

City of Houston, Texas, Ordinance No. 2016-864

AN ORDINANCE AMENDING ARTICLE XII OF CHAPTER 47 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, INCLUDING THE REPEAL OF SECTIONS 47-674 AND 47-675 RELATING TO STORM WATER DISCHARGE; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; DECLARING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Chapter 47 of the City of Houston Code of Ordinances contains the City's measures to be implemented to address storm water discharges; and

WHEREAS, the Public Works and Engineering Department (PWE) is responsible for storm water discharge into the municipal separate storm water sewer system (MS4) within the City and planning for ways to address the region's future needs; and

WHEREAS, the these changes to the City's storm water ordinance are required to comply with the City's new MS4 permit with the Texas Commission on Environmental Quality new; **NOW, THEREFORE**;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Section 47-601 of the Code of Ordinances, Houston, Texas, is hereby amended by removing the definitions of "*structural control maintenance agreement*," "*type 1 facility*," and "*type 2 facility*," and adding in appropriate alphabetical order the definitions of "*authorized city official*," "*high-risk facility*," "*notice of change*," "*reinspection*," and "*storm water pollution prevention plan*," which shall read as follows:

"*Authorized city official* shall mean the director or a deputy director of the department of public works and engineering, the city engineer, or the engineer in charge of the stormwater quality permitting."

“High-risk facility shall mean any industrial or commercial facility the director of the department of public works and engineering, or city engineer believes is contributing a pollutant to the MS4.”

“Notice of Change or NOC shall mean a notice of change that is required by the TPDES General Permit No. TXR050000, the EPA NPDES General Permit for Storm Water Discharges From Construction Activities in Region 6, or any similar general permit to discharge storm water associated with industrial or construction activity that is issued by the EPA or TCEQ”

“Reinspection shall mean revisiting a site to insure that a violation noted on the previous inspection report has been resolved. Reinspections are subject to the reinspection fee.”

“Storm water pollution prevention plan or SWPPP shall be a required element of approved construction plans. The SWPPP can be as simple as the Stormwater Pollution Prevention Plan Detail (DWG NO 01571-01).”

Section 3. That Section 47-601 of the Code of Ordinances, Houston, Texas, is hereby amended by amending the definitions of *“development,” “new development,” “pollutant,” “significant redevelopment,” “substantial deviation,”* and *“undeveloped parcel,”* which shall read as follows:

“Development shall mean (i) any activity that requires a development plat pursuant to Chapter 42 of this Code; or (ii) any activity that requires a construction permit.”

“New development shall mean development of an undeveloped parcel of land one acre or larger without regard to the amount of land that will actually be disturbed. The term does not include development on an undeveloped and undivided parcel of one acre or more of one dwelling unit and one or more accessory structures. The term also does not include a stormwater detention basin that includes a water quality feature”

“Pollutant shall mean, but shall not be limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, concrete saw slurry, and other material discharged into the MS4 or any waters of the United States.”

“Significant redevelopment shall mean increase of 0.2 acre or more to the impervious surface on a one acre or larger developed parcel, but does not include a stormwater detention basin that includes a water quality feature.”

“Substantial deviation shall mean a deviation that:

- (1) Increases the designed flow rate by more than five percent;
- (2) Increases or decreases the designed storage volume by more than five percent;
- (3) Increases or decreases the designed water surface elevation by more than six inches; or
- (4) Increases the risk of flooding caused by a 100-year storm event as that term is defined in chapter 19 of this Code.”

“Undeveloped parcel shall mean a parcel on which there are no structures at the time that a construction permit or development plat is applied for or required.”

Section 4. That Section 47-606(a) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(a) When the director or a deputy director of the department of public works and engineering, or the city engineer, determines that a person is causing or threatening to cause a discharge to the MS4 or a publicly owned treatment work in violation of this article that:

- (1) Presents or may present an imminent and substantial danger to the environment or to the health or welfare of persons; or
- (2) Presents or may present an imminent and substantial danger to the MS4 or waters of the United States;”

Section 5. That Section 47-613 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 47-613. Compliance, inspections and investigations.

(a) When it is necessary to make an inspection to enforce the provisions of this chapter or to inspect or investigate conditions related to water quality, an authorized city official may enter a building or premises at reasonable times to inspect or to perform the duties imposed by this

article or to inspect or review records, reports, data, plans, or other documents relating to compliance with this chapter, the site's SWPPP, or with any TPDES or NPDES storm water permit. If the building or premises is occupied, credentials must be presented to the occupant and entry requested. If the building or premises is unoccupied, the authorized city official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If refused, the authorized city official shall have recourse to the remedies provided by law to secure entry.

(b) The findings related to a site inspection shall be recorded on an inspection report form, a copy of which report shall be provided for the person in charge of the site. The authorized city official shall maintain a copy of the inspection report in the departmental records.

(c) Upon request of the operator of a site, the authorized city official may allow an extension of the time in which to correct a violation. In determining whether to allow an extension and the length of the extension, the authorized city official shall consider the degree of risk, if any, posed by the violation and the time reasonably required to correct it. No extension shall be granted if the authorized city official determines that a significant risk is posed to the public or environment.

(d) If the authorized city official determines that a reinspection is necessary to ascertain that the conditions responsible for a violation no longer exist, the operator shall be assessed the reinspection fee established in section 118.1.5 of the Building Code in conjunction with that reinspection, and a hold will be placed on all permits and inspections on the site.

(e) A facility that is required to or agrees to cease operations under the provisions of this section shall not resume operations until an authorized city official does a reinspection and determines that the conditions responsible for the requirement to cease operations no longer exist.

(f) The authorized city official shall conduct all reinspections required under this section within a reasonable period of time. Other inspections and permits shall not be renewed or approved until all outstanding fees assessed under this chapter have been paid.

(g) When, due to emergency, immediate entry is necessary to protect life or property, or when the authorized city official shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by

the authorized city official for the purpose of inspection and investigation pursuant to this article or other laws relating to water quality.

(h) Any temporary or permanent obstruction to safe and easy access to a facility that is to be inspected or sampled must be promptly removed by the discharger at the written or verbal request of the city engineer and may not be replaced. The cost of clearing access to the facility shall be borne by the discharger.

(i) The city engineer, utility official, building official, health officer or any city peace officer is hereby authorized to undertake the activities authorized by this section.”

Section 6. That Section 47-635(c) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(c) If the SWQMP on which the SWQ permit is based includes one or more structural controls, neither the building official nor the city engineer shall issue any construction permit, except permits for streets, public utilities, demolition or storm water controls, for all or part of the new development or significant redevelopment unless the city engineer has confirmed the proper installation of all structural controls included in the SWQMP for all or that portion of the new development or significant redevelopment and the SWQ permittee has satisfied the requirements of section 47-672(a) of this Code;”

Section 7. That Section 47-635(d) of the Code of Ordinances, Houston, Texas, is hereby added to read as follows:

“(d) If the SWQMP on which the SWQ permit is based does not include one or more structural controls, neither the building official nor the city engineer shall issue any construction permit for all or a part of the new development or significant redevelopment unless the SWQ permittee has satisfied the requirements of section 47-672(b) of this Code.”

Section 8. That Section 47-637 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“The building official shall not issue a certificate of occupancy for any new development or significant redevelopment unless the new development or significant redevelopment has and is in compliance with a SWQ permit or an industrial activity certification.”

Section 9. That Section 47-654(b) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(b) Applications to amend a SWQ permit to satisfy subsection (a)(1) of this section shall be submitted within 30 days after any such transfer to a subsequent owner or to a third-party permittee. Amendments to a SWQ permit to satisfy subsections (a)(2) and (a)(3) of this section must be obtained before commencement of the activity that triggers the need for the amendment.”

Section 10. That Division 2 of Article XI of Chapter 47 of the Code of Ordinances, Houston, Texas, is hereby amended by inserting a new Section 47-658 that reads as follows and renumbering the remaining Reserved Sections of the Division accordingly:

“Sec. 47-658. Late renewals of permit.

The authorized city official shall accept and process a late filed application for the renewal of a permit if the application is filed or tendered for filing within the 30 day period following the permit expiration date and if the applicant demonstrates that the failure to timely file was based upon an error or misunderstanding and was not the result of a conscious indifference to the requirements for renewal.”

Section 11. That Subsection (a) of Section 47-673 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(a) The provisions of this subsection (a) shall apply to subdivisions that include lots for single-family residential use. Prior to the sale of the first lot in the subdivision or any section thereof, the owner of land that is being subdivided, in whole or in part, into single-family residential lots shall transfer the obligation to comply with all requirements of this division to a homeowners' association established for all or that part of the subdivision. The homeowners' association must have fee simple title to all structural controls and, at a minimum, an easement in favor of the homeowners' association allowing access to maintain structural controls or to implement non-structural controls. Further, the owner must require that any homeowners' association for the subdivision have the authority to impose fees or otherwise generate monies to fund operation and maintenance measures and bond requirements. After a homeowners' association complying with the provisions of this subsection has been established, the owner may seek to amend the SWQ permit pursuant to

section 47-654 of this Code to transfer the SWQ permit to the homeowners' association. Until the city has approved the transfer to the homeowners' association, the owner shall remain responsible for compliance with the requirements of this division;”

Section 12. That Sections 47-674 and 47-675 of the Code of Ordinances, Houston, Texas, are hereby repealed and the remaining reserved section numbers are renumbered accordingly.

Section 13. That Section 47-691 of the Code of Ordinances, Houston, Texas, is hereby added to read as follows:

“This division shall apply to all sites with a construction permit located within the city that have storm water discharges associated with construction activity.”

Section 14. That Section 47-692 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“A person who is the operator of a site with a construction permit that has storm water discharges associated with construction activity commits an offense if the person discharges, or causes to be discharged, storm water associated with construction activity without first having obtained an NPDES or TPDES permit, or an approved SWPPP to do so.”

Section 15. That Section 47-695 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(a) A facility that has storm water discharges associated with construction activity shall be operated in strict compliance with the requirements of its NPDES or TPDES permit or its construction permit to discharge storm water associated with construction activity.

(b) The storm water pollution prevention plan implemented to satisfy the requirements of an NPDES or TPDES permit to discharge storm water associated with construction activity shall comply with the storm water management handbook for construction activities. Construction sites that are not subject to an NPDES or TPDES permit due to their small size are still subject to their approved SWPPP.

(c) A person commits an offense if the person operates a site with a construction permit that has storm water discharges associated with

construction activity in violation of the site's construction, NPDES or TPDES permit to discharge storm water associated with construction activity."

Section 16. That Section 47-712(a) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(a) A person who is the owner or the operator of a facility that has storm water discharges associated with industrial activity shall submit to the authorized city official a copy of:

- (1) The notice of intent to obtain coverage under TPDES permit number TXR050000 for the facility;
- (2) The notice of intent to obtain coverage under any other TPDES general storm water permit for the facility;
- (3) The individual TPDES storm water permit for the facility; or
- (4) The no exposure certification form submitted to TCEQ for the facility pursuant to the provisions of TPDES permit number TXR050000."

Section 17. That Section 47-713(a) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(a) A person who is the owner or operator of a facility that has storm water discharges associated with industrial activity shall submit to the authorized city official a copy of an NOT for the facility which shall include any information required for notice of termination under TPDES permit number TXR050000 or any other TPDES general storm water permit, whenever:

- (1) All storm water discharges associated with industrial activity are eliminated at the facility; or
- (2) The operator of the facility changes."

Section 18. That Section 47-721 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"This subdivision shall apply to municipal landfills, hazardous waste treatment, disposal and recovery facilities, facilities that are subject to Section 11023 of Title 42 of the United States Code, as it may be amended from time to time, and other municipal waste treatment, storage

or disposal facilities (including, but not limited to, POTWs, transfer stations and commercial incinerators). This subdivision shall also apply to high-risk facilities that the director of the department of public works and engineering, or city engineer believes have the potential to contribute a pollutant to the MS4.”

Section 19. That Section 47-722 of the Code of Ordinances, Houston, Texas, is hereby renamed and amended to read as follows:

“Sec. 47-722. Designation as a high risk facility.

(a) The city engineer shall promulgate regulations to determine whether a facility is contributing a substantial pollutant loading to the MS4 and so should be designated as a high-risk facility. The city engineer shall consider, but shall not be limited to, such factors as the nature of the activities at the facility and drainage patterns in the area of the facility. The city engineer shall provide the facility with written notice of the facility's designation.

(b) The city engineer shall send written notification by certified mail, return receipt requested, to each high-risk facility designated pursuant to subsection (a) of this section informing the operator of that designation. The notice shall specify the parameter or parameters that the facility will have to monitor for pursuant to section 47-723(b)(12) or section 47-723(c)(5), whichever is applicable. The facility operator may appeal the designation pursuant to section 47-608 of this Code. Designation as a high-risk facility shall be effective on the third day following the date notice is deposited in the mail to the facility.

(c) The city engineer shall further promulgate regulations for determining whether a facility designated as a high-risk facility pursuant to subsection (a) is no longer contributing a substantial pollutant loading or a pollutant to the MS4 and for terminating the facility's designation as a high-risk facility. Upon terminating the facility's designation as a high-risk facility, the city engineer shall send written notification by certified mail, return receipt requested to the facility informing it of that termination.”

Section 20. That Sections 47-723(a) and 47-723(b) of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows:

“(a) Every high-risk facility that has storm water discharges associated with industrial activity shall undertake all of the following applicable monitoring:

- (1) Required by an individual NPDES or TPDES storm water permit if the facility has an individual storm water permit;
- (2) Required by a general NPDES or TPDES storm water permit, other than TPDES permit number TXR050000 if the facility has coverage under such a permit; or
- (3) Required by TPDES permit number TXR050000, or any successor permit thereto, if neither (i) or (ii) above apply;

as applicable.

(b) If a high-risk facility does not have storm water discharges associated with industrial activity, the facility annually shall analytically monitor and analyze storm water discharges from its facility during a representative storm event on an outfall-by-outfall basis for each of the following parameters:

- (1) Any pollutants limited in an existing NPDES or TPDES permit for the facility;
- (2) Total oil and grease;
- (3) Chemical oxygen demand;
- (4) pH;
- (5) Biochemical oxygen demand, five-day;
- (6) Total suspended solids;
- (7) Total phosphorus;
- (8) Total Kjeldahl nitrogen;
- (9) Nitrate plus nitrite nitrogen;
- (10) Any other discharges required to be monitored under Section 122.21(g)(7)(iii) and (iv) of Title 40 of the CFR;
- (11) Any pollutants for which effluent limitations are imposed in the city's storm water permit for its MS4; and
- (12) Any other pollutant that the city has determined the facility is discharging that contributes a substantial pollutant loading to the MS4."

Section 21. That Section 47-725 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“The city engineer shall establish a reporting threshold for every parameter for which monitoring is required of high risk facilities that do not have storm water discharges associated with industrial activity under this subdivision, which may be amended from time to time as deemed warranted by the city engineer.”

Section 22. That Section 47-727 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Each high-risk facility shall retain the results of all monitoring required by this division and supporting documentation for three years.”

Section 23. That Items (b)(8) and (b)(10) of Section 47-741 of the Code of Ordinances, Houston, Texas, are hereby amended to read as follows, and items (b)(24) through (b)(29) are added:

- “(8) Uncontaminated ground water infiltration;
- (10) Uncontaminated pumped ground water;
- (24) Pavement wash water provided cleaning chemicals are not used (cosmetic wash water)
- (25) Individual residential vehicle washing provided cleaning chemicals are not used
- (26) Wash water using only potable water, and which are similar in quality to street wash water and individual vehicles washing but without the use of detergents or surfactants
- (27) Other allowable non-storm water discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1)
- (28) Other allowable non-storm water discharges as listed in the TPDES Construction General Permit No. TXR150000 and TPDES Multi-Sector General Permit No. TXR050000; or
- (29) Other similar occasional incidental non-storm water discharges.”

Section 24. That the various former ordinance provisions that are amended in this Ordinance are saved from repeal for the limited purpose of their continuing application to any violation committed before the effective date of this Ordinance, as applicable. For this purpose, a violation is deemed to have been committed before the effective date of this Ordinance, as applicable, if any element of the offense was committed prior to the effective date of this Ordinance, as applicable.

Section 25. That the City Council hereby approves the charging of the post-violation reinspection fee described in Section 47-613(d) of the Code of Ordinances, Houston, Texas, as added by this Ordinance. The Director of Finance shall add a new line item to the City Fee Schedule for this type of reinspection fee.

Section 26. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 27. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 9th day of November, 2016.

APPROVED this 9th day of November, 2016.

Sylvester Turner

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

(Prepared by Legal Dept. _____)
(AJW: 10/11/2016 Assistant City Attorney)
(Requested by Dale A. Rudick, Director, Public Works & Engineering)
L.D. File No. 0631000115003