

ILLICIT DISCHARGE ORDINANCE

Contains regulatory language relevant to the following Ordinance Best Management Practices:

- *ORD 9 to establish an illicit discharge ordinance (entire ordinance)*
- *ORD 10 to establish construction monitoring*
- *ORD 12 to establish and enforce erosion and sedimentation controls*

- *ORD 1 to incentivize sustainable renovations*
- *ORD 2 to incentivize identification and preservation of sensitive areas*
- *ORD 3 to incentivize reducing disturbance of natural land/systems*
- *ORD 6 to improve parking specifications related to landscape placement supporting improved stormwater runoff*
- *ORD 15 to incentivize implementation of green stormwater infrastructure for both new development and redevelopment*

ORDINANCE NO. _____ - _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT ARANSAS, NUECES COUNTY, TEXAS, SETTING FORTH REGULATION OF ILLICIT DISCHARGES OF POLLUTANTS INTO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4); PROVIDING FOR A PENALTY; PROVIDING FOR ASSOCIATED FEES; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE; PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES OR RESOLUTIONS.

WHEREAS, the City Council finds the City of Port Aransas is a Texas Home-Rule Municipality as that term is defined by Texas law; and

WHEREAS, the City Council has decided to amend the Code of Ordinances as more specifically set forth herein; and

WHEREAS, the City Council of the City of Port Aransas has determined that the provisions of this Ordinance will promote the health, safety, morals and the general welfare of the City of Port Aransas and its surrounding areas; and

WHEREAS, this Ordinance was adopted at a meeting held in strict compliance with the Texas Open Meetings Act;

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

Section 1: The City of Port Aransas Code of Ordinances Chapter 16 is amended to add the following Article VI regarding the regulation of Illicit Discharges into the Municipal Separate Storm Sewer System and Conveyances:

Article VI. Illicit Discharges of Pollutants into the MS4 or Conveyances

Section 1. Purpose and Intent

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the city through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this article are:

- (a) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user;
- (b) To prohibit illicit connections and discharges to the MS4; and
- (c) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this Article.

Section 2. Definitions

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them in this section, except when the context otherwise requires. Whenever any words and phrases used herein are not defined herein but are defined in the federal and state laws regulating illicit discharge, any such definition therein shall be deemed to apply to such words and phrases used herein, except when the context otherwise requires.

Calendar day. When the term “day” is used herein, unless specifically defined otherwise, the term shall mean any day of the week, including Saturdays, Sundays, and legal holidays, with no days being excepted.

City staff. Employees of any of the city’s departments, authorized to act on the city’s behalf by the director.

Construction activity. The disturbance of soils associated with clearing, grading, grubbing, demolition or excavating activities or other construction activities.

Conveyance. Any of the following, by way of illustration and not limitation: stream, channel, drainageway, drainage/dry well, ephemeral stream, floodplain, karst feature, storm drainage system, drainage system appurtenance, waterbody, watercourse or waterway.

Director. The city manager, or the city employee(s) designated by the city manager, responsible for enforcement of this article.

Discharge. Any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or conveyances.

Discharger. Any person who causes, allows, permits, or is otherwise responsible for a discharge, including, without limitation, any operator of a construction site or industrial facility.

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

Extremely hazardous substance. Any substance listed in the appendices to 40 CFR 355, emergency planning and notification.

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

Fire department. The fire department serving the city and any other fire departments with which the fire department serving the city has mutual assistance or mutual aid agreements.

Fire protection water. Any water, and any substances or materials contained therein, used by any person other than the fire department to control or extinguish a fire.

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

Harmful quantity. The amount of any substance due to volume or concentration that will cause pollution.

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

stored, transported, disposed of, or otherwise managed. This term shall include household hazardous wastes as classified under 40 CFR 261, hazardous substances as listed in table 302.4 of 40 CFR 302, and hazardous wastes identified or listed by the EPA pursuant to 40 CFR 261.

Illicit connection. Any connection to the MS4 or conveyances that allows for an illicit discharge.

Illicit discharge. Any direct or indirect discharge of pollutant to the MS4 or conveyances, except as specifically exempted in this article.

Industrial activity. Any activity at an industrial facility described by the TPDES multi-sector general permit, TXR050000, or by any other TCEQ or TPDES permit including any of the following, by way of illustration and not of limitation: manufacturing, processing, materials storage, and waste materials disposal.

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

Motor vehicle fluids. Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid, differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a motor vehicle.

Municipal Separate Storm Sewer System (MS4). The storm drainage system operated and maintained by the city which is comprised of the following: the system of conveyances (including roads with drainage systems, municipal streets, catchbasins, 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.

Nonstormwater discharge. Any discharge to the storm drain system that is not composed entirely of stormwater runoff.

Notice of Intent (NOI). The notice of intent that is required by either the industrial general permit or the construction general permit.

Oil. Any kind of oil in any form, including but not limited to petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste. This term shall include used oil that has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with state and federal law.

Operator. The person or persons who, either individually or taken together, meet the following two criteria:

- (1) Has operational control over the facility specifications (including the ability to make modifications in specifications); and
- (2) Has the day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

Owner. The person who owns a facility or part of a facility.

Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, lessees, or assigns. This term shall also include all federal, state, and local governmental entities.

Petroleum storage tank (PST). Any one or a combination of aboveground or underground storage tanks or connecting underground pipes that contain petroleum products that are obtained from distilling and processing crude oil and that are capable of being used as a fuel.

Pollutant. A substance, the entrance of which causes or contributes to a violation of applicable water quality standards as defined by the Clean Water Act. This term includes but is not limited to paints, varnishes, solvents, oil and other automotive fluids, yard wastes, trash, sediments, household chemicals, detergents, pesticides, herbicides, fertilizers, hazardous materials, sewage, animal wastes, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water, and other materials exposed to stormwater as a result of construction activity.

Pollution. The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or conveyances.

Sanitary sewer or sewer. The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the city sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).

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

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

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

Stormwater. Any surface flow, stormwater runoff, snow melt runoff, and surface runoff and drainage consisting entirely of water from any form of natural precipitation.

Stormwater Pollution Prevention Plan (SWPPP). A plan required by either the construction general permit or the industrial general permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity at the facility.

TCEQ. The Texas Commission on Environmental Quality, or any duly authorized official of said agency.

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

Trash. Non-putrescible solid waste, excluding ashes, that consists of:

- (1) Combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and
- (2) Noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal objects, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

Uncontaminated. Not containing a harmful quantity of any substance.

Washwater. Any water containing pollutants from the act of cleaning parking lots, vehicles, or building exteriors.

Wastewater. Human excrement, gray water (from home clothes washing, bathing, showering, dishwashing, and food preparation), other wastewater that is free from industrial waste including from household drains, and waterborne waste normally

discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions.

Water quality standard. The designation of a body or segment of surface water in the state for desirable uses and the narrative and numerical criteria deemed by the state to be necessary to protect those uses, as specified in 31 Tex. Admin. Code, chapter 307.

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

Section 2. Applicability

This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the city.

Section 3. Minimum Standards

The standards set forth in this article are minimum standards; therefore, no inference is intended that compliance with this article will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants. Additionally, no inference is intended that compliance with this article will serve to extend any deadline established by a state or federal standard or requirement, nor is any inference intended that compliance with this article will relieve a discharger of liability for any violation or continuing violation.

Section 4. Compliance Obligations

- (a) Any person subject to an industrial or construction activity TPDES stormwater discharge permit shall comply with all provisions of such permit or any other state or federal regulations. Prior to the city allowing discharges to the MS4 or conveyances, the city may require proof of such compliance in a form acceptable to the city.
- (b) Every person owning property through which a conveyance passes, or such person's lessee, shall have the obligation to keep and maintain that part of the conveyance within the property free of trash, debris, excessive vegetation, other pollutants and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the conveyance. The owner or lessee shall maintain existing privately owned structures within or adjacent to a conveyance, so that such structures will not become a hazard to the use, function, or physical integrity of the conveyance.

Section 5. General Prohibitions and Affirmative Defenses

- (a) General Prohibition.

No person within the city limits and extraterritorial jurisdiction of the city shall introduce, cause to be introduced, discharge, or cause to be discharged into the municipal separate storm sewer system (MS4) or any conveyances any discharge that is not composed entirely of stormwater. Such prohibition includes commencement of any illicit discharge into the MS4 or any conveyances, and continuation of any illicit discharge into the MS4 or any conveyances.

(b) Affirmative Defenses.

It is an affirmative defense to any enforcement action for violation of subsection (a) of this section that the discharge was composed entirely of one or more of the following categories of discharges:

- (1) A discharge specified in writing by the city as being necessary to protect public health and safety.
- (2) A discharge associated with dye testing, however this activity requires a verbal notification to the director prior to the time of the test.
- (3) A discharge authorized by a TPDES permit, waiver, or waste discharge order issued to the discharger and administered under authority of the TCEQ or USEPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, order, and other applicable laws and regulations.
- (4) A discharge resulting from firefighting/fire suppression activities.
- (5) A discharge of fire protection water from standard municipal operations and training that does not contain oil or hazardous substances or materials that are required 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.
- (6) A discharge resulting from the standard municipal operations of street sweeping and street washing activities, which discharge is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance.
- (7) A discharge from water line flushing, but not including a discharge from water line disinfection by super-chlorination or other means unless the total residual chlorine (TRC) has been reduced to less than one ppm (part per million) and it contains no harmful quantity of chlorine or any other chemical used in line disinfection.
- (8) A discharge from a potable water source not containing any harmful quantity of a substance or material from the cleaning or draining of a storage tank or other container.

- (9) A discharge from lawn watering or landscape irrigation.
 - (10) A discharge from individual residential carwashing.
 - (11) A discharge from air-conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant.
 - (12) Swimming pool water that has been dechlorinated so that total residual chlorine (TRC) is less than one ppm (part per million) and that contains no harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning.
 - (13) Stormwater runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber or filter or any other source of pollutant.
 - (14) A discharge or flow from a diverted stream flow or natural spring.
 - (15) A discharge or flow from uncontaminated pumped groundwater, rising groundwater, or groundwater infiltration to storm drains.
 - (16) Uncontaminated groundwater infiltration, as defined by 40 CFR 35.2005(20), to the MS4.
 - (17) Uncontaminated discharge from a foundation or footing drain (excluding active groundwater dewatering systems), crawl space pump, or sump pump.
- (c) No affirmative defense shall be available under this article if the discharge in question has been previously determined by the city to be a source of a pollutant to the MS4 or any conveyances, and written notice of such determination has been provided to the discharger. The city's determination that a discharge is a source of a pollutant may be reviewed in any administrative or judicial enforcement proceeding.

Section 6. Specific Prohibitions

- (a) The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition in Section 5(a).
- (b) No person shall introduce, cause to be introduced, discharge, or cause to be discharged into the MS4 or conveyances any discharge that causes or contributes to causing the city to violate a water quality standard, the city's TPDES permit, or any state-issued discharge permit for discharges from its MS4.
- (c) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4 or conveyances:

- (1) Any motor oil, antifreeze, or any other motor vehicle fluid.
- (2) Any industrial waste.
- (3) Any hazardous material, including household hazardous waste, hazardous substances, and hazardous waste.
- (4) Any wastewater or septic tank waste, grease trap waste, or grit trap waste.
- (5) Any garbage, trash, or yard waste, specifically including but not limited to pressure-treated wood, painted wood, painted wood pallets, laminated wood, insulation, and particle board.
- (6) Any discharge from a carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than four such vehicles.
- (7) Any discharge from a mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance.
- (8) Any discharge from commercial floor, rug, or carpet cleaning.
- (9) Any discharge from the washdown or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any discharge from the washdown or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed.
- (10) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler.
- (11) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro-mulch material, or material from the cleaning of vehicles or equipment containing, or used in transporting or applying, such materials.
- (12) Any runoff or washdown water from concentrated animal feeding operations as defined in 40 CFR 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR 122.24.

- (13) Any swimming pool, fountain, or spa water, including backwash water, containing total residual chlorine (TRC) of one ppm (part per million) or more or containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning.
- (14) Any discharge from water line disinfection by super-chlorination or other means if the total residual chlorine (TRC) is at one ppm (part per million) or more or if it contains any harmful quantity of chlorine or any other chemical used in line disinfection.
- (15) Any fire protection water containing oil or hazardous materials that are required to be contained and treated prior to discharge, unless treatment adequate to remove pollutants occurs prior to discharge. This prohibition does not apply to discharges or flow from firefighting/fire suppression activities.
- (16) Any contaminated runoff from a vehicle salvage yard or storage yard.
- (17) Any substance or material that will damage the MS4.
- (18) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge from the remediation of any such PST release, unless the discharge satisfies all of the following criteria:
 - a. Compliance with all state and federal standards and requirements; and
 - b. No discharge containing a harmful quantity of any pollutant.
- (19) Any harmful quantity of sediment, silt, earth, soil, or other material which is associated with clearing, grading, excavation or other such construction activities, or which is associated with landfilling or other placement or disposal of soil, rock, or other earth materials.
- (20) Any pavement washwater from a service station unless such washwater has passed through a properly functioning and maintained grease, oil, and sand separator before discharge into the MS4 or conveyances.
- (21) Any introduction of oil into the environment, specifically including but not limited to oil applied to a road or land for dust suppression, weed abatement, or other similar use; any introduction of oil commingled or mixed with solid waste that is to be disposed of in a landfill; any introduction of oil by direct disposal on land or in a landfill; or any introduction of oil into the MS4 or conveyances, or into any septic tank.

Section 7. Prohibition of Illicit Connections

The construction of, use of, maintenance of, or continued use of a new or existing illicit connection to the MS4 or any conveyances is prohibited. This prohibition expressly includes any illicit connection made before passage of the ordinance codified in this article, regardless of whether such connection was permissible under law or practices applicable or prevailing at the time of connection. A person is deemed to be in violation of this article if the person connects a line conveying wastewater or industrial waste to the MS4 or any conveyances, or allows such a connection to continue.

Section 8. Industrial or Construction Activity Discharges

- (a) Any person subject to an industrial or construction activity TPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the director prior to the allowing of discharges to the MS4.
- (b) The operator of a facility, including construction sites, required to have a TPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the notice of intent (NOI) to the director at the same time the operator submits the original notice of intent to the EPA and/or TCEQ as applicable.
- (c) A person commits an offense if the person operates a facility that is discharging stormwater associated with industrial activity without having submitted a copy of the notice of intent to do so to the director.

Section 9. Prevention, Control, and Reduction of Stormwater Pollutants by the Use of Best Management Practices

The city will adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid TPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater management plan as necessary for compliance with requirements of the TPDES permit.

Section 10. Compliance Monitoring

- (a) Right of entry; inspection and sampling.

City staff shall have the right to enter any facility or site, including industrial and construction facilities or sites, which are discharging to the MS4 or any conveyances to determine if the discharger is complying with all requirements of this article. Dischargers shall allow city staff immediate access to all parts of the premises for the purposes of inspection, sampling, records examination, and copying, and for the performance of any additional inspections or duties. Dischargers shall make available to city staff, upon request, any Stormwater Pollution Prevention Plans (SWPPPs), modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports, and other documents related to compliance with this article and with any state or federal discharge permit.

- (1) Where a discharger has security measures in force which require proper identification and clearance before entry onto its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, city staff will be permitted to enter without delay for the purposes of performing the city's responsibilities.
- (2) City staff shall have the right to set up on the discharger's property, or require installation on the discharger's property, of such devices as city staff deem necessary to conduct sampling and/or metering of the discharger's operations.
- (3) City staff may require any discharger to the MS4 or any conveyances to conduct specified sampling, testing, analysis, and other monitoring of its stormwater discharges at the discharger's expense, and may specify the frequency and parameters of any such required monitoring.
- (4) City staff may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of city staff and shall not be replaced. The costs of clearing such access shall be borne by the discharger.
- (6) Unreasonable delays in allowing city staff access to the discharger's premises shall be deemed a violation of this article.

(b) Search Warrant

If city staff has been refused access to any part of the premises from which stormwater is discharged, and the city is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a

routine inspection and sampling program of the city designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction.

Section 11. Notification of Spills

(a) Discovery, containment and cleanup procedure.

Notwithstanding other requirements of law, as soon as any discharger or operator of a facility or operation, or person responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in an illicit discharge, such person shall take all necessary steps to ensure the discovery, containment and cleanup of such discharge.

- (1) Hazardous materials spill. In the event of discharge of hazardous materials, the discharger shall immediately notify emergency response agencies. Once the immediate threat has been properly contained, the discharger shall notify the city via the director.
- (2) Nonhazardous materials spill. In the event of a release of nonhazardous materials, the discharger shall notify the city, via the director, in person or by telephone no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the director within three business days of the telephone notice.

(b) Record of discharge from commercial or industrial establishment.

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain on site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for a minimum of three years.

Section 12. Enforcement Provisions

(a) Warning notice.

When the city finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, the city may service upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this

subsection shall limit the authority of the city to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

(b) Notice of violation.

When city staff believes that a discharger has violated, or continues to violate, any provision of this article, or any order issued hereunder, the director, or his designee, may serve upon the alleged violator a written notice of violation. Such notice shall contain the following:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6) A statement that the determination of violation may be appealed, specifying the deadline and form of such appeal; and
- (7) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Within ten days of mailing of such notice of violation, the alleged violator shall submit to the director a written explanation of the violation and a written plan for the satisfactory correction and prevention of recurrence thereof, including specific required actions. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, a written explanation of the basis of any such denial or contention shall be submitted by the alleged violator to the director within seven days of receipt of the notice of violation. Submission of an explanation and/or plan shall in no way relieve the alleged violator of liability for any violation occurring before or after receipt of the notice of violation. Nothing herein shall limit the authority of the city and the director to take any action, including emergency action or any other enforcement action, in the absence of issuance of a notice of violation.

(c) Voluntary consent order.

The city, via the director, may enter into a voluntary consent order, an assurance of voluntary compliance, or other similar agreement with any violator noncompliant with any provision of this article, or any order issued hereunder. Such document may include specific action to be taken by the violator to correct noncompliance within a time period specified by the director. Such agreement shall have the same force and effect as administrative orders issued pursuant to this article, and same shall be judicially enforceable.

(d) Mandatory compliance order.

When city staff finds that any discharger has violated, or continues to violate, any provision of this article, or any order issued hereunder, the director may issue a mandatory compliance order to the violator ordering any one or more of the following:

- (1) Compliance within time limit.
- (2) Directing that the violator come into compliance within a specified time limit. Such an order also may contain other requirements to address noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the MS4 or conveyances.
- (3) Remediation, abatement, and/or restoration.

Directing that the violator (if the violation has adversely affected the MS4 or conveyances or any other aspect of the environment) undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4 or conveyances or any other aspect of the environment, and/or to restore any part of the MS4 or conveyances or any other aspect of the environment that has been harmed. Such remedial, abatement, and restoration action may include but shall not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollutant or contamination; prevention, minimization, and/or mitigation of any damage to the public health, safety, welfare, or the environment that may result from the violation; restoration or replacement of city property or natural resources damaged by the violation. Such an order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. Any expenses related to the remediation, abatement, and/or restoration incurred by the city shall be fully reimbursed by the person deemed responsible by the director. If the amount due is not paid within a timely manner, as determined by decision of the city, then the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

- (4) Emergency cease and desist.

Directing that the violator immediately cease and desist from all violations (if the violations have caused or contributed to an actual or threatened discharge to the MS4 or any conveyances which reasonably appears to present an imminent or substantial endangerment to the health, safety, or welfare of persons or to the environment; or if past violations are likely to recur). The emergency cease and desist order may also direct the violator to:

- a. Immediately comply with all chapter requirements; and
- b. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any violator notified of an emergency cease and desist order shall immediately comply and stop or eliminate the endangering discharge. In the event of a violator's failure to immediately comply voluntarily with the emergency cease and desist order, the city and city staff may take such steps as it/they deem necessary to prevent or minimize harm to the MS4 or conveyances, and/or endangerment to persons or to the environment. Any expenses related to the remediation, abatement, and/or restoration incurred by the city shall be fully reimbursed by the person deemed by the director to be responsible. If the amount due is not paid within a timely manner, as determined by decision of the city, then the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

The city may allow the violator to recommence its discharge when it has demonstrated to the satisfaction of city staff that the period of endangerment has passed, unless further termination proceedings are initiated against the violator under this article. A violator that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit the following to the director within five days of receipt of the emergency cease and desist order, a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(5) Construction stop-work order regarding illicit discharge.

Whenever city staff finds that any operator of a construction site has violated, or continues to violate, any provision of this article, or any order issued hereunder, the director may order that a construction stop-work order regarding illicit discharge be issued to the operator or person responsible, posted at the construction site, and distributed to all city departments and divisions whose decisions affect any activity at such site. Unless express written exception is made by the city, the construction stop-work order regarding illicit discharge shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the city associated with

a building permit, grading permit, or any other city authorization necessary to commence or continue construction or to assume occupancy at the site. Issuance of a construction stop-work order regarding illicit discharge shall not be a bar against, or a prerequisite for, taking any other action against the violator.

A mandatory compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor shall a mandatory compliance order relieve the violator of liability for any violation, including any continuing violation.

Issuance of a mandatory compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator or any responsible party.

(e) Disconnection from MS4.

- (1) Any discharger in violation of this article may have its/their MS4 connection terminated by city staff, if such disconnection would abate or reduce an illicit discharge. The city has the right to require the violator to disconnect from the MS4 at the violator's expense, or require the discharger to take corrective action to eliminate the source of the illicit discharge. A discharger commits an offense if it reinstates an MS4 connection previously terminated pursuant to this article, without the prior written approval of the city.
- (2) Without any prior notice, city staff may terminate a discharger's MS4 connection when such action is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or any conveyances. If the discharger fails to comply with any order issued in such an emergency, the city may take such steps as it deems necessary to prevent or minimize damage to the MS4 or any conveyances, and to minimize danger to persons.

Section 13. Right to Reconsideration of Enforcement Provision, and Cost of Abatement of the Violation

- (a) Any discharger subject to an order under Section 12 may petition the director to reconsider the basis for the order within seven days of the affected person's notice of issuance of such an order.
- (b) After the director has reviewed relevant documents and evidence, he shall:
 - (1) Grant the petition;
 - (2) Deny the petition; or
 - (3) Grant the petition in part and deny it in part.

The director may modify the order as is appropriate based upon all the documents and evidence. Further orders and directives as are necessary and appropriate may be issued. The decision of the director shall be final and shall be non-appealable.

- (c) If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within seven days of the decision of the municipal authority upholding the decision of the director, then representatives of the city may enter upon the subject's private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.
- (d) Within seven days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within seven days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. Interest at the maximum rate permitted by law shall be assessed on the balance beginning on the thirtieth (30th) day after the assessment of the lien.

Section 14. Civil Remedies and Injunctive Relief

It shall be unlawful for any person to violate any provision of this article, or to fail to comply with any of the requirements of this article. If a discharger has violated or continues to violate the provisions of this article, the city may avail itself of any and all civil remedies available to it, including petitioning the courts for a preliminary or permanent injunction restraining the discharger from activities which would create further violations or compelling the discharger to perform abatement or remediation of the violation.

Section 15. Violation Deemed Public Nuisance

Any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare, and is therefore declared and deemed a public nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the city.

Section 16. Criminal Penalties

Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense. A violation of this article is considered a violation of a rule ordinance or police regulation that governs fire safety, zoning, or public health and sanitation. A violation of this article is punishable by a fine not to exceed two thousand dollars (\$2,000.00).

--- REMAINDER OF PAGE INTENTIONALLY BLANK ---

DRAFT

Section 2: If any clause or provision of this Ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the Ordinance, which shall continue to have full force and effect.

Section 3. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

Section 4. Effective Date. Pursuant to Section 3.12(c) of the City Charter, this ordinance is effective upon adoption, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after having been published once in its entirety, or a caption that summarizes the purpose of the ordinance and the penalty for violating the ordinance in a newspaper designated as the official newspaper of the City. An ordinance required by the Charter to be published shall take effect when the publication requirement is satisfied.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Port Aransas, on this the ____ day of _____, 2021.

APPROVED:

Charles Bujan, Mayor

ATTEST:

(CITY SEAL)

**City Secretary
City of Buda, Texas**