

ORDINANCE NO. 1887

AN ORDINANCE OF THE CITY OF BRYAN, AMENDING CHAPTER 46 "FLOODS" OF THE CITY OF BRYAN CODE OF ORDINANCES, BY REPEALING THE EXISTING CHAPTER AND REPLACING WITH A NEW CHAPTER TO BE TITLED "STORMWATER MANAGEMENT"; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERANCE CLAUSE; FINDING AND DETERMINING THAT THE MEETINGS AT WHICH THE ORDINANCE IS PASSED ARE OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR CODIFICATION; PROVIDING FOR PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Bryan finds that it is in the best interests of all of the citizens to enact a comprehensive ordinance for the proper regulation of storm waters; and

WHEREAS, the City Council desires to encourage development in the City in a manner as to avoid endangering citizens during times of extreme rainfall and storm water runoff.

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

1.

That Chapter 46, "Floods" is deleted in its entirety and replaced with a new Chapter 46, "Stormwater Management" to read as follows:

CHAPTER 46 STORMWATER MANAGEMENT

ARTICLE I. IN GENERAL

Secs. 46-1 – 46.10. Reserved.

ARTICLE II. FLOOD PROTECTION

DIVISION 1. GENERALLY

Sec. 46-11. Statutory Authorization.

The legislature of the State of Texas has in V.T.C.A. Water Code § 16.315, et seq., delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses.

Sec. 46-12. Findings of Fact.

As a part of these provisions, the City finds that:

- (1) The special flood hazard areas of the city 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 the result of the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of special 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.
- (3) The city, in an attempt to require the development of property in such a way as to not adversely impact on potential stormwater and flooding has caused this chapter to be enacted.

Sec. 46-13. Statement of Purpose.

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

- (1) Protect human life and health;
- (2) Maximize the cost effectiveness of expenditures of public money for 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 special flood hazard areas;
- (6) Help maintain a stable tax base for the city by providing for the organized development of all areas in such a manner as to minimize future areas of flooding; and
- (7) Ensure that potential property owners are notified that property is in a special flood hazard area.

Sec. 46-14. Methods of Reducing Flood Losses.

To accomplish its purpose, this Article uses the following methods:

- (1) Restricts or prohibits uses that are dangerous to health, safety or property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requires that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage throughout their intended life span;
- (3) Controls the alteration of natural floodplains, their protective barriers and stream channels, which help accommodate or channel flood waters;
- (4) Prevents the construction of barriers which will divert floodwaters and subject other lands to greater flood hazards; and
- (5) Controls development which would cause greater erosion or potential flood damage such as grading, dredging filling, and excavation.

Sec. 46-15. Definitions.

In this Article:

Appeal means a request to the Director of Public Works for a review of the Floodplain Administrator's interpretation of any provision of this Article.

Appurtenant structure means a Structure that is located on the same parcel of property as the principal Structure and the use of which is incidental to the use of the principal Structure.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood average depths 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 sheet flow or ponding.

Area of special flood hazard means the land in the Floodplain within a community subject to a one percent or greater chance of flooding in any given year. The term "special flood hazard area", for purposes of these regulations, is synonymous with the phrase "area of special flood hazard".

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "regulatory flood").

Base flood elevation (BFE) means the water surface elevation of the Base flood at a certain location assuming full encroachment onto the floodway fringe at all locations. This is the "with floodway" elevation shown in the Flood insurance study.

Basement means any area of a Building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the Building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the Building or the supporting foundation system.

Building- see Structure

Certification means a certification by a registered professional engineer or other party but does not constitute a warranty or guarantee of performance, expressed or implied. Certification of data is a statement that the data is accurate to the best of the certifier's knowledge. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices to provide protection from the base flood. Certification of "as built" conditions is a statement that the structure(s) has been built according to the plans being certified, is in place, and is fully functioning.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical Facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

Development means any substantial manmade change to improved or unimproved real estate, including but not limited to Buildings or other Structures, mining, dredging, filling, grading, paving, excavating, drilling operations or storage of materials or equipment.

Elevated building means a non-basement Building built to have the lowest floor elevated above the ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

- (1) 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 elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water; and
- (2) 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, D, the term "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 floodwaters.

Existing construction means, for the purposes of determining insurance rates, Structures for which the "start of construction" commenced before the effective date of the FIRM. "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, and either final site grading or the pouring of concrete pads) is completed before August 22, 1977 when Floodplain management regulations were adopted.

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 the overflow of inland waters or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map of a community, on which the Federal Emergency Management Agency (FEMA) has delineated the areas of flood hazards and regulatory floodway.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which special flood hazard areas have been designated as Zone A.

Flood Insurance Rate Map (FIRM) means an official map 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 (FIS) means the official report provided by the Federal Emergency Management Agency that contains flood profiles, as well as the flood hazard boundary-floodway map and the water surface elevations of the base flood.

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.

Floodplain or flood prone area means any land area susceptible to being inundated by water from any source (See *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, floodplain management regulations.

Floodplain management regulations means this ordinance and other 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. This term describes federal, state or local regulations in any combination thereof, which provide provisions for the purpose of flood damage prevention and reduction.

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 of the base flood more than one foot.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Functionally dependent facility means a facility which cannot be used for 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 shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Floodway fringe means that portion of the area of special flood hazard not occupied by the floodway.

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:

- (1) 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.
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

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

(a) By an approved state program as determined by the Secretary of the Interior, or

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

Increased Cost of Compliance (ICC) means the coverage by a standard flood insurance policy under the NFIP that provides for the payment of a claim for the cost to comply with the State of Texas and the City of Bryan floodplain management laws or ordinances after a direct physical loss by flood, when the City declares the Structure to be “substantially” or “repetitively” flood-damaged. ICC coverage is provided for in every standard NFIP flood insurance policy, and will help pay for the cost to floodproof, relocate, elevate, or demolish the Structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of 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 requirements of this Article.

Manufactured home means a Structure transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include “recreational vehicle” unless it is placed on a site for greater than 180 consecutive days.

Manufactured home park or subdivision (mobile home park) means a parcel or contiguous parcels of land divided into two or more Manufactured home lots for rent or sale.

Map means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Maps (FIRM) for a community issued by the Agency.

Mean sea level (MSL) means 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.

National geodetic vertical datum (NGVD) means the nationwide reference surface for elevations throughout the United States made available by the National Geodetic Survey with the establishment of thousands of benchmarks throughout the continent.

New Construction means construction for which the “start of construction” commenced after the effective date of the ordinance from which this Article was derived.

New 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, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this ordinance.

Participating Community, also known as an eligible community, means a community in which FEMA has authorized the sale of flood insurance.

Principally above ground means that at least 51 percent of the actual cash value of the Structure is above ground.

Recreational Vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use (includes park trailers and travel trailers).

Note: If the Recreational Vehicle is left in floodplain for more than 180 consecutive days, the Recreational Vehicle must comply with the requirements of this ordinance as if it were a Manufactured Home.

Reasonably safe from flooding means base flood waters will not inundate the land or damage Structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed Buildings.

Repetitive Loss means flood-related damages sustained by a Structure on two separate occasions during a 10-year period ending on the date of the event for which the second claim is made, for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the Structure before the damages occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area (SFHA) (see Area of Special Flood Hazard) means an area having special flood hazard and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V1-30, VE, or V.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. It includes substantial improvement. The actual start means the first placement of permanent construction of a Structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a Manufactured home on a foundation. 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 a 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 substantial improvement, the actual start of construction means the first alteration of any 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, Manufactured home, or any gas or liquid storage tank that is principally above ground.

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 damage also means flood-related damages sustained by a Structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the Structure before the damages occurred.

Substantial improvement means any repair, reconstruction, addition, or other improvement of a Structure, during the life of the Structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the Structure before the "start of construction" of the improvement. The term does not, however, include either:

- (1) Any project for improvement of a Structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- (2) Any alteration of a "Historic Structure" provided that the alteration would not preclude the structure's continued designation as a "Historic Structure".

Variance means a grant of relief by the Zoning Board of Adjustment from the requirements of this Article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner that would be otherwise prohibited by this Article.

Violation means the failure of a Structure or other development to be fully compliant with this Article. A Structure or other Development without the elevation certificate, other certifications, or other evidence of compliance required in this Article 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.

Secs. 46-16 – 46.20. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 46-21. Lands to which this Article applies.

This Article shall apply to all areas within the City of Bryan, and the area of extraterritorial jurisdiction (ETJ).

Sec. 46-22. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific and engineering report entitled "Flood Insurance Study for Brazos County, Texas and Incorporated Areas," dated July 2, 1992, with accompanying flood insurance rate maps and any revisions thereto, are hereby adopted by reference and declared to be a part of this chapter.

Any revision or amendment to the flood insurance study which is requested by a landowner in the city shall be submitted to the Floodplain Administrator. All requests for map amendment or map revision must be approved by the Floodplain Administrator in writing prior to their submission to FEMA. If modification of any watercourse is involved an effective conditional letter of map amendment or conditional letter of map revision shall be on file with the Floodplain Administrator prior to any development. All submittals to FEMA shall be made at no cost to the city. No certificate of occupancy shall be issued for any structure whose construction required the revision or amendment of the flood insurance study until data supporting the revision has been submitted to the Floodplain Administrator.

Sec. 46-23. Establishment of Floodplain Development Permit.

A Floodplain Development Permit is required for all proposed construction within regulatory floodplains or other areas of flooding identified by the City of Bryan to ensure conformance with the provisions of this Article.

Sec. 46-24. Compliance.

No development shall hereafter occur without full compliance with the terms and provisions of this Article and other applicable regulations.

Sec. 46-25. Abrogation and greater restrictions.

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

Sec. 46-26. Interpretation.

In the interpretation and application of this Article all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the City, and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Sec. 46-27. Warning and disclaimer of liability.

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

Sec. 46-28. Designation of Floodplain Administrator.

The City Engineer, or his designee, is hereby appointed the Floodplain Administrator to administer and implement the provisions of this Article.

Sec. 46-29. Duties and responsibilities of the Floodplain Administrator.

Duties and responsibilities of the Floodplain Administrator include:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this Article unless protected from disclosure by law;
- (2) Review, approve or deny all applications for Floodplain Development Permits required by this Article.

- (3) Review permits for proposed development to assure that the Developer has obtained all necessary permits from those federal, state or local government 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. Developer will submit documentation of those necessary permits to the City and such documentation is to be maintained on file with the floodplain development permit;
- (4) Review reports, studies, plans and specifications for compliance with the requirements of this Article;
- (5) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor of all new construction and substantial improvements, by requiring an elevation certificate sealed by a licensed professional;
- (6) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved nonresidential structures in A- Zones have been floodproofed by requiring an elevation certificate sealed by a licensed professional;
- (7) Provide interpretation as needed as to the exact location of the boundaries of the areas of special flood hazard and regulatory floodway (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. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided for in this ordinance;
- (8) Notify in Riverine situations adjacent communities and the Texas Commission on Environmental Quality (TCEQ) prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency, and assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished;
- (9) When base flood elevation data or floodway data has not been provided in accordance with this Article, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of this Article;
- (10) Coordinate with other Departments in the City to assure that the requirements of this Article are fully met;
- (11) Participate actively in evaluating the variance requests and provide input and recommendations in variance hearings/proceedings;
- (12) Coordinate all change requests to the FIS and FIRM or FBFM, or both, with the requestor, State, and FEMA;
- (13) Submit new technical data. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify FEMA of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be

based upon current data. This submittal to FEMA shall be at the developer's, who is requesting the change, expense and at no cost to the City;

- (14) When a regulatory floodway has not been designated, the Floodplain Administrator shall not permit new construction, substantial improvements, or other development (including fill) 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; and
- (15) The Floodplain Administrator shall maintain a record of all actions taken under the provisions of this Article, including but not limited to appeals or request for a variance as a matter of public record or for submittal to the Federal Emergency Management Agency.

Sec. 46-30. Floodplain Development Permit procedures.

A Floodplain Development Permit Application must be submitted to the Floodplain Administrator prior to undertaking any development activities. Application for a Floodplain Development Permit must be submitted on forms furnished by the City and must include: plans in duplicate drawn to scale showing the location, dimensions, and elevation of the area under consideration for development, drainage facilities, perimeter setbacks, environmental features such as base floodplain areas, wetlands, and other protected areas, proposed earth and landscape alterations, existing and proposed Structures, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information, certified by a professional who is authorized to certify such information in the State, is required:

- (1) Application:
 - (a) Elevations of the area of development in relation to mean sea level (such as a contour map) for both existing and proposed development;
 - (b) Elevation in relation to mean sea level, of the lowest floor (including basement) of all new and substantially improved Structures;
 - (c) Elevation in relation to mean sea level to which any nonresidential Structure will be flood proofed;
 - (d) A certificate from a registered professional engineer or architect that the nonresidential flood proofed Structure will meet the flood proofing criteria of section 46-43;
 - (e) Existing and proposed infrastructure; and
 - (f) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
- (2) Approval or denial of a development permit by the Administrator will be based on the requirements of this Article and the following 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 development with existing and anticipated development;
- (e) The safety of access to or through the property in times of flooding for ordinary and emergency vehicles, city utility service vehicles, or maintenance vehicles;
- (f) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets, bridges, public utilities and facilities such as sewer, gas, electrical, and water systems;
- (g) The expected heights, velocity, duration, rate or rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
- (h) The necessity of 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; and
- (k) The requirements of the federal emergency management agency as a part of the National Flood Insurance Program.

(3) Construction:

Upon placement of the lowest floor, or flood proofing by whatever construction means, the permit holder must submit to the Floodplain Administrator a certification of the elevation of the lowest floor or flood proofed elevation, as built, in relation to mean sea level. Certification must be prepared by or under the direct supervision of a registered land surveyor or professional engineer who is authorized to certify such information in the State, and certified by same. Any work undertaken prior to submission of the certification will be at the permit holder's risk.

The Floodplain Administrator will review the lowest floor elevation and flood proofing certificate. If these documents do not conform to the requirements of this Article, the permit holder must immediately cease further work, and correct any deficiencies. Failure of the permit holder to submit the surveyed lowest floor elevation and flood proofing certificate or failure to correct any deficiencies will result in a stop-work order for the project.

- (4) Revocation of permit. The Floodplain Administrator may revoke a permit or approval issued under the provisions of this Article when the applicant has made a false statement or misrepresentation of a material fact in the application or plans upon which the permit or approval was based.

Sec. 46-31. Variance procedures.

- (1) The Zoning Board of Adjustment will hear and decide requests for variances from the requirements of this Article.
- (2) The board will hear and decide appeals only when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this Article. Any person aggrieved by the decision of the board may appeal the decision to a court of competent jurisdiction.
- (3) Variances may only be granted when there is:
 - (a) A showing of good and sufficient cause,
 - (b) A determination that failure to grant the variance would result in exceptional hardship, and
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (4) Variances may only be granted for the minimum necessary deviation to accomplish the purposes of this Article.
- (5) Variances will not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (6) Variances may be issued for the repair or rehabilitation of historic Structures if the proposed repair or rehabilitation would not preclude the Structure's continued designation as a historic Structure, and the variance is the minimum necessary to preserve the historic character and design of the Structure.
- (7) Variances may be issued for new construction, substantial improvements, and for other development necessary for the conduct of a functionally dependent use if:
 - (a) The criteria of paragraphs (3) through (5) of this section are met, and
 - (b) The Structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Sec. 46-32. Factors to consider in granting a variance request.

The Zoning Board of Adjustment shall consider all technical evaluations, provisions specified in other sections of this Article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others,
- (2) The danger to life and property due to flooding or erosion damage,
- (3) The susceptibility of the proposed facility and its contents to flood damage,
- (4) The importance of the services provided by the proposed facility to the community,

- (5) The necessity of the facility to a waterfront location,
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage,
- (7) The compatibility of the proposed use with existing and anticipated development,
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area,
- (9) Access to the property in times of flood for ordinary and emergency vehicles,
- (10) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site,
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges; and
- (12) The request for variance is not an after-the-fact request.

Sec. 46-33. Special conditions.

The Zoning Board of Adjustment may attach reasonable conditions to a variance to further the purposes of this Article.

Sec. 46-34. Variance notification.

- (1) The Floodplain Administrator will notify in writing an applicant to whom a variance is granted that:
 - (a) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
 - (b) Construction below the base flood level increases risks to life and property.
- (2) A copy of the notice will be recorded by the Floodplain Administrator in the Brazos County Deed Records in a manner so that it appears in the chain of title of the affected parcel of land. The Floodplain Administrator will maintain a record of all actions involving an appeal and will report all variances issued in his annual biennial report submitted to FEMA.
- (3) The Floodplain Administrator will notify in writing if the variance is denied.

Sec. 46-35. Stop work orders.

Upon notice from the Floodplain Administrator that work on any Building, Structure, dike, bridge or any improvement which would affect water drainage is being done contrary to the provisions of this Article, or in a dangerous or unsafe manner, such work shall be immediately stopped. Notice will be in writing and be given to the owner of the property or to his agent, or to the person doing the work, and will state the conditions under which work may be resumed. When an emergency exists, no written notice is

required to be given by the Floodplain Administrator; provided however, written notice shall follow within 5 working days from the time oral notice to stop is issued.

Sec. 46-36. Penalties for violation.

Violation of the provisions of this Article or failure to comply with any of its requirements shall constitute a misdemeanor. Each violation shall be deemed a separate offense for each and every day during which any violation of any of the provisions of this Article is committed or continued. Any person found guilty of violating a provision of this Article may be punished as provided for in section 1-14 of this Code.

Secs. 46-37 – 46.40. Reserved.

DIVISION 3. STANDARDS FOR FLOOD HAZARD REDUCTION

Sec. 46-41. General Standards.

In all areas of special flood hazards, determined by FEMA or by the community in areas where FEMA has not determined the areas of special flood hazard, the following provisions apply:

- (1) Floodplain Administrator shall review permits for proposed construction or other development, including the placement of manufactured homes, so that a determination may be made whether or not such construction or other development is proposed within flood-prone areas.
- (2) The Developer of new construction, substantial improvements, and other development proposals must assure that all necessary permits have been obtained from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act, as amended, or by wide-area agencies.
- (3) All new construction and substantial improvements must 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.
- (4) All new construction and substantial improvements must be constructed with materials and utility elements resistant to flood damage.
- (5) All new construction or substantial improvements must be constructed by methods and practices that minimize flood damage.
- (6) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, must be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (7) Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, must be assured that they will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that:
 - (a) All such proposals are consistent with the need to minimize flood damage within the flood-prone area,

- (b) All public and private utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
 - (c) Adequate drainage is provided to reduce exposure to flood hazards.
- (8) New and replacement water supply systems must be designed to prevent infiltration of flood waters into the systems.
- (9) New and replacement sanitary sewage systems must be designed to prevent infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems must be located and constructed to avoid impairment to them or contamination from them during flooding.
- (10) New construction and substantial improvements, when located in multiple flood zones with varying base flood elevations or in same flood zone with multiple base flood elevations must meet the requirements for the flood zone with the most stringent requirements and the highest base flood elevation.

Sec. 46-42. Standards for approximate A-Zones.

On land located within the areas of special flood hazard established in section 46-22, where streams exist for which no base flood elevation data or regulatory floodway has been provided by FEMA, the following provisions apply:

- (1) Compliance with the standards listed in section 46-41.
- (2) Base flood elevation data must be submitted to the Floodplain Administrator for all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, if not otherwise required by this Article.
- (3) The Floodplain Administrator will obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to paragraph 46-42(2). When such base flood elevation data is utilized, the new construction, substantial improvements, or other development must meet the elevation and non-elevation requirements of sections 46-43 through 46-45.
- (4) When the base flood elevation data is utilized, the Floodplain Administrator will:
 - (a) Obtain from the Developer in the form of an elevation certificate the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved Structures,
 - (b) Obtain, if the Structure has been flood proofed in accordance with the requirements of section 46-43, the elevation in relation to the mean sea level to which the Structure has been flood proofed, and
 - (c) Maintain a record of all such information.
- (5) Notify, in Riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (6) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

- (7) Manufactured homes must be installed using methods and practices that minimize flood damage. Manufactured homes must be elevated and anchored to prevent 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.
- (8) When the base flood elevation data is not available from any source, the lowest floor of the new construction and substantial improvements must be elevated to 3 feet above the highest adjacent grade, (or 2 foot above the highest crown of the adjacent roadway).
- (9) Any alteration, repair, reconstruction or improvements to a Building that is in compliance with the provisions of this Article must meet the requirements of "new construction" as contained in this Article; and
- (10) Any alteration, repair, reconstruction or improvements to a Building that is not in compliance with the provisions of this Article may be undertaken only if the non-conformity is not furthered, extended, or replaced.

Sec. 46-43. Specific standards for non-coastal high hazard areas

In all non-coastal areas of special flood hazard where base flood elevation data has been provided, as set forth in section 46-22, but no regulatory floodways have been delineated, the following provisions apply:

- (1) Compliance with the standards in section 46-42.
- (2) Residential Structures.
 - (a) All new construction or substantial improvements of residential Structures within Zones A1-30, AE and AH (including substantially damaged manufactured homes by flood) must have the lowest floor (including basement) elevated to 1 foot above the base flood elevation.
 - (b) All new construction and substantial improvements of residential Structures within AO Zone must 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 FIRM (at least two feet if no depth number is specified).
- (3) Nonresidential Structures.
 - (a) All new construction or substantial improvements of non-residential Structures must have the lowest floor (including basement) elevated to 1 foot above the base flood elevation. Nonresidential structures within Zones A1-30, AE and AH may be flood-proofed in lieu of being elevated provided that together with all attendant utility and sanitary facilities, be designed so that below the base flood elevation plus one foot the structure is water-tight with walls substantially impermeable to the passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect must certify that the provisions of this subsection are satisfied. The FEMA Floodproofing Certificate must be prepared and submitted to the Floodplain Administrator along with the corresponding operational and maintenance plans.
 - (b) All new construction and substantial improvements of nonresidential Structures within Zone AO must:

- 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 FIRM (at least two feet if no depth number is specified), or
 - ii. together with attendant utility and sanitary facilities be completely flood proofed to that level to meet the flood proofing standard specified in paragraph (3)(a) of this section.
- (4) Elevated Structures. For all new construction or substantial improvements, fully enclosed areas below the lowest floor elevation may be usable solely for parking of vehicles, building access, or storage. These enclosed areas must be designed and constructed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
 - (a) Designs for meeting this requirement must be certified by a professional engineer or architect, to meet or exceed the following minimum criteria:
 - i. 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 must be provided,
 - ii. The bottom of all openings must be no higher than one foot above grade, and
 - iii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic entry and exit of floodwaters.
 - (b) Access to the enclosed area must be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator), and
 - (c) The interior portion of the enclosed areas may not be partitioned, temperature-controlled, or finished into separate rooms.
- (5) Provisions for Manufactured Homes and Recreational Vehicles.
 - (a) All manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision within Zones A 1-30, AH, and AE, must be elevated on a permanent foundation and be securely anchored to an adequately anchored foundation system to resist foundation collapse and lateral movement so that:
 - i. The lowest floor of the manufactured home is elevated to 2.0 feet above the base flood elevation, and
 - ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 36 inches in height above the grade and be securely anchored to an adequate foundation system to resist flotation, collapse, and lateral movement as certified by a Licensed Professional Engineer.
 - (b) All recreational vehicles placed on sites within Zones A1-30, AH, and AE must 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 requirements for new construction, including anchoring and elevation requirements for manufactured homes in paragraph 5(a) of this subsection.

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.

- (c) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill shall be permitted within Zones A 1-30 and AE on the 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.
- (d) Within Zones AH and AO on the FIRM, adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

Sec. 46-44. Standards for Floodways.

On land located within areas of special flood hazard established in section 46-22, are designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris, potential projectiles and have significant erosion potential, the following provisions apply:

- (1) Compliance with standards in section 46-43.
- (2) Prohibition on encroachments, including fill, new construction, substantial improvements and other developments with the 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.

Sec. 46-45. Critical Facilities.

Construction of new Critical Facilities shall be, to the extent possible, located outside the limits of the SFHA, preferably outside the 0.2% annual chance floodplain. Construction of new Critical Facilities may be permissible within the SFHA if feasible alternative sites are unavailable. Critical Facilities constructed within the SFHA shall have the lowest floor elevated 3.0 feet above the base flood elevation at the site. Flood proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all Critical Facilities to the maximum extent possible.

Sec. 46-46. Management Methods and Practices

The city shall utilize the following methods and practices for stormwater management:

- (1) Limit or regulate the rate of stormwater runoff from development to that which existed under conditions prior to development in those portions of the city as specified by the city;

- (2) Limit or control changes in the path of stormwater across or away from a site or development;
- (3) Limit or control alterations to existing watercourses and drainage facilities either within or outside areas of special flood hazard;
- (4) Control the use of existing or proposed drainage easements such that the easement remains useable for its intended purpose;
- (5) Limit or prohibit development in areas of special flood hazard;
- (6) Require compliance with City drainage design guidelines, specifications and details;
- (7) Establish drainage easements to control development and limit flood damage;
- (8) Prohibit dumping of refuse, fill, garbage, grass clippings, brush, waste concrete, or other objectionable material in existing drainage facilities including swales, ditches, storm drains, inlets, watercourses, gutters, or culverts;
- (9) Regulate or control filling, grading, clearing, dredging, paving, berming, or other earthwork which may increase stormwater runoff, change drainage patterns, or otherwise increase flood hazard or damage;
- (10) Control development that is dangerous to health, safety, or property in times of flooding, or which cause increases in flood heights, velocities, or flow rates;
- (11) Require adequate maintenance by landowner of drainage facilities and watercourses such that they retain their capacity for conveying stormwater. Maintenance within public drainage easements will be performed by the city.

Secs. 46-47 – 46-99. Reserved.

ARTICLE III. MUNICIPAL STORMWATER PROTECTION

DIVISION 1. IN GENERAL

Sec. 46-100. Purpose and intent.

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

- (1) Regulate the contribution of pollutants into the municipal stormwater drainage system by any person or entity;
- (2) Prohibit illicit discharges and illegal connections into the municipal stormwater drainage system;

- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, into the municipal stormwater drainage system; and,
- (4) To establish legal authority to carry out all inspections, surveillance, monitoring and enforcement procedures necessary to ensure compliance with the MS4 permit.

Sec. 46-101. Compatibility with other regulations.

This Article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this Article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this Article imposes restriction of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Secs. 46-102–46-109. Reserved.

DIVISION 2. DEFINITIONS

Sec. 46-110. Definitions.

In this Article:

Accidental Discharge means a discharge prohibited by this Article that occurs by chance and without planning or thought prior to occurrence.

Administrator means the City Manager of the City of Bryan or the City Manager's authorized representatives.

Agricultural stormwater runoff means any stormwater runoff from orchards, cultivated crops, pastures, range lands, and other Nonpoint source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR. Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR. Section 122.24.

Best management practices (BMP) means schedules of activities, practices, maintenance procedures, and other management practices to prevent or reduce the Pollution of the municipal stormwater drainage system and 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.

CFR means the Code of Federal Regulations.

Clean Water Act (CWA) means The Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92500, as amended Pub. L. 95217, Pub. L. 95576, Pub. L. 6483 and Pub. L. 97117, 33 USC. 1251 et.seq.

Construction Activity or Construction Activities include clearing, grading, and excavating that are subject to TPDES General Construction Permits. It does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, and original purpose of a ditch, channel, or other similar storm water conveyance. Additionally, it does not include the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities.

Contaminated means containing a harmful quantity of any substance.

Contamination means the presence of or entry into a public water supply system, the municipal stormwater drainage system, waters of the State, or waters of the United States of any substance which may be harmful to the public health and/or the quality of the water.

Construction Site means any construction site required by the Clean Water Act to Operate within the limits of an TPDES permit to discharge stormwater associated with construction activity.

Construction Site Notice (CSN) means a written submission to the MS4 Operator from an applicant stating that a small Construction Activity will be commencing and will operate under the provisions of the TCEQ General Permit TXR150000.

Discharge means any addition or introduction of any unpolluted water, pollutant, stormwater, or any other substance whatsoever into the municipal stormwater drainage system or into waters of the United States. This includes, but is not limited to, household hazardous waste, used motor vehicle fluids, and collected quantities of grass clippings, leaf litter, and animal wastes.

Discharger means 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.

Environmental Protection Agency (EPA) means the United States Environmental Protection Agency, or any duly authorized official of said agency.

Facility means any facility, Industrial Facility or Construction Site, required by the Clean Water Act to have a permit to Discharge stormwater associated with Industrial or Construction Activity.

Harmful quantity means the amount of any substance that will cause Pollution of waters of the State, the municipal stormwater drainage system, or that will present or may present imminent and substantial danger to the environment or to the health or welfare of persons.

Illicit Connections means any manmade conveyance connecting an Illicit Discharge directly to a municipal separate storm sewer.

Illicit Discharge means any Discharge to a municipal separate storm sewer that is not composed entirely of stormwater except Discharges pursuant to an TPDES permit (other than the TPDES permit for certain Discharges from the municipal separate storm sewer), Discharges resulting from fire fighting activities, and other allowable non-storm water Discharges.

Industrial Facility means any facility required by the Clean Water Act to have a permit to Discharge stormwater associated with Industrial Activity subject to TPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipal Separate Stormwater System (MS4) Permit means a Stormwater permit for municipalities to regulate stormwater discharges.

Municipal Separate Stormwater Sewer System means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage. Also designated as MS4.

Municipal Stormwater Drainage System Operator means the City of Bryan.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Clean Water Act.

Nonpoint source means any source of any Discharge of a pollutant that is not a "point source."

Notice of Change (NOC) means the notification of changes to SWP3 that is required by the TPDES Stormwater Permits.

Notice of Intent (NOI) means the advance notification that is required by the TPDES Stormwater Permits prior to commencement of work.

Notice of Termination (NOT) means the notification that is required by the TPDES Stormwater Permits upon completion of work.

Operate means to drive, conduct, work, run, manage, or control a vehicle or machine.

Operator means the party or parties that either individually or taken together meet the following two criteria: 1) They have operational control over the site specifications (including the ability to make modifications in specifications) and 2) they have the day to day operational control of those activities at the site necessary to ensure compliance with SWP3 requirements and any permit conditions.

Pollutant includes, but is not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, toxic materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, cellar dirt, and industrial, municipal, recreational, and agricultural waste discharged into water or into the MS4.

Pollution means the alteration of the physical, thermal, chemical, or biological quality of, or the Contamination of, any water of the State or water of the United States, 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.

Premises means lots, buildings, and any appurtenances situated thereon.

Private means property or Facilities owned by individuals, corporations, and other organizations and not by a city, county, state, or federal government agency.

Public means property or Facilities owned by a city, county, state, or federal government or agency thereof.

Regulated Activity means an activity occurring at an Industrial Facility or Construction Site, which qualifies the Facility or site to acquire a permit to Discharge Stormwater under the Clean Water Act.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Municipal Stormwater Drainage System, the water of the State, the waters of the United States.

Stormwater means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

Stormwater discharge associated with industrial activity means the Discharge from any conveyance which is used for collecting and conveying Stormwater and which is directly related to manufacturing, processing or raw materials storage areas at an Industrial Facility. The following categories of Facilities are considered to be engaging in "Industrial Activity":

- (1) Facilities subject to Stormwater effluent limitations guidelines, new source performance standards, or toxic Pollutant effluent standards under 40 CFR. subchapter N (except Facilities with toxic Pollutant effluent standards which are exempted under category (11) of this definition);
- (2) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
- (3) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR § 434.11(1) because the performance bond issued to the Facility by the appropriate federal Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990 and oil and gas exploration, production, processing, or treatment operations, or transmission Facilities that Discharge Stormwater Contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations;
- (4) Hazardous waste treatment, storage, or disposal Facilities, including those that are operating under interim status or a permit under subtitle C of the Federal Resource Conservation and Recovery Act (RCRA);
- (5) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the Facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;
- (6) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
- (7) Steam electric power generating Facilities, including coal handling sites;
- (8) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 422125), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the Facility that are either involved in vehicle maintenance, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (1)-(7) or (9)-(11) of this definition are associated with Industrial Activity;
- (9) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located

within the confines of the Facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the Facility, or areas that are in compliance with section 405 of the Clean Water Act;

- (10) Construction Activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which are not part of a larger common plan of development or sale;
- (11) Facilities under Standard Industrial Classifications (SIC Code) 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 422125, (and which are not otherwise included within categories (2)-(10) of this definition);

Stormwater Pollution Prevention Plan (SWP3) means a plan required by a TPDES permit to Discharge Stormwater associated with Industrial Activity or Construction Activity and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in Stormwater Discharges from Industrial Facilities and Construction Sites.

TCEQ means the Texas Commission on Environmental Quality or successor. MS4 interest is delegated to the TCEQ upon authority of the EPA.

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

TPDES Permit means a permit issued by the TCEQ under authority delegated pursuant to 33 USC § 1342(b) that authorizes the Discharge of Pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area wide basis.

Uncontaminated means not containing a Harmful quantity of any substance.

United States Code (USC) is the Federal law containing the Clean Water Act.

Vehicle means any form of motorized conveyance that transports people, cargo, or any other objects.

Wastewater means any water or other liquid, other than Uncontaminated Stormwater, Discharged from a Facility.

Surface Water in the State includes 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 non-navigable, and including the beds and banks of all watercourses 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, regulations, or permit, and which are created for the purpose of waste treatment are not considered to be water in the State.

Waters of the United States means:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) all interstate waters, including interstate wetlands;
- (3) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;
 - (a) which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (b) from which fish or shellfish are or could be taken or sold in interstate or foreign commerce; or
 - (c) which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) all impoundments of waters otherwise defined as waters of the United States under this definition;
- (5) tributaries of waters identified in this definition;
- (6) the territorial sea; and
- (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in 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 manmade bodies of water, which neither were originally created in waters of the United States (such as disposal are in wetlands) nor resulted from the impoundment of waters of the United States. 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 federal agency, for the purpose of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.

Wetland means 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.

Secs. 46-111–46-119. Reserved.

DIVISION 3. PROHIBITIONS

Sec. 46-120. Discharge to municipal stormwater drainage system prohibited.

A person commits an offense if the person Discharges or causes to be Discharged into the MS4 any Release of a Harmful quantity of any substance that is not comprised entirely of Stormwater.

Sec. 46-121. Exceptions.

- (1) It is an affirmative defense to prosecution, subject to subparagraph (2) below, that the Discharge was composed entirely of one or more of the following:
 - (a) A Discharge authorized by, and in full compliance with, an TPDES permit (other than the TPDES permit for discharges from the MS4);
 - (b) A Discharge or flow resulting from fire fighting by the fire department;
 - (c) Agricultural Stormwater runoff;
 - (d) A Discharge or flow from water line flushing or disinfection that contains no Harmful quantity of total residual chlorine (TRC) or any other chemical used in line disinfection;
 - (e) A Discharge or flow from normal lawn watering or landscape irrigation;
 - (f) A Discharge or flow from a diverted stream flow or natural spring;
 - (g) A Discharge or flow from uncontaminated pumped groundwater or rising groundwater;
 - (h) Uncontaminated groundwater infiltration (as defined at 40 CFR § 35.2005(20)) to the MS4;
 - (i) Uncontaminated Discharge or flow from a foundation drain, crawl space pump, or footing drain;
 - (j) A Discharge or flow from a potable water source not containing any harmful substance;
 - (k) A Discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of Pollutant;
 - (l) A Discharge or flow from individual residential car washing;
 - (m) A Discharge or flow from a riparian habitat or wetland;
 - (n) A Discharge or flow from cold water (or hot water with prior permission of the Administrator) used in street washing or cosmetic cleaning that is not Contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
 - (o) Drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals; or
 - (p) A Discharge or flow of uncontaminated Stormwater pumped from an excavation.
- (2) No exception to enforcement shall be available under subparagraph (1) if:
 - (a) The Discharge or flow in question has been determined to be a source of a Pollutant or pollutants to the waters of the United States or to the MS4;

- (b) Notice of such determination has been provided to the Discharger; and
- (c) The Discharge has continued after the expiration of the time given in the notice to cease the Discharge.

Sec. 46-122. Prohibition of Illicit Connections.

- (1) The construction, connection, use, maintenance or continued existence of any Illicit Connection to the MS4 is prohibited.
- (2) Connections that were permissible when originally installed but that are now considered Illicit must be brought into compliance within a timeframe designated by the administrator.
- (3) A person violates this Article if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.
- (4) Improper connections in violation of this Article must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system.

Sec. 46-123. Unpermitted discharges prohibited.

It is an offense for an Operator or responsible party of a Facility to:

- (1) Discharge, or cause to be Discharged, Stormwater associated with Industrial or Construction Site Activity without first having obtained a TPDES permit from the TCEQ.
- (2) Operate a Facility that is Discharging Stormwater associated with a Construction Site Activity without having submitted a copy of the NOI or Construction Site Notice to the City.
- (3) Introduce sediment, concrete, asphalt or any other construction debris into the MS4 from a Construction Activity. The Administrator will provide the Operator a reasonable amount of time, to remove any Pollutants or debris from the MS4 conveyances.

Secs. 46-124—46-129. Reserved.

DIVISION 4. SUSPENSION OF UTILITY SERVICE

Sec. 46-130. Emergency suspension of utility service and municipal stormwater drainage system access.

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

- (2) When the Administrator determines that City provided water or sanitary sewer service must be suspended pursuant to subsection (1), the Administrator will request the Director of Water Services to do so.
- (3) As soon as is practicable after the suspension of service or MS4 Discharge access, the Administrator will notify the violator of the suspension and order the violator to cease the Discharge immediately.
- (4) If the violator fails to comply with an order issued under subsection (3), the Administrator may take such actions as the Administrator deems necessary to prevent or minimize harmful Discharges to the MS4, waters of the United States, or to persons or wildlife.
- (5) The City will not reinstate suspended services or MS4 access to the violator until:
 - (a) The violator presents proof, satisfactory to the Administrator and Director of Water Services, that the non-complying Discharge has been eliminated and its cause determined and corrected;
 - (b) The violator reimburses the City for all costs the City incurred in suspending and reinstating water service, sanitary sewer connection, and MS4 access; and
 - (c) The violator reimburses the City for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully Discharged into the MS4 incurred by the City while responding to, abating, and remediating the Discharge or threatened Discharge.
- (6) A violator whose service or access has been suspended or disconnected may appeal the enforcement action to the City Manager's attention, in writing, within 10 days of notice of the suspension. The City Manager will render a decision within 7 days upon written receipt of the petition.
- (7) The remedies provided by this section are in addition to any other remedies set out in this Article. Exercise of this remedy is not a bar against, or a prerequisite for, taking other action against a violator.
- (8) A person commits an offense if the person reinstates water service, sanitary sewer service, or MS4 access to Premises terminated pursuant to this section, without the prior approval of the Administrator.

Sec. 46-131. Nonemergency suspension of utility service and municipal stormwater drainage system access.

- (1) The City may suspend the City provided water supply, sanitary sewer connection, or MS4 access for any person failing to comply with previous notices to cease discharges to the MS4 in violation of this Article. Utilities will be subject to suspension if such measures would abate or reduce the Discharge.
- (2) The Administrator will notify a violator of the proposed suspension of its water supply, sanitary sewer connection or MS4 access. The violator may petition the Administrator for a reconsideration and hearing before the City Manager.

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

Secs. 46-132—46-139. Reserved.

DIVISION 5. FACILITY INSPECTION FOR STORMWATER DISCHARGES.

Sec. 46-140. Applicability for Industrial and Construction Activity.

This division applies to all Facilities located within the city limits that have Stormwater Discharges associated with Industrial Activity or Construction Site Activity. State regulations require that subject Facilities apply for and obtain general permits for Industrial Facilities (TPDES TXR050000) and Construction Sites (TXR150000) that have been determined to contribute or have the potential to contribute substantial Pollutant loads to the MS4 or waters of the State. The general permits require that the permittee develop, implement, and maintain a Stormwater Pollution Prevention Plan (SWP3) and submit a NOI notifying the TCEQ and the MS4 Operator (City of Bryan).

The MS4 permit issued to the City by the TCEQ mandates the City “Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance with permit conditions” (Part III (E)(6)) and to implement a program that shall include “Inspection of construction sites and enforcement of control measure requirements” (Part III (A)(9)(b)). To meet these requirements the City must enter onto the Premises of Industrial and Construction Sites to inspect, monitor, and conduct surveillance of requirements mandated by the TCEQ. These requirements include, but are not limited to:

- (1) Review of the Facilities’ SWP3 with onsite conditions;
- (2) Evaluation of BMP to effectively prohibit the Discharge of non-stormwater to the MS4;
- (3) Inspection for Illicit Connections and Illicit Discharges;
- (4) Self inspection compliance; and
- (5) Compliance with the City’s MS4 permit and the Facilities subject general permit (TXR150000 or TXR050000).

Sec. 46-141. Access to Industrial Facilities and Construction Sites.

- (1) The intent of Facility inspections shall be to determine compliance with the conditions of the City's TPDES permit, any TPDES general permit the Facility is currently obligated to for Industrial and Construction Activities, and this Article. Facility owners and Operators will allow the Administrator ready access to applicable sections of Public and Private Premises for the sole purpose of inspection, surveillance, and monitoring for the presence of illegal Discharges to the MS4, Illicit Connections to the MS4, and assessment of any portions of a regulated Facility influenced by Stormwater runoff that may adversely affect the MS4 or waters of the United States.
- (2) Admittance to the Facility shall be requested at a reasonable time during the Facilities normal working hours unless it is determined by the Administrator that imminent and substantial danger exists.
- (3) The owner or Operator shall make all necessary arrangements to allow access to the Administrator.
- (4) If the owner or Operator refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- (5) The Administrator retains the authority to collect samples and photographs from Stormwater outfalls or other components of the MS4 as may be deemed appropriate in the administration and enforcement of this Article.
- (6) The Administrator has the authority to establish on subject Facilities devices as are necessary in the opinion of the Administrator to conduct monitoring of the Facility's Stormwater Discharge.
- (7) The Administrator or the designated inspector must present appropriate credentials to the Facility officials at the time of entry to a Facility.

Sec. 46-142. Review and modification of Stormwater Pollution Prevention Plans.

- (1) The Administrator has the authority to request to review any documents or plans (Stormwater Pollution Prevention Plan, spill prevention control plans, hazardous material plans, waste management documentation, etc.) from a regulated Facility that the Administrator deems may affect Stormwater Discharges to the MS4.
- (2) The Administrator may require an Operator of a regulated Facility to modify its Stormwater Pollution Prevention Plan if the Stormwater Pollution Prevention Plan does not comply with the requirements of the Facility's TPDES permit to Discharge Stormwater associated with Industrial or Construction Activity.
- (3) The deficiencies in a Facility's Stormwater Pollution Prevention Plan will be communicated in writing, and the Administrator will provide the Operator a reasonable amount of time to make the necessary changes in the Stormwater Pollution Prevention Plan.

Sec. 46-143. Review and modifications of Best Management Practices.

- (1) Any person engaged in activities or Operation, or owning Facilities or property, which will or may result in Pollutants entering the MS4 or waters of the United States, shall implement BMPs to the extent they are technologically achievable to prevent and reduce such Pollutants. The owner or Operator of a regulated Facility shall prove reasonable protection from Accidental Discharge of prohibited materials or other wastes into the MS4 or waters of the United States. Practices implemented to prevent Accidental Discharge of prohibited materials or other wastes shall be provided and maintained at the owner or Operator's expense.
- (2) The City does not maintain a list of required or approved BMPs for regulated Facilities. The Administrator may request Facilities to demonstrate the effectiveness of implemented BMPs. Suggested BMPs and a list of prohibited BMPs will be maintained in the B/CS Drainage Design Guidelines.
- (3) The Administrator may require an Operator of a regulated Facility to modify its BMP if the BMPs do not provide effective protection from Accidental Discharge of prohibited materials or other wastes from entering into the MS4 or waters of the United States.
- (4) The deficiencies in a Facility's BMP will be communicated in writing, and the Administrator will provide the Operator a reasonable amount of time to make the necessary changes in the BMPs.

Sec. 46-144. Compliance with permit.

- (1) A Facility shall be operated in strict compliance with the requirements of the TPDES permit to Discharge Stormwater associated with Industrial or Construction Site Activity.
- (2) A person commits an offense if the person operates a Facility in violation of a requirement of the Facility's TPDES permit to Discharge Stormwater associated with Industrial or Construction Site Activity.

Secs. 46-145—46-149. Reserved.

DIVISION 6. STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY.

Sec. 46-150. Applicability.

This division applies to all Facilities located within the city limits that have Stormwater Discharges associated with Industrial Activity.

Sec. 46-151. Industrial and high risk runoff monitoring.

- (1) All hazardous waste treatment and storage Facilities, active municipal landfills, Facilities subject to section 313 of Title III of the Superfund Amendment and Reauthorization Act of 1986 (SARA), and any other industrial Discharger the City determines is contributing a substantial Pollutant load to the MS4 shall submit self monitoring data to the City on an annual basis. Submittal date of self monitoring data is to be determined by the Administrator.
- (2) The City's MS4 permit requires that all industrial Facilities listed in (1) be subject to site inspections of no less than once per permit term (5 years). However, the Administrator has the

authority to inspect these Industrial Facilities as often as deemed necessary to assure permit compliance and safety of the MS4 and waters of the United States.

- (3) An unreasonable delay or refusal to submit self monitoring data to the Administrator is a violation of this Article. A person who is the Operator of an Industrial Facility with a TPDES permit to Discharge Stormwater associated with Industrial Activity commits an offense if the person denies the Administrator reasonable access to a Facility's self monitoring data for the purpose of review required by this Article.
- (4) An Industrial Facility may submit a "no exposure" certification to the City in lieu of self monitoring; however, any Facility operating under a "no exposure" certification is subject to periodic Facility inspections (not less than once per permit term – five years) to verify the Facility's "no exposure" exemption.
- (5) The City may waive monitoring requirements for Industrial Facilities determined to be in compliance with the TPDES Multi-Sector General Permit Number TXR050000.
- (6) The Administrator has the authority to conduct inspections on any Industrial Facility subject to the TCEQ's TPDES Multi-Sector General Permit or has been deemed to be, or has potential to be, contributing a substantial Pollutant load to the MS4 to determine compliance and safety of the MS4 and waters of the United States.

Secs. 46-152—46-159. Reserved.

DIVISION 7. STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY.

Sec. 46-160. Applicability.

This division applies to all Facilities located within the city limits that have Stormwater Discharges associated with Construction Activity.

Sec. 46-161. Submission of Notice of Intent, Notice of Change, Notice of Termination or Construction Site Notice to municipal stormwater drainage system Operator.

- (1) The Operator of a Construction Site required to have a TPDES permit to Discharge Stormwater associated with Construction Activity shall submit a copy of the above notices to the Administrator at the same time the Operator submits the original notice to the TCEQ.
- (2) The Operator of a Construction Site which does not require an NOI is required to submit, per TCEQ's TPDES general permit for Construction Sites, a Construction Site Notice to the Administrator.
- (3) Copies of all notices may be delivered to the Administrator either in person or by mail.

Secs. 46-162—46-169. Reserved.

DIVISION 8. CONTROL AND CONTAINMENT REQUIREMENTS.

Sec. 46-170. Spill or Release corrective actions, responsibility, and compensation.

- (1) Spills or leaks of Polluting substances Discharged to, or having the potential to be indirectly transported to, the MS4, shall be contained, controlled, collected, and removed promptly. All affected areas shall be restored to their preexisting condition. Any costs of the containment, control, collection, removal, or restoration incurred by the City will be reimbursed to the City by the person associated with the spill or leak.
- (2) Persons associated with the spill or leak must immediately call 911 to notify emergency personnel of all spills or leaks of polluting substances. Notification does not relieve any person of any costs related to the restoration, loss, damage, or any other responsibility which may be incurred as a result of the spill or leak, nor will the notification relieve any person from other responsibility which may be imposed by State, Federal, or other law.
- (3) Any person operating a Vehicle that causes or results in an Accidental Discharge or Release to the MS4 is responsible for costs of any testing, containment, cleanup, abatement, removal and disposal of Contamination to the extent determined by the Administrator.

Sec. 46-171. Stockpiling, accumulations, and heaps.

- (1) Stockpiles, accumulations, and heaps comprised of soil, sand, mulch, trash, asphalt, aggregate or any other material deemed a Pollutant by local, state, or federal regulations, which are located within the city limits and present a real or perceived potential of discharging to the MS4 are subject to control measures to prevent introduction into the MS4.
- (2) The Administrator has the authority to necessitate the use of control measures to mitigate the introduction of Pollutants to the MS4. Failure to implement control measures as prescribed by the Administrator will result in enforcement as described in this Article.
- (3) Stockpiles, accumulations, and heaps discovered to be Discharging Pollutants to the MS4 are subject to enforcement as described in this Article.

Secs. 46-171—46-179. Reserved.

DIVISION 9. ENFORCEMENT

Sec. 46-180. Enforcement responsibility.

The Administrator or his designee has the responsibility for enforcement of the provisions of this Article. The duties include not only the issuance of permits as required by this Article, but also the responsibility of ensuring that all Facilities conform with this subpart and with any other applicable state and federal laws, requirements and regulations of this Code of Ordinances or of the City. The Administrator has the authority to adopt policies and procedures not inconsistent with the terms of this Article necessary to implement the provisions of this Division.

Sec. 46-181. Violations.

Violation of the provisions of this Article or failure to comply with any of its requirements shall constitute a misdemeanor. Each violation shall be deemed a separate offense for each and every day

during which any violation of any of the provisions of this Article is committed or continued. Any person found guilty of violating a provision of this Article may be punished as provided for in section 1-14 of this Code.

Sec. 46-182. Notice of Violations.

If the Administrator determines that there is a violation of this Article, notice will be sent to the property owner or Operator of record by registered or certified mail, unless deemed an emergency pursuant to Section 46-130 of this Article. The notice will specify the measures required to come into full compliance with this Article and shall specify the time within which the measures must be completed. Failure to comply within the time specified is a violation of this Article and subject to additional penalties outlined herein.

Sec. 46-183. Voluntary Compliance.

The Administrator has the authority to instruct an Operator of a Facility that commits any acts prohibited by this Article to achieve voluntary compliance as determined by the Administrator. The Administrator will provide a reasonable amount of time, specific to the occurrence, to remedy the violation.

Sec. 46-184. Stop Orders.

The Administrator has the authority to issue stop work orders for any Facility that commits any acts prohibited by this Article.

Sec. 46-185. Penalties and violations.

- (1) Violations of provisions of this Article or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this Article or fails to comply with any of its requirements shall upon conviction thereof be fined in accordance with sec. 1-14 of this Code against the person for each violation. Each day such violation continues shall be considered a separate offense.
- (2) The owner or Operator of any Facility, structure, Premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

Sec. 46-186. Appeals, Interpretation, & Variances.

Any appeals, interpretations or variances of the Administrator, except those under Division 10 of this Article, shall first be to the City Manager, then to a court of competent jurisdiction.

Secs. 46-187—46-189. Reserved.

2.

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

3.

The Code of the City of Bryan, Texas, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

4.

Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby and to this end the provisions of this Ordinance are declared to be severable.

5.

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

6.

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

7.

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

8.

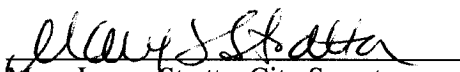
That the City Secretary is directed to publish this ordinance in a newspaper of general circulation in the City of Bryan in compliance with the provisions of the City Charter, which publication shall be sufficient if it contains the title of this ordinance, the penalty provided therein for violation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

9.

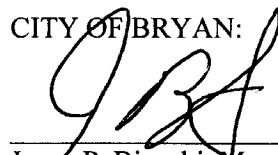
That this ordinance shall take effect from and after its final passage and publication as required by law. The effective date of this Ordinance will be November 5, 2010.

PRESENTED AND GIVEN first reading the 12th day of October, 2010, at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, passed and approved on the 26 day of October, 2010 by a vote of 7 ayes and 0 nays at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:


Mary Lynne Stratta, City Secretary

CITY OF BRYAN:


Jason P. Bienski, Mayor

APPROVED AS TO FORM:



James K. Hampton, City Attorney