

STORMWATER MANAGEMENT AND DRAINAGE ORDINANCE

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

- **ORD 1 – Section 5(c) adopts GSI criteria and makes a cross-reference to incentives**
- **ORD 3 – Section 6(c)(2) establishes that clearing and grubbing should not take place without required permits, and erosion and sedimentation controls.**
- **ORD 4 – Section 1(f) provides drawdown requirements by adopting the manuals, specifying drawdown for enhanced detention wet ponds and bioretention design, and Section 5(b) reiterates this.**
- **ORD 10 – Section 6 addresses construction monitoring**
- **ORD 11 – Section 7 addresses post-construction maintenance of stormwater controls**
- **ORD 12 – Section 6 includes construction monitoring and enforcement provisions, including erosion and sedimentation controls**
- **ORD 13 – Section 5(d) Option 2 and Option 3 creates mitigation of impervious area through green stormwater infrastructure controls**
- **ORD 15 – Section 1(f), ordinance in general establishes GSI criteria**

ORDINANCE NO. _____ - _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT ARANSAS, NUECES COUNTY, TEXAS, SETTING FORTH REQUIREMENTS FOR STORMWATER MANAGEMENT AND DRAINAGE; 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 V regarding the regulation of Stormwater Management and Drainage:

Article V. Stormwater Management and Drainage

Section 1. General Provisions

(a) Findings of Fact

It is hereby determined that:

- (1) Land development projects and associated increases in impervious cover alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, and sediment transport and deposition; and
- (2) This stormwater runoff contributes to increased quantities of water-borne pollutants, and;
- (3) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from development sites; and
- (4) Increased stormwater runoff rates and volumes, flooding, stream channel erosion, soil erosion, and nonpoint source pollutants are threats to the public health.

Therefore, the City of Port Aransas establishes this set of stormwater runoff regulations for the purpose of protecting local, regional and state water resources from degradation. It is determined that the regulation of stormwater runoff discharges from land development projects and other construction activities in order to control and minimize increases in stormwater runoff rates and volumes, erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will prevent threats to public health and safety.

(b) Purpose

The purpose of this ordinance is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in watersheds within this jurisdiction. This ordinance seeks to meet that purpose through the following objectives:

- (1) Minimize increases in stormwater runoff from any development in order to reduce flooding, siltation, increases in bay and estuary temperatures, and bank erosion, and maintain the integrity of channels; and

- (2) Minimize increases in nonpoint source pollution caused by stormwater runoff from development which would otherwise degrade local and receiving water quality; and
- (3) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

(c) Applicability

To prevent the adverse impacts of stormwater runoff, the City of Port Aransas has developed a set of performance standards that must be met at new development sites.

(1) Generally

a. Geographic and Process Applicability

This ordinance shall be applicable to all subdivision and site plan applications for property within the city limits and the city's extraterritorial jurisdiction, unless eligible for an exemption or granted a waiver by the (jurisdictional stormwater authority) under the specifications of Section 4 of this ordinance.

b. Applicability to Sites Part of a Larger Plan of Development

The ordinance 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.

c. Other Interested Officials

In addition, all plans must also be reviewed by local environmental protection officials to 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.

(2) Exemptions

The following activities are exempt from these stormwater performance criteria:

- a. Any logging and agricultural activity;

- b. Repairs to any stormwater treatment practice deemed necessary by the City of Port Aransas.

(3) Applicability to Redevelopment

When a site development plan is submitted that qualifies as a redevelopment project as defined in Section 2 of this ordinance, only any newly created impervious cover is subject to these stormwater requirements. Final authorization of all redevelopment projects will be determined after a review by the City of Port Aransas.

(d) Compatibility with Other Permit and Ordinance Requirements

This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(e) Severability

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this ordinance shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this ordinance.

(f) Development of a Stormwater Design Manual

All stormwater and drainage shall be designed and constructed in accordance with the following:

(1) Adoption of the *Guidance for Sustainable Stormwater Drainage on the Texas Coast* manual

The City of Port Aransas has adopted the *Guidance for Sustainable Stormwater Drainage on the Texas Coast* manual. This manual includes a list of acceptable stormwater treatment practices, including the specific design criteria and operation and maintenance requirements for each stormwater practice. The manual may be updated and expanded from time to time, at the discretion of the local review authority, based on improvements in engineering, science, monitoring and local maintenance experience. Stormwater treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to achieve water quality performance standards of eighty (80) percent removal of total suspended solids (TSS).

(2) Adoption of the City of Port Aransas Storm Drainage Design Manual

The following manual and maps are hereby adopted by reference as though they were copied herein fully as the Storm Drainage Master plan of the City of Port Aransas:

- a. Storm Drainage Design Manual – October, 2005
- b. Storm Drainage Master Plan Maps – October, 2005

(3) Consistency with Flood Damage Prevention Regulations

All stormwater and drainage shall be designed and constructed in accordance with Chapter 8, Flood Damage Prevention, City of Port Aransas Code of Ordinances.

Section 2. Definitions

(a) Applicant

means a property owner or agent of a property owner who has filed an application for a stormwater management permit.

(b) Building

means any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

(c) Channel

means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

(d) Dedication

means the deliberate appropriation of property by its owner for general public use.

(e) Developer

means a person who undertakes land disturbance activities.

(f) Drainage Easement

means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

(g) Payment in Lieu

means a payment of money in place of meeting all or part of the storm water performance standards required by this ordinance.

(h) Impervious Cover

means those surfaces that cannot effectively infiltrate rainfall (including such things as building rooftops, pavement, sidewalks, paved and unpaved driveways, parking areas, and streets, but not including swimming pools and ponds).

(i) Land Disturbance Activity

means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

(j) Landowner

means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

(k) Maintenance Agreement

means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.

(l) Nonpoint Source Pollution

means pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

(m) Off-Site Facility

means a stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

(n) On-Site Facility

means a stormwater management measure located within the subject property boundary described in the permit application for land development activity.

(o) Redevelopment

means any construction, alteration or improvement exceeding one acre in areas where existing land use is high density commercial, industrial, institutional or multi-family residential.

(p) Stop Work Order

means an order issued which requires that all construction activity on a site be stopped.

(q) Stormwater Management

means the use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

(r) Stormwater Runoff

means flow on the surface of the ground, resulting from precipitation.

(s) Stormwater Treatment Practices (STPs)

means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

(t) Water Quality Volume (WQV)

means the storage needed to capture and treat the storm identified in the stormwater guidance manual.

(u) Watercourse

means a permanent or intermittent stream or other body of water, either natural or manmade, which gathers or carries surface water.

(v) Waters of the United States (WOTUS)

threshold term in the Clean Water Act and establishes the scope of federal jurisdiction under the Act. The Clean Water Act does not define “waters of the United States”; rather, it provides discretion for EPA and the USACE to define “waters of the United States” in regulations. Generally, WOTUS includes bays and oceans, lakes, reservoirs, rivers, streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds.

Section 3. Permit Procedures and Requirements

(a) Permit Required

No landowner or land operator shall receive any of the building, grading or other land development permits required for land disturbance activities without first meeting the requirements of this ordinance prior to commencing the proposed activity.

(b) Application Requirements

Unless specifically excluded by this ordinance, any landowner or operator desiring a permit for a land disturbance activity shall submit to the City of Port Aransas a permit application containing the material required by the stormwater design manual.

The stormwater management plan shall be prepared to meet the requirements of Section 5 of this ordinance, the maintenance agreement shall be prepared to meet the requirements of Section 7 of this ordinance, and fees shall be those established by the City of Port Aransas.

In addition to the above, the following documents shall be included in the submittal to the City of Port Aransas for any building permit, site permit or other permit involving land disturbance:

- (1) TPDES permit issued by Texas Commission on Environmental Quality (TCEQ), as applicable; and
- (2) US Army Corps of Engineers (USACE) Section 404 permit, as applicable

(c) Application Review Fees

The fee for review of any land development application shall be based on the amount of land to be disturbed at the site, and the fee structure shall be established by the City of Port Aransas. All of the monetary contributions shall be credited to a local budgetary category to support local plan review, inspection and program administration, and shall be made prior to the issuance of any building permit for the development.

(d) Application Procedures

The following procedure shall apply:

- (1) Applications for land disturbance activity permits must be filed with the City of Port Aransas. The City of Port Aransas may establish uniform submission dates and shall

publish a submission calendar annually should uniform submission dates be established.

- (2) The City of Port Aransas shall specify in appropriate forms the submission content, number of copies and other pertinent information to ascertain consistency with this Article, as well as any required review fees.
- (3) The City of Port Aransas shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved. If disapproved, the City of Port Aransas shall indicate specific deficiencies and citations.
- (4) If the stormwater management plan is disapproved, the applicant may revise the stormwater management plan.
- (5) If the final stormwater management plan is approved by the City of Port Aransas, all appropriate land disturbance activity permits shall be issued.

(e) Permit Duration

Permits issued under this Section shall be valid from the date of issuance through the date the City of Port Aransas notifies the permit holder that all stormwater management practices have passed the final inspection required under permit condition.

Section 4. Relief from Stormwater Management Requirements

(a) Waivers for Providing Stormwater Management

Every applicant shall provide for stormwater management as required by this ordinance, unless a written request is filed to waive this requirement. Requests to waive the stormwater management plan requirements shall be submitted to the City of Port Aransas for approval. In instances where one of the conditions below applies, the City of Port Aransas may grant a waiver in whole or in part from strict compliance with these stormwater management provisions as long as acceptable mitigation measures are provided:

- (1) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this ordinance; or
- (2) Alternative minimum requirements for on-site management of stormwater discharges have been established in a stormwater management plan that has been approved by the City of Port Aransas and the implementation of the plan is required by local ordinance; or
- (3) Provisions are made to manage stormwater 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

stormwater 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 stormwater practice; or

- (4) The City of Port Aransas finds that meeting the minimum on-site management requirements is not feasible due to the natural or existing physical characteristics of a site.

(b) Payment in Lieu of Stormwater Management Practices

Where the City of Port Aransas waives all or part of the minimum stormwater management requirements, or where the waiver is based on the provision of adequate stormwater facilities provided downstream of the proposed development, the applicant shall be required to pay a fee in an amount as determined by the City of Port Aransas.

When an applicant obtains a waiver of the required stormwater management, the monetary contribution required shall be in accordance with a fee schedule (unless the developer and the stormwater authority agree on a greater alternate contribution) established by the City of Port Aransas, and based on the amount of impervious cover created by the development in question. All of the monetary contributions shall be credited to an appropriate capital improvements program project, and shall be made by the developer prior to the issuance of any building permit for the development.

(c) Dedication of Land

In lieu of a monetary contribution, an applicant may obtain a waiver of the required stormwater management by entering into an agreement with the City of Port Aransas for the granting of an easement or the dedication of land by the applicant, to be used for the construction of an off-site stormwater management facility. The agreement shall be entered into by the applicant and the City of Port Aransas prior to the recording of plats or, if no record plat is required, prior to the issuance of the building permit.

Section 5. General Performance Criteria for Stormwater Management

Unless judged by the City of Port Aransas to be exempt or granted a waiver, the following performance criteria shall be addressed for stormwater management at all sites:

- (a) All site designs shall establish stormwater management practices to control the peak flow rates of stormwater discharge associated with specified design storms and reduce the generation of stormwater. These practices should seek to utilize pervious areas for stormwater treatment and to infiltrate stormwater runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity.

- (b) Maximum retention or “draw-down” time for detention ponds shall not exceed 24 hours from the time of peak storage to the time of complete emptying of the pond, as determined by hydrograph routing or other calculations acceptable to the City. This requirement does not apply to facilities in which retention or “draw-down” time is required to be greater than 24 hours. All volume required for detention shall be available after 24 hours to allow for subsequent storms, including any portion of the water quality volume utilized for detention purposes.
- (c) All stormwater runoff generated from new development shall not discharge untreated stormwater directly into waters of the US (WOTUS) or a local waterbody without adequate treatment, and compliance with state and federal regulatory requirements. For new developments where such discharges are proposed, City of Port Aransas shall evaluate compliance with any mitigation requirements from the United States Army Corp of Engineers (USACE), Texas Commission on Environmental Quality (TCEQ), or other Federal or State Agency.

OPTION 1 – INCENTIVE APPROACH

- (d) For new development seeking incentives, development bonuses or credit under Chapter 16 Article IV Landscaping or Chapter 25 Zoning, structural stormwater treatment practices shall be designed to remove eighty (80) percent of the average annual post development total suspended solids load (TSS). It is presumed that a STP complies with this performance standard if it is:
 - (1) Sized to capture the prescribed water quality volume (WQV); and
 - (2) Designed according to the specific performance criteria outlined in the adopted Stormwater Design Manuals; and
 - (3) Constructed properly; and
 - (4) Maintained regularly.

OPTION 2 – REGULATORY APPROACH INITIAL

- (d) For new development beyond fifty (50) percent impervious cover, structural stormwater treatment practices shall be designed to remove eighty (80) percent of the average annual post development total suspended solids load (TSS). It is presumed that a STP complies with this performance standard if it is:
 - (1) Sized to capture the prescribed water quality volume (WQV); and
 - (2) Designed according to the specific performance criteria outlined in the adopted Stormwater Design Manuals; and

(3) Constructed properly; and

(4) Maintained regularly.

OPTION 3 – REGULATORY APPROACH FINAL

(d) For new development, structural stormwater treatment practices shall be designed to remove eighty (80) percent of the average annual post development total suspended solids load (TSS). It is presumed that a STP complies with this performance standard if it is:

(1) Sized to capture the prescribed water quality volume (WQV); and

(2) Designed according to the specific performance criteria outlined in the adopted Stormwater Design Manuals; and

(3) Constructed properly; and

(4) Maintained regularly.

Section 6. Requirements for Stormwater Management Plan Approval

(a) Stormwater Management Plan Required

No application for development will be approved unless it includes a stormwater management plan detailing in concept how runoff and associated water quality impacts resulting from the development will be controlled or managed. This plan must be prepared by an engineer licensed in the State of Texas and must indicate whether stormwater will be managed on-site or off-site and, if on-site, the general location and type of practices.

The stormwater management plan(s) shall be referred for comment to all other interested agencies, and any comments must be addressed in a final stormwater management plan. This final plan must be signed by a licensed professional engineer (PE), who will verify that the design of all stormwater management practices meet the submittal requirements outlined in the Submittal Checklist found in the stormwater design manual. No building, grading, or sediment control permit shall be issued until a satisfactory final stormwater management plan, or a waiver thereof, shall have undergone a review and been approved by the City of Port Aransas after determining that the plan or waiver is consistent with the requirements of this ordinance.

(b) Stormwater Management Plan Requirements

A stormwater management plan shall be required with all permit applications and will include the information required by the stormwater guidance manual.

The applicant must ensure access to all stormwater treatment practices at the site for the purpose of inspection and repair by securing all the maintenance easements needed on a permanent basis. These easements will be recorded with the plan and will remain in effect even with transfer of title to the property.

The applicant must provide for appropriate BMPs during construction to minimize erosion.

The applicant must execute an easement and an inspection and maintenance agreement binding on all subsequent owners of land served by an on-site stormwater management measure in accordance with the specifications of this ordinance.

(c) Erosion Control Plan

- (1) In order to clearly identify all erosion and sediment control measures to be installed and maintained throughout the duration of the project, a detailed erosion control plan shall be required prior to the issuance of the site development permit or the building permit in accordance with adopted design manuals.
- (2) Each developer shall implement and maintain the erosion control measures shown on its approved erosion control plan or otherwise approved by the City in order to minimize the erosion and the transport of silt, earth, topsoil, etc., by water runoff or construction activities, beyond the limits of the developer's site onto city streets, drainage easements, drainage facilities, storm drains or other city property, prior to beginning any land-disturbing activity.
 - a. The contractor shall install erosion/sedimentation controls, tree/natural area protective fencing, and conduct "Pre-Construction" tree fertilization (if applicable) prior to any site preparation work (clearing, grubbing or excavation).
 - b. The placement of erosion/sedimentation controls shall be in accordance with the approved erosion control plan or otherwise approved by the City. It shall be available for review by the City at all times during construction.
 - c. The contractor is required to provide a certified inspector that is either a licensed engineer (or person directly supervised by the licensed engineer) or Certified Professional in Erosion and Sediment Control (CPESC or CPESC - IT), Certified Erosion, Sediment and Stormwater - Inspector (CESSWI or CESSWI - IT) or Certified Inspector of Sedimentation and Erosion Controls (CISEC or CISEC - IT) certification to inspect the controls and fences at weekly or bi-weekly intervals and after one-half (½) inch or greater rainfall events to insure that they are functioning properly. The person(s) responsible for maintenance of controls and fences shall immediately make any necessary repairs to damaged areas. Silt

accumulation at controls must be removed when the depth reaches six (6) inches or one-third ($\frac{1}{3}$) of the installed height of the control whichever is less.

- d. Prior to final acceptance by the City, haul roads and waterway crossings constructed for temporary contractor access must be removed, accumulated sediment removed from the waterway and the area restored to the original grade and revegetated. All land clearing debris shall be disposed of in approved spoil disposal sites.
- (3) It shall be an offense for a developer or a third party performing work on a project to violate any of the requirements of this article, including, but not limited to, the following:
- a. Conducting any land-disturbing or construction activity without an approved erosion control plan for the location where the violation occurred.
 - b. Failing to install erosion control devices or to maintain erosion control devices throughout the duration of land-disturbing activities, in compliance with the approved erosion control plan for the location where the violation occurred.
 - c. Failing to remove off-site sedimentation that is a direct result of land-disturbing activities where such off-site sedimentation results from the failure to implement or maintain erosion control devices as specified in an approved erosion control plan for the location where the violation occurred.
 - d. Allowing sediment-laden water resulting from below-ground installations to flow from a site without being treated through an erosion control device.
 - e. Failing to repair damage to existing erosion control devices, including replacement of existing grass or sod.
- (4) Written notice of violation shall be given to the developer or his job site representative as identified in the erosion control plan for a site. Such notice shall identify the nature of the alleged violation and the action required to obtain compliance with the intent of the approved erosion control plan.

(d) TPDES Permit and City Notification

- (1) Any operator who intends to obtain coverage as an operator for stormwater discharges from a construction site under a TPDES general permit for stormwater discharges from construction sites (the construction general permit) from Texas Commission on Environmental Quality (TCEQ) shall submit a signed copy of its Notice of Intent (NOI) to the city engineer at least fourteen (14) days prior to the commencement of construction activities. If the construction activity is already underway upon the effective date of this article, the NOI shall be submitted within

thirty (30) days. For stormwater discharges from construction sites where the operator changes, an NOI shall be submitted to the city engineer at least seven (7) days prior to when the operator commences work at the site.

- (2) A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared and implemented in accordance with the requirements of the TPDES construction general permit, or any individual or group TPDES permit issued for stormwater discharges from the construction site. The SWPPP shall include any additional requirement imposed by or under this article and any other provision of the city's Code of Ordinances.
- (3) On a site of more than one acre in total land area or a site which is impacted by off-site drainage for more than one acre, the SWPPP shall be prepared, signed, and sealed by a registered professional engineer. The signature and seal of the registered professional engineer shall constitute certification that the SWPPP fully complies with the requirements of the construction general permit, or with any applicable individual or group TPDES permit issued for stormwater discharges from the construction site, and with any additional requirement imposed by or under this article. The SWPPP shall contain the name, title, and business address of the registered professional engineer signing it, and the date that he/she did so.
- (4) The SWPPP shall be completed prior to the submittal of the NOI to the city and, for new construction, prior to the commencement of construction activities. The SWPPP shall be updated and modified as appropriate and as required by the construction general permit and this article. Any update or modification to the SWPPP shall be prepared, signed, and sealed by a registered professional engineer, if the original SWPPP was required to have been prepared by a registered professional engineer.
- (5) A copy of any NOI that is required shall be submitted to the city in conjunction with any application for a building permit, site development, subdivision plat approval, site development plan approval, and any other city approval necessary to commence or continue construction at the site.
- (6) The city engineer shall require any operator who is required to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the city engineer for review. Such submittal and review of the SWPPP shall be required by the city prior to commencement of or during construction activities at the site.
- (7) Upon the city's review of the SWPPP and any site inspection that it may conduct, the city may deny approval of any building permit, site development permit, subdivision plat, site development plan, or any other city approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the construction general permit, any individual or group TPDES permit issued for stormwater discharge from the construction site, or any additional requirement imposed by or under this article. Also, if at any time the city determines that the SWPPP is not being fully implemented, the city may

similarly deny approval of any building permit, site development permit, subdivision plat, site development plan or any other city approval necessary to commence or continue construction, or to assume occupancy, at the site.

- (8) The owner shall make the SWPPP and any modification thereto available to the city upon request, and to TCEQ inspectors.
- (9) The city may notify the owner at any time that the SWPPP does not meet the requirements of the construction general permit, any applicable individual or group TPDES permit issued for stormwater discharges from the construction site, or any additional requirement imposed by or under this article. Such notification shall identify those provisions of the permit or this article which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven (7) days of such written notification from the city, the operator shall make the required changes to the SWPPP and shall submit to the city a written certification that the requested changes have been made.
- (10) The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance which has a significant effect on the potential for the discharge of pollutants to the stormwater drainage system or to waters of the United States (WOTUS), and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges associated with construction activity. In addition, the SWPPP shall be amended to identify any new contractor or subcontractor that will implement a measure in the SWPPP.
- (11) Qualified personnel, provided by the operator of the construction site, shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven calendar days and within twenty-four (24) hours of the end of the storm that is one-half inch (0.5") or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Discharge locations or points that are accessible shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.
- (12) Based on the results of the inspections, the site description and the pollution prevention measures identified in the SWPPP, the SWPPP shall be revised as appropriate, but in no case later than seven calendar days following the inspection.

Such modifications shall provide for timely implementation of any changes to the SWPPP within seven calendar days following the inspection.

- (13) A report summarizing the scope of any inspection, and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with subsection (12) above shall be made and retained as part of the SWPPP for at least three (3) years from the date that the site is finally stabilized. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the facility's TPDES permit, and this article. The report shall be certified and signed by the person responsible for making the report.
- (14) The owner shall retain copies of any SWPPP and all reports required by this article or by the TPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three (3) years from the date that the site is finally stabilized.
- (15) Where a site has been finally stabilized and all stormwater discharges from construction activities that are authorized by this article and by the TPDES permit for those construction activities are eliminated, or where the operator of all stormwater discharges at a facility changes, the owner of the construction site shall submit to the city a notice of termination (NOT) that includes the information required for notices of termination by part VIII of the construction general permit.
- (16) Upon final stabilization of the construction site, the owner or the duly authorized representative thereof shall submit written certification to the city that the site has been finally stabilized. The city may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the city has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

(e) Performance Bond and Security

The City of Port Aransas may, at its discretion, require the submittal of a performance security or bond prior to issuance of a permit in order to insure that the stormwater practices are installed by the permit holder as required by the approved stormwater management plan. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management practices approved under the permit, plus twenty-five (25) percent. The performance security shall contain forfeiture provisions for failure to complete work specified in the stormwater management plan.

The installation performance security shall be released in full only upon submission of "as built plans" and written certification by a licensed professional engineer that the stormwater practice has been installed in accordance with the approved plan and other applicable provisions of this ordinance. The City of Port Aransas will make a final inspection of the stormwater practice to ensure that it is in compliance with the approved plan and the provisions of this ordinance. Provisions for a partial pro-rata release of the performance security based on the completion of various development stages can be done at the discretion of the City of Port Aransas.

Section 7. Maintenance and Repair of Stormwater Facilities

(a) Maintenance Easement

Prior to the issuance of any permit that has a stormwater management facility as one of the requirements of the permit, the applicant or owner of the site must execute a maintenance easement agreement that shall be binding on all subsequent owners of land served by the stormwater management facility. The agreement shall provide for access to the facility at reasonable times for periodic inspection by the City of Port Aransas, or their contractor or agent, and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this ordinance. The easement agreement shall be recorded by the City of Port Aransas in the land records.

(b) Maintenance Covenants

Maintenance of all stormwater management facilities shall be ensured through the creation of a formal maintenance covenant that must be approved by the City of Port Aransas and recorded into the land record prior to final plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the stormwater management facility. The covenant shall also include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts.

The City of Port Aransas, in lieu of a maintenance covenant, may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

(c) Requirements for Maintenance Covenants

All stormwater management facilities must undergo, at the minimum, an annual inspection to document maintenance and repair needs and ensure compliance with the requirements of this ordinance and accomplishment of its purposes. These needs may include: removal of silt, litter and other debris from all catch basins, inlets and drainage

pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the City of Port Aransas, and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the stormwater management facility.

(d) Inspection of Stormwater Facilities

Inspection programs may be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.

(e) Right-of-Entry for Inspection

When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall grant to the (jurisdictional stormwater authority) the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes, but is not limited to, the right to enter a property when it has a reasonable basis to believe that a violation of this ordinance is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this ordinance.

(f) Failure to Maintain Practices

If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the City of Port Aransas, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the stormwater management facility becomes a danger to public safety or public health, the City of Port Aransas shall notify the party responsible for maintenance of the stormwater management facility in writing. Upon receipt of that notice, the responsible person shall have 60 days to effect maintenance and repair of the facility in an approved manner. After proper notice, the City of Port Aransas may assess the owner(s) of the facility for the cost of repair work and any penalties; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the municipality.

(g) Requirements for Maintenance Associations.

- (1) Landowners and land users outside the city limits and not within a utility district may elect to form a maintenance association (MA) in accordance with this section prior to permit issuance. All MAs must post financial security or create a maintenance fund for the purpose of maintaining all stormwater management controls required by this article. The duties and responsibilities of an MA may be performed by a homeowners' association, property owners' association, or like entity if it meets the requirements of this section. The maintenance of all BMPs shall be in accordance with the applicable permits and the approved maintenance plan.
- (2) The applicant must submit to the city the approved articles of association for the MA, as well as a map showing the boundaries of its jurisdiction. The MA must have the following general powers which are reflected in the articles of association:
 - a. Own and convey property;
 - b. Operate and maintain common property, specifically the stormwater management controls;
 - c. Establish rules and regulations;
 - d. Assess members maintenance fees and enforce said assessments;
 - e. Sue and be sued;
 - f. Contract for services to provide operation and maintenance;
 - g. If the MA is a homeowners' association, it must have as members all the homeowners, lot owners, property owners, or unit owners;
 - h. The MA shall exist in perpetuity; however, if the MA is dissolved or annexed into the city or a utility district, the articles of association must provide that the property consisting of the stormwater management controls shall be conveyed to the city or a utility district; and
 - i. It shall be clearly stated in the articles of association of the MA that:
 1. It is the responsibility of the MA to operate and maintain the stormwater controls;
 2. The water quality controls are owned by the MA or described therein as common property;
 3. There is a method of assessing and collecting the assessment for operation and maintenance of the stormwater management controls; and

4. Any amendment that would affect the stormwater management controls must be approved by the city.

(3) If an MA is proposed for a project which will be developed in phases and subsequent phases will utilize the stormwater management controls, the MA must have the ability to accept future phases into the MA.

(h) Annual Operating Permit

(1) General Requirements.

The owners or operators of all new stormwater management controls for multifamily residential development, for single-family subdivision development, and for nonresidential development must obtain an annual operating permit. The owner or operator is responsible for the proper operation and maintenance of the control and for annual permit renewal. The first operating permit will be issued by the city upon:

- a. The completion of construction, if applicable;
- b. Inspection of the control by the City after review of the maintenance plan accompanying the design engineer's concurrence letter of the completion of construction;
- c. Final inspection approval by the City;
- d. The issuance of a Certificate of Compliance or a Certificate of Occupancy by the City, if applicable; and
- e. Payment of the permit fee.

(2) Procedures.

All stormwater management controls must be maintained in accordance with this article, and each permitted control will be inspected each year by the city to confirm that proper maintenance, as described in the maintenance plan, has occurred prior to renewal of the permit. An operating permit shall be required for developed sites with existing stormwater management control only when new development or redevelopment occurs.

(3) Information Requirements.

The City may establish components and submission requirements to implement this Section.

(4) Renewal.

- a. It is the responsibility of the permittee to apply to the city for renewal of the permit no later than thirty (30) calendar days before the existing permit expires. The application must be accompanied by payment of the appropriate renewal fee, updated information concerning ownership or facility operation and enforcement status. Upon receipt of all information and fees, including a favorable inspection and maintenance report, the city will renew the permit for a period of one (1) year.
- b. Any repair work or modifications of a control not specified in the maintenance plan shall require the permittee's engineer's concurrence letter, prior to renewal of the permit.
- c. Permit renewal will be withheld if there is pending enforcement action against the permittee based on any violations of water quality regulations at the site.

(5) Transfer.

The transfer of the operating permit shall require the completion of a new permit application, and must be submitted not later than thirty (30) calendar days after transfer of ownership or operation of the control.

(i) Functionality Inspections.

(1) In addition to the inspection and permitting process provided in this Ordinance, each owner of on-site stormwater management controls facilities shall obtain from a qualified professional registered engineer a functionality inspection no less than once every five years. The first functionality test is due on or before the expiration of five years from the date the facility was accepted by the city and every five years thereafter. If no functionality inspection has occurred by a facility that was accepted by the city more than five years from the effective date of the ordinance from which this section was adopted, such facility shall obtain a functionality inspection on or before the expiration of one year from the effective date of the ordinance from which this section was adopted. In addition, functionality inspections shall be conducted during or within (72 hours) following a 1-year storm event which has produced or is producing a depth of precipitation of 1.33 inches during six hours or 0.22 inches/hour. The following, if present, must be inspected and evaluated at each water quality facility, including but not limited to:

- a. Dams, berms, levees.
- b. Spillways.
- c. Inlets.

- d. Pipes, culverts, and appurtenances.
- e. Outlets.
- f. Bank erosion.
- g. Sedimentation.
- h. Tree/vegetation management.
- i. Trash and debris removal.
- j. Water quality impairments.
- k. Backup power.
- l. Reservoir drawdown capability.
- m. Security issues.
- n. Emergency spillway/service spillway.
- o. Service outlet structure.
- p. Service inlet structure.
- q. Downstream hazard conditions.
- r. Seepage on downstream slope.
- s. Downstream embankment general condition.
- t. Upstream embankment.
- u. Crest of embankment.
- v. Irrigation area.

(2) The purpose of the functionality inspection shall be to determine if each stormwater management control facility is:

- a. Operating properly;

- b. Pumps, electrical systems, and all appurtenances applicable to the BMP's working;
 - c. Structurally integrity protected;
 - d. Accomplishing the purposes for which it was designed and installed; and
 - e. Can be improved or modified in a manner that is likely to improve its functionality or efficiency.
- (3) The engineer conducting the functionality inspection shall prepare and file with the city and the owner a written report that includes the engineer's evaluation of whether the water quality facility is accomplishing the purposes described in subsection (2), including any analysis of optional actions, cost/benefit, any risk associated with the facility, and any other factor that, in the engineer's opinion, should be brought to the attention of the owner and the city. The owner is responsible for the operation and maintenance of a water quality management facility and shall make records of all maintenance installation and repairs. Records of the inspection, maintenance and repairs must be completed, signed by the responsible engineer, and retained for a minimum of five years for review upon city request.
- (4) The owner of the water quality facility shall be responsible for all costs associated with procuring the functionality inspection and shall provide a written copy of the engineer's inspection report not later than thirty (30) days after the sooner of the fifth anniversary of the date the facility was first installed and permitted or the last functionality inspection.
- (5) Failure to obtain a functionality inspection may result in revocation of the owner's permit and such other enforcement or penalties as the city may determine to be appropriate.
- (6) In the event that the inspection reveals that the water quality facility is not accomplishing the purposes for which it was constructed, or that new or additional BMPs, stormwater management controls, or facilities are necessary for proper functioning of the facility or the accomplishment of its intended purposes, the owner shall be required to implement such BMPs or stormwater management controls or to construct such facilities and, to the extent necessary, amend the applicable stormwater pollution prevention plan, TPDES permit, stormwater management controls maintenance plan, pollution control permit, or restrictive covenant as a condition to renewal of the owner or operator's annual operating permit. Deficiencies must be addressed within 90 days from the date identified unless additional time is approved by the city engineer. The person responsible for facility inspection must provide documentation to the city demonstrating that each deficiency identified in the inspection report has been corrected. Additional inspection reports may be required

by the city if an event occurs, such as a large storm event, which in the opinion of the city engineer jeopardizes the structural integrity or function of the facility.

Section 8. Enforcement and Penalties

(a) Violations

Any development activity that is commenced or is conducted contrary to this ordinance, may be restrained by injunction or otherwise abated in a manner provided by law.

(b) Notice of Violation

When the City of Port Aransas determines that an activity is not being carried out in accordance with the requirements of this Ordinance, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- (1) The name and address of the owner or applicant; and
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring; and
- (3) A statement specifying the nature of the violation; and
- (4) A description of the remedial measures necessary to bring the development activity into compliance with this Ordinance and a time schedule for the completion of such remedial action; and
- (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; and
- (6) A statement that the determination of violation may be appealed to the City of Port Aransas by filing a written notice of appeal within fifteen (15) days of service of notice of violation.

(c) Stop Work Orders

Persons receiving a notice of violation will be required to halt all construction activities. This "stop work order" will be in effect until the City of Port Aransas confirms that the development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a notice of violation in a timely manner can result in revocation of a permit as well as civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this ordinance

(d) Civil and Criminal Penalties

Any person who violates the provisions of this Ordinance may be subject to civil penalties as set forth in chapter 7 of the Texas Water Code. Penalties ranging from \$50 to \$25,000 for each day of violation may be imposed pursuant to section 7.102 of the Water Code. Criminal penalties may also be imposed for unauthorized discharges, failure to use pollution control devices or practices, or for intentionally or knowingly submitting false information from an application or plan pursuant to Water Code sections 7.147, 7.148 and 7.149. Pursuant to Water Code section 7.187, the criminal penalties can include fines and incarceration.

(e) Restoration of Lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City of Port Aransas may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

(f) Holds on Occupation Permits

Certificates of occupancy or other occupation permits will not be granted until corrections to all stormwater practices have been made and accepted by the City of Port Aransas.

---- REMAINDER OF PAGE INTENTIONALLY BLANK ----

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 Port Aransas, Texas