Authority**

- (1) Jurisdiction. This appendix shall apply to all territory within that portion of the incorporated limits of the City of Burnet, Texas located within the Lake Travis Watershed.
- (2) Scope. This appendix applies to any Development of Land in that portion of the of the City that is located within the Lake Travis Watershed..

#### **Sec. 98-92 Findings of Fact**

The drainage ways and creeks of the City of Burnet, Texas, are subject to the potential for periodic pollution and Erosion which may result in the loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for pollution reduction and protection, all of which adversely affect the public health, safety and general welfare.

- (1) All Watersheds within the City's jurisdiction are undergoing development or are facing development pressure, which if not properly regulated can adversely impact Stormwater quality.
- (2) All Watersheds within the City's jurisdiction, and especially those with abrupt topography, sparse vegetation, and thin and/or easily disturbed soil, are vulnerable to degradation resulting from development activities.
- (3) The development of land causes large quantities of soil to be displaced and transported to downstream locations. This soil displacement can create significant soil Erosion, degradation of the water quality, and Sedimentation problems. Erosion is a dangerous activity in that it contaminates water supplies and water resources. A buildup of Sediment degrades water quality, destroys valuable environmental resources and clogs watercourses and storm drains.
- (4) The continued economic growth of the City is dependent on adequate quality and quantity of water, a pleasing natural environment, and recreational opportunities in close proximity to the City.
- (5) Specifically, creek and floodplain areas in the City are valuable resources to the citizens of the City in that they provide recreational opportunities, improve the aesthetics of the community, convey Stormwater runoff and filter water

Pollutants.

- (6) If Watersheds within the City's jurisdiction are not developed in a sensitive and innovative manner, their water resources, natural environment, and recreational characteristics will be irreparably damaged. As valuable resources, creeks and floodplains warrant protection.
- (7) The City Council is desirous of adopting appropriate development rules and regulations for the purpose of protecting the water quality of the Watersheds within its jurisdiction.

#### **Sec. 98-93 Statement of Purpose**

Non-point source pollution control management policies shall govern the planning, design, construction, operation and maintenance of drainage, Erosion, and Water Quality Control facilities within the those portions of the City located within the Lake Travis Watershed. This chapter sets forth the minimum requirements necessary to provide and maintain a safe, efficient and effective non-point source pollution control system within the City and to establish the various public and private responsibilities for the provision thereof. Further, it is the purpose of this chapter to:

- (1) Protect human life, health and property;
- (2) Minimize the expenditure of public money for building and maintaining non-point source pollution control projects and cleaning Sediments out of storm drains, streets, sidewalks and watercourses;
- (3) Help maintain a stable tax base and preserve land values;
- (4) Preserve the natural beauty and aesthetics of the community;
- (5) Control and manage the quality of Stormwater Runoff, the Sediment load in that Runoff, from points and surfaces within subdivisions;
- (6) Establish a reasonable standard of design and performance for development which prevents Erosion and Sediment damage and which reduces the Pollutant loading to streams, ponds and other watercourses.

#### **ReservedSec. 98-95 NPS Technical Manual**

This appendix is designed to require an accompanying Non-point Source Pollution Control Ordinance Technical Manual (NPS Technical Manual), which describes in detail the technical requirements to be used to comply with the provisions contained in this chapter. Although the intention of this manual is to establish uniform design practices, it neither replaces the need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used to conduct hydrologic and hydraulic studies if approved by the City Engineer. The NPS Technical Manual is maintained and available for inspection at the City Offices.

**Sec. 98-96 through 98-99 [Reserved]**

**ARTICLE 2. DEFINITIONS**

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

*Applicant:* A property Owner, or any person authorized by that property Owner to submit an Application for an approval required by this appendix. .

*Application:* A written request for an approval required by this appendix, the form of which is provided by the City.

*Best Management Practices (BMP):* Schedules of activities, prohibitions of practices, maintenance procedures, management practices, infiltration BMPs, Erosion controls, vegetation practices, Stormwater and overland flow controls, retention, Water Quality Controls, and treatment facilities designed to prevent, reduce, or treat the Discharge of non-point source pollution into or adjacent to the Stormwater Drainage System or Water in the State.

*Bond:* Any form of a surety bond in an amount and form satisfactory to the City.

*Buffer Zone:* Vegetated area adjacent to a natural creek, swale, or Critical Environmental Feature that is to remain undisturbed and free of Impervious Cover to the largest extent practicable (as determined by the City).

*Business Day:* Monday, Tuesday, Wednesday, Thursday, or Friday, except legal holidays observed by the City.

*City:* The City of Burnet, Texas.

*City Manager:* The person holding the position of City Manager of the City of Burnet, as appointed by the City Council. For the purposes of this chapter, the City Manager may appoint, in writing, a designee to act on his or her behalf.

*City Engineer:* Such professional engineer or firm of licensed professional consulting engineers that has been specifically employed by the City to assist in engineering-related matters.

*Code:* City of Burnet Code of Ordinances as amended from time to time.

*Commencement of Construction:* The disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

*Contractor:* Any person, other than the Owner, engaging in land development activities on land located within the City's jurisdiction.

*Contributing On-site Drainage Area:* The portion of a site that contributes Stormwater

Runoff to a common point of interest.

*Critical Environmental Feature:* Features determined to be of critical importance to the maintenance of water quality, including groundwater recharge areas, springs, natural wetlands, caves, and highly erodible natural features.

*Developer:* A person who is engaged in clearing, grubbing, filling, mining, excavating, grading, installing streets and utilities or otherwise preparing a tract of land for the eventual division into one or more lots on which building(s) or other Structure(s) will be constructed or placed.

*Development or Development of Land:* All land modification activity or Disturbance of Land, including the construction of building, roads, paved storage areas, and parking lots. "Development" also includes any land disturbing construction activities or human-made change of the land surface, including clearing of Vegetative Cover, excavating, filling and grading, mining, and dredging, and the deposit of refuse, waste or Fill. Care and maintenance of lawns, gardens, and trees; minimal clearing (not to exceed ten feet (10') wide) for surveying and testing; and agricultural activities are excluded from this definition.

*Discharge:* Any addition or introduction of any Pollutant, Stormwater, or any other substance whatsoever into the Stormwater Drainage System or into waters of the United States or waters in the State.

*Discharger:* Any person, who causes, allows, permits, or is otherwise responsible for, a Discharge, including, without limitation, any Operator of a construction site or industrial Facility.

*Disturbance of Land or Disturbed Land:* Construction activities or human-made change of the land surface, including clearing of Vegetative Cover, excavating, filling and grading, mining, and dredging, and the deposit of refuse, waste or Fill, except for care and maintenance of lawns, gardens, and trees, minimal clearing (not to exceed ten feet (10') wide) for surveying and testing, and agricultural activities.

*Domestic Sewage:* Human excrement, gray water from home clothes washing, bathing, showers, dishwashing, and food preparation, other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings, including single-family homes, apartment houses and hotels, office buildings, factories, and institutions, that are free from Industrial Waste.

*Drainage Criteria Manual:* A technical manual containing a description of drainage policies and required methods of hydraulic and hydrologic design and analysis, adopted by Ordinance 2009-32 and as may be amended from time to time to be used in that portion of the City located within the Lake Travis Watershed.

*Easement:* The right of the City or a public utility, or both, to use an identified area on the property of another for the purpose or purposes described in the Easement Instrument, or subdivision plat.



*Erosion:* The detachment and movement of soil, Sediment, or rock fragments by wind, water, ice or gravity.

*ETJ:* The extraterritorial jurisdiction of the City as established by Texas Local Government Code Chapter 42.

*Extremely Hazardous Substance:* Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.

*Facility:* Any building, Structure, installation, process, or activity from which there is or may be Discharge of a Pollutant.

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

*Fill:* The manmade deposition and compaction of material that will effect elevation.

*Harmful Quantity:* The amount of any substance that will cause pollution of Water in the State.

*Hazardous Household Waste (HHW):* Any material generated in a household (including single and multiple residences, hotels, motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR §261.4(b)(1), would be classified as a Hazardous Waste under 40 CFR Part 261.

*Hazardous Substance:* Any substance listed in Table 302.4 of 40 CFR Part 302.

*Hazardous Waste:* Any substance identified or listed as a Hazardous Waste by the EPA pursuant to 40 CFR Part 261.

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

*Impervious Cover:* All man-made improvements that prevent the infiltration of water into the natural soil, or prevent the migration of the infiltration as base flow, including but not limited to, roads, pavements, and driveways, parking areas, buildings, pedestrian walkways and sidewalks, concrete, asphalt, masonry, surfaces areas, and paving stone surfaced areas, swimming pool water surface area, densely compacted natural soils or Fills which result in a coefficient of permeability less than  $1 \times 10^{-6}$  cm/sec., all existing man-made impervious surfaces prior to Development, water quality and Stormwater detention basins lined with impermeable materials, Stormwater drainage conveyance Structures lined with impermeable materials, interlocking or "permeable pavers," fifty percent (50%) of the horizontal surface area of an uncovered deck that has drainage spaces between the deck boards that is

located over a pervious surface. Impervious Cover does not include naturally occurring impervious features, such as rock out crops, landscaped areas and areas remaining in their natural state, Water Quality Controls and Stormwater detention basins not lined with impermeable materials, and Stormwater drainage conveyance Structures not lined with impermeable materials. A property Owner, or Developer shall not be required to provide BMP's to accommodate Runoff from impervious surfaces such as existing roads adjacent to the Development that were not constructed as part of an earlier phase of the Development.

*Industrial Waste:* Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

*Landowner:* Any person, including said person's agents or assigns, holding title, either exclusively or jointly with others, to land.

*Land User:* Any person operating, leasing, renting, or having made other arrangements with the Landowner by which the Landowner authorizes use of his or her land.

*Larger Common Plan of Development:* Development that is or will be completed in separate stages, in separate phases, or in combination with other construction activities and is identified by documentation that identifies the scope of the project including such things as plats, blueprints, marketing plans, contracts, building permits, public notice or hearing, or zoning requests.

*Licensed Professional Engineer (LPE), Professional Engineer (PE):* A person who has been duly licensed and registered by the State Board of Registration for Professional Engineers to engage in the practice of engineering in the State of Texas.

*Natural Creek or Swales:* A well-defined natural drainage path capable of conveying Stormwater Runoff.

*New Construction:* Structures for which the Start of Construction commenced on or after the date of adoption of this chapter by the City Council.

*NPS Pollution Controls and Best Management Practices (BMPs):* Schedules of activities, prohibitions of practices, maintenance procedures, management practices, infiltration BMPs, Erosion controls, vegetation practices, Stormwater and overland flow controls, retention, Water Quality Controls, and treatment facilities designed to prevent, reduce, or treat the Discharge the non-point source pollution into or adjacent to the Stormwater Drainage System or Water in the State .

*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.

*Operator:* The person or persons who, either individually or taken together, meet one of the following two criteria: (1) they have operational control over the Facility specifications, including the ability to make modifications in specifications; or (2) they

have the day-to-day operational control over those activities at the Facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

*Owner:* The person who owns a Facility or part of a Facility or a lessee.

*Permanent Stabilization:* Installation of approved permanent measures to prevent Erosion with a minimum of 80% coverage of perennial vegetation over pervious areas.

*Permittee:* A Landowner or Land User who is undertaking land Development activities pursuant to a permit or authorization granted according to the provisions of this chapter.

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

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

*Petroleum Storage Tank (PST):* Any one or combination of aboveground or underground storage tanks that contain Petroleum Products and any connecting underground pipes.

*Pollutant:* Dredged spoil, Solid Waste, incinerator residue, Sewage, garbage, Sewage sludge, filtered backwash, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into or adjacent to water.

*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.

*Primary Treatment:* The permanent BMPs designed to have substantial removal of the increase in Pollutant loads due to the Development or Redevelopment of a site.

*Redevelopment:* Any rebuilding, renovation, remodeling, reconstruction, Revision, or replat of an existing development.

*Release:* Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or adjacent to the

Stormwater Drainage System or the Water in the State .

*Revision:* Any amendments to a previously approved project.

*Right-of-Way:* The land on which a public or private street or alley is or may be located. A Right of Way may be established by Easement or in Fee title. The scope of a "Right-of-Way" established by Easement may include other facilities and utilities such as sidewalks; railroad crossings; electrical, communication, Oil and/or gas facilities; water, wastewater and drainage facilities. Right-of-Way shall also include parkways and medians outside of the paved portion of the street.

*Rubbish:* Non-putrescible Solid Waste, excluding ashes, which consists of (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; or (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).

*Runoff:* That portion of rainfall, melted snow, melted sleet, melted hail, irrigation, or drainage that flows across ground surface and reaches the water in the state, storm drain, or storm Sewer.

*Sanitary Sewer (or sewer):* The system of pipes, conduits, and other conveyances which carry Industrial Waste and Domestic Sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant (and to which Stormwater, surface water, and groundwater are not intentionally admitted).

*Secondary Treatment:* Any additional permanent BMPs necessary to meet performance standards not achieved by the Primary Treatment for a site.

*Sediment:* Solid soil material, both mineral and organic, that is being moved or has been moved from its original site by wind, gravity, flowing water or ice and including those materials sometimes also referred to as "silt" or "sand."

*Sedimentation:* Deposit of detached soil particles.

*Septic Tank Waste:* Any Domestic Sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

*Sewage (or Sanitary Sewage):* The Domestic Sewage and Industrial Waste that is discharged into a Sanitary Sewer system and passes through the Sanitary Sewer system to a sewage treatment plant for treatment.

*Sheet Flow:* The flow of water in a thin layer over the ground surface.

*Site:* The property boundaries of a development, including the limits of construction for any offsite improvements.

*Slope:* A measure of change in vertical elevation with respect to horizontal distance between two defined points.

*Solid Waste:* Any garbage, Rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air Pollution control Facility, and other discarded material, including, solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities.

*Start of Construction:* The date the building permit was issued, provided the actual Start of Construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a Structure on a Site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.

*Steep Slope:* Slope with a grade in excess of twenty percent (20%),

*Stormwater:* Any moisture that falls from the atmosphere in a discrete storm event, including snow, sleet, rain, and hail.

*Stormwater Drainage System:* A conveyance or system of conveyances including roads with drainage systems, catch basins, curbs, gutters, ditches, man-made channels, or storm drains designed or used for collecting or conveying storm water.

*Structure:* A walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home. When used in the context of Stormwater, the term means drainage improvement, such as dams, levees, bridges, culverts, head walls, or flumes.

*Used Oil or Used Motor Oil:* Any oil that has been refined from crude oil or a synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with state and federal law.

*Vegetative Cover:* The cover over a land's surface area with plant life.

*Water in the State ): Any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.*

*Water Quality Control:* A Structure, system, or feature that provides water quality

benefits by treating Stormwater Runoff.

*Water Quality Standard:* The designation of a body or segment of surface Water in the State for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in Chapter 307 of Title 30 of the Texas Administrative Code.

*Watershed:* The total area contributing Runoff to a stream or drainage system.

*Yard Waste:* Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

*1-Year, 3-Hour Storm Event:* A rainfall event over a 3 hour period as defined in the Drainage Criteria Manual. The 1-year, 3-hour rainfall distribution can be found in Drainage Criteria Manual.

### **ARTICLE 3. NON-POINT SOURCE POLLUTION CONTROL MEASURES**

#### **Sec. 98-101 Non-point Source Pollution Control Management Prohibitions**

- (1) Except as authorized by permit or this Code, no person shall introduce or cause to be introduced into or adjacent to the Stormwater Drainage System or Water in the State any Discharge that is not composed entirely of Stormwater.
- (2) Except as authorized by permit or this Code, no person shall introduce or cause to be introduced into or adjacent to the Stormwater Drainage System or Water in the State any Discharge that causes or contributes to causing the City to violate a water quality standard.
- (3) Except as authorized by permit or this Code, 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 or adjacent to the Stormwater Drainage System or Water in the state:
  - a. Any Used Motor Oil, antifreeze, or any other motor vehicle fluid;
  - b. Any Industrial Waste or Hazardous Waste, including Hazardous Household Waste;
  - c. Any Domestic Sewage or Septic Tank Waste, grease trap waste, or grit trap waste;
  - d. Any garbage, Rubbish, or Yard Waste;
  - e. Any wastewater from:
    - (i) a commercial carwash Facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or

- maintenance Facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than two such vehicles;
- (ii) from the washing, cleaning, de-icing, or other maintenance of aircraft;
  - (iii) a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
  - (iv) commercial floor, rug, or carpet cleaning;
  - (v) 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 substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or Hazardous Substance has occurred, unless all harmful quantities of such Released material have been previously removed;
- f. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
  - g. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
  - h. Any Runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;
  - i. Any filter backwash from a swimming pool, or fountain, or spa;
  - j. Any swimming pool water containing any Harmful Quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
  - k. Any Discharge from water line disinfection by superchlorination or other means if it contains any Harmful Quantity of chlorine or any other chemical used in line disinfection;
  - l. Any fire protection water containing Oil or Hazardous Substances or materials. This prohibition does not apply to Discharges or flow from firefighting by the Fire Department;

- m. Any water from a water curtain in a spray room used for painting vehicles or equipment;
- n. Any contaminated Runoff from a vehicle wrecking yard;
- o. Any substance or material that will damage, block, or clog the Stormwater Drainage System; or
- p. Any Release from a Petroleum Storage Tank (PST), or any leachate or Runoff from soil contaminated by a leaking PST, or any Discharge of pumped, confined, or treated wastewater from the remediation of any such PST Release, unless the Discharge complies with all state and federal standards and requirements.

- (4) Except as authorized by permit or this Code, no person shall introduce or cause to be introduced into or adjacent to the Stormwater Drainage System or Water in the State any Harmful Quantity of Sediment, silt, earth, soil, 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.
- (5) Except as authorized by a permit or other approval issued by the Texas Commission on Environmental Quality or authorized agent under Texas Water Code Chapter 26 or Texas Health and Safety Code Chapter 366, no person shall connect a line conveying Sanitary Sewage, domestic or industrial, to the Stormwater Drainage System, or allow such a connection to continue.
- (6) Except as authorized by permit or this Code, no person shall cause or allow any pavement wash water from a Service Station to be discharged into or adjacent to the Stormwater Drainage System or Water in the State. No permit is required for existing Service Stations on the effective date of this chapter. However, wash water from new Service Stations shall pass through a properly functioning and maintained, grease, Oil, and sand interceptor before discharge into or adjacent to the Stormwater Drainage System or Water in the State.

**Sec. 98-102 Regulation of Pesticides, Herbicides, and Fertilizers.**

- (1) Any sale, distribution, application, labeling, manufacture, transportation, storage, or disposal of a Pesticide, Herbicide, or Fertilizer must comply fully with all state and federal statutes and regulations including, without limitation, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and all federal regulations promulgated pursuant to FIFRA; Chapters 63 and 76 of the Texas Agriculture Code and all state regulations promulgated pursuant thereto; and any other state or federal requirement.
- (2) Any license, permit, registration, certification, or evidence of financial



responsibility required by state or federal law for sale, distribution, application, manufacturer, transportation, storage, or disposal of a Pesticide, Herbicide or Fertilizer must be presented to the City and any City law enforcement officer for examination upon request.

- (3) No person shall use or cause to be used any Pesticide or Herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.
- (4) No person shall use or cause to be used any Pesticide, Herbicide, or Fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a Harmful Quantity of the Pesticide, Herbicide, or Fertilizer to enter the Stormwater Drainage System or Water in the State.
- (5) No person shall dispose of, discard, store, or transport a Pesticide, Herbicide, or Fertilizer, or a Pesticide, Herbicide, or Fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a Harmful Quantity of the Pesticide, Herbicide, or Fertilizer to enter the Stormwater Drainage System or Water in the State.
- (6) If provided with a display notice containing the provisions of this subsection, pertaining to the regulation of Pesticides, Herbicides, and Fertilizers, or a reasonable description thereof, and the information that any user of the product may obtain further information from the City, any person selling Pesticides, Herbicides, or Fertilizers at retail or wholesale shall post the notice prominently where it may be read by purchasers of the product.

#### **Sec. 98-103 Used Oil Regulation**

- (1) No person shall:
  - a. Discharge Used Oil into or adjacent to the Stormwater Drainage System, Water in the State, or a Sewer, drainage system, septic tank, surface Water, groundwater, or watercourse;
  - b. Knowingly mix or commingle Used Oil with Solid Waste that is to be disposed of in a landfill or knowingly directly dispose of Used Oil on land or in a landfill;
  - c. Apply Used Oil to a road or land for dust suppression, weed abatement, or other similar use that introduces Used Oil into the environment.
- (2) A retail dealer who annually sells directly to the public Oil in containers for use off-premises shall post in a prominent place a sign informing the public that improper disposal of Used Oil is prohibited by law. The sign shall prominently display the toll-free telephone number of the state Used Oil information center.

#### **Sec. 98-104 Impervious Cover**

- (1) This section applies to all new development, re-development, and construction for which a construction or development plat, Site plan, or NPS Site plan is required, or a building permit is, or will be, required.
- (2) This section applies regardless if the development is exempt under Section 98-105.
- (3) A property Owner, or Developer shall not be required to provide BMP's to accommodate Runoff from impervious surfaces such as existing roads adjacent to the Development that were not constructed as part of an earlier phase of the Development.
- (4) Although certain percentages of Impervious Cover are designated in this section, nothing in this section shall release a person from meeting other zoning and land use regulations in this Code.
- (5) Unless increases are permitted by the use of Impervious Cover allowances, the Impervious Cover shall not exceed the allowances required by Chapter 98 of this Code, or, if Chapter 98 does not specifically limit the Impervious Cover for a particular type of land use, then the Impervious Cover shall not exceed the following:
  - a. 85% of the total area of the Site for industrial sites;
  - b. 80% of the total area of the Site for commercial sites;
  - c. 75% of the total area of the Site for multi-family sites; and
  - d. 50% of the total area of the Site for residential subdivisions.
- (6) Subsection (2) of this section does not apply to the H-Historical District, which is exempt from the Impervious Cover limitations.
- (7) No Impervious Cover shall be constructed within a water quality buffer zone, downstream of a Water Quality Control, or within areas designated for on-site irrigation for treated wastewater effluent disposal.
- (8) Impervious Cover Allowances:
  - a. Isolation of roof runoff, rainwater collection, and Irrigation: If approved by the City, the maximum Impervious Cover limit may be increased by up to five (5) percentage points if roof runoff or rainwater is isolated, treated, and used for irrigation. The roof runoff or rainwater must comply with the Pollutant removal performance standards in Section 98-111.
  - b. Use of Mitigation Land

- (i) For each three (3) acres of land (transferring tract) that the Applicant leaves undeveloped or undisturbed and that is not included in an Impervious Cover calculation, the Applicant may transfer up to one (1) acre of land (receiving tract) for Impervious Cover, but in no case shall the maximum Impervious Cover limit be increased by more than ten (10) percentage points.
- (ii) Both the transferring and receiving tracts used in the Impervious Cover allowances shall be located within the corporate limits of the City.
- (iii) The transferring tract shall not include a water quality Buffer Zone or Critical Environmental Feature.
- (iv) The receiving tract shall comply with the Water Quality Control standards of this chapter.
- (v) The transferring and the receiving tracts shall be concurrently platted and must transfer development intensity at that time.
- (vi) The use of mitigation land and the increase in Impervious Cover limits shall be noted on the plats of the transferring and receiving tracts.
- (vii) A restrictive covenant that runs with the transferring tract and describes the use of mitigation land shall be filed in the deed records upon approval by the City of the restrictive covenant.

#### **ARTICLE 4. NPS POLLUTION CONTROL AUTHORIZATIONS**

##### **Sec. 98-105 Projects Exempt from Article 4**

The following projects are exempt from the requirements of this Article:

- (1) **Single-family Residences.** New Construction of a single-family residence; provided the subdivision plat, establishing the lot on which the construction is to occur, establishes only that lot. .
- (2) **Existing Development.** Development which is legally existing on the effective date of this chapter shall be subject to the regulatory standards under which it was approved. If, however, improvements, additions, or Revisions to the approved plans are made after the effective date of this chapter that require an any type of plat, then such improvements, additions, or Revisions to the originally approved plans or plat shall be subject to NPS Pollution Control authorization as determined by this appendix.
- (3) **Final Plats.** Development which occurs on a lot established by a final plat that

was approved by City before the effective date of the Lower Colorado River Authority Ordinance.

- (4) Utility Maintenance. Routine maintenance and installation of utility lines.
- (5) Developments of One Acre or Less. Developments or Redevelopments of one acre or less that are not part of a Larger Common Plan of Development
- (6) Previously Permitted Developments. Developments or Redevelopments that have already been issued a permit by the Lower Colorado River Authority as of the effective date of this ordinance. Such Developments or Redevelopments shall remain subject to said permit unless the Permittee elects to file a new permit Application with the City.

#### **Sec. 98-106 Non-Point Source Pollution Control Approval**

- (1) Authorized Activities- NPS Pollution Control Authorization Required
  - a. An authorization by ordinance or an Non-Point Source (NPS) Pollution Control authorization shall be required for all development, re-development, or other construction that causes, may cause, or has the potential to cause the discharge of Stormwater, NPS Pollution, or other Pollutant listed in section 98-101 into or adjacent to the Stormwater Drainage System or Water in the State. No Landowner or Land User subject to this chapter may commence or conduct construction or development within the City without first obtaining an NPS Pollution Control authorization from the City. At the time the Landowner or Land User controlling or using the Site and desiring to undertake construction or development subject to this chapter, the Landowner or Land User shall pay all applicable fees required by this chapter and provide the required information for an NPS Pollution Control authorization with the Landowner's or Land User's Site plan or construction or development plat. By submitting a Site plan or plat, the Applicant is authorizing City to enter the Site to obtain information required to review and provide approval for the NPS Pollution Control measures.
  - b. Except as otherwise provided by this chapter, all development, re-development, or other construction that is required to obtain an authorization by ordinance or an NPS Pollution Control authorization shall ensure all the required NPS Pollution Controls and BMPs comply with the performance standards prescribed in section 98-111.
- (2) Activities Authorized by Ordinance
  - a. Except as provided by subsections c. and d. of this section and if the development is not exempt under Section 98-105, the following list of projects are eligible for authorization by ordinance:
    - (i) 1 Acre or Less of Impervious Cover with 5 acres or Less of

Disturbance of Land: Developments or Redevelopments with one (1) acre or less of Impervious Cover with five (5) acres or less of disturbance of land.

(ii) 20 Percent or Less of Overall Impervious: Cover for the Site: Developments or Redevelopments with twenty (20) percent or less of overall Impervious Cover for the Site.

b. Requirements for Projects Authorized by Ordinance. To qualify for an authorization by ordinance, the projects listed in subsection (2)a. of this section shall comply with the following:

(i) Submit a written notice to the City at the same time the request is made for a construction or development plat, or Site plan approval, or if no plat or Site plan is required, fourteen (14) Business Days before the Commencement of Construction that contains the following information:

(a) name of the Landowner;

(b) location of address of the property;

(c) name of development, if applicable;

(d) contact information for Owner, engineer, and Contractor as applicable;

(e) type of project or development;

(f) basis for exemption from NPS Pollution control authorizations;

(g) amount of Impervious Cover expected as a result of the project;

(h) certification of compliance with the NPS Pollution Control requirements, as set forth in this chapter and NPS Technical Manual;

(i) dated signature of Owner's or owners' authorized representative;

(ii) Comply with all applicable TPDES and EPA Stormwater requirements.

(iii) Submit to the City all documents submitted to the TCEQ or EPA.

(iv) Comply with guidelines and BMPs set forth in the NPS

Technical Manual for controlling Erosion, Sedimentation and NPS Pollution in a manner and to a level consistent with this Chapter and the NPS Technical Manual.

- (v) For developments or Redevelopments for which the construction of a permanent BMP, other than vegetative filter strips and infiltration trenches, is required, submit a maintenance plan to the City at least fourteen (14) days prior to the Commencement of Construction of the permanent BMP.
  - c. Projects listed in section 98-105 shall comply with all other applicable chapters in the Code, or other applicable ordinances adopted by the City from time to time.
  - d. If the City, after receipt of the notice required by b. of this subsection, determines that the project as proposed will not meet the performance standards described in Section 98-111 of this Code and will cause the water quality to degrade, the City may require the Landowner or Land User to obtain an individual NPS Pollution Control authorization or an Operating Permit.
- (3) Processing of NPS Pollution Control authorizations
- a. Submittals. Landowners and Land Users who must obtain NPS Pollution Control authorization shall submit the required information in accordance with this appendix and the NPS Technical Manual.
  - b. Review of NPS Pollution Control Information.
    - (i) Preliminary Plats and Construction Plans. If a person is required to obtain a preliminary plat, or submit construction plans in conjunction with a final plat, or site development plan, the person shall submit the information required for an NPS Pollution Control authorization along with, and at the same time the preliminary plat or construction plan is submitted to the City in accordance with Chapter 98 of the City's Code of Ordinances. The City shall review the NPS Pollution Control information in conjunction with the review of Applications for construction or development plats.
    - (ii) Site Plan Reviews. If a person is not required to obtain a plat but is required to obtain site development plan approval under Chapter 118 of this Code, the person shall submit the information required for an NPS Pollution Control authorization along with and at the same time the site development plan Application is submitted to the City in accordance with Chapter 118 of the City's Code of Ordinances. The City shall review the NPS Pollution Control information in conjunction with the review of Applications

for Site plans.

- (iii) **NPS Site Plan Reviews:** If no construction or development plat is required and if no Site plan is otherwise required but the person is required by this Chapter to obtain NPS Pollution Control authorization, the person shall submit the information required for an NPS Pollution Control authorization in the form of an NPS Site Plan. The NPS Site Plan shall be submitted for the total area of the Site. The NPS Site Plan shall include:
- (a) Name and address of the Landowner and Applicant.
  - (b) Address and legal description of the property.
  - (c) If the Applicant is not the legal Landowner of the property, a statement that the Applicant is the authorized agent of the Landowner.
  - (d) A brief description of the proposed use.
  - (e) A Site plan, drawn to scale and sufficiently dimensioned as required, showing the following:
    - 1. The date, scale, North arrow, title, name of Owner and name of person preparing the Site plan.
    - 2. The location and dimensions of boundary lines, Easements and required yards and setbacks.
    - 3. A scale drawing of location and intended use of proposed and existing Site improvements and proposed and existing Impervious Cover, including parking and loading areas, pedestrian and vehicular access, landscaped areas, and utility or services areas.
    - 4. A scale drawing of location and description of all Water Quality Control and Erosion control BMPs as required by this Chapter and the NPS Technical Manual.
    - 5. A Site inventory analysis including a scale drawing showing major existing vegetation, natural watercourses, creeks or bodies of Water in the State and an analysis of planned changes in such natural features as a result of the development. This shall include a delineation of any flood prone areas.

6. For Sites with an average Slope greater than ten (10) percent, a plan showing existing and proposed topography and grading and proposed Erosion control measures.

7. Any other information that may be necessary to review the Application for compliance with this Chapter and the NPS Technical Manual.

(f) Any applicable fee established by the City Council.

(g) If the Site plan does not include the required information, the City may request additional information or return the Application as incomplete.

c. Approval Process and Procedures:

(i) Approvals in Conjunction with preliminary plats and site development plans: For NPS Pollution Control Applications submitted in conjunction with a preliminary plat or a site development plan required by Chapter 98, or Chapter 118 of this Code, approval of the NPS Pollution Control measures shall occur at the same time and in conjunction with plat and site development plan approvals.

(ii) Approvals of NPS Site Plans: The procedure for approval of an NPS Site Plan and NPS Pollution Control measures is as follows:

(a) Review for administrative completeness: Within ten (10) business days after an Application for approval of an NPS Site Plan is filed with the City, the City shall determine if the Application is complete. If the Application is not complete, the City may return to the Applicant the incomplete Application or provide the Applicant with additional time to submit the required information. The review period specified by paragraph (b) below, does not start until a completed Application is filed.

(b) Review for approval: Following a determination that an Application for NPS site plan approval is administratively complete; the City shall approve, approve subject to conditions, or disapprove the Application. The City shall provide written notice to the Applicant stating such approval, approval with conditions, or disapproval. The notice shall list any and all conditions of approval, or provide a comprehensive list of reasons for disapproval.



- (b) Effect of disapproval: Following an initial disapproval of an Application for NPS site plan, the Applicant, within sixty (60) days of said disapproval, and without imposition of additional Application or review fees, may submit a revised Application to the City. Revised Applications will be processed in accordance with the provisions of paragraphs (a) and (b) above. A revised Application submitted more than sixty (60) days following disapproval shall be considered a new Application and will be subject to fees as provided for in Section 98-113.
- (c) Review and evaluation criteria. The City shall review and evaluate NPS site plans to ensure conformance with applicable regulations and standards established by this Chapter and the NPS Technical Manual.
- (d) Modification of site plan. The City may require modification of an NPS site plan as a prerequisite for approval to ensure compliance with this Chapter and the NPS Technical Manual.
- (e) Expiration of approval.
1. Unless a longer time shall be specifically established as a condition of approval, an NPS Site plan approval shall expire and shall become void one (1) year after the date on which such approval became effective, unless prior to the expiration of one (1) year construction is commenced and diligently pursued toward.
  2. An NPS Site plan approval subject to expiration, upon recommendation by the City Engineer and concurrence by the City Manager, may be extended for an additional period, not to exceed, one-hundred eighty (180) days, provided that prior to the expiration date, a written request for extension is filed with the City. The request shall include an explanation as to the reason for delay in Commencement of Construction. The request shall not be approved unless the City Engineer and City Manager find good cause to grant such extension.
- (f) New Applications. Following the denial or revocation of an NPS Site plan review Application, no application for an

NPS Site plan review for the same or substantially the same Site plan on the same or substantially the same Site shall be filed within sixty (60) days from the date of denial or revocation. Any such Application filed will be returned to the Applicant as an incomplete Application.

- d. Fees. The fees and charges required to process NPS Pollution Control authorizations shall be as shown in this Code.
- e. Fiscal Security. Proof of fiscal security shall be provided with the NPS Pollution Control authorization. Fiscal security shall be provided in accordance with the requirements in Section 98-118.
- f. Conditions. In addition to Site specific conditions that may be required to comply with the technical standards set forth in the NPS Technical Manual, all permits or NPS Pollution Control authorizations shall require the Permittee to:
  - (i) Notify the City within forty-eight (48) hours before commencing any development;
  - (ii) Obtain a permit or authorization amendment from City prior to modifying the approved NPS Pollution Controls and BMPs; however, no permit or authorization amendment is required for minor field adjustments of temporary Erosion controls;
  - (iii) Install all NPS Pollution Controls and BMPs as identified in the approved permit or authorization and ensure those NPS Pollution Controls and BMPs comply with the applicable performance standards prescribed in section 98-116 or other standard for which a variance has been granted;
  - (iv) Comply with the requirements of this chapter regarding maintenance plans;
  - (v) Repair any siltation or Erosion damage resulting from development;
  - (vi) Inspect all temporary Erosion and Sedimentation controls after each rain of one-half inch (0.5") or more, and at least once each week, and make needed repairs;
  - (vii) Allow the City to enter the Site for the purpose of inspecting compliance with the permit or authorization, or for performing any work necessary to bring the Site into compliance with the permit or authorization;

- (viii) Designate a location on the Site for the posting of notices;
  - (ix) Keep a copy of the permit or authorization and all development plans on the Site or with the Permittee's designated representative;
  - (x) Upon completion of development, the Permittee's registered professional engineer shall certify in writing to the City that the NPS Pollution Controls and BMPs were constructed and maintained in accordance with the permit or authorization conditions and this chapter;
  - (xi) Promptly notify the City in writing of any change in the name, address, or telephone number of the Permittee;
  - (xii) Assign the NPS Pollution Control authorization and all rights and obligations associated therewith to the land Owner, Operator, Property Owners' Association or other entity as applicable, upon completion of construction of the development if the permit or authorization is not already in the name of the entity responsible for the BMPs.
  - (xiii) Pay all fees associated with the approval of the NPS Pollution Control measures at the time of submittal;
  - (xiv) Perform all activities in accordance with the federal, state or local laws or ordinances;
  - (xv) Indemnify and hold the City and its authorized agents and its authorized consultants harmless from any and all claims, demands, damages, actions, costs and charges to which the City may become subject and which the City may have to pay by reason of injury to any person or property, or loss of life, or loss of property, resulting from, or in any way connected with the Permittee's actions under this NPS Pollution Control authorization.
  - (xvi) No work is authorized that is not directly addressed in the permit Application submitted to the City.
  - (xvii) Nothing in the permit is intended to amend or alter any legal rights or benefits previously granted to or vested in the City.
  - (xviii) Any terms and conditions reached between the City and the Applicant.
- g. Approval of permit. The City will issue a NPS Pollution Control permit upon the Applicant's submission of a complete permit Application, payment of the Application fee, the City's approval of the NPS Pollution

Control measure, and approval of the plat or Site plan, as applicable.

- h. Duration. Except as provided in Subsection (3) g. of this section or Sections 98-112 and 98-128 of this Chapter, NPS Pollution Control authorization shall be valid for the life of the Site development permit or the building permit for the development.
- i. Termination for Nonuse. An NPS Pollution Control authorization will be terminated by the City should the building permit or the Site development permit be terminated. Commencement of development means clearing the Site and performing initial or rough grading of the improvements. If the City terminates a permit for nonuse and the fiscal security is still in effect, the City may call on the Permittee's security in order to provide Permanent Stabilization of the Site.

- (4) Enforcement. Failure to comply with the provisions of an NPS Pollution Control authorization is a violation of this Code.

### **Sec. 98-107 Operating Permit**

- (1) General Requirements. Except for projects listed and authorized under section 98-105 of this Code, the Landowners or Operators of all new Water Quality Controls for residential and non-residential development must obtain an Operating Permit. The Application for the Operating Permit shall be filed concurrently with the Application for the NPS Pollution Control authorization. The Landowner or Operator is responsible for the proper operation and maintenance of the control and for Operating Permit renewal. The first Operating Permit will be issued by the City upon:
  - a. The completion of construction, if applicable;
  - b. Inspection of the control by the City after review of the maintenance plan accompanying the design engineer's concurrence letter of the completion of construction;
  - c. Final inspection approval by the City;
  - d. The issuance of a certificate of compliance or a certificate of occupancy by the City, if applicable; and
  - e. Payment of any required fees.
- (2) Operating Permit Procedures. All Water Quality Controls shall be maintained in accordance with this chapter, the permit, and the NPS Technical Manual, and in accordance with section 98-117 of this Code, each permitted control will be inspected from time to time by the City to confirm that proper maintenance, as described in the maintenance plan, has occurred prior to renewal of the permit. An Operating Permit for developed Sites with existing Water Quality Control shall be amended only when new development or re-development occurs.

- (3) Operating Permit Information Requirements. The permit Application shall include the following components and must be submitted to the City with the Site plan for New Construction, or not later than thirty (30) calendar days prior to the renewal date shown on an existing permit:
- a. Name and address of the development;
  - b. Name, title and business phone number of the Owner or Operator;
  - c. Single point of contact name, phone number, and fax number;
  - d. Mailing address of the Owner or Operator;
  - e. Site plan number on file with the City for the control;
  - f. Previous Operating Permit;
  - g. Signature block for City approval;
  - h. Special conditions required by restrictive covenant, or by agreement at a condition of City approval;
  - i. Maintenance records and date of last maintenance;
  - j. Name of Contractor who performed the required maintenance;
  - k. Results of required maintenance, including actions take, materials removal, disposal location, components replaced;
  - l. Evidence of fiscal security, if applicable;
  - m. Types of BMPs being used.
- (4) Permit Duration. Any Operating Permit issued by the City shall be issued for a period of one (1) year, or five (5) years as provided for herein.
- (5) Operating Permit Renewal
- a. It is the responsibility of the Permittee to apply to the City for renewal of the permit no later than thirty (30) calendar days before the existing permit expires. The Application must be accompanied by payment of the appropriate renewal fee, updated information concerning ownership or Facility operation and enforcement status. Upon receipt of all information and fees, including a favorable inspection and maintenance report, the City will renew the permit for a period of either one (1), or five (5) years.

- b. Any repair work or modifications of a control not specified in the maintenance plan shall require the Permittee's engineer's concurrence letter, prior to renewal of the permit.
  - c. Permit renewal will be withheld if there is pending enforcement action against the Permittee based on any violations of water quality regulations at the Site.
- (6) Permit Transfer. The transfer of the Operating Permit shall require the completion of a new permit Application, and must be submitted not later than thirty (30) calendar days after transfer of ownership or operation of the control.
- (7) Enforcement. Failure to comply with the provisions of the Operating Permit is a violation of this Code.

### **Sec. 98-108 Required Plans**

All plans required by the NPS Technical Manual shall be submitted for review and approval along with the required information necessary for authorization of any NPS Pollution Control measures. Any required plans shall be incorporated into any permits or authorizations issued by the City.

### **Sec. 98-109 Maintenance Requirements**

- (1) Maintenance Required. All Water Quality Control measures and their appurtenances shall be maintained by the Permittee or subsequent Landowner(s) or Land User(s) pursuant to an approved maintenance plan. The City may require the Permittee and subsequent Landowner(s) or Land Users to post fiscal security in a manner described in section 98-118 for the purpose of maintaining all Water Quality Controls required by this chapter. Landowners and Land Users may elect to form a Maintenance Association (MA) in accordance with this section prior to the issuance of an Operating Permit. All MAs must post fiscal security or create a maintenance fund for the purpose of maintaining all Water Quality Controls required by this chapter. The duties and responsibilities of an MA may be performed by a Homeowners' Association, Property Owners' Association, or like entity if it meets the requirements of this section of this chapter. The maintenance of all BMPs shall be in accordance with the NPS Pollution Control authorization or Operating Permit and the approved maintenance plan.
- (2)
- (3) Requirements for MA's. The Applicant must submit to the City the approved articles of association for the MA, as well as a map showing the boundaries of its jurisdiction. The MA must have the following general powers which are reflected in the articles of association:
- a. Own and convey property;
  - b. Operate and maintain common property, specifically the Water Quality

Controls;

- c. Establish rules and regulations;
- d. Assess member maintenance fees and enforce said assessments;
- e. Sue and be sued;
- f. Contract for services to provide operation and maintenance;
- g. If the MA is a homeowners' association, it must have as members all the homeowners, lot owners, property owners, or unit owners;
- h. The MA and its defined obligations shall be established by deed restriction or covenant and shall exist in perpetuity; however, if the MA is dissolved the articles of association must provide that, prior to dissolution, the property consisting of the Water Quality Controls, along with authority to assess annual dues for maintenance of the Water Quality Controls shall be conveyed to a responsible party; and
- i. No covenant or deed restriction establishing a MA shall be filed until said covenants or deed restrictions have been reviewed and approved by the City.
- j. It shall be clearly stated in the chapters of association of the MA that:
  - (i) It is the responsibility of the MA to operate and maintain the water quality controls;
  - (ii) The water quality controls are owned by the MA or described therein as common property;
  - (iii) There is a method of assessing and collecting the assessment for operation and maintenance of the water quality controls; and
  - (iv) Any amendment that would affect the water quality controls must be approved by the City.

- (4) Phased Projects. If an MA is proposed for a project which will be developed in phases and subsequent phases will utilize the Water Quality Controls, the MA must have the ability to accept future phases into the MA.

**Sec. 98-110 Texas Pollutant Discharge Elimination System (TPDES) Notice of Intent and Stormwater Pollution Prevention Plan**

Any Owner or Operator who intends to obtain coverage as an Owner or Operator for Stormwater Discharges from a construction Site under the TPDES General Permit for Stormwater Discharges From Construction Sites shall submit a signed copy of its

Notice of Intent (NOI) and the Stormwater Pollution Prevention Plan (SWPPP) to the City Engineer at least fourteen (14) days prior to the Commencement of Construction. The Owner or Operator shall make the SWPPP and any modifications thereto available to the City upon request.

### **Sec. 98-111 NPS Pollution Control and BMP Performance Standards and Design Requirements**

- (1) All Development and Redevelopment is required to obtain an authorization by ordinance or an NPS Pollution Control authorization under Section 98-111(2) or (3) shall utilize NPS Pollution Controls and BMPs to treat Stormwater Runoff. All NPS Pollution Controls and BMPs required by this chapter shall be designed in accordance with the NPS Technical Manual and by a Professional Engineer. All NPS Pollution Controls and BMPs shall meet the performance standards and design requirements prescribed by this section.
- (2) Water Quality Volume: All NPS Pollution Controls and BMPs shall be designed and sized based on water quality volume calculated using the methods prescribed in the NPS Technical Manual. The minimum volume of Stormwater Runoff for Water Quality Control shall be based on the 1-Year, 3-Hour Storm Event for the Contributing On-site Drainage Area.
- (3) Sites in excess of ten (10) acres: The BMPs for Sites of ten (10) or more acres shall be designed to achieve an annual removal rate of 70% or more for the increase of Total Suspended Solids (TSS) and increase in Total Phosphorus (TP) resulting from the development or Redevelopment. Primary and Secondary Treatment methods may be used to achieve these removal rates.
- (4) Overland Flow Controls
  - a. To the maximum extent practical, all roof runoff from non-residential buildings shall have down spouts disconnected from the Site Stormwater Drainage System.
  - b. To the maximum extent practical, all Stormwater drainage shall be treated using overland flow methods to a vegetated buffer. The vegetated buffer shall be designed in accordance with the NPS Technical Manual.
  - c. Drainage patterns shall be designed to the maximum extent practical to prevent Erosion, maintain and recharge of local seeps and springs, and attenuate the harm of contaminants collected and transported by Stormwater. Overland Sheet Flow and natural drainage features and patterns shall be maintained to the maximum extent practical, depending on volumes and velocities of Runoff for the development, as opposed to concentrating flows in storm Sewers and drainage ditches.



- d. Construction of enclosed storm Sewers and impervious channel linings are permitted only when the City, on the basis of competent engineering evidence from the Applicant, concludes that such storm Sewers or impervious linings are protective of water quality.
  - e. If storm Sewers are deemed necessary as specified above, the Applicant shall design the Stormwater Drainage System to mitigate its impact on water quality by using structural devices or other methods to prevent Erosion and dissipate Discharges from outlets wherever practicable, and by directing Discharges to maximize overland flow through buffer zones or grass lined Swales.
  - f. Overland flow facilities for the Stormwater Drainage System shall be designed in accordance with the criteria of the Drainage Criteria Technical Manual.
- (5) Infiltration: To the maximum extent practical, Water Quality Controls shall be designed to restore the infiltration capacity of pre-development conditions. Infiltration BMPs shall be designed in accordance with the NPS Technical Manual.
- (6) Steep Slopes
- a. Erosion control and Water Quality Control BMPs shall be designed in accordance with the NPS Technical Manual.
  - b. A cut or Fill with a finished gradient steeper than thirty-three percent (33%) shall be stabilized in accordance with the NPS Technical Manual.
- (7) Vegetation
- a. To the maximum extent practical, landscape shall be preserved in its natural state and shall comply with the requirements of the zoning ordinance of the City.
  - b. To the maximum extent practical, xeriscape and low maintenance vegetation shall be included in all non-residential development and shall be provided in accordance with the NPS Technical Manual.
  - c. To the maximum extent practical, the use of Herbicides, Pesticides and Fertilizers shall be minimized.
  - d. If Pesticides and Fertilizers will be used, a Pesticide and Fertilizer management plan shall be submitted providing information regarding proper use, storage, and disposal of Pesticides and Fertilizers. The plan shall indicate likely Pesticides and Fertilizers to be used. The plan shall include two lists of Pesticides and Fertilizers: (1) those which, due to their chemical characteristics, potentially contribute significantly to water

quality degradation; (2) those which, due to the chemical characteristics, potentially would result in minimal water quality degradation.

- e. An Integrated Pest Management (IPM) Plan shall be submitted in accordance with the NPS Technical Manual.
- f. Vegetative BMPs, such as vegetative filter strips, shall be designed in accordance with the NPS Technical Manual.

(8) Water Quality Controls (WQC)

- a. Water Quality Controls (WQC) are required for residential and non-residential developments and re-developments. Water Quality Controls shall be sized for the on-site contributing drainage area that contains development if the new development or re-development contains Impervious Cover.
- b. The volume of Runoff (water quality volume) to be captured, isolated, and treated by each WQC shall be as required in subsection (2) of this section. Each WQC shall be sized for the Contributing On-site Drainage Area only to that WQC.
- c. Vegetated filter strips shall be used to the maximum extent practicable for the treatment of Stormwater Runoff.
- d. Developed areas requiring treatment shall include the on-site contributing drainage area with:
  - (i) areas of Impervious Cover;
  - (ii) lawns using Pesticides, Herbicides or Fertilizers;
  - (iii) landscaping using Pesticides, Herbicides or Fertilizers;
  - (iv) gardens using Pesticides, Herbicides or Fertilizers;
  - (v) golf courses and play fields using Pesticides, Herbicides or Fertilizers;
  - (vi) areas of on-site spray irrigation with wastewater effluent.
- e. The following areas shall not require water quality treatment:
  - (i) The full area of existing natural areas or restored natural areas which are restricted from development and Pesticides, Herbicide, or Fertilizer Application through a plat note or restrictive covenant and the Runoff from which is routed around the WQC. The Runoff from natural areas which blend with the Runoff from the developed areas shall be included in the water quality volume

calculations.

- (ii) The full area of the WQC Structure.
  - (iii) Swimming pools which do not discharge its filter backwash into the Stormwater Drainage System or Water in the State.
  - (iv) Impervious surface areas used for Stormwater collection and on-Site irrigation.
  - (v) The full area of off-Site drainage areas.
- f. Removal efficiencies for WQC's shall be as established in the NPS Technical Manual.
- g. The design of WQC's shall be in accordance with the NPS Technical Manual.

(9) Erosion Control Requirements

- a. All temporary and permanent Erosion and Sedimentation control BMPs shall comply with the NPS Technical Manual.
- b. Peak Runoff Rate: The peak Runoff rate for the 1-Year, 3-Hour Storm Event under developed conditions shall not exceed the peak Runoff rate for the 1- Year, 3-Hour Storm Event under pre-development conditions, unless otherwise noted in the NPS Technical Manual. Peak Runoff rate calculations shall comply with the criteria given in the NPS Technical Manual and the Drainage Criteria Manual.
- c. The Site for which temporary or permanent Erosion and Sediment control BMPs may be required include any off-Site burrow, spoil, and staging areas, as well as any other land disturbed related to the project.

(10) Isolation of Roof Runoff and Irrigation: If roof runoff is isolated from the Site Stormwater collection system and is used for irrigation, the system shall comply with the following requirements:

- a. The system shall comply with the Pollutant removal requirements of subsection (2) of this section;
- b. No reduction in the water quality volume will be allowed as a result of choosing this method of pollution reduction;
- c. Roof Runoff shall be collected and routed to a separate storage area distinct from that which collects and treats other Stormwater Runoff;

- d. The roof runoff system shall provide for the collection of no less than the required water quality volume. Harvesting and storage of additional Runoff in excess of the minimum required water quality volume for on-site irrigation is allowable;
- e. Roof Runoff in excess of the minimum required water quality volume may be routed to detention facilities or discharged to a Water Quality Control;
- f. The system shall be designed to accept the water quality volume within seventy-two (72) hours after the end of the rainfall event and to detain and treat the water quality volume in accordance with the Water Quality Control requirements of this chapter. For the purpose of this requirement, individual storm events shall be separated by seventy-two (72) hours with no more than a trace of rainfall; and
- g. The collected water may be used to irrigate landscaped or natural areas on the Site. Irrigation systems shall be designed in accordance with standard irrigation practices considering such factors as soil type Slope, and vegetation and must be approved by the City.

#### **Sec. 98-112 Water Quality Buffer Zones**

- (1) Water quality buffer zones (WQBZ) of 15 feet are required along natural creeks and Swales with overall contributing drainage areas of 25 acres or more within the corporate limits of the City. A WQBZ of 85 feet is established around all Critical Environmental Features inside the corporate limits of the City.
- (2) All development activities, including temporary construction activities and landscaping activities, shall be restricted from the WQBZ, except the following development activities may be allowed if approved by the City:
  - a. Roadway and driveway crossings (as close to perpendicular as practical);
  - b. Hike and bike trails in accordance with the Comprehensive Plan;
  - c. Maintenance and restoration of natural vegetation;
  - d. Water Quality Control monitoring devices;
  - e. Removal of trash, debris, Pollutants;
  - f. Utilities, as subject to the restrictions of subsection (3) of this section;

- g. Fences that do not obstruct flood flows;
  - h. Public and private parks and open space, with development in the parks and open space limited to hiking, jogging, or walking trails, and excludes stables and corrals for animals;
  - i. Private drives to allow access to property not otherwise accessible;
  - j. Structural WQC's (only when unavoidable as deemed by the City).
- (3) All utilities, other than wastewater utilities, shall be located outside the WQBZ except for crossings. Wastewater lift stations shall be located outside the WQBZ. On-Site wastewater disposal system shall be located outside the WQBZ. Wastewater trunk lines and lateral lines shall be located outside the WQBZ to the maximum extent practical except for crossings. All wastewater trunk lines located in the WQBZ shall meet design standards and construction specifications of testing to a zero (0) leakage allowable.
- (4) All Water Quality Control Discharges and Stormwater Discharges onto a WQBZ shall have diffused Sheet Flow.

## **ARTICLE 5: ADMINISTRATIVE PROVISIONS**

### **Sec. 98-113 Charges and Fees**

- (1) The City hereby adopts reasonable fees for reimbursement of costs of implementing its non-point source pollution prevention management program and the cost of implementing this chapter, which costs may include, but not be limited to, the following:
- a. Fees for monitoring, inspections, and surveillance including the cost of collecting and analyzing Discharges and reviewing monitoring reports submitted by Dischargers;
  - b. Fees for spill and Release reports and responding to spills and Releases of Oil, hazardous and Extremely Hazardous Substances, and other Pollutants;
  - c. Application and review fees for permits;
  - d. Application and review fees for submittals associated with the concept plan, preliminary plat, Site plan, construction drawings for public improvements, and final plats;
  - e. Re-Application and re-review fees;

- f. Inspection fees;
- g. General consultation fee with the Applicant and with the City concerning the Applicant's development; and
- h. Other fees as the City may deem necessary to carry out the requirements contained in this chapter. These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines, and penalties chargeable by the City.

(2) Fees and charges shall be as follows:

	Exempt Projects See Sec. 98-105	Activities Authorized by Ordinance See Sec. 98-106(2)	NPS Pollution Control Authorizations See Sec. 98-106(3)
Individual Single-family residence	No fee		
All other exempt projects	\$250		
NPS Review of non-exempt projects including preliminary plats, final plats, Site development plans and utility projects		\$250 administrative processing fee + City Engineer review fee (Minimum \$200)	\$250 administrative processing fee + City Engineer review fee (Minimum \$200)
2 <sup>nd</sup> & each subsequent resubmittal any plans undergoing City of Burnet NPS review		\$250 administrative processing fee + City Engineer review fee (Minimum \$200)	\$250 administrative processing fee + City Engineer review fee (Minimum \$200)
1-year BMP Operating Permit		\$300	\$300
5-year BMP Operating Permit		\$1,200	\$1,200
Variance Request	\$250 administrative processing fee + City Engineer review fee (Minimum \$200)	\$250 administrative processing fee + City Engineer review fee (Minimum \$200)	\$250 administrative processing fee + City Engineer review fee (Minimum \$200)

**Sec. 98-114 Variances**

- (1) General. Where the Planning and Zoning Commission recommends, and the City Council finds, that undue hardships will result from strict compliance with a certain provision(s) of this chapter, or where the purposes of these regulations may be served to a greater extent by

an alternative proposal, and that such a variance from portions of these regulations will serve to ensure that that substantial justice may be done and the public interest be secured, provided that the variance shall not have the effect of nullifying the intent and the purpose of these regulations, and further provided that the City Council shall not approve a variance unless it shall make finding based upon the evidence presented to it in each specific case that:

- a. Granting the variance will not be detrimental to the public safety, health or welfare, water quality, and will not be injurious to other property or to the owners of other property, and the variance will not prevent the orderly development or use of other property in the vicinity;
- b. The conditions upon which the request for a variance is based are unique to the property for which the variance is sought, and are not applicable generally to other property;
- c. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the property Owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
- d. The variance will not in any manner vary the provisions of the zoning, land use, or subdivision ordinances, or the comprehensive plan or any other adopted plans or ordinances of the City.
- e. An alternate design will generally achieve the same result or intent as the standards and regulations prescribed herein.

Such findings of the City Council, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the City Council meeting at which a variance is considered. A variance from any provision of this chapter may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured and substantial justice done. Pecuniary hardship to the property Owner or Developer, standing alone, shall not be deemed to constitute undue hardship.

- (2) Conditions. In approving a variance, the City Council may require such conditions as will, in its judgments, secure substantially the purpose described in Section 98-93.

(3) Procedures:

- a. A petition for a variance shall be submitted in writing by the Applicant before the required Application or submittal is presented for the consideration of the City's planning and zoning commission (commission). The petition shall fully state the grounds for the Application, and all of the facts relied upon by the petitioner.
- b. Where a hardship is identified pursuant to this chapter which requires issuance of a variance from a provision of Chapter 98, the commission may recommend a conditional variance from the provision in this chapter in conjunction with approval by the City Council. A conditional variance from this chapter shall receive final approval provided that no new information or reasonable alternative plan exists which, at the determination of the City Council, voids the need for a variance. All variances shall have final approval or disapproval by the City Council. Any variance recommended for denial by the planning and zoning commission shall require a two-thirds (2/3) majority for approval by the city council.

**Sec. 98-115 Release Reporting and Cleanup**

- (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 or adjacent to the Stormwater Drainage System or Water in the State, shall immediately telephone and notify the City concerning the incident:
  - a. An amount equal to or in excess of a reportable quantity of any Hazardous Substance, as established under 40 CFR Part 302;
  - b. An amount equal to or in excess of a reportable quantity of any Extremely Hazardous Substance, as established under 40 CFR Part 355;
  - c. An amount of Oil that leaves 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 immediate notification required by this chapter 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 (thus far) of the Release;
  - d. An estimate of the quantity and concentration (if known) of the substance Released;
  - e. The source of the Release;
  - f. Any known or anticipated health risks associated with the Release and, where appropriate, advice regarding medical attention that may be necessary for exposed individuals (Material Safety Data Sheet reports);
  - g. Any precautions that should be taken as a result of the Release;
  - h. Any steps that have been taken to contain and clean up the Released material and minimize its impacts; and
  - i. The names and telephone numbers of the person or persons to be contacted for further information.
- (3) Within fifteen (15) days following such Release, the responsible person in charge of the Facility, vehicle, or other source of the Release shall, unless waived by the City Council, submit a written report containing each of the items of information specified above in this chapter, 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. Where appropriate, advice 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 future occurrences.
- (4) The notifications required by this chapter 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 chapter or to state or federal law.
- (5) Any person responsible for any Release as described in this chapter 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 this chapter shall reimburse the City for any cost incurred by the City in responding to the Release.

**Sec. 98-116 Access for Maintenance and Monitoring**

To provide necessary access for maintenance and monitoring, Water Quality Controls must be contained within a water quality Easement or restricted, platted lot. The Easement documents shall note that water quality restrictions exist on the property or Easement and that any alternative use or alteration must be approved by the City. Also, an access Easement with suitable means of ingress and egress for construction equipment shall be provided to access the designated water quality Easement.

**Sec. 98-117 Compliance Monitoring - Right of Entry and Inspection**

- (1) Right of Entry During Construction. Any Owner who has filed a notice under Section 98-106, an NPS Pollution Control authorization or Operating Permit Application or has received an NPS Pollution Control permit or Operating Permit under this chapter shall allow entry by the City on the Site for the purposes of inspection and monitoring. Employees and agents of the City Manager are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions related to water quality and administration of this chapter. They shall notify the Owner or his designated agent prior to entering the Site for inspection purposes.
  - a. Predevelopment Inspection. After the issuance of any authorization or permit required under this Chapter, but before the installation of permanent Erosion and Sedimentation controls and before development commences, the Applicant shall provide a written request to the City for an inspection of the temporary Erosion controls and Water Quality Controls. This

predevelopment inspection will be attended by the City's designated representative who will determine whether the temporary Erosion and Sedimentation controls and Water Quality Controls will be in compliance with the NPS Pollution Control authorization or Operating Permit. If the City does not conduct the predevelopment inspection within five (5) Business Days of receipt of the request for inspection, the Applicant may proceed with development.

- b. Inspections During Development. During development, the City will inspect the Site to ensure that temporary and permanent Erosion controls are being maintained and that the permanent NPS Pollution Controls and BMPs are being constructed in accordance with the requirements of this chapter.
- c. Final Inspection. Upon completion of development, the City will conduct a final inspection of the NPS Pollution Controls and BMPs used. This final development inspection must be attended by the Permittee; the City's designated representative, the design engineer, Contractor, and field engineer. The City's representative will determine whether the NPS Pollution Controls are in compliance with the NPS Pollution Control authorization or Operating Permit.
- d. Permittee shall confirm that Water Quality Controls are constructed in conformance with the approved design by providing a concurrence letter certified by the Permittee's design engineer.
- e. The Permittee's fiscal security for construction of temporary and permanent NPS Pollution Controls and BMPs will be released in accordance with Section 98-125.

(2) Right of Entry and Periodic Inspection of Completed Projects.

- a. The City shall have the right to enter the premises of any permitted Site discharging Stormwater to the Stormwater Drainage System, to Water Quality Controls, or to Water in the State to determine if the Permittee or Discharger is complying with all requirements of this chapter, and with any state or federal discharge permit, limitation, or requirement. Permittees or Dischargers shall allow the City 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. Permittees or Dischargers shall make available to the City, upon request, any SWPPPs, operating permits, Site development permits, construction permits, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, NOI's, and any other records, reports, and other documents related to compliance with this chapter and with

any state or federal discharge permit.

- (i) Where the Owner has security measures in force which require proper identification and clearance before entry into its premises, the Permittee or Discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City will be permitted to enter without delay for the purposes of performing his/her responsibilities.
  - (ii) The City may require any Owner whose property discharges into or adjacent to the Stormwater Drainage System or Water in the State or any Permittee 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.
  - (iii) The City may require the Owner or Permittee to install monitoring equipment as necessary at the Discharger's expense. The Facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the Permittee or Discharger at its own expense. All devices used to measure Stormwater flow and quality shall be calibrated to ensure their accuracy.
  - (iv) 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 Permittee or Discharger at the written or verbal request of the City and shall not be replaced. The costs of clearing such access shall be borne by the Owner.
  - (v) Unreasonable delaying or denying access by the City to the Permittee's Discharger's premises shall be a violation of this chapter.
- b. City will inspect facilities authorized under this Chapter from time to time to confirm that proper maintenance of the facilities and to ensure compliance with the authorization. City will inspect the facilities at least once every two years.

#### **Sec. 98-118 Fiscal Security**

- (1) This section applies to owners and Developers of all developments, re-developments, and other construction that are required to obtain NPS Pollution Control authorization, as described in Section 98-106(3), or an Operating Permit, as described in Section 98-107.
- (2) Fiscal security shall be provided by the Owner or Developer for the

construction of temporary Erosion and Sedimentation controls and for Water Quality Controls, under the following considerations:

- a. Fiscal security shall be provided if the development is single-family subdivision, or multi-family residential or non-residential development regardless if a plat is required; and
  - b. Fiscal security shall be provided for New Construction of controls and for re-development modifications to existing controls; and
  - c. Fiscal security shall be provided if the Application to construct or modify the controls under a Site plan is submitted to the City after the development Application is submitted to the City for the City's approval of the final plat.
- (3) Fiscal security shall be provided to the City in order to obtain NPS Pollution Control authorization.
  - (4) The amount of the fiscal security shall be determined and certified by the Developer's engineer's and shall be equal to the full construction cost of the temporary controls and 100 percent of the re-vegetation of the entire Site of the proposed project.
  - (5) The City may require fiscal security for permanent Erosion and Sedimentation controls and for Water Quality Controls in order to obtain an Operating Permit if the Applicant has violated its NPS Control approval, or if the permanent controls are in close proximity to a Critical Environmental Feature.
  - (6) Fiscal security for the controls shall be in the form of cash escrow or a cashier's check or money order in the specified amount. If authorized by the City, a performance bond or a letter of credit may be considered by the City, as security for the construction of the controls. The issuer of any surety bond and letter of credit shall be subject to the approval of the City.
    - a. Performance Bond. If the City Manager authorizes the Developer to post a performance bond as security for its promises contained in the improvement agreement, the performance bond shall comply with the following requirements:
      - (i) All performance bonds must be in the forms acceptable to the City Manager and the City attorney; and
      - (ii) All performance bonds must be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as

published in Circular 570 (amended) by Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury; and

- (iii) All performance bonds must be signed by an agent accompanied by a certified copy of the authority to act; and
- (iv) All performance bonds shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue performance bonds for the limits and coverage required.

If the surety on any performance bond furnished by the Owner is declared to be bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or the surety ceases to meet the requirements to be listed in Circular 570, the Owner shall within twenty (20) calendar days thereafter substitute another performance bond and surety, both of which must be acceptable to the City.

- b. Letter of Credit. If the City Manager authorizes the Developer to post a letter of credit as security, the letter of credit shall:
  - (i) Be irrevocable; and
  - (ii) Be for a term sufficient to cover the completion, and warranty periods, but in no event less than two (2) years; and
  - (iii) Required only that the City present the issuer with a sight draft and a certificate signed by an authorized representative of the City certifying to the City's right to draw funds under the letter of credit.
- (7) The City may, by written notice, order any Owner or Operator of a source of pollution Discharge associated with construction or industrial activity to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City to be necessary to achieve consistent compliance with this chapter, any order issued hereunder, or any required BMP. The City may deny approval of any building permit, grading permit, subdivision plat, Site development plan, or any other City permit or approval necessary to commence or continue construction or any industrial activity at the Site, or to assume occupancy, until such a performance bond has been filed.
- (8) The City may, by written notice, order any Owner or Operator of a source of Stormwater Discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value determined by the City, that is sufficient to remediate, restore, and abate any damage to the Stormwater Drainage System, the Water in

the State , or any other aspect of the environment that is caused by the Discharge.

- (9) Upon acceptance by the City of all required construction of the controls, the City will authorize a reduction in the security to ten percent (10%) of the original amount of the security if the property Owner is not in violation of the permit requirements. The remaining security shall be security for the Owner's covenant to maintain the required controls and to warrant that the improvements are free from defects for two (2) years thereafter.

(1)

**Sec. 98-119          Stop Orders**

Whenever any work is being done contrary to the provisions of this chapter, the City Manager may order the work stopped by notice in writing (referred to as a "Stop Work Order") served on any persons engaged in the doing or causing such work to be done. The stop work order shall be posted on the property adjacent to the activity in question, and any such person shall forthwith stop work until authorized by the building official to proceed with the work.

**Sec. 98-2-120      Permit or Authorization Revocation**

A violation of this chapter shall authorize the City Manager to cancel any permit or authorization depending in whole or in part on any approval under this chapter. If a permit or authorization is canceled, no further work covered by said permit or authorization shall be done until the violation has been cured and new submittals under this chapter, as required by the City Manager, have been made and approved in accordance with the provisions of this chapter and a new permit or authorization has been issued. Permanent Stabilization of the Site shall immediately be required, and the City may fund the establishment of Permanent Stabilization through the fiscal security provided in accordance with this Chapter.

**Sec. 98-121          Denial of Approvals and Permits**

A violation of this chapter shall authorize the City Manager to deny any other approvals or permits sought by the person violating this chapter under this Code.

**Sec. 98-122          Appeal of Denial or Revocation of Approvals and Permits**

Any party aggrieved by the City Manager's denial or revocation of an approval or permit may appeal such denial or revocation to the City Council. Appeals shall be made in writing and to be eligible for consideration shall be filed in the office of the City Secretary no later than the tenth (10<sup>th</sup>) day following issuance of the City Managers written Denial or Revocation.

**Sec. 98-123          Penalties and Injunctive Relief**

Any person violating this chapter, upon conviction, is punishable by a fine in accordance with the general penalty provision found in Section 1-9 of this Code. Any person violating this chapter is subject to suit for injunctive relief, civil penalties, as well as prosecution for criminal violations.

**SECTION V. PROVIDING FOR A SAVINGS CLAUSE.** The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

**SECTION VI. SEVERABILITY CLAUSE.** If any provision, section, sentence, clause or phrase of this ordinance, or the Application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its Application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting, and of the Mayor in approving this ordinance, that no portion thereof or provision or regulation contained herein shall be come inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

**SECTION VII. REPEALER CLAUSE.** The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance.

**SECTION VIII. EFFECTIVE DATE.** This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

**SECTION IX. NOTICE AND MEETING CLAUSE.** It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**PASSED AND APPROVED** on First Reading this 14th day of February, 2017.

**FINALLY PASSED AND APPROVED** on this 14th\_\_\_\_ day of March, 2017.

**ATTEST:**

**CITY OF BURNET, TEXAS**



Kelly Dix  
Kelly Dix, City Secretary

Gary Wideman  
Gary Wideman, Mayor

