

**ORDINANCE NO. 8106**

**AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS AMENDING THE AMARILLO MUNICIPAL CODE, CHAPTER 18-3, ARTICLE V, SECTION 18-3-101: AMENDING THE MS4 ENFORCEMENT PROCEDURES FOR AN ILLICIT DISCHARGE BY A USER INTO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM; PROVIDING REPEALER CLAUSE; PROVIDING FOR SEVERABILITY CLAUSE, AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Amarillo owns and operates a Storm Sewer System, which is designed or used for collecting and conveying stormwater;

**WHEREAS**, as such, the City of Amarillo's the public purpose for amending such Ordinance is to assure the Municipal Separate Storm Sewer System is in compliance with applicable State and Federal laws, and its National Pollutant Discharge Elimination System (NPDES) permit;

**WHEREAS**, any User, who contributes, causes or permits the contribution of water into the City's Municipal Separate Storm Sewer System, may receive a Stormwater Discharge Permit from the City of Amarillo;

**WHEREAS**, if User violates the conditions of such permit, then, User shall be subjected to penalties as stated in the Amarillo Municipal Code at Section 18-3-101;

**WHEREAS**, the City of Amarillo, in order to comply with applicable State and Federal laws, and it's NPDES permit, needs to amend its enforcement provisions in the Amarillo Municipal Code at 18-3-101;

**WHEREAS**, the City Council reviewed such provisions for enforcement and determines that such amendment will ensure and protect the health, safety, and welfare of the citizens of Amarillo and the general public;

**WHEREAS**, the City Council further finds that it is in the best interest of the City and its residents to adopt the amended enforcement provisions in this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO:**

**SECTION 1.** All of the above premises are hereby found to be true and correct legislative

and factual findings of the City Council and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**SECTION 2.** The City Council hereby amends the Amarillo Municipal Code, Chapter 18-3, Article V, Section 18-3-101, Enforcement Procedures, to:

**Sec. 18-3-101. - MS4 Enforcement procedures.**

~~(a) When in the opinion of the Director an Illicit Discharge has been made by a User, Director shall notify User as provided in (b) below. Upon notification the User shall immediately stop or eliminate the Discharge. In the event of failure of the User to comply voluntarily, the City shall take such corrective or enforcement action as allowed by this Chapter or by a court of competent jurisdiction to prevent or minimize damage to the Municipal Separate Storm Sewer System, danger to any individuals, or a violation of the City's NPDES Permit.~~

(a) MS4 Enforcement Response Procedures: Violations of this article shall be enforced by, but not limited to, the following escalating steps.

(1) Notification of violation. Whenever the City finds that any User has violated or is violating this article, the City shall serve upon such person a written Notice of Violation (NOV) stating the nature of the violation and provide a period of ten (10) business days for satisfactory correction thereof. If the User fails to voluntarily comply with the conditions of the NOV, the City shall enact escalation of enforcement procedures.

a. NOV's shall require a written response as to the cause of the violation and the steps taken to prevent further such violations from reoccurring. Written responses shall be submitted within ten (10) business days of receipt of the NOV. The response shall be submitted to the City Stormwater Coordinator at the following address: Laboratory Administration, PO Box 1971 Amarillo, Tx 79105. Failure to submit a response by the due date may lead to enforcement escalation.

(2) Compliance orders: When the City finds that a User has violated, or continues to violate, any provision of this article, or any other standard or requirement of the MS4, the City may issue an order to the User responsible, directing that the User come into compliance within ten (10) business day of issuance. If the User obtains full compliance during the ten (10) days, the User may request a reinspection of the site. If the User does not come into compliance within ten (10) business days, a red tag order shall be issued. A compliance order does not relieve the User of liability for any violation, including any

continued violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(3) Civil Penalties: Upon issuance of a compliance order, civil penalties shall be assessed by the Director. The User shall be penalized no less than an amount of one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each violation, for each day that it exists. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. Each day that a violation persists, penalties shall be escalated. In addition, repeat violators such as a specified contractor, shall be subject to the same escalation of penalties.

(4) Red Tag Order: When the City finds that any operator of a construction site has violated, or continues to violate, any provision of the City's MS4 – TPDES permit, the construction general permit TXR150000, or any order issued thereunder, the City shall issue a "Red Tag Order" to the operator, posted at the construction site, and distributed to all City departments and/or divisions whose decisions affect any activity at the site. The red tag shall prohibit any further inspection or approval by the City associated with a building permit, grading permit, subdivision plat approval, site development plan approval, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a red tag order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

a. Once a red tag order been issued, it shall not be removed until:

i. A site inspection has been conducted and all violations have been resolved.

ii. All penalties associated with the enforcement of the construction site have been paid in full. Including any previous unpaid penalties associated with the specified User and or contractor.

~~(b) Violations of this article shall be enforced by, but not limited to, the following escalating steps.~~

~~(b) MS4 Enforcement Response Plan:~~

~~(1) The City shall develop and utilize a MS4 Enforcement Response Plan (ERP) to identify the enforcement tools available to municipal staff to use if they observe noncompliance with the City's regulatory mechanisms for illicit discharge, construction stormwater runoff control, and post-construction stormwater management.~~

~~(1) A verbal request to correct the noted violations by the Director.~~

~~(2) A follow-up letter noting violations and requesting compliance.~~

~~(3) A second letter if no response is noted after ten (10) days. This letter may state it is a final warning, that enforcement may be remanded to EPA or TNRCC, and there may be State or Federal penalties.~~

~~(4) Remand enforcement to EPA or TNRCC if no response is noted within thirty (30) days.~~

~~(5) Should the EPA or TNRCC fail to act, the City may take such legal actions as it deems necessary to secure compliance with this Chapter.~~

~~(c) Whenever the Director finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, the Director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:~~

(c) MS4 Enforcement Criteria:

~~(1) The performance of monitoring, analyses and reporting;~~

(1) Whenever the City finds that a User has violated a prohibition or failed to meet a requirement of this article, the City shall issue a NOV to the responsible User. The NOV shall require:

a. The elimination of illicit discharge.

b. The abatement or remediation of Stormwater Pollution and the restoration of any affected property.

~~(2) The elimination of illicit connections or Discharges;~~

(2) If a User fails to meet the conditions of a previously issued NOV, a compliance order shall be issued ordering the User to obtain compliance with the City's MS4 – TPDES permit, and the construction general permit TXR150000, within ten (10) business days of receipt of the compliance order.

~~(3) The violating Discharges, practices or operations shall cease and desist;~~

(3) If a User fails to meet the conditions of a compliance order, the User shall then be issued a Red Tag Order. The red tag order shall require:

(a) The abatement or remediation of Stormwater Pollution and the restoration of any affected property.

(b) Remediation Penalties: If abatement of a violation or restoration of affected property is required, the City shall set forth a deadline within such remediation or restoration must be completed. Should the violator fail to remediate or complete restoration within the City's established deadline, the work will be done by the City or a contractor designated by the City and the expense thereof shall be charged to the violator.

(c) City or a contractor designated by the City shall enter upon the Users property

and is authorized to take all measures necessary to abate the violation and restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the City or designated contractor to enter upon the premises for the purposes set forth above. Refusal of entry shall result in immediate suspension of water utility service until authorization is granted and abatement measures are complete.

~~(4) The abatement or remediation of Stormwater Pollution and the restoration of any affected property; and~~

~~(5) Payment of a fine to cover administrative and remediation costs.~~

~~If abatement of a violation or restoration of affected property is required, the notice shall set forth a deadline within such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the City or a contractor designated by the Director and the expense thereof shall be charged to the violator.~~

~~(d) Any User receiving Notice of Violation may appeal the determination of the Director to an appeals committee. Members of the committee shall be the Assistant City Manager, the Director of Public Works, and the Director of Community Services. The notice of appeal must be received by the appeals committee within five (5) days from the date of receipt of the Notice of Violation. The committee shall hear the appeal within fifteen (15) working days from the date of committee's receipt of the notice of appeal.~~

(d) Appeals:

(1) Any User receiving a red tag order may appeal the determination to an appeals committee. Members of the committee shall be an Assistant City Manager, and two Director level positions selected by the Assistant City Manager. The notice of appeal must be received by the appeals committee within five (5) days from the date of receipt of the red tag order. The committee shall hear the appeal within ten (10) business days from the date of the committee's receipt of the notice of appeal.

(2) The User may appeal the decision of the appeals committee with the City Manager, within five (5) business days after receiving notice of the appeals committee's decision. The decision of the City Manager is final.

~~(e) The User may appeal the decision of the appeals committee by filing with the City Secretary a written notice of appeal to the City Council, within five (5) working days after receiving notice of the appeals committee's decision. The appeal shall be placed on the City Council's agenda for consideration within a reasonable time. The decision of the City Council is final.~~

~~(f) If the violation has not been corrected pursuant to the requirements set forth in the Notice~~

~~of Violation, or in the event of an appeal in which the decision of the Director is upheld, then the City or a contractor designated by the Director shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City or designated contractor to enter upon the premises for the purposes set forth above.~~

~~(g) The City may employ any other remedies authorized for enforcement by Federal or State Regulations.~~

~~(h) Any violation of a User's NPDES Storm Water permit shall be a violation of this article. Also, any facility subject to the Federal NPDES program that does not have a NPDES permit is in violation of this article.~~

~~(Ord. No. 6464, § 1, 2-8-2000; Ord. No. 6542, § 1, 7-10-2001; Ord. No. 7658, § 2, 3-14-2017)~~

**~~Sec. 18-3-102. -- Enforcement at Construction Sites.~~**

~~(a) Whenever the Director finds that any owner, operator, contractor or subcontractor of a construction site has violated, or continues to violate, any provision of this Chapter, or any order issued under it, the Director may issue a "stop work order" to the appropriate party, posted at the construction site, and distributed to all city departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the Director, the "stop work order" shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the city associated with a building permit, grading permit, future site development plan approval, or any other city approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a "stop work order" shall not be a bar against, or a prerequisite for, taking any other action against the violator.~~

~~(b) If compliance is not achieved to the Director's satisfaction, the Director may, at its discretion, report the noncompliance to the EPA.~~

~~(Ord. No. 6464, § 1, 2-8-2000)~~

**~~Sec. 18-3-103. -- Emergency Suspensions of Utility Services and MS4 Access.~~**

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[TEXT UNCHANGED]

**~~Sec. 18-3-104. -- Non-emergency Suspension of Utility Service and MS4 Access.~~**

**Sec. 18-3-103. - Non-emergency Suspension of Utility Service and MS4 Access.**

[TEXT UNCHANGED]

**Sec. 18-3-105. -- Violations Deemed a Public Nuisance.**

**Sec. 18-3-104. - Violations Deemed a Public Nuisance.**

[TEXT UNCHANGED]

**SECTION 3.** All ordinances and resolutions or parts thereof that conflict with this ordinance are hereby repealed, to the extent of such conflict.

**SECTION 4.** In the event this ordinance or any part hereof is found to be invalid, such invalidity shall not affect the remaining portions of the ordinance, and such remaining portions shall continue to be in full force and effect if they can be given effect without the invalid portion.

**SECTION 5.** This Ordinance shall be published and become effective according to law.

**INTRODUCED AND PASSED** by the City Council of the City of Amarillo, Texas, on First Reading on this the 12th day of December, 2023 and **PASSED** on Second and Final Reading on this the 9th day of January, 2023.

Cole Stanley, Mayor

ATTEST:

Stephanie Coggins, City Secretary

APPROVED AS TO FORM:

Bryan McWilliams, City Attorney

**ORDINANCE NO. 8106**

**AN ORDINANCE OF THE CITY OF AMARILLO, TEXAS  
AMENDING THE AMARILLO MUNICIPAL CODE,  
CHAPTER 18-3, ARTICLE V, SECTION 18-3-101:  
AMENDING THE MS4 ENFORCEMENT PROCEDURES  
FOR AN ILLICIT DISCHARGE BY A USER INTO THE  
MUNICIPAL SEPARATE STORM SEWER SYSTEM;  
PROVIDING REPEALER CLAUSE; PROVIDING FOR  
SEVERABILITY CLAUSE, AND PROVIDING FOR  
PUBLICATION AND AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Amarillo owns and operates a Storm Sewer System, which is designed or used for collecting and conveying stormwater;

**WHEREAS**, as such, the City of Amarillo's the public purpose for amending such Ordinance is to assure the Municipal Separate Storm Sewer System is in compliance with applicable State and Federal laws, and its National Pollutant Discharge Elimination System (NPDES) permit;

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**WHEREAS**, if User violates the conditions of such permit, then, User shall be subjected to penalties as stated in the Amarillo Municipal Code at Section 18-3-101;

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**WHEREAS**, the City Council reviewed such provisions for enforcement and determines that such amendment will ensure and protect the health, safety, and welfare of the citizens of Amarillo and the general public;

**WHEREAS**, the City Council further finds that it is in the best interest of the City and its residents to adopt the amended enforcement provisions in this Ordinance.

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**Sec. 18-3-101. - MS4 Enforcement procedures.**

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~~comply voluntarily, the City shall take such corrective or enforcement action as allowed by this Chapter or by a court of competent jurisdiction to prevent or minimize damage to the Municipal Separate Storm Sewer System, danger to any individuals, or a violation of the City's NPDES Permit.~~

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(2) Compliance orders: When the City finds that a User has violated, or continues to violate, any provision of this article, or any other standard or requirement of the MS4, the City may issue an order to the User responsible, directing that the User come into compliance within ten (10) business day of issuance. If the User obtains full compliance during the ten (10) days, the User may request a reinspection of the site. If the User does not come into compliance within ten (10) business days, a red tag order shall be issued. A compliance order does not relieve the User of liability for any violation, including any continued violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(3) Civil Penalties: Upon issuance of a compliance order, civil penalties shall be assessed by the Director. The User shall be penalized no less than an amount of one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each violation, for each day that it exists. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. Each day that a violation persists, penalties shall be escalated. In addition, repeat violators such as a specified contractor, shall be subject to the same escalation of penalties.

(4) Red Tag Order: When the City finds that any operator of a construction site has violated, or continues to violate, any provision of the City's MS4 – TPDES permit, the construction general permit TXR150000, or any order issued thereunder, the City shall issue a "Red Tag Order" to the operator, posted at the construction site, and distributed to all City departments and/or divisions whose decisions affect any activity at the site. The red tag shall prohibit any further inspection or approval by the City associated with a building permit, grading permit, subdivision plat approval, site development plan approval, or any other City approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a red tag order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

a. Once a red tag order been issued, it shall not be removed until:

- i. A site inspection has been conducted and all violations have been resolved.
- ii. All penalties associated with the enforcement of the construction site have been paid in full. Including any previous unpaid penalties associated with the specified User and or contractor.

(b) Violations of this article shall be enforced by, but not limited to, the following escalating

steps.

(b) MS4 Enforcement Response Plan:

(1) The City shall develop and utilize a MS4 Enforcement Response Plan (ERP) to identify the enforcement tools available to municipal staff to use if they observe noncompliance with the City's regulatory mechanisms for illicit discharge, construction stormwater runoff control, and post-construction stormwater management.

~~(1) A verbal request to correct the noted violations by the Director.~~

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~~(4) Remand enforcement to EPA or TNRCC if no response is noted within thirty (30) days.~~

~~(5) Should the EPA or TNRCC fail to act, the City may take such legal actions as it deems necessary to secure compliance with this Chapter.~~

~~(c) Whenever the Director finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, the Director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:~~

(c) MS4 Enforcement Criteria:

~~(1) The performance of monitoring, analyses and reporting;~~

(1) Whenever the City finds that a User has violated a prohibition or failed to meet a requirement of this article, the City shall issue a NOV to the responsible User. The NOV shall require:

a. The elimination of illicit discharge.

b. The abatement or remediation of Stormwater Pollution and the restoration of any affected property.

~~(2) The elimination of illicit connections or Discharges;~~

(2) If a User fails to meet the conditions of a previously issued NOV, a compliance order shall be issued ordering the User to obtain compliance with the City's MS4 – TPDES permit, and the construction general permit TXR150000, within ten (10) business days of receipt of the compliance order.

~~(3) The violating Discharges, practices or operations shall cease and desist;~~

(3) If a User fails to meet the conditions of a compliance order, the User shall then be issued a Red Tag Order. The red tag order shall require:

(a) The abatement or remediation of Stormwater Pollution and the restoration of any affected property.

(b) Remediation Penalties: If abatement of a violation or restoration of affected property is required, the City shall set forth a deadline within such remediation or restoration must be completed. Should the violator fail to remediate or complete restoration within the City's established deadline, the work will be done by the City or a contractor designated by the City and the expense thereof shall be charged to the violator.

(c) City or a contractor designated by the City shall enter upon the Users property and is authorized to take all measures necessary to abate the violation and restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the City or designated contractor to enter upon the premises for the purposes set forth above. Refusal of entry shall result in immediate suspension of water utility service until authorization is granted and abatement measures are complete.

~~(4) The abatement or remediation of Stormwater Pollution and the restoration of any affected property; and~~

~~(5) Payment of a fine to cover administrative and remediation costs.~~

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~~(d) Any User receiving Notice of Violation may appeal the determination of the Director to an appeals committee. Members of the committee shall be the Assistant City Manager, the Director of Public Works, and the Director of Community Services. The notice of appeal must be received by the appeals committee within five (5) days from the date of receipt of the Notice of Violation. The committee shall hear the appeal within fifteen (15) working days from the date of committee's receipt of the notice of appeal.~~

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(1) Any User receiving a red tag order may appeal the determination to an appeals committee. Members of the committee shall be an Assistant City Manager, and two Director level positions selected by the Assistant City Manager. The notice of appeal must be received by the appeals committee within five (5) days from the date of receipt of the red tag order. The committee shall hear the appeal within ten (10) business days from the date of the committee's receipt of the notice of appeal.

(2) The User may appeal the decision of the appeals committee with the City Manager, within five (5) business days after receiving notice of the appeals committee's decision. The decision of the City Manager is final.

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~~(f) If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in the event of an appeal in which the decision of the Director is upheld, then the City or a contractor designated by the Director shall enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City or designated contractor to enter upon the premises for the purposes set forth above.~~

~~(g) The City may employ any other remedies authorized for enforcement by Federal or State Regulations.~~

~~(h) Any violation of a User's NPDES Storm Water permit shall be a violation of this article. Also, any facility subject to the Federal NPDES program that does not have a NPDES permit is in violation of this article.~~

(Ord. No. 6464, § 1, 2-8-2000; Ord. No. 6542, § 1, 7-10-2001; Ord. No. 7658, § 2, 3-14-2017)

**~~Sec. 18-3-102. — Enforcement at Construction Sites.~~**

- (a) ~~Whenever the Director finds that any owner, operator, contractor or subcontractor of a construction site has violated, or continues to violate, any provision of this Chapter, or any order issued under it, the Director may issue a "stop work order" to the appropriate party, posted at the construction site, and distributed to all city departments and divisions whose decisions affect any activity at the site. Unless express written exception is made by the Director, the "stop work order" shall prohibit any further construction activity at the site and shall bar any further inspection or approval by the city associated with a building permit, grading permit, future site development plan approval, or any other city approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a "stop work order" shall not be a bar against, or a prerequisite for, taking any other action against the violator.~~
- (b) ~~If compliance is not achieved to the Director's satisfaction, the Director may, at its discretion, report the noncompliance to the EPA.~~

(Ord. No. 6464, § 1, 2-8-2000)

**~~Sec. 18-3-103. — Emergency Suspensions of Utility Services and MS4 Access.~~**

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[TEXT UNCHANGED]

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**Sec. 18-3-104. - Violations Deemed a Public Nuisance.**

[TEXT UNCHANGED]

**SECTION 3.** All ordinances and resolutions or parts thereof that conflict with this ordinance are hereby repealed, to the extent of such conflict.

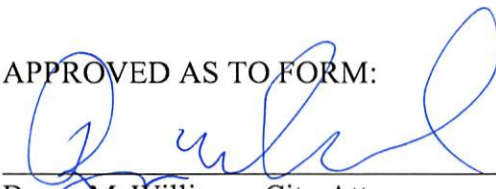
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**SECTION 5.** This Ordinance shall be published and become effective according to law.

**INTRODUCED AND PASSED** by the City Council of the City of Amarillo, Texas, on First Reading on this the 12th day of December, 2023 and **PASSED** on Second and Final Reading on this the 9th day of January, 2023.

  
Cole Stanley, Mayor

ATTEST:  
  
Stephanie Coggins, City Secretary

APPROVED AS TO FORM:  
  
Bryan McWilliams, City Attorney