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CHAPTER 6 - STORM WATER PROTECTION

ARTICLE I. - IN GENERAL

Sec. 6-1. - Administration.

The city manager or an authorized representative is authorized to administer, implement, and enforce the provisions of this chapter.

Secs. 6-2—6-9. - Reserved.

ARTICLE II. - STORM WATER DISCHARGES GENERALLY

Sec. 6-10. - Discharge to MS4 prohibited.

- A. A person commits an offense if the person introduces or causes to be introduced into the MS4, Waters of the State, or Waters of the United States, any discharge, within the corporate boundaries of the municipality, which is not composed entirely of storm water.
- B. It is an affirmative defense to any enforcement action for a violation of subsection (A) of this section that the discharge was composed entirely of one (1) or more of the following categories of discharges:
 1. A discharge authorized by, and in full compliance with, an NPDES permit (other than the NPDES permit for discharges from the MS4);
 2. A discharge or flow resulting from firefighting activities by the fire department;
 3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code requires to be contained and treated prior to discharge, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge;
 4. Agricultural storm water runoff;
 5. 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;
 6. A discharge or flow from lawn watering or landscape irrigation;
 7. A discharge or flow from a diverted stream flow or natural spring;
 8. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;

9. Uncontaminated groundwater infiltration (as defined at 40 CFR Section 35.2005(20)) to the MS4;
10. Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;
11. A discharge or flow from a potable water source that does not contain any harmful substance or material from the cleaning or draining of a storage tank or other container;
12. 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;
13. A discharge or flow from individual residential car washing or other non-commercial car washing;
14. A discharge or flow from a riparian habitat or wetland;
15. A discharge or flow from cold water (or hot water with prior permission of the city manager or an authorized representative) 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;
16. Drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals (drainage from swimming pool filter backwash is prohibited); or
17. A discharge or flow of uncontaminated storm water pumped from an excavation.

C. No affirmative defense shall be available under subsection (B) above if:

1. The discharge or flow in question has been determined by the city manager or an authorized representative to be a source of a pollutant or pollutants to the MS4, Waters of the State, or Waters of the United States;
2. Written notice of such determination and notice to cease the discharge has been provided to the discharger; and
3. The discharge has continued after expiration of the time given in the notice to cease the discharge.

D. A person commits an offense if the person introduces, or causes to be introduced, into the MS4, Waters of the State, or Waters of the United States any harmful quantity of any substance.

Sec. 6-11. - Connection of sanitary sewer prohibited.

A person commits an offense if the person connects a line conveying sewage to the MS4, Waters of the State, or Waters of the United States or allows such a connection to continue.

Sec. 6-12. - Nuisances.

- A. An actual or threatened discharge to the MS4, Waters of the State, or Waters of the United States that violates or would violate this article is hereby declared to be a nuisance.
- B. A line conveying sewage or designed to convey sewage that is connected to the MS4, Waters of the State, or Waters of the United States is hereby declared to be a nuisance.

Sec. 6-13. - Emergency suspension of utility service and MS4 access.

- A. The city may, without prior notice, suspend water service, sanitary sewer service, and/or discharge access to a person discharging to the MS4, Waters of the State, or Waters of the United States when such suspension is necessary to stop an actual or threatened discharge which:
 - 1. Presents or may present imminent and substantial danger to the environment or to the health or welfare of persons; or
 - 2. Presents or may present imminent and substantial danger to the MS4, Waters of the State, or Waters of the United States.
- B. When the city manager or an authorized representative determines that city-provided water service, sanitary sewer service, and/or discharge access, needs to be suspended pursuant to subsection (A) above, the city manager or an authorized representative shall submit a request to the director of the utility department to suspend such service or access.
- C. Within twenty-four (24) hours, or in a reasonable time if twenty-four (24) hours is not possible, of the suspension of water service, sanitary sewer service, and/or discharge access, the city manager or an authorized representative shall notify the violator of the suspension in person and/or send notice of such suspension by certified mail, return receipt requested. Notice shall contain an order requiring the violator to cease the illicit discharge immediately. If possible and time permits, the city manager or an authorized representative shall also attempt to notify the violator prior to suspending service or access, so long as this prior notification process does not delay suspension of service or access, and therefore cause additional danger to the environment or to the health or welfare of persons.

- D. If the violator fails to comply with an order issued under the notice provisions of subsection (C) above, the city manager or an authorized representative may take such steps allowed by law as the city manager or an authorized representative deems necessary to prevent or minimize damage to the MS4, Waters of the State, or Waters of the United States, and further minimize danger to the environment or to the health or welfare of persons.
- E. The city shall not reinstate suspended services or discharge access to the violator until:
1. The violator presents proof, satisfactory to the city manager, that the non-complying discharge has been eliminated and its cause determined and corrected;
 2. The violator pays the city for all costs the city incurred in responding to abating, and remediating the discharge or threatened discharge; and
 3. The violator pays the city for all costs the city will incur in reinstating service or access.
- F. Any violator whose service or access has been suspended or disconnected by order of the city manager or an authorized representative may petition the city manager for reconsideration. Such petition must be made by filing notice of such reconsideration with the city manager or an authorized representative within five (5) days of the receipt of notice of the suspension of service or access. The city manager or an authorized representative shall hear the reconsideration request within ten (10) days from the date such request is filed. After a final decision has been made by the city manager or an authorized representative, any violator may appeal such decision to the city council, which shall hear the matter at a meeting of the city council to occur not more than thirty (30) days from the date the appeal is filed. Any persons seeking to appeal as herein provided shall file a notice of appeal with the city secretary within ten (10) days of the date a final decision on the request for reconsideration has been made by the city manager or an authorized representative. Failure to commence a petition for reconsideration or an appeal timely shall render the decision of the city manager or authorized representative final and binding and not subject to appeal or other proceedings. Such reconsideration and/or appeal shall not stay the enforcement of any provisions of this chapter. The city council, upon hearing the matter, shall consider the facts and evidence presented at the hearing and shall, upon the completion of all proceedings, enter a final and binding order that shall not be appealable to any other body or tribunal.
- G. If prior notification of the violation is given and the violator fails to cease the discharge immediately, the city may assess a lien against the property to recover its actual response costs to suspend water service, sanitary sewer service, and/or discharge access.

- H. The remedies provided by this section are in addition to any other remedies set out in this chapter. Exercise of any remedies provided by this section shall not be a bar against, nor a prerequisite for, taking other action against a violator.
- I. A person commits an offense if the person reinstates water service, sanitary sewer service, and/or discharge access to a premises with terminated service and/or access, pursuant to this section, without the prior written approval of the city manager or an authorized representative.

Sec. 6-14. - Non-emergency suspension of utility service and MS4 access.

- A. The city may terminate the city-provided water service, sanitary sewer service, and/or discharge access to any person discharging into the MS4, the Waters of the State, or Waters of the United States, in violation of this article, if such termination would abate or reduce the illicit discharge.
- B. The city manager or an authorized representative shall notify a violator of the proposed termination of its water service, sanitary sewer service, and/or discharge access. Notice shall be sent to the violator in person and/or by certified mail, return receipt requested, and shall contain an order requiring the violator to cease the illicit discharge immediately. If the violator fails to comply with an order issued under the notice provisions of this subsection, the city manager or an authorized representative may take such steps allowed by law as the city manager or an authorized representative deems necessary to prevent or minimize damage to the MS4, Waters of the State, or Waters of the United States, and further minimize danger to the environment or to the health or welfare of persons. The violator may petition the city manager or an authorized representative for reconsideration, and, if necessary, file an appeal to the city council with the city secretary, in accordance with the procedures set forth in Section 6-13(F) of this article.
- C. The city shall not reinstate suspended services or MS4 access to the discharger until:
 - 1. The violator presents proof, satisfactory to the city manager, that the noncomplying discharge has been eliminated and its cause determined and corrected;
 - 2. The violator pays the city for all costs the city will incur in reinstating service or access; and
 - 3. If applicable, the violator pays the city for all costs the city incurred in responding to, abating, and remediating the discharge or threatened discharge.
- D. The remedies provided by this section are in addition to any other remedies set out in this chapter. Exercise of any remedies provided by this section shall not be a bar against, nor a prerequisite for, taking other action against a violator.

- E. A person commits an offense if the person reinstates water service, sanitary sewer service, and/or discharge access to a premises with terminated service and/or access, pursuant to this section, without the prior written approval of the city manager or an authorized representative.

Secs. 6-15—6-30. - Reserved.

ARTICLE III. - STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY, INCLUDING CONSTRUCTION ACTIVITY

Sec. 6-31. - Applicability.

This article applies to all facilities located within the corporate limits of the city that have storm water discharges associated with industrial activity, including construction activity.

Sec. 6-32. - Access to facilities.

- A. The city manager or an authorized representative is authorized by this section to enter and inspect facilities subject to regulation as provided for in this article.
- B. Facility operators shall allow the city manager or an authorized representative ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES or TPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.
- C. The city manager or an authorized representative shall have the right to set up, on any permitted facility, such devices as are necessary in the opinion of the city manager or an authorized representative to conduct monitoring and/or sampling of the facility's storm water discharge.
- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city manager or an authorized representative and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- E. Unreasonable delays in allowing the city manager or an authorized representative access to a permitted facility are a violation of a storm water discharge permit and of this article. A person who is the operator of a facility with a NPDES or TPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the city manager or an authorized representative reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.

Sec. 6-33. - Unpermitted discharges prohibited

A person who is the operator of a facility commits an offense if the person discharges, or causes to be discharged, storm water associated with industrial activity without first having obtained a NPDES or TPDES permit for such discharge.

Sec. 6-34. - Submission of NOI to city.

- A. The operator of a facility, including construction sites, required to have a NPDES or TPDES permit to discharge storm water associated with industrial activity, shall submit a copy of the NOI to the city manager or an authorized representative at the same time the operator submits the original NOI to the EPA or the TCEQ, as applicable.
- B. The copy of the NOI must be delivered to the city manager or an authorized representative, either in person or by mailing it to:

City of Rosenberg

2220 4th Street

Rosenberg, Texas 77471

Attn: City Manager (or identify an authorized representative)

Any NOI mailed to the address stated above must have "notice of intent to discharge storm water associated with industrial activity" clearly marked on the exterior of the envelope or package.

- C. A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the NOI with the city manager or an authorized representative.

Sec. 6-35. - Compliance with permit.

- A. A facility shall be operated in strict compliance with the requirements of its NPDES or TPDES permit to discharge storm water associated with industrial activity.
- B. A person commits an offense if the person operates a facility in violation of a requirement of the facility's NPDES or TPDES permit to discharge storm water associated with industrial activity.

Sec. 6-36. - Modification of storm water pollution prevention plans.

- A. The city manager or an authorized representative may require any operator of a facility to modify the facility's storm water pollution prevention plan if, in the best professional judgment of the city manager or an authorized representative, the SWPPP does not comply with the requirements of the facility's NPDES or TPDES permit to discharge storm water associated with industrial activity.
- B. The deficiencies in a facility's SWPPP will be made in writing, and the city manager or an authorized representative will give the facility operator a reasonable amount of time, not to exceed thirty (30) days, to make the necessary changes in the SWPPP.
- C. The facility operator may petition the city manager or an authorized representative for reconsideration of the determination of deficiencies in a facility's SWPPP, and, if necessary, file an appeal to the city council with the city secretary, in accordance with the procedures set forth in Section 6-13(F) of Article II.

Secs. 6-37—6-49. - Reserved.

ARTICLE IV. - CONSTRUCTION SITE STORM WATER RUNOFF

Sec. 6-50. - Applicability.

This article, relating to the definitions and prohibitions of any construction site and associated storm water runoff, shall apply to all areas within the corporate limits of the city.

Sec. 6-51. - Permit for land disturbance

- A. Before construction activity begins on land described below, the person owning, developing, or disturbing the land must obtain a land disturbance permit from the city:
 - 1. One (1) acre or more of land; and
 - 2. Less than one (1) acre of land that is part of a larger common plan of development or sale that will result in disturbance of one (1) or more acres.
- B. The permit for land disturbance does not apply to land under active agricultural use. As soon as construction activity to the exempted land begins, the land shall lose its exemption and become subject to the provisions of this article including the requirement to obtain a land disturbance permit.

Sec. 6-52. - Application and issuance of land disturbance permits.

- A. A completed application for a land disturbance permit must be submitted to the building permit office (as designee of the city manager) on a city form. The application will require a storm water pollution prevention plan, a plan showing the person's best management practices for pollution and erosion control, and other information, including plans, that the city manager or an authorized representative determines is reasonably necessary to administer this article and to protect the public, public property, and waters of the state.
- B. The land disturbance permit will be issued if the application complies with the provisions of this chapter. The permit must contain the name, address, and telephone number of the person performing the work, the location of the work, and any other information designated by the city manager or an authorized representative. The permit may also contain special conditions the city manager or an authorized representative determines are necessary to ensure compliance with this article or to protect the public, the municipal storm sewer system, or public property. It is unlawful for any person doing work under a land disturbance permit to violate any special condition or other provision of the land disturbance permit.
- C. The permit holder must keep the permit posted at a visible place at the work site and make it available for inspection upon the request of the city manager or an authorized representative.
- D. A land disturbance permit issued under this article is valid for the time period specified by the permit, based on the estimated time to complete the work. Upon the written request of the permit holder, the city manager or an authorized representative may grant additional time to complete the work under the land disturbance permit.
- E. Any changes made to the storm water pollution prevention plan shall be submitted to the city for approval. Field modifications must be acknowledged by the city, in writing, before implementation.

Sec. 6-53. - Maintenance.

The construction site must have documentation detailing the temporary and permanent maintenance of the site against storm water runoff.

Sec. 6-54. - Inspections.

The city reserves the right to inspect any and all construction sites within the city. The operator of the construction site is obligated to allow any city inspector on site without prior notice.

Sec. 6-55. - Responsibility of operators.

All operators with control over the construction site must:

1. Ensure that all applicable parts of TPDES General Permit TXR150000, including any amendments, are met.
2. Ensure that the SWPPP provided to the city indicates the areas of the project where operators have control over project specifications, including the ability to make modifications in specifications.
3. Ensure all other operators affected by modifications in project specifications, especially those adjacent to the site or downstream, are notified in a timely manner so that those operators may modify their BMPs as necessary to remain compliant with the conditions of TPDES General Permit TXR150000, including any amendments.
4. Ensure that the SWPPP, for portions of the project where they are operators, indicates the name and site specific TPDES authorization numbers for permittees with the day-to-day operational control over those activities necessary to ensure compliance with the SWPPP and other permit conditions. If the operator with day-to-day operational control has not been authorized or has abandoned the site, the operator with control over project specifications is considered to be the responsible party until the authority is transferred to another party and the SWPPP is updated.
5. Submit a copy of all paperwork submitted to regional, state, or federal authorities in relation to the storm water management plan.
6. Ensure that all design requirements meet local, state, and federal standards.

Sec. 6-56. - Stop work orders; revocation and appeals.

- A. If a person violates a provision of this chapter, the city manager or an authorized representative may issue a written stop work order to the violator directing any work or activity authorized to be done under a land disturbance permit to cease until the violation is corrected. Upon receiving a stop work order, the permit holder must immediately cause all work authorized under the land disturbance permit to stop, but may take steps necessary to secure the site. It is unlawful for any person to continue work under a land disturbance permit after receiving a stop work order or receiving notice that a stop work order has been issued or to resume the work or activity until the city manager or an authorized representative withdraws the stop work order.

- B. The city manager or an authorized representative may revoke a land disturbance permit for a violation of this article. To revoke a land disturbance permit the city manager or an authorized representative must send or deliver written notice of a violation to the permit holder ordering the violation to be corrected within a specified time. If the permit holder fails to correct the violation as directed, the city manager or an authorized representative may revoke the permit by giving notice to the permit holder in writing.
- C. Any person may appeal the denial or revocation of a land disturbance permit, the interpretation or application of a requirement of this article, the issuance of a stop work order or notice of violation, or other requirement or action imposed under this chapter by the city manager or an authorized representative. The appeal must be submitted in writing to the city manager within seventy-two (72) hours of the action being appealed. The city manager or an authorized representative will promptly review the facts and issue a written determination.
- D. The revocation and appeal provisions in this section govern over any other conflicting provision in the City's Code of Ordinances.

Secs. 6-57—6-69. - Reserved.

ARTICLE V. - POST CONSTRUCTION STORM WATER RUNOFF

Sec. 6-70. - Applicability.

This article shall be applicable to all subdivision or site plan applications, unless eligible for an exemption by the city manager or an authorized representative under the specifications of this article. The article also applies to land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development that meets the following applicability criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules. In addition, all plans must also ensure that established water quality standards will be maintained during and after development of the site and that post construction runoff levels are consistent with any local and regional watershed plans.

1. To prevent the adverse impacts of storm water runoff, the city shall develop performance standards to be met at new development sites. These standards apply to any construction activity disturbing one (1) or more acres of land. The following activities may be exempt from these storm water performance criteria:
 - i. Additions or modifications to existing single family structures;
 - ii. Developments that do not disturb more than one (1) acre of land, provided they are not part of a larger common development plan; or
 - iii. Repairs to any storm water treatment practice deemed necessary by the city manager or an authorized representative.

2. When a site development plan is submitted that qualifies as a redevelopment project as defined in Chapter 8 - Definitions, decisions on permitting and on-site storm water requirements shall be determined after a review by the city manager or an authorized representative.

Sec. 6-71. - Permit procedures and requirements.

- A. *Permit required.* No landowner or land operator shall receive any of the building, grading, land disturbance or other land development permits required for land disturbance activities without first meeting the requirements of this chapter prior to commencing the proposed activity.
- B. *Application requirements.* Unless specifically excluded by this article, any landowner or land operator desiring a permit for a land disturbance activity shall submit to the city manager or an authorized representative a permit application on a form provided for that purpose.

Sec. 6-72. - Exemptions to storm water management requirements.

Exemptions for providing storm water management are as follows:

1. Every applicant shall provide for storm water management as required by this chapter, unless a written request is filed to waive this requirement. Requests to waive the storm water management plan requirements shall be submitted to the city manager or an authorized representative for approval.
2. The minimum requirements for storm water management may be waived in whole or in part upon written request of the applicant, provided that at least one (1) of the following conditions applies:
 - i. It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this article;
 - ii. Alternative minimum requirements for on-site management of storm water discharges have been established in a storm water management plan that has been approved by the city manager or an authorized representative and the implementation of the plan is required by local ordinance;
 - iii. Provisions are made to manage storm water by an off-site facility. The off-site facility is required to be in place, to be designed and adequately sized to provide a level of storm water control that is equal to or greater than that which would be afforded by on-site practices and there is a legally obligated entity responsible for long term operation and maintenance of the storm water practice; or

- iv. Nonstructural practices will be used on the site to reduce: a) the generation of storm water from the site, b) the size and cost of storm water storage and c) the pollutants generated at the site. These nonstructural practices will be explained in detail in the storm water design manual and the amount of credit available for using such practices shall be determined by the city manager or an authorized representative.
1. In instances where one (1) of the conditions above applies, the city manager or an authorized representative may grant a waiver from strict compliance with these storm water management provisions, as long as acceptable mitigation measures are provided. However, to be eligible for a variance, the applicant must demonstrate to the satisfaction of the city manager or an authorized representative that the variance will not result in the following impacts to downstream waterways:
- i. Deterioration of existing culverts, bridges, and other structures;
 - ii. Degradation of biological functions or habitat;
 - iii. Accelerated stream bank or streambed erosion or silting; or
 - iv. Increased threat of flood damage to public health, life, property.