

ORDINANCE NO. _____

EXHIBIT A

Replace ARTICLE VII. MUNICIPAL DRAINAGE UTILITY in its entirety with:

ARTICLE VII. MUNICIPAL DRAINAGE UTILITY -- STORMWATER PROTECTION

DIVISION 1. CREATION OF MUNICIPAL DRAINAGE UTILITY

Sec. 32-160. Adoption of State law and creation of municipal drainage utility.

The provisions of Subchapter C of Chapter 402 of the Local Government Code are hereby adopted by the City of Abilene, and a municipal drainage utility is hereby created in the City of Abilene. The City shall have the full authority to operate a municipal drainage utility system pursuant to Section 5 of the Texas Constitution, the Charter of the City of Abilene and State law. The municipal drainage utility shall be a public utility. The proposed service area shall be the incorporated city limits of the City of Abilene, Texas. The City of Abilene will offer drainage service on nondiscriminatory, reasonable and equitable terms.

Sec. 32-161. Purpose and intent

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

- (a) Regulate the contribution of pollutants to the municipal stormwater drainage system by any person;
- (b) Prohibit illicit discharges and illegal connections to the municipal stormwater drainage system;
- (c) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the municipal stormwater drainage system; and,
- (d) To establish legal authority to carry out all inspections, surveillance, monitoring and enforcement procedures necessary to ensure compliance with the MS4 permit.

Sec. 32-162. Compatibility with other regulations

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 Ordinance imposes restriction of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Sec. 32-163. Administration.

The Administrator of the Stormwater Utility Division and the Administrator's authorized representatives are sanctioned to administer, implement, and enforce the provisions of this Article.

Secs. 32-164--32-185. Reserved.

DIVISION 2. DEFINITIONS

Sec. 32-186. Definitions.

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Article, shall have the meanings hereinafter designated.

As it relates to the requirements of section 402.053 of the Local Government Code, the issuance of a "certificate of occupancy" for residential structures in the City shall be defined as the installation of the initial tie-in to water or wastewater service for the residential parcel.

Accidental Discharge: A discharge prohibited by this Ordinance that occurs by chance and without planning or thought prior to occurrence.

Administrator: The Administrator of the Stormwater Utility Division or the Administrator's authorized representatives.

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

Best management practices (BMP): Schedules of activities, practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the municipal stormwater drainage system and waters of the United States.

BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

CFR: The Code of Federal Regulations.

City: The City of Abilene, Texas.

City Limits: The incorporated city limits of the City of Abilene.

Clean Water Act (CWA): 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. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 6-483 and Pub. L. 97-117, 33 USC. 1251 et.seq.

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

Construction Site: Any construction site required by the Clean Water Act to operate within the limits of an NPDES/TPDES permit to discharge stormwater associated with construction activity.

Contaminated: Containing a harmful quantity of any substance.

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

Construction Site Notice (CSN): A written submission to the municipal stormwater drainage system operator from an applicant stating that a small construction activity will be commencing and will operate under the provisions of the TCEQ General Permit TXR150000.

Discharge: Any addition or introduction of any 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: 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, or any duly authorized official of said agency.

Facility: Any facility, industrial facility or construction site, required by the Clean Water Act to have a permit to discharge stormwater associated with industrial or construction activity.

Harmful quantity: 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: Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illicit Discharge: Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except discharges pursuant to an NPDES or TPDES permit (other than the NPDES or TPDES permit for certain discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and other allowable non-storm water discharges detailed in Section 32-188(a)(1-16) of this Article.

Industrial Facility: Any facility required by the Clean Water Act to have a permit to discharge stormwater associated with industrial activity subject to NPDES/TPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Industrial Waste Manager: City of Abilene Water Department position currently responsible for assessment of discharges to the Publicly-Owned Treatment Works (POTW). Performs inspection on high-risk industrial facilities and reports stormwater violations to the Stormwater Utility Division.

MS4 (Municipal separate storm sewer system) Permit: Stormwater permits started in 1990 for medium (serving between 100,000 and 250,000 people) and large (serving 250,000 people) municipalities to regulate stormwater discharges; often issued to a group of co-permittees encompassing an entire metropolitan area.

Municipal Stormwater Drainage System: The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made 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 municipal separate storm sewer system (MS4).

Municipal Stormwater Drainage System Operator: City of Abilene.

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

Non-point source: Any source of any discharge of a pollutant that is not a "point source."

Notice of Intent (NOI): The notification that is required by the NPDES Stormwater Multi-Sector General Permit, the EPA Region 6 NPDES Stormwater Construction general permit, or any similar general permit to discharge stormwater associated with industrial activity that is issued by the EPA or the TCEQ.

NPDES permit: A permit issued by EPA (or by the state under authority delegated to the state pursuant to 33 USC § 1342(b) – see *TPDES*) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Operate: Drive, conduct, work, run, manage, or control a vehicle or machine.

Operator: 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 SWPPP requirements and any permit conditions.

Person: Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, commission, board or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state, and local governmental entities.

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

Pollution: 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: Lots, buildings, and appurtenances situated thereon.

Private: Property or facilities owned by individuals, corporations, and other organizations and not by a city, county, state, or federal government agency.

Public: Property or facilities owned by a city, county, state, or federal government or agency thereof.

Regulated Activity: Activity occurring at an industrial facility or construction site, which qualifies the facility or site to acquire a permit to discharge stormwater under the Clean Water Act.

Release: 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.

State: The State of Texas.

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

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

- (i) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR, subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);
- (ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
- (iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR § 434.11(1) because the performance bond issued to the facility by the appropriate federal Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990 and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any

overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of the Federal Resource Conservation and Recovery Act (RCRA);

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance, equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)--(vii) or (ix)--(xi) of this definition are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the Clean Water Act;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications (SIC Code) 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and which are not otherwise included within categories (ii)--(x) of this definition);

Stormwater Pollution Prevention Plan (SWP3): A plan required by a TPDES permit to discharge stormwater associated with industrial activity or construction activity and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges from industrial facilities and construction sites.

TCEQ: Texas Commission on Environmental Quality or successor. Municipal separate storm sewer system interest delegated to the TCEQ upon authority of the EPA.

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

TPDES Permit: A permit issued by the TCEQ under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis

Uncontaminated: Not containing a harmful quantity of any substance.

United States Code (USC): Federal law regulation the Clean Water Act.

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

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a Facility.

Surface Water in the State: Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (From the mean high water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all water-courses 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: For the purpose of this Ordinance, waters of the United States or waters of the U.S. 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;
 - (1) which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - (2) from which fish or shellfish are or could be taken or sold in interstate or foreign commerce; or
 - (3) 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: An area that is inundated or saturated by surface or ground-water 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.

DIVISION 3. PROHIBITIONS

Sec. 32-187. Discharge to municipal stormwater drainage system prohibited.

- (a) No person may discharge or cause to be discharged any harmful quantity of any substance into the municipal stormwater drainage system that is not comprised entirely of stormwater.
- (b) A person commits an offense if the person discharges or causes to be discharged into the municipal stormwater drainage system any release of a harmful quantity of any substance that is not comprised entirely of stormwater

Sec. 32-188. Exceptions

- (a) It may be an exception, subject to (b) below, to any enforcement action for a violation of Section 32-187 (a) & (b) that the discharge was composed entirely of one or more of the following categories of discharges:
 - (1) A discharge authorized by, and in full compliance with, an NPDES permit (other than the NPDES permit for discharges from the municipal stormwater drainage system);
 - (2) A discharge or flow resulting from fire fighting by the fire department;
 - (3) Agricultural stormwater runoff;
 - (4) 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;
 - (5) A discharge or flow from lawn watering, or landscape irrigation;
 - (6) A discharge or flow from a diverted stream flow or natural spring;
 - (7) A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
 - (8) Uncontaminated groundwater infiltration (as defined at 40 CFR § 35.2005(20)) to the municipal stormwater drainage system;
 - (9) Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;

- (10) A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
 - (11) 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;
 - (12) A discharge or flow from individual residential car washing;
 - (13) A discharge or flow from a riparian habitat or wetland;
 - (14) 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;
 - (15) Drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals; or
 - (16) A discharge or flow of uncontaminated stormwater pumped from an excavation.
- (b) No exception to enforcement shall be available under subsection (a) if:
- (1) 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 municipal stormwater drainage system;
 - (2) Notice of such determination has been provided to the discharger; and
 - (3) The discharge has continued after the expiration of the time given in the notice to cease the discharge.

Sec. 32-189. Prohibition of illicit connections

- (a) The construction, connection, use, maintenance or continued existence of any illicit connection to the municipal stormwater drainage system is prohibited.
- (b) Connections that were permissible when originally installed but that are now considered illicit must be brought into compliance within 30 days of notification.
- (c) A person violates this Ordinance if the person connects a line conveying sewage to the municipal stormwater drainage system, 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 upon approval of the Industrial Waste Manager.
- (e) The property owner or the person using said connection shall remove the connection within six months following application of this regulation; provided that, this grace period shall not apply to connections which may result in discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to property, natural resources, wildlife, or habitat.

Sec. 32-190. Unpermitted discharges prohibited.

- (a) A person who is the operator and/or responsible party of a facility commits an offense if the person discharges, or causes to be discharged, stormwater associated with industrial or construction site activity without first having obtained an NPDES/TPDES permit from the EPA/TCEQ to do so.
- (b) A person commits an offense if the person operates a facility that is discharging stormwater associated with construction site activity without having submitted a copy of the Notice of Intent or Construction Site Notice to the City of Abilene.
- (c) The introduction of sediment, concrete, asphalt, or any other construction debris into the municipal stormwater drainage system from a construction activity is a violation of this Ordinance and will be subject to enforcement activities. The Administrator will provide the operator a reasonable amount of time, not to exceed seventy-two (72) hours to remove any pollutants or debris from the municipal stormwater drainage system conveyances.

Secs. 32-191--32-212. Reserved.

DIVISION 4. SUSPENSION OF UTILITY SERVICE

Sec. 32-213. Emergency suspension of utility service and municipal stormwater drainage system access.

- (a) The City may, without prior notice, suspend water service, sanitary sewer service, and/or municipal stormwater drainage system discharge access to a person discharging to the municipal stormwater drainage system, waters of the United States, or Publicly-Owned Treatment Works when such suspension is necessary to stop an actual or threatened discharge which:

- (1) Presents or may present imminent and substantial danger to the environment or to the health or welfare of persons; or
 - (2) Presents or may present imminent and substantial danger to the municipal stormwater drainage system or waters of the United States.
- (b) When the Administrator determines that City-provided water and/or sanitary sewer service must be suspended pursuant to subsection (a), the Administrator shall request the Director of the Department of Water Utilities to do so.
- (c) As soon as is practicable after the suspension of service or municipal stormwater drainage system discharge access, the Administrator shall notify the violator of the suspension in person and shall order the violator to cease the discharge immediately.
- (d) If the violator fails to comply with an order issued under subsection (c), the Administrator may take such actions, established in Division 9: Enforcement, as the Administrator deems necessary to prevent or minimize harmful distress to the municipal stormwater drainage system, waters of the United States, or to persons or wildlife.
- (e) The City shall not reinstate suspended services or municipal stormwater drainage system access to the violator until:
- (1) The violator presents proof, satisfactory to the Administrator and Director of Public Works, that the non-complying discharge has been eliminated and its cause determined and corrected; and
 - (2) The violator pays the City for all costs the City incurred in suspending and reinstating water service, sanitary sewer connection, and/or municipal stormwater drainage system access; and
 - (3) The violator shall be responsible to the City for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the municipal stormwater drainage system incurred by the City while responding to, abating, and remediating the discharge or threatened discharge.
- (f) A violator whose service or access has been suspended or disconnected may appeal such enforcement action to the Administrator's attention, in writing, within ten (10) days of notice of the suspension. The Director of Public Works shall render a decision within two (2) days upon written receipt of the petition. Appeals of the Director of Public Works decision must be submitted for judgment to Municipal Court.

- (g) The remedies provided by this section are in addition to any other remedies set out in this Article. Exercise of this remedy shall not be a bar against, or a prerequisite for, taking other action against a violator.
- (h) A person commits an offense if the person reinstates water service, sanitary sewer service, and or municipal stormwater drainage system access to premises terminated pursuant to this section, without the prior approval of the Administrator or Director of Public Works.

Sec. 32-214. Non-emergency suspension of utility service and municipal stormwater drainage system access.

- (a) The City may suspend the City-provided water supply, sanitary sewer connection, and/or municipal stormwater drainage system access for any person failing to comply with previous notices to cease discharges to the municipal stormwater drainage system in violation of this Article. Utilities will be subject to suspension if such measures would abate or reduce the discharge.
- (b) The Administrator will notify a violator of the proposed suspension of its water supply, sanitary sewer connection, and/or municipal stormwater drainage system access. The violator may petition the Administrator for a reconsideration and hearing before the Director of Public Works. Further petitions must be submitted for judgment to Municipal Court.
- (c) The City shall not reinstate suspended services or municipal stormwater drainage system access to the discharger until:
 - (1) The violator presents proof, satisfactory to the Administrator and Director of Public Works, that the non-complying discharge has been eliminated and its cause determined and corrected; and
 - (2) The violator pays the City for all costs the City incurred in suspending and reinstating water service, sanitary sewer connection, and/or municipal stormwater drainage system access.
 - (3) The violator shall be responsible to the City for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the municipal stormwater drainage system incurred by the City while responding to, abating, and remediating the discharge or threatened discharge.
- (d) The remedies provided by this section are in addition to any other remedies set out in this Article. Exercise of this remedy shall not be a bar against, or a prerequisite for, taking other action against a violator.

- (e) A person commits an offense if the person reinstates water service, sanitary sewer service, and or municipal stormwater drainage system access to premises terminated pursuant to this section, without the prior approval of the Administrator or Director of Public Works.

Secs. 32-215--32-240. Reserved.

DIVISION 5. FACILITY INSPECTION FOR STORMWATER DISCHARGES.

Sec. 32-241. Applicability for Industrial and Construction Activity.

This division applies to all facilities located within the city limits that have stormwater discharges associated with industrial activity or construction site activity.

State of Texas regulations require that subject facilities apply for and obtain general permits for industrial facilities (TPDES TXR050000) and construction sites (TXR150000) that have been determined to contribute or have the potential to contribute substantial pollutant loads to the municipal stormwater drainage system or waters of the State. The general permits require that the permittee develop, implement, and maintain a Stormwater Pollution Prevention Plan (SWP3) and submit a Notice of Intent notifying the TCEQ and the municipal stormwater drainage system operator (City of Abilene).

The MS4 permit issued to the City of Abilene by the TCEQ mandates to the City of Abilene to “Carry out all inspections, surveillance, and monitoring procedures necessary to determine compliance with permit conditions” (Part III (E)(6) and to implement a program that shall include “Inspection of construction sites and enforcement of control measure requirements” (Part III (A)(9)(b).

To meet these requirements the City of Abilene must enter onto the premises of industrial and construction sites to inspect, monitor, and conduct surveillance of requirements mandated by the TCEQ. These requirements include, but are not limited to:

- 1.) Review of the facilities SWP3 with on-site conditions;
- 2.) Evaluation of best management practices to effectively prohibit the discharge of non-stormwater to the municipal stormwater drainage system;
- 3.) Inspection for illicit connections and illicit discharges;
- 4.) Self-inspection compliance; and
- 5.) Compliance with the City’s MS4 permit and the facilities subject general permit (TXR150000 or TXR050000)

Sec. 32-242. Access to industrial facilities and construction sites.

- (a) The intent of facility inspections shall be to determine compliance with the conditions of the City’s TPDES permit, any NPDES/TPDES general permit the

facility is currently obligated to for industrial and construction activities, and this Ordinance. Facility owners and operators shall allow the Administrator ready access to applicable sections of public and private premises for the sole purpose of inspection, surveillance, and monitoring for the presence of illegal discharges to the municipal stormwater drainage system, illicit connections to the municipal stormwater drainage system, and assessment of any portions of a regulated facility influenced by stormwater runoff that may adversely affect the municipal stormwater drainage system and/or waters of the United States.

- (b) Admittance to the facility shall be requested at a reasonable time during the facilities normal working hours unless it is determined by the Administrator that imminent and substantial danger exists.
- (c) The owner or operator shall make all necessary arrangements to allow access to the Administrator.
- (d) In the event the owner or operator refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- (e) The Administrator retains the authority to collect samples and photographs from stormwater outfalls or other components of the municipal stormwater drainage system as may be deemed appropriate in the administration and enforcement of this Ordinance.
- (f) The Administrator shall have the authority to set up on subject facilities such devices as are necessary in the opinion of the Administrator to conduct monitoring of the facility's stormwater discharge.
- (g) The Administrator or the designated inspector must present appropriate credentials to the facility officials at the time of entry to a facility.

Sec. 32-243. Review and modification of Stormwater Pollution Prevention Plans.

- (a) The Administrator retains the authority to request for review any documents or plans (Stormwater Pollution Prevention Plan, spill prevention control plans, hazardous material plans, waste management documentation, etc.) from a regulated facility that the Administrator deems may affect stormwater discharges to the municipal stormwater drainage system.
- (b) The Administrator may require an operator of a regulated facility to modify its Stormwater Pollution Prevention Plan if, in the best professional judgment of the Administrator, the Stormwater Pollution Prevention Plan does not comply with the requirements of the facility's NPDES/TPDES permit to discharge stormwater associated with industrial or construction activity.

- (c) The deficiencies in a facility's Stormwater Pollution Prevention Plan will be communicated in writing, and the Administrator will provide the operator a reasonable amount of time, not to exceed thirty (30) days, to make the necessary changes in the Stormwater Pollution Prevention Plan.

Sec. 32-244. Review and modifications of Best Management Practices.

- (a) Any person engaged in activities or operation, or owning facilities or property, which will or may result in pollutants entering the municipal stormwater drainage system or waters of the United States, shall implement Best Management Practices to the extent they are technologically achievable to prevent and reduce such pollutants. The owner or operator of a regulated facility shall prove reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal stormwater drainage system or waters of the United States. Practices implemented to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.
- (b) The City of Abilene will not maintain a list of required or approved Best Management Practices for regulated facilities. However, the Administrator may request facilities to demonstrate the effectiveness of implemented Best Management Practices.
- (c) The Administrator may require an operator of a regulated facility to modify its Best Management Practices if, in the best professional judgment of the Administrator, the Best Management Practices do not provide effective protection from accidental discharge of prohibited materials or other wastes from entering into the municipal stormwater drainage system or waters of the United States.
- (d) The deficiencies in a facility's Best Management Practices will be communicated in writing, and the Administrator will provide the operator a reasonable amount of time, not to exceed ninety (90) days, to make the necessary changes in the Best Management Practices.

Sec. 32-245. Compliance with permit.

- (a) A facility shall be operated in strict compliance with the requirements of the subject NPDES/TPDES permit to discharge stormwater associated with industrial or construction site activity.
- (b) A person commits an offense if the person operates a facility in violation of a requirement of the facility's NPDES/TPDES permit to discharge stormwater associated with industrial or construction site activity.

Secs. 32-246 -- 32-266. Reserved.

DIVISION 6. STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY.

Sec. 32-267. Applicability.

This division applies to all facilities located within the city limits that have stormwater discharges associated with industrial activity.

Sec. 32-268. Industrial and high risk runoff monitoring.

- (a) All hazardous waste treatment and storage facilities, active municipal landfills, facilities subject to section 313 of title III of the Superfund Amendment and Reauthorization Act of 1986 (SARA), and any other industrial discharger the City determines is contributing a substantial pollutant load to the municipal stormwater drainage system shall submit self-monitoring data to the City on an annual basis. Submittal date of self-monitoring data is to be determined by the Administrator or Industrial Waste Manager.
- (b) The City's MS4 permit requires that all industrial facilities listed in (a) be subject to site inspections of no less than once per permit term (5 years). However, the Administrator retains the authority to inspect these industrial facilities as often as deemed necessary to assure permit compliance and safety of the municipal stormwater drainage system and waters of the United States.
- (c) An unreasonable delay or refusal to submit self-monitoring data to the Administrator is a violation of this Article. A person who is the operator of an industrial facility with an NPDES/TPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Administrator reasonable access to a facility's self-monitoring data for the purpose of review required by this Article.
- (d) An industrial facility may submit a "no exposure" certification to the City in lieu of self-monitoring; however, any facility operating under a "no exposure" certification is subject to periodic facility inspections (not less than once per permit term – five years) to verify the facility's "no exposure" exemption. The inspection may be waived for facilities, which participate in the TCEQ's Small Business and Local Government Assistance Compliance Commitment Program.
- (e) The City may waive monitoring requirements for industrial facilities determined to be in compliance with the TPDES Multi-Sector General Permit Number TXR050000.

- (f) The Administrator retains the authority to conduct inspections on any industrial facility subject to the TCEQ's TPDES Multi-Sector General Permit or has been deemed to be, or has potential to be, contributing a substantial pollutant load to the municipal stormwater drainage system to determine compliance and safety of the municipal stormwater drainage system and waters of the United States.
- (g) Industrial facility inspections for stormwater runoff purposes will be conducted as outlined in the City of Abilene Stormwater Utility Division's "**Industrial Facility Inspection Guideline and Procedures**". The guidelines and procedures manual will be made available on the City of Abilene's Website or can be viewed within the Public Works Department.

Secs. 32-269 -- 32-289. Reserved.

DIVISION 7. STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY.

Sec. 32-290. Applicability.

This division applies to all facilities located within the city limits that have stormwater discharges associated with construction activity.

Sec. 32-291. Submission of Notice of Intent or Construction Site Notice to municipal stormwater drainage system operator.

- (a) The operator of a construction site required to have a NPDES/TPDES permit to discharge stormwater associated with construction activity shall submit a copy of the Notice of Intent (NOI) to the Administrator at the same time the operator submits the original notice of intent to the EPA or the TCEQ, as applicable.
- (b) The operator of a construction site, which does not require an NOI, is required to submit, per TCEQ's TPDES general permit for construction sites, a Construction Site Notice to the operator of the municipal stormwater drainage system.
- (c) The copy of the Notice of Intent or Construction Site Notice may be delivered to the Administrator either in person or by mailing it to:

Notice of Intent to Discharge Stormwater
Stormwater Utilities Division
555 Walnut Street, Ste. 210
Abilene, Texas 79604-0060

- (d) Construction site inspections for stormwater runoff purposes will be conducted in a way as outlined in the City of Abilene Stormwater Utility Division's **"Construction Site Stormwater Runoff Prevention Inspection Guideline"**. The guidelines and procedures manual will be made available on the City of Abilene's Website or can be viewed within the Public Works Department.

Secs. 32-292 -- 32-312. Reserved.

DIVISION 8. CONTROL AND CONTAINMENT REQUIREMENTS.

Sec. 32-313. 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 municipal stormwater drainage system, 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 of Abilene shall be reimbursed to the City by the person associated with the spill or leak.
- (b) Persons associated with the spill or leak shall immediately notify the City of Abilene Fire Chief or his designee of all spills or leaks of polluting substances. Notification shall 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 said spill or leak, nor shall such 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 municipal stormwater drainage system shall be responsible for costs of any testing, containment, cleanup, abatement, removal and disposal of contamination to the extent determined by the Administrator.

Sec. 32-314. 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 municipal stormwater drainage system are subject to control measures to prevent introduction into the municipal stormwater drainage system, as applicable.
- (b) The Administrator retains the authority to necessitate the use of control measures as deemed necessary to mitigate the introduction of pollutants to the municipal stormwater drainage system. Failure to implement control measures as prescribed by the Administrator shall result in enforcement as described in this Article.

- (c) Stockpiles, accumulations, and heaps discovered to be discharging pollutants to the municipal stormwater drainage system will be subject to enforcement as described in this Article.

Secs. 32-315--32-334. Reserved

DIVISION 9. ENFORCEMENT

Sec. 32-335. Enforcement responsibility.

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

Sec. 32-336. Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. Any person who has violated or continues to violate the provisions of this Ordinance, will be subject to the enforcement actions outlined in this Division or may be restrained by injunction or otherwise abated in a manner provided by law.

Sec. 32-337. Nuisances.

- (a) An actual or threatened discharge to the municipal stormwater drainage system or waters of the United States that violates or would violate this Article is hereby declared to be a nuisance.
- (b) A line conveying sewage or designed to convey sewage that is connected to the municipal stormwater drainage system or waters of the United States is hereby declared to be a nuisance.

Sec. 32-338. Notice of Violations

If the Administrator determines that there is an illicit discharge, a failure to maintain a facility in conformance with this Ordinance, or any other violation of this

Ordinance, notice shall be served upon the property owner or operator of record by registered or certified mail to the address of the property owner of record, unless an emergency pursuant to Section 32-213 of this Article. The notice shall specify the measures, as appropriate, required to come into full compliance with this Ordinance and shall specify the time within which such measures shall be completed. Failure to comply within the time specified shall be deemed to be a violation of this Ordinance subject to the penalties outlined herein.

Sec. 32-339. Voluntary Compliance

The Administrator shall retain the authority to instruct an operator of a facility that commits any acts prohibited of 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.

Sec. 32-340. Stop Orders

- (a) The Administrator shall retain the authority to issue stop work orders for any facility that commits any acts prohibited by this Article.
- (b) Stop work orders: If the Administrator determines that voluntary compliance is not feasible, that a facility is operating in a dangerous or unsafe manner, or that conditions exist at a facility that may lead to an illicit discharge, upon written notice of an issuance of a stop work order, such work or conditions shall be immediately terminated or remedied. Such notice shall be provided to the owner, operator, or responsible party of the facility and shall state the conditions under which work may be resumed. However, where an emergency exists which may result in discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to property, natural resources, wildlife, or habitat written notice shall not be required.

Sec. 32-341. Penalties and violations

- (a) Violations of provisions of this Article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with approval of variances) shall constitute a misdemeanor. Any person who violates this Article or fails to comply with any of its requirements shall upon conviction thereof be fined in accordance with Chapter 1 (Sec. 1-9) of this Code against the person for each violation. Each day such violation continues shall be considered a separate offense.

- (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) Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- (d) It is further the intent and declared purpose of this Ordinance that no offense committed, and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the time that the existing ordinance was repealed and such ordinance adopted shall be discharged or affected by such repeal, but prosecutions and suits for such offenses, liabilities, penalties, or forfeitures may be instituted, and causes presently in process may be prosecuted in all respects as if such prior ordinance had not been repealed.

Sec. 32-342. Appeals, Interpretation, & Variances

Any appeals, interpretations or variances of the Administrator, except those under Division 10 of this Article, shall first be to the Director of Public Works, then to a court of competent jurisdiction, including municipal court.

Secs. 32-343--32-364. Reserved.

DIVISION 10. CREATION OF MUNICIPAL DRAINAGE UTILITY FEES

Sec. 32-365. Deposit not required.

The City of Abilene shall not require a deposit for drainage charges as a precondition to accepting surface flow into the drainage system.

Sec. 32-366. Billing; delinquent charges.

All billings, credits, exemptions and other procedures, including penalties for delinquent payments, shall be as specified in Subchapter C of Chapter 402, Local Government Code. In addition, such penalties and procedures for collection as are used for other utility billings by the City, where not in conflict with Subchapter C of Chapter 402, Local Government Code, are hereby adopted for use as rules of the municipal drainage utility.

Sec. 32-367. Schedule of drainage charges.

The Abilene City Council will set a schedule of drainage charges against all real property in the proposed city limits and will provide drainage for all real property in the proposed city limits on payment of drainage charges, except for any real property required to be exempt under 402.053 of the Local Government Code. A schedule of charges shall be adopted by resolution of the city council following a public hearing as required by section 402.045 of the Local Government Code. Said resolution shall be placed on file at the Office of the City Secretary following passage and made available upon request to the public. Such charges may be changed, adjusted or readjusted by City Council resolution as required and a current copy of such drainage charges shall be kept available at the Office of the City Secretary.

Sec. 32-368. Appeals.

Ordinary billing and payment disputes shall be subject to informal hearing and dispute resolution procedures used for other utility billing disputes by the City of Abilene. Certain other matters may be appealed to the stormwater Administrator or his designee as follows:

- (1) Residential property billing can be appealed when the owner can offer proof that the property is unimproved and therefore not subject to the municipal drainage utility fee or may be appealed when proof can be offered that the amount of imperviousness of the property is inaccurate.
- (2) Nonresidential property billing can be appealed when the owner can offer proof that an error was made with regard to the category of land development, that the land is unimproved, or the amount of imperviousness of the land development.
- (3) The Director of Public Works or his designee shall render a written decision on such appeals within thirty (30) days after receiving a written notice of appeal from the landowner.

Sec. 32-369. Administrative enforcement, injunctive relief.

Violations of this Division, including failure to pay, are declared to be civil in nature, which may be enjoined by civil proceedings in state court, remedied as allowed by Chapter 402, or termination of water services on the account for which this fee is assessed.

Secs. 32-370 – 32-400. Reserved.