

**Sec. 8-1, Flood Damage Prevention**

ARTICLE I

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS

SECTION A. STATUTORY AUTHORIZATION

The Legislature of the State of Texas has in Sec. 16.315, Texas Water Code, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL HILLS, TEXAS as follows:

SECTION B. FINDINGS OF FACT

(1) The flood hazard areas of the City of Terrell Hills are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

SECTION C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric,

telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

(7) Insure that potential buyers are notified that property is in a flood area.

#### SECTION D. METHODS OF REDUCING FLOOD LOSSES

In order to accomplish its purposes, this ordinance uses the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging and other development which may increase flood damage;

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

#### ARTICLE 2

#### DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**ALLUVIAL FAN FLOODING** - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

**APEX** - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

**AREA OF SHALLOW FLOODING** - means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist,

where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD** - is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any- given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

**BASE FLOOD** - means the flood having a one percent chance of being equaled or exceeded in any given year.

**BASEMENT** - means any area of the building having its floor subgrade (below ground level) on all sides.

**CRITICAL FEATURE** - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

**DEVELOPMENT** - means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**ELEVATED BUILDING** - means a non-basement building (I) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by- means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-3, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e)(5) of the National Flood Insurance Program regulations.

**EXISTING CONSTRUCTION** - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the

construction of streets, an either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION** - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FLOOD OR FLOODING** - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters.
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD INSURANCE RATE MAP (FIRM)** - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY** - is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map

**FLOODPLAIN OR FLOOD-PRONE AREA** - means any land area susceptible to being inundated by water from any source (see definition of flooding).

**FLOODPLAIN MANAGEMENT** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD PROTECTION SYSTEM** - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extend of the areas within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOOD PROOFING - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY (REGULATORY FLOODWAY) - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FUNCTIONALLY DEPENDENT USE - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE - means any structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(d) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

(1) By an approved state program as determined by the Secretary of the Interior or;

(2) Directly by the Secretary of the Interior in states without approved programs

LEVEE - means a man-made structure, usually an earthen embankment designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM - means a flood protection system which consists of a levee, or levees, and

associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor: provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood insurance Program regulations.

**MANUFACTURED HOME** - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR SUBDIVISION** - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**NEW CONSTRUCTION** - means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974 whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION** - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**RECREATIONAL VEHICLE** - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

**START OF CONSTRUCTION** - (for other shall new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and

means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent constructions 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. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement footings piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of ally wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** - means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE** - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** - means ally reconstruction rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or (2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**VARIANCE** - is a grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

**VIOLATION** - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications. Or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** - means the height, in relation to the National Geodetic

Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE 3

GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Terrell Hills, Texas.

SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Bexar County, Texas and Incorporated Areas" dated February 16, 1996 with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

SECTION C. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be required to ensure conformance with the provisions of this ordinance.

SECTION D. COMPLIANCE

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY



The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

ARTICLE 4

ADMINISTRATION

SECTION A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The City Building Official is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

SECTION B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- (2) Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this ordinance.
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Agency which is the Texas Natural Resources Conservation Commission, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5.

(9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(10) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot, provided that the community **first** applies for a conditional FIRM revision through FEMA.

**SECTION C. PERMIT PROCEDURES**

(1) Application for a Development Permit shall be in conjunction with any building permits required by the City of Terrell Hills presented to the Building Official on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

a. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;

b. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

c. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section B(2);

d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

e. Maintain a record of all such information in accordance with Article 4, Section (B)(1).

(2) Approval or denial of a Development Permit by the Building Official shall be based on all of the provisions of this ordinance and the following relevant factors:

a. The danger to life and property due to flooding or erosion damage;

b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

c. The danger that materials may be swept onto other lands to the injury of others;

d. The compatibility of the proposed use with existing and anticipated development;

e. The safety of access to the property in times of flood for ordinary and emergency vehicles;

f. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

h. The necessity to the facility of a waterfront location, where applicable;

i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

j. The relationship of the proposed use to the comprehensive plan for that area.

## ARTICLE 5

### PROVISIONS FOR FLOOD HAZARD REDUCTION

#### SECTION A. GENERAL STANDARDS

In all areas of special flood hazards the following provisions are required for all new

construction and substantial improvements.

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system:

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and.

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

#### SECTION B. SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided as set forth in (I) Article 3, Section B, (ii) Article 4, Section B(8) or (iii) Article 5, Section C(3), the following provisions are required:

(1) Residential Construction - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation. A registered professional engineer architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article 4, Section C(1)a., is satisfied.

(2) Nonresidential Construction - new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls

substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) Enclosures - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than one foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Manufactured Homes

a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM ten sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above tile base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

c. Require that manufactured homes that are placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH, and AE on the

community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:

- (i) the lowest floor of the manufactured home is at or above the base flood elevation, or
- (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) Recreational Vehicles - Require that recreational vehicles placed on sites within Zones A1-3, AH, and AE on the community's FIRM either (I) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet the permit requirements of Article 4, Section C(1), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

#### SECTION C. STANDARDS FOR SUBDIVISION PROPOSALS

(1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C, and D of this ordinance

(2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet. Development Permit requirements of Article 3, Section C: Article 4, Section C: and the provisions of Article 5 of this ordinance.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Article 3, Section B or Article 4, Section 13 (8) of this ordinance.

(4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas electrical and water systems Located and constructed to minimize or eliminate flood damage.

#### SECTION D. STANDARDS FOR AREAS OF SHALLOW FLOODING (AD/AH ZONES)

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood

depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow: therefore, the following provisions apply:

(1) All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified).

(2) All new construction and substantial improvements of non-residential structures;

(i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or;

(ii) together with attendant utility and sanitary facilities be designed so that together with the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Article 4, Section (1) a., are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

#### SECTION E. FLOODWAYS

Floodways - located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If Article 5, Section E (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 5.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community **first** applies for a conditional FIRM and floodway revision through FEMA.

## ARTICLE 6

### PENALTIES FOR NON-COMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. **Penalty for Violations:** Any person or corporation that shall violate any of the provisions of this Ordinance or fail to comply therewith any of the requirements thereof, shall be guilty of a misdemeanor and shall be liable to a fine of not more than two hundred dollars nor less than one dollar, and each day such violation shall exist shall constitute a separate offense. Nothing herein contained shall prevent the City of Terrell Hills from taking such other lawful action as is necessary to prevent or remedy any violation.

### CERTIFICATION

It is hereby found and declared by the City of Terrell Hills, Texas that severe flooding has occurred in the past within its jurisdiction and will certainly occur within the future; that flooding is likely to result in infliction of serious personal injury or death, and is likely to result in substantial injury or destruction of property within its jurisdiction; in order to effectively comply with minimum standards for coverage under the National Flood Insurance Program; and in order to effectively remedy the situation described herein, it is necessary that this ordinance become effective immediately.

Therefore, an emergency is hereby declared to exist, and this ordinance, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.

(Ord. 1088, 9-10-01)

## **DIVISION 1. General Provisions**

### **Section 8-2 “Storm Water Pollution Control**

#### **Administration**



The City Manager shall implement and enforce the provisions of this Chapter. The Director of each City department shall also implement and enforce the provisions of this chapter for all municipal operations under his/her direction. Any powers granted to or duties imposed in this Chapter upon the City Manager, or he may delegate the Director of another City department to other City personnel.

### **Section 8-2.1. Abbreviations**

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

**BMP - Best Management Practices**  
**BOD5 - Five-Day Biological Oxygen Demand**  
**CFR - Code of Federal Regulations**  
**COD - Chemical Oxygen Demand**  
**CSCE - Comprehensive Site Compliance Evaluation**  
**EPA - U.S. Environmental Protection Agency**  
**HHW - Household Hazardous Waste**  
**LPE - Licensed Professional Engineer**  
**mg/l - Milligrams per liter**  
**MS4 - Municipal Separate Storm Sewer System**  
**MSGP - Multi-Sector General Permit**  
**NOC - Notice of Change**  
**NOI - Notice of Intent**  
**NOT - Notice of Termination**  
**NPDES - National Pollutant Discharge Elimination System**  
**pH - Measure of Acidity or Alkalinity**  
**POTW - Publicly Owned Treatment Works**  
**PST - Petroleum Storage Tank**  
**SWPPP - Storm Water Pollution Prevention Plan**  
**TCEQ - Texas Commission on Environmental Quality**  
**TPDES - Texas Pollutant Discharge Elimination System**  
**TSS - Total Suspended Solids**  
**USC - United States Code**

### **Section 8-2.2. Definitions**

***Best Management Practices or BMP*** shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

***City*** shall mean the City of Terrell Hills, Texas, or the City Council of Terrell Hills.

**Commencement of Construction** shall mean the initial disturbance of soils associated with clearing, grading, excavating, land filling, and other construction activities.

**Commercial** shall mean pertaining to any business, trade, industry, or other activity engaged in for profit.

**Common Plan of Development** shall mean a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

**Construction** shall mean any human activity that involves clearing, grading, excavation, land filling, or other placement, movement, removal, or disposal of soil, rock, or other earth materials.

**Contaminated** shall mean containing a harmful quantity of any substance.

**City Manager** shall mean the City Manager of the City of Terrell Hills, or his/her duly authorized representative.

**Discharge** shall mean any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

**Discharger** shall mean 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.

**Domestic Sewage** shall mean human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

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

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

**Fertilizer** shall mean a solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or

a mixture of two or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

**Final Stabilization** shall mean the status when all soil disturbing activities at a site have been completed, and a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas and areas not covered by permanent structures have been established, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed. (Note: The pervious area shall be uniformly vegetated such that randomly chosen areas, as would be enclosed by a hula hoop, each have a vegetation density at least 70%.)

**Fire Protection Water** shall mean any water, and any substances or materials contained therein, used by any person other than the Fire Department to control or extinguish a fire.

**Garbage** shall mean putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

**Harmful Quantity** shall mean the amount of any substance that will cause pollution of water in the State.

**Hazardous Material** shall mean any substance or materials determined to be hazardous by the Secretary of Transportation according to 49 CFR Part 171.8.

**Hazardous Substance** shall mean any substance listed in Table 302.4 of 40 CFR Part 302.

**Hazardous Waste** shall mean any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

**Hazardous Waste Treatment, Disposal, and Recovery Facility** shall mean all contiguous land, and structures, other appurtenances and improvements on the land, used for the treatment, disposal, or recovery of hazardous waste.

**Herbicide** shall mean a substance or mixture of substances used to destroy a plant or to inhibit plant growth.

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

**Industrial Waste** shall mean any byproduct that results from any process of industry, manufacturing,

mining, production, trade, business, or facility identified as engaging in an industrial activity under 40 CFR Part 122.26.

**Land filling** shall mean the deposition of soil and other inert materials on the land to raise its grade and/or smooth its features.

**Licensed Professional Engineer or LPE** shall mean a person who has been duly licensed (and registered if practicing as an individual) by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

**Motor Vehicle Fluid** shall mean any vehicle crankcase oil, antifreeze, transmission fluid, hydraulic fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

**Municipal Operations** shall mean the day-to-day operation and maintenance activities that have the potential for contributing pollutant runoff to the MS4.

**Municipal Separate Storm Sewer System or MS4** shall mean the system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water.

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

**NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Product Plants, and Their Associated Facilities in Texas or NPDES General Permit** shall mean General Permit No. TXG110000 published by EPA in Volume 65 of the Federal Register at page 2165 on January 13, 2000, and any subsequent modifications or amendments thereto, that has been assumed and is now administered by the TCEQ.

**NPDES General Permit for Storm Water Discharges Associated with Industrial Activity or Baseline Industrial General Permit** shall mean the Baseline Industrial General Permit issued by EPA on August 27, 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992, and any subsequent modifications or amendments thereto.

**NPDES General Permit for Storm Water Discharges from Construction Sites or Construction General Permit or CGP** shall mean the Construction General Permit issued by EPA on June 24, 1998, and published in Volume 63 of the Federal Register at page 36485 on July 6, 1998, and any subsequent modifications or amendments thereto.

**NPDES permit** shall mean a permit issued by EPA (or by the State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**No Exposure** shall mean that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, run-on and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products not intended to be used outdoors, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

**No Exposure Certification** shall mean receipt of an NPDES Form 3510- 11 or an equivalent form issued by TCEQ related to the TPDES General Permit.

**No Exposure Exclusion** shall mean that all industrial facilities that meet the criteria listed in 40 CFR 122.26(b)(14) (except construction) may be excluded from industrial storm water discharge permitting requirements on a conditional basis if certification that a condition of "no exposure" can be made for the facility.

**Nonpoint Source** shall mean any source of any discharge of a pollutant that is not a "point source."

**Notice of Change or NOC** shall mean the notice of change that is required by the TPDES General Permit related to storm water discharges associated with industrial activity.

**Notice of Intent or NOI** shall mean the Notice of Intent that is required by the Construction General Permit, the Multi-Sector General Permit, or other General Permit for the discharge of storm water.

**Notice of Termination or NOT** shall mean the Notice of Termination that is required by the Construction General Permit, the TPDES General Permit for industrial activity, or other General Permit for the discharge of storm water.

**Oil** shall mean 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** shall mean the person or persons who, either individually or taken together, meet either 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** shall mean the person who owns a facility or part of a facility.

**Person** shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

**Pesticide** shall mean 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** shall mean a 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.

**Petroleum Storage Tank or PST** shall mean any one or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

**Point Source** shall mean any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

**Pollutant** shall mean dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

**Pollution** shall mean 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.

**Qualified Personnel** shall mean persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally accepted industry standards for such activity.

**Release** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, directly or indirectly, into the municipal separate storm sewer system (MS4) or the waters of the United States.

**Rubbish** shall mean non-putrescible solid wastes that consist of (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (b) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

**Sanitary Sewer (or Sewer)** shall mean the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the sewage treatment plant utilized by the City (and to which storm water, surface water, and groundwater are not intentionally admitted).

**Septic Tank Waste** shall mean any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

**Sewage or Sanitary Sewage** shall mean the domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the sewage treatment plant utilized by the City for treatment.

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

**Solid Waste** shall mean 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.

**Storm Water** shall mean storm water runoff, snowmelt runoff, and surface runoff and drainage.

**Storm Water Discharge Associated with Industrial Activity** shall mean the release of storm water runoff from any conveyance which is used for collecting and conveying storm water that drains from manufacturing, processing, maintenance, materials storage, or waste storage areas at a facility that meets the criteria listed in 40 CFR § 122.26(b)(14).

**Storm Water Pollution Prevention Plan or SWPPP** shall mean a plan required by either the

Construction General Permit, the Baseline Industrial General Permit, or the Multi-Sector General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity at the facility.

***Surface Water in the State*** - Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, 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 subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

***Texas Commission on Environmental Quality or TCEQ*** shall mean the State of Texas agency by that name, the regional offices thereof, any state department, agency, or commission that may succeed to the authority of the TCEQ, and any duly authorized official of TCEQ or such successor agency.

***TPDES General Permit for Storm Water Discharges from Construction Sites or Construction General Permit*** shall mean the Construction General Permit issued by TCEQ on March 5, 2003 as authorized under provision of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions.

***TPDES General Permit or TPDES General Permit Relating to Storm Water Discharges Associated with Industrial Activity*** shall mean TPDES General Permit No. TXR050000 issued by the TCEQ in 2001 as authorized under provisions of Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code and subsequent revisions.

***TPDES permit*** shall mean a permit issued by the TCEQ that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable to an individual, group, or general area wide basis.

***Used Oil or Used Motor Oil*** shall mean 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.

***Wastewater*** shall mean any water or other liquid, other than uncontaminated storm water, discharged from a facility.



**Water Quality Standard** shall mean the designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code.

**Waters of the United States - (from title 40, part122, section 2 of the Code of Federal Regulations) or “Waters of the U.S.” means:**

- (a) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
- (b) all interstate waters, including interstate wetlands;
- (c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (3) which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) all impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) tributaries of waters identified in paragraphs (a) through (d) of this definition;
- (f) the territorial sea; and
- (g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to man made bodies of water that neither were originally created in waters of

the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

**Wetland** shall mean an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

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

## **DIVISION 2. General Prohibition**

### **Section 8-2.3. Allowable Storm Water Discharges to the MS4.**

- (a) A person commits an offense if the person introduces or causes to be introduced into the MS4 any discharge that is not composed entirely of storm water.
- (b) It is an affirmative defense if the person introduces or causes to be introduced into the MS4 any of the following discharges that is not composed entirely of storm water:
  - 1. water line flushing (excluding discharges of hyper-chlorinated water, unless the water is first de-chlorinated and discharges are not expected to adversely affect aquatic life);
  - 2. runoff or return from landscape irrigation, lawn irrigation, and other irrigation utilizing groundwater or surface water resources (not from potable water system);
  - 3. discharges from potable water sources;
  - 4. diverted stream flows;
  - 5. rising ground waters and springs;
  - 6. uncontaminated ground water infiltration;
  - 7. uncontaminated pumped ground water;

8. foundation and footing drains;
  9. air conditioner condensation;
  10. water from crawl space pumps;
  11. individual residential vehicle washing;
  12. occasional discharges of vehicle wash water from fundraising events, provided best management practices are used, per Section 8-2.6;
  13. flows from wetlands and riparian habitats;
  14. street wash water;
  15. discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems containing pollutants, and similar activities);
  16. storm water discharges authorized by, and in full compliance with, a TPDES permit,
  17. non-storm water discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) and the TPDES Construction General Permit (CGP); and,
  18. other similar occasional incidental non-storm water discharges unless the TCEQ develops permits or regulations addressing these discharges
  19. other allowable non-storm water discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1);
- (c) No affirmative defense shall be available under Subsection B of this section if the discharge or flow in question has been determined by the City Manager to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and the discharge has occurred more than 15 calendar days beyond such notice. The correctness of the City Manager's determination that a discharge is a source of a pollutant or pollutants may be reviewed in any administrative or judicial enforcement proceeding.
- (d) The burden of proof that a discharge was composed entirely of one or more of the categories in subsection B and that it was not a source of a pollutant or pollutants to waters of the United States or to the MS4 is upon the person or entity responsible for the discharge.

**DIVISION 3. Specific Prohibitions and Requirements**

**Section 8-2.4. Prohibited discharges adversely affecting water quality.**

- (a) The following list is not considered to be all-inclusive of all prohibited discharges. Final discretion is left to the City Manager and based on potential damage to the MS4.
- (b) A person commits an offense if the person introduces or causes to be introduced into the MS4 any discharge that causes or contributes to causing the city to violate a water quality standard, the city's TPDES permit, or any other discharge permit for discharges from its MS4.
- (c) A person commits an offense if the person dumps, spills, pumps, pours, empties, discharges, disposes of, recklessly leaks, leaches, emits or otherwise introduces or causes, allows, or permits to be introduced any of the following substances to the MS4:
  - 1. excessive amounts of sediment that would cause accumulation of sediment in the City of Terrell Hills MS4 or cause the MS4 to discharge excessive sediments to the Waters in the State;
  - 2. any used motor oil, antifreeze, or any other motor vehicle fluid;
  - 3. any industrial waste;
  - 4. any hazardous material or waste, including *Household Hazardous Waste*;
  - 5. any fire protection water containing oil or hazardous substances or materials that this code requires to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge (this prohibition does not apply to discharges or flow from firefighting by the Fire Department);
  - 6. any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  - 7. any commercial runoff or wash-down water from any animal pen, kennel or fowl or livestock containment area;
  - 8. wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any automotive-related facility; or from any washing, cleaning or maintenance of any business or commercial or public service vehicle by any business or public entity that operates more than two (2) such vehicles;
  - 9. wastewater or wash water from operations that are contaminated with chemicals or waste products from operations;

10. brush, leaves, grass clippings or other yard waste previously gathered for the purpose of disposal;
11. any discharge from water line disinfection by superchlorination or other means unless the disinfecting chemical has been removed or attenuated to the point where it is not a pollutant;
12. excessive dust or dusty materials;
13. garbage, trash, debris, or rubbish;
14. any substance or material that will damage, block or clog the MS4;
15. any polluted liquids.

**Section 8-2.5. Prohibited Activities Adversely Affecting Water Quality**

It is unlawful for any person to:

- a) Operate a facility that is subject to storm water discharge permitting without prior approval from the Texas Commission on Environmental Quality or other approving agency.
- b) Install or maintain grease or sand traps that discharge to the MS4 without prior approval from the City of Terrell Hills;
- c) Permit polluted materials, hazardous materials, liquid waste, semi-liquid waste, or chemical waste or like material that would adversely affect water quality to:
  1. discharge to the ground, or
  2. discharge to or create a potential to discharge to the MS4 through any of the following activities:
    - i. discharge of wash water containing the material,
    - ii. dump, drain or introduce the material to the MS4,
    - iii. store the material in such a manner that the material is exposed to the elements or runoff, or

- iv. dispose of the material in any area that may drain to the MS4 or dispose or store the material at any site other than one approved for that purpose;
- d) Permit cooling tower, compressor, or boiler blow-down that is not clean or is contaminated to flow to the MS4;
- e) Permit wash water from any surface containing or having a substance on it that is a pollutant to discharge to the MS4;
- f) Permit unused materials from ready-mix concrete mortar, and asphalt base delivery trucks to be dumped to any area that may drain to the MS4;
- g) Purposefully dump, blow into, sweep into or otherwise dispose of excessive grass clippings, leaves, brush, yard waste or any rubbish or debris to the curb, gutter, storm drain, or watercourse;
- h) Permit sewage wastes to flow to any area other than a sanitary sewer or approved septic tank.

**Section 8-2.6. Pesticide and Fertilizer Regulations**

- a) 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, 75, and 76 of the Texas Agriculture Code and all state regulations promulgated pursuant to it; and any other state or federal requirement.
- b) 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.
- c) No person shall use or cause to be used any pesticide, herbicide, or fertilizer in any manner that the person knows, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4.
- d) 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 is likely to cause or does cause a harmful quantity of the pesticide, herbicide or fertilizer to enter the MS4.

**Section 8-2.7. Used Oil and Other Vehicle Fluids Regulation**

- a) No person shall:

1. Pour, spill, leak, pump, empty, leach, dispose, or otherwise discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater or water course;
  2. Apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment;
  3. Introduce or cause to be introduced into the sanitary sewer system any discharge of storm water, polluted or unpolluted, or any discharge that cause or contributes to causing the City to violate a water quality standard, its agreements associated with the regional sewage treatment plants, or any state issued permit;
- b) Any person that causes a spill, release, or other discharge of a prohibited substance or other pollutant to the MS4 is solely responsible for the cleanup and removal of the substance from the MS4 or any area adjacent to the MS4 that is exposed to runoff. Where the person that caused the spill, release, or discharge to the MS4 is unknown, the owner of the property on which the spill, release, or discharge occurred is responsible for the cleanup or removal of the substance from the MS4 or any area adjacent to the MS4.
- c) Drip pans, absorbent mats, or equivalent controls shall be used to collect and properly dispose of leaking fluids from motor vehicles that are parked outside during maintenance and repairs or while awaiting repairs at commercial repair facilities. Used engines, transmissions, radiators, and other vehicle components that have automotive fluids in or on them shall be stored in a manner that prevents pollutants from entering the MS4.

**Section 8-2.8. Mobile Cleaning Operations and Occasional Vehicle Wash for Fundraising Activities.**

- a) Mobile cleaning operations may discharge clean, uncontaminated water to the MS4.
- b) Any actual or threatened discharge of contaminated discharge to the MS4 from the operation of a mobile cleaning operation is hereby declared a nuisance.
- c) A mobile cleaning operation must collect any unclean or contaminated water produced when engaging in mobile cleaning operations and disposed of said wastewater in the sanitary sewer with approval from the owner of the property upon which the sewer inlet is located.
- d) Contaminated water from mobile cleaning operations includes, but is not limited to:
1. water containing soap, detergent, degreaser, solvent or other harmful cleaning substances, including biodegradable products;

2. any waste water 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 the released material have been previously removed;
  3. or waste water with excessive amounts of sediments.
- e) A mobile cleaning operation must use best management practices to the maximum extent practicable to prevent contaminants from entering the MS4.
- f) Occasional discharges of vehicle wash water are allowable when generated strictly for the purpose of fundraising activities. Best management practices are encouraged to minimize pollution, including, but not limited to:
1. remove all trash and debris before beginning the activity;
  2. use soaps that are “non-toxic”, “phosphate-free”, or “biodegradable”;
  3. refrain from using acid wheel cleaners or other toxic or harmful substances;
  4. minimize the amount of soapy water entering the MS4 by shutting off water when not in use and washing on a grassy area or an area where the runoff will enter a grassy area;
  5. emptying buckets of soapy water in sinks or toilets;
  6. and clean up the site after completing the activity.

**Section 8-2.9. Prohibition of Illicit Connections.**

The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this Article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

**Section 8-2.10. Notification of Release and Cleanup**

- a) The person in charge of any vehicle, facility, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, disposing, or any other release of any of the following quantities of any of the following substances that may flow, leach, enter, or otherwise be introduced into the MS4, shall telephone and notify the City



Manager through PD Dispatch Non-Emergency contact number as soon as practicable concerning the incident:

1. An amount equal to or in excess of a reportable quantity of any hazardous substance, as established under 40 CFR Part 302;
2. An amount equal to or in excess of a reportable quantity of any extremely hazardous substance, as established under 40 CFR Part 355;
3. An amount of oil that either (i) violates applicable water quality standards, or (ii) causes a film 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
4. Any harmful quantity of any pollutant.

b) The immediate notification shall include the following information:

1. The identity or chemical name of the substance released, and whether the substance is an extremely hazardous substance, as established under 40 CFR Part 355;
2. The exact location of the release, including any known name of the waters involved or threatened and any other environmental media affected;
3. The time and duration (thus far) of the release;
4. An estimate of the quantity and concentration (if known) of the substance released;
5. The source of the release;
6. Any known or anticipated health risks associated with the release and, where appropriate, advice regarding medical attention for exposed individuals;
7. Any precautions that should be taken as a result of the release;
8. Any steps that have been taken to contain and clean up the released material and minimize its impacts; and
9. The name and telephone numbers of the person or persons to be contacted for further information.

- c) Within fourteen days following such release, the responsible person in charge of the vehicle, facility, or other source of the release shall, unless waived by the City Manager, submit a written report containing each of the items of information specified above, as well as the following additional information:
1. The ultimate duration, concentration, and quantity of the release;
  2. All actions taken to respond to, contain, and clean up the released substances, and all precautions taken to minimize the impacts;
  3. Any known or anticipated acute or chronic health risks associated with the release;
  4. Where appropriate, advice regarding medical attention necessary for exposed individuals;
  5. The identity of any government/private sector representative responding to the release; and
  6. The measures taken or to be taken by the responsible person(s) to prevent similar future occurrences.
- d) Any release report required by a state or federal authority containing the information described above, shall be adequate to meet the reporting requirements for submittal to the City Manager.
- e) The notifications required above shall not relieve the responsible person of any expense, loss, damage, or other liability which may be incurred as a result of the release, including any liability for damage to the City, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to this Chapter or to state or federal law.
- f) Any person responsible for any release as described above shall comply with all state, federal, and any other local law requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release.
- g) Any person responsible for a release described above shall reimburse the City for any cost incurred by the City in responding to the release.

#### **DIVISION 4. Storm Water Discharges from Construction Activities**

##### **Section 8-2.11. General Requirements of Construction Activities**

The goal for erosion and sediment control at sites disturbed by construction is achievement of at least the minimum site rating to be in compliance with the City of Terrell Hills Design Criteria Manual.

- a) All operators of construction sites shall use best management practices (BMP) to control and reduce the discharge, to the MS4 and to waters of the United States, of sediment, silt, earth, soil, and other material associated with demolition, clearing, grading, excavation, land filling, and other construction activities to the maximum extent practicable. Any best management practices capable of installation and/or implementation prior to commencement of construction (for example, structural measures) shall be installed and/or implemented prior to commencement of construction at the site or in compliance with a schedule for installation and/or implementation in an applicable SWPPP. Permanent BMPs as required for post-construction water quality maintenance by the NPDES or TPDES Construction General Permit or other ordinances may be used during construction, as appropriate, for sediment and other pollutant control. They shall be restored to serve their post-construction function before development or redevelopment activities are completed.
- b) All sites shall comply with the requirements in any and all applicable current NPDES and TPDES storm water permits, when appropriate based upon the acreage of the construction site.

**Section 8-2.12. Compliance Requirements**

- a) Sites disturbing less than one acre or within a common plan of development that is disturbing less than one acre do not have to apply for state coverage, inspect the site, nor create plans. If general construction requirements are repeatedly not met, the owner/operator may be directed by the City to comply with some or all requirements for larger sites.
- b) Sites disturbing more than one acre of land or within a common plan of development that is disturbing more than acre of land shall comply with all sections of this ordinance.
  - 1. The Owner or Operator shall ensure that copies of the Notice of Intent (NOI), Notice of Change (NOC), Notice of Termination (NOT), and Construction Site Notice (CSN) are provided to the City of Terrell Hills when appropriate.

c) Inspections.

- 1. All construction sites shall be inspected per the TPDES Construction General Permit.
- 2. All Owners or Operators of a Construction Site must provide an electronic version of inspection documentation at the frequency indicated by the Construction General Permit.

Documentation will be of the condition of the practices and will note any repairs needed and action taken.

3. Upon written notice by an agent of the City of Terrell Hills to the applicant or the applicant's designated representative regarding an erosion control action or repair needed to bring the Site into compliance, the Owner or Operator shall comply with noted actions or repairs, and record such actions within 48 hours of the notification and prior to the next rain event. Failure to record such actions within 72 hours of notification shall be a violation of this ordinance.

d) Control measures. Erosion and sediment control measures shall be designed and established at the Site in a manner that minimizes erosion and retains sediment on-site to the maximum extent practicable with consideration of the topography, soil type, and rainfall. BMP's and control measures described in the Integrated Storm Management (iSWM) manual produced by the North Central Texas Council of Governments or subsequent versions are minimal control measures approved for use in the City of Terrell Hills. BMP's not listed in the iSWM manual may be considered and must receive City approval.

e) Preserve existing vegetation. The Owner or Operator shall ensure that existing vegetation is preserved to the maximum extent practicable. Should the existing vegetation not be preserved, the Owner or Operator shall take steps necessary to stabilize the Site in order to prevent erosion.

f) Maintenance.

1. All temporary stabilization measures shall be maintained until final stabilization is established and a NOT is filed with the TCEQ, when required by the Construction General Permit, and the finalization of a City of Terrell Hills Termination Inspection has been conducted, or transfer of operational control has been completed, as required by the Construction General Permit, when appropriate based on the acreage of the construction site.

2. The Owner or Operator of any Site shall perform maintenance as necessary to maintain the continued effectiveness of storm water controls within 48 hours of discovery of failure, damage, or compromise and prior to the next rain event.

3. Failure to maintain BMP's in proper working order shall be a violation of this ordinance.

4. Sediment or silt accumulation. Should the control measures at a Site fail, in part or in total, the Owner or Operator shall remove all sediment and siltation accumulation caused by BMP failure from the City's MS4, including streets and right-of-ways, within 48 hours of discovery or prior to the next rain event. Removal includes sweeping streets, sidewalks, and other infrastructure and removing sediment from the MS4.

g) Waste.

1. Proper waste disposal and waste management techniques shall be implemented, including covering waste materials, minimizing ground contact with regulated or hazardous chemicals and trash, and keeping trash receptacles off of paved surfaces or other locations that drain directly to a storm drain system or local waterway.

2. This subsection also includes sanitary waste.

h) Dust suppression. Techniques shall be employed to prevent air-borne dust from leaving the Site.

i) Concrete wash-out

1. An Operator shall specify a containment area and/or a concrete wash-out device that will be established and maintained for all Sites. This designated area must be clearly marked with signs.

**Section 8-1.13. Responsibility of all On-Site Personnel.**

It is a violation of this ordinance for any Person to damage or allow be damaged any temporary or permanent storm water control measures through their actions or inactions without promptly restoring the control measures to an effective and efficient state.

**Section 8-2.14. Training Required.**

a) No contractor or sub-contractor shall commence work on a Site without first attending training on storm water impacts from construction activities and maintenance of control measures.

1. Location and availability of training shall be provided by the City of Terrell Hills.

2. Prior training or training provided by another entity shall be considered by City staff. Staff shall consider the merits of said alternative training and may disapprove of this training for any reason.

b) Contractors shall have proof of attendance available for inspection at any Site. The contractor shall be responsible for ensuring that each of its employees is knowledgeable of the conditions of this ordinance.

**Section 8-2.15. Erosion and Sediment Control Submittal Required.**

An Erosion and Sediment Control Plan shall be submitted to the City and reviewed and released by the City prior to the commencement of any activity on a Site. Commencement of activity before the submittal, review and release of an Erosion and Sediment Control Plan shall be a violation of this ordinance.

## **DIVISION 5. Storm Water Discharges from Industrial Activities.**

### **Section 8-2.16. General Requirements for Industrial Activities**

- a) All owner or operators of facilities that have or will have storm water discharges associated with industrial activity that are subject to an NPDES storm water discharge permit shall comply with all provisions of such permit.
- b) All owners or operators of facilities that have or will have storm water discharges associated with industrial activity (except for construction activities) shall submit one of the following:
  1. A copy of the facility's signed NOI for a TPDES General Permit relating to storm water discharges associated with industrial activity to the City Manager not less than two calendar days prior to commencement of industrial activity at the facility.
  2. A copy of the facility's No Exposure Certification to the City Manager not less than two calendar days prior to commencement of industrial activity at the facility.
  3. A copy of the facility's NPDES or TPDES application for an individual permit to discharge storm water not less than thirty calendar days prior to commencement of industrial activity at the facility.
  4. A copy of the facility's signed NOI for an NPDES General Permit for Discharges from Ready-Mixed Concrete Plants, Concrete Products Plants and Their Associated Facilities in Texas to the City Manager not less than thirty calendar days prior to commencement of industrial activity at the facility.
- c) If the owner or operator of a facility becomes aware of a failure to submit relevant facts or that incorrect information has been submitted, a copy of the signed revised NOI shall be submitted to the City Manager within fourteen calendar days of the discovery. If relevant information on the NOI or No Exposure Certification changes, a copy of the signed revised NOI shall be submitted within fourteen calendar days of the discovery.
- d) When the owner or operator of a facility changes or the facility moves to a new location or the industrial activity at the facility ceases operations, a copy of the signed NOT for the TPDES or NPDES General Permit or No Exposure Exclusion shall be submitted to the City Manager

within fourteen calendar days of the change.

- e) Any owner of a facility with a storm water discharge associated with industrial activity, to which Section 8-2.15(a) applies, whether or not he/she is an operator of the facility, is jointly and severally responsible for compliance with this ordinance.
- f) Upon request by the City Manager, all owners and operators of any facility that is in noncompliance with the requirements of this Chapter, the NPDES or TPDES General Permit, the No Exposure Exclusion, or any applicable individual NPDES or TPDES permit issued for storm water discharges from the industrial facility, shall consult with the City Manager, any other representative of the City, or any third-party designated by the City in an attempt to achieve compliance as soon as practicable. If compliance is not achieved to the City's satisfaction, the City may, in its discretion, report the noncompliance to EPA and/or the TCEQ, and/or the City may itself undertake any enforcement action authorized by this Chapter. Exercise of the City's option for consultation under this Section 8-2.15(e) shall not be a bar against, or prerequisite for, taking any other enforcement action against any owner or operator of the facility.

#### **Section 8-2.17. Facilities operating with a No Exposure Exclusion**

- a) The owner or operator of a facility operating with a No Exposure Exclusion shall not allow the following materials, equipment, processes, and areas to be exposed to precipitation or storm water runoff:
  - 1. Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain;
  - 2. Materials or residuals on the ground or in storm water inlets from spills or leaks;
  - 3. Materials or products from past industrial activities;
  - 4. Material handling equipment, except non-leaking, maintained vehicles intended for outside use;
  - 5. Materials or products during loading, unloading, or transporting activities;
  - 6. Materials or products stored outdoors, except for final products that are intended for outside use and do not release a pollutant;
  - 7. Materials contained in open, deteriorated, or leaking storage drums, barrels, bins, tanks or similar containers.
  - 8. Materials or products handled or stored on roads or railways owned or maintained by the

- owner or operator of the facility;
9. Waste material;
10. Application or disposal of process wastewater unless otherwise permitted;
11. Particulate matter or visible deposits of residuals from roof stacks, vents, or air handling and control devices that are not authorized by an air quality control permit.
- b) Upon inspection of the facility, the City Manager may at any time notify the Operator or Owner that the facility does not meet the requirements of no exposure necessary to operate under a No Exposure Exclusion or any additional requirements imposed by or under this Chapter or other City ordinances. Such notification shall identify the non-compliant conditions at the facility and the changes necessary to attain a condition of no exposure. Within thirty calendar days of such notification from the City Manager (or as otherwise provided by the City Manager), the Operator or Owner shall correct the non-compliant conditions and submit to the City Manager a written certification that the changes have been implemented, or the operator or owner shall prepare a Storm Water Pollution Prevention Plan and submit a NOI in accordance with this Chapter.

## **DIVISION 6. COMPLIANCE MONITORING AND ENFORCEMENT**

### **Section 8-2.18. Right of Entry: Inspection and Sampling**

The City Manager, or the designated representative, shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of this Chapter, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the City Manager ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Dischargers shall make available to the City Manager, upon request, any SWPPP's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, Notices of Intent, and any other records, reports, and other documents related to compliance with this Chapter and with any state or federal discharge permit.

- a) Where a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City Manager or his authorized representative(s) will be permitted to enter without delay for the purposes of performing his/her responsibilities.
- b) The City Manager shall have the right to set up on the discharger's property, or require



installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.

- c) The City Manager may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.
- d) The City Manager may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
- e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the City Manager and shall not be replaced. The costs of clearing such access shall be borne by the discharger.
- f) Unreasonable delays in allowing the City Manager access to the discharger's premises shall be a violation of this Chapter.

**Section 8-2.19. Inspection or Search Warrants**

If the City Manager, or his/her authorized representative, has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City Manager may seek issuance of an inspection or search warrant from any court of competent jurisdiction. For purposes of this Section, the City Manager, the Director of Public Works, the Building Inspector, and the duly authorized representatives of these City departmental Managers are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

**Section 8-2.20. Warning Notice**

When the City Manager finds that any person has violated, or continues to violate, any provision of

this Chapter, or any order issued hereunder, the City Manager may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall require the City Manager to issue a Warning Notice prior to taking any action, including emergency action or any other enforcement action.

**Section 8-2.21. Notification of Violation**

When the City Manager finds that any person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, the City Manager may serve upon that person a written Notice of Violation. Within seven calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the City Manager. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the City Manager within seven calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this subsection shall require the City Manager to issue a Notice of Violation prior to taking any action, including emergency action or any other enforcement action.

**Section 8-2.22. Consent Orders**

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

**Section 8-2.23. Show Cause Hearing**

The City Manager may order any person who has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, to appear before the City Manager and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be

served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in this Chapter. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

**Section 8-2.24. Compliance Orders**

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

**Section 8-2.25. Remediation, Abatement, and Restoration Orders**

When the City Manager finds that a person has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, and that such violation has adversely affected the MS4, or the waters of the United States, the City Manager may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, or the waters of the United States, and/or to restore any part of the MS4, or the waters of the United States. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of City property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Subsection does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this Subsection shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

**Section 8-2.26. Emergency Cease and Desist Orders**

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

- a) Immediately comply with all requirements of this Chapter; and
- b) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge. Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the City Manager may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The City Manager may allow the person to commence or recommence its discharge when it has demonstrated to the satisfaction of the City Manager that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Chapter. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the City Manager within ten calendar days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

### **Section 8-2.27. Stop Work Orders**

Whenever the City Manager finds that any operator of a construction site has violated, threatens to violate, or continues to violate, any provision of this Chapter, or any order issued hereunder, the City Manager may issue a Stop Work Order to the operator, and require that a copy of the Stop Work Order be posted at the construction site and distributed to all City departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the City Manager, the Stop Work Order shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the City associated with a building permit, early grading release, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a Stop Work Order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

**SECTION 3. Penalty.** That any person violating any of the provisions of this ordinance shall be

deemed guilty of a misdemeanor and upon conviction thereof shall be fined \$500.00. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

**SECTION 4. Repealing Ordinances in Conflict.** That all ordinances or any parts thereof in conflict with the terms of this ordinance shall be and hereby are deemed repealed and of no force or effect; provided, however, that the ordinance or ordinances under which the cases currently filed and pending in the Municipal Court of the City of Terrell Hills, Texas, shall be deemed repealed only when all such cases filed and pending under such ordinance or ordinances have been disposed of by a final conviction or a finding not guilty or nolo contendere, or dismissal.

**SECTION 5. Severability.** That if any section, article, paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of the ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 6. Effective Date.** That this ordinance shall be in full force and effect after its passage and publication as required by law, and it is so ordained.  
(ORD 1304, 04-12-10)