

ORDINANCE NO. 2012-3430

AN ORDINANCE AMENDING CHAPTER 7, HEALTH AND SANITATION, BY ADDING A NEW SECTION 13 "STORMWATER PROTECTION" TO REGULATE DISCHARGES INTO THE CITY STORMWATER SYSTEM AND TO ESTABLISH THE ASSOCIATED ENFORCEMENT AND PENALTIES PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

- PART 1:** That Chapter 7 of the Code of Ordinances of the City of College Station, Texas, be hereby amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.
- PART 2:** That all previous ordinances in direct conflict with this ordinance are hereby superseded and repealed, but only to the extent of such conflict.
- PART 3:** That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 4:** That this ordinance shall become effective immediately upon passage and approval.

PASSED, ADOPTED AND APPROVED THIS 12th DAY OF July 2012.

ATTEST:

Sherry Massman
CITY SECRETARY

APPROVED:

Trancy J. Frey
MAYOR

APPROVED:

Michaela...
CITY ATTORNEY

EXHIBIT "A"

That Chapter 7, Health and Sanitation, of the Code of Ordinances, City of College Station, Texas, is hereby amended by adding a section, to be numbered Section 13, which said section shall read as follows:

"CHAPTER 7 HEALTH AND SANITATION

....

SECTION 13 – STORMWATER PROTECTION.

(A) GENERAL.

(1) Purpose

- (a) The purpose of this ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges into the municipal stormwater drainage system to the maximum extent practicable as required by federal law. This article establishes methods for controlling the introduction of pollutants into the municipal stormwater drainage system in order to comply with requirements of the Texas Pollutant Discharge Elimination System (TPDES) permit process.
- (b) The objectives of this ordinance are to:
 - i. Regulate the contribution of pollutants into the municipal stormwater drainage system by any person or entity;
 - ii. Prohibit illicit discharges and illegal connections into the municipal stormwater drainage system; and
 - iii. Prevent nonstormwater discharges, generated as a result of spills, inappropriate dumping or disposal, into the municipal stormwater drainage system.

(2) Compatibility with other regulations.

- (a) This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restriction of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.
- (b) Any reference to this Section shall also apply to Chapter 12, Article 7, Section 7.13 of this Code of Ordinances, and both Sections shall be interpreted and enforced in conjunction with each other, where applicable.

(3) **Definitions.**

In this section:

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

Administrator means the Director of Planning and Development Services and/or his designee.

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

CFR means the Code of Federal Regulations.

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

Contaminated means containing a harmful quantity of any substance.

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

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

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

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

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

Illicit connections means any man made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

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

Municipal separate stormwater system (MS4) permit means a stormwater permit

for municipalities to regulate stormwater discharges.

Municipal separate stormwater sewer system means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, 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. Also designated as MS4.

Municipal stormwater drainage system operator means the City of College Station.

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

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

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

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

Pollutant includes, but is not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, toxic materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, cellar dirt, and industrial, municipal, recreational, agricultural waste, paints, varnishes, solvents, oil and automotive fluids, litter, discarded and abandoned objects, floatables, fecal coliform, pathogens, dissolved and particulate metals, pet wastes, and construction debris discharged into water or into the MS4.

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

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

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

Public means property or facilities owned by a City, county, state, or federal government or agency thereof.

Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal stormwater drainage system, the water of the state, the waters of the United States.

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

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

Uncontaminated means not containing a harmful quantity of any substance.

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

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

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

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

Waters of the United States means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate wetlands;
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters;
 - i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - ii. From which fish or shellfish are or could be taken or sold in interstate or foreign commerce; or
 - iii. Which are used or could be used for industrial purposes by industries in interstate commerce;
- (d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- (e) Tributaries of waters identified in this definition;
- (f) The territorial sea; and
- (g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in this definition; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling

ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water, which neither were originally created in waters of the United States (such as disposal are in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any federal agency, for the purpose of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.

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

(B) PROHIBITIONS.

(1) Discharge to municipal stormwater drainage system prohibited.

A person commits an offense if the person discharges or causes to be discharged into the MS4 any release of a harmful quantity of any substance that is not comprised entirely of stormwater.

(2) Exceptions:

- (a)** It is an affirmative defense to prosecution, subject to subparagraph (b) below, that the discharge was composed entirely of one or more of the following:
- i.** A discharge authorized by, and in full compliance with, a TPDES permit (other than the TPDES permit for discharges from the MS4);
 - ii.** A discharge or flow resulting from fire fighting by the fire department;
 - iii.** A discharge or flow from water line flushing or disinfection that contains no harmful quantity of total residual chlorine (TRC) or any other chemical used in line disinfection;
 - iv.** A discharge or flow from normal lawn watering or landscape irrigation;
 - v.** A discharge or flow from a diverted stream flow or natural spring;
 - vi.** A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
 - vii.** Uncontaminated groundwater infiltration (as defined at 40 CFR § 35.2005(20)) to the MS4;
 - viii.** Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;
 - ix.** A discharge or flow from a potable water source not containing any harmful substance;
 - x.** A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;

- xi. A discharge or flow from individual residential car washing;
 - xii. A discharge or flow from a riparian habitat or wetland;
 - xiii. A discharge or flow from cold water (or hot water with prior permission of the Administrator) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
 - xiv. Drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals; or
 - xv. A discharge or flow of uncontaminated stormwater pumped from an excavation.
- (b) No exception to enforcement shall be available under subparagraph (a) if:
- i. The discharge or flow in question has been determined to be a source of a pollutant or pollutants to the waters of the United States or to the MS4;
 - ii. Notice of such determination has been provided to the discharger; and
 - iii. The discharge has continued after the expiration of the time given in the notice to cease the discharge.

(3) Illicit connections prohibited.

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

(C) EMERGENCY SUSPENSION OF SERVICE.

Emergency suspension of utility service and municipal stormwater drainage system access.

- (1) The City may, without prior notice, suspend water service, sanitary sewer service or MS4 discharge access to a person discharging to the MS4, waters of the United States, or publicly owned treatment works when such suspension is necessary to stop an actual or threatened discharge which:
 - (a) Presents or may present imminent and substantial danger to the environment or to the health or welfare of persons; or
 - (b) Presents or may present imminent and substantial danger to the MS4 or waters of the United States.
- (2) When the Administrator determines that City provided water or sanitary sewer

service must be suspended pursuant to subsection (1), the Administrator will request the director of water services to do so.

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

(D) NON-EMERGENCY SUSPENSION OF SERVICE.

Non-emergency suspension of utility service and municipal stormwater drainage system access.

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

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

(E) CONTROL AND CONTAINMENT REQUIREMENTS.

(1) Spill or release corrective actions, responsibility, and compensation.

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

(2) Stockpiling, accumulations, and heaps.

- (a) Stockpiles, accumulations, and heaps comprised of soil, sand, mulch, trash, asphalt, aggregate or any other material deemed a pollutant by local, state, or federal regulations, which are located within the City limits and present a real or perceived potential of discharging to the MS4 are subject to control measures to prevent introduction into the MS4.
- (b) The Administrator has the authority to necessitate the use of control measures to mitigate the introduction of pollutants to the MS4. Failure to implement control

measures as prescribed by the Administrator will result in enforcement as described in this ordinance.

- (c) Stockpiles, accumulations, and heaps discovered to be discharging pollutants to the MS4 are subject to enforcement as described in this ordinance.

(F) ENFORCEMENT.

(1) Enforcement Responsibility.

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

(2) Violations.

- (a) Violation of the provisions of this ordinance or failure to comply with any of its requirements shall constitute a misdemeanor. Each violation shall be deemed a separate offense for each and every day during which any violation of any of the provisions of this ordinance is committed or continued. Any person found guilty of violating a provision of this ordinance may be punished as provided for in Chapter 1, Section 5 of this Code of Ordinances.
- (b) The owner or operator of any facility, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
- (c) A violation of this section is also declared a nuisance and may be enforced five thousand (5,000) feet outside the City Limits.

(3) Notice of violations.

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

(4) Voluntary compliance.

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

(5) Stop orders.

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

(6) Appeals, interpretation, and variances.

Where applicable, any appeals, interpretations or variances of the Administrator's designee shall first be to the Administrator, then to a court of competent jurisdiction. Any appeals, interpretations or variances of the Administrator shall be to a court of competent jurisdiction directly."