

ORDINANCE NO. 2017-30

AN ORDINANCE AMENDING ARTICLE VI, EROSION AND SEDIMENT CONTROL, OF CHAPTER 18, ENVIRONMENT, OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL, TO ADD PROVISIONS TO SUPPORT THE CITY'S COMPLIANCE WITH PERMITTING REQUIREMENTS FOR STORMWATER SYSTEM; ALLOWING AN APPLICATION FOR A SITE DEVELOPMENT PERMIT AS AN ALTERNATIVE TO AN EROSION AND SEDIMENT CONTROL PLAN; ADOPTING PENALTIES IN ACCORDANCE WITH CHAPTER 54 OF THE TEXAS LOCAL GOVERNMENT CODE; ADOPTING A NEW ARTICLE VIII, ILLICIT DISCHARGE PROGRAM, OF CHAPTER 18, ENVIRONMENT, PROVIDING DEFINITIONS, REGULATION AND ENFORCEMENT OF ILLICIT DISCHARGES INTO THE CITY'S STORMWATER SYSTEM; ADOPTING A NEW ARTICLE IX, POST-CONSTRUCTION RUNOFF CONTROL PROGRAM, TO CHAPTER 18, ENVIRONMENT, ESTABLISHING DEFINITIONS, REGULATIONS, AND ENFORCEMENT REGARDING DISCHARGE OF POLLUTANTS IN THE CITY'S STORMWATER RUNOFF FROM NEW DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT; ADOPTING A NEW ARTICLE X, PET WASTE MANAGEMENT, TO CHAPTER 18, ENVIRONMENT, TO ESTABLISH DEFINITIONS, REGULATIONS AND ENFORCEMENT REGARDING DISCHARGE OF BACTERIA IN STORMWATER RUNOFF FROM PET WASTE; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000.00 FOR ANY VIOLATION OF ANY PROVISION OF THIS ORDINANCE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; PROVIDING FOR PUBLICATION; AND PROVIDING FOR SEVERABILITY.

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WHEREAS, the City of Tomball has received the Texas Pollutant Discharge Elimination System Permit No. TXR040000 for small Municipal Separate Storm Sewer Systems (the "Permit");

WHEREAS, the City Council of the City of Tomball desires to amend its regulations regarding stormwater runoff to support its compliance with the Permit; and

WHEREAS, the City Council finds it to be in the best interest of the health, safety and welfare of its citizens to make the amendments and adopt the regulations contained in this ordinance; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL,
TEXAS:**

Section 1. The facts and matters set forth in the preamble to this ordinance are hereby found to be true and correct.

Section 2. Article VI, Erosion and Sediment Control, of Chapter 18, Environment, of the Code of Ordinances of the City of Tomball, Texas is hereby amended to add the language underscored below and delete the language struck through below:

“ARTICLE VI. - EROSION AND SEDIMENT CONTROL

Sec. 18-254. - Purpose.

The purpose of this article is to reduce erosion during the construction process by implementing and enforcing erosion and sediment control management guidelines. This article supports the City’s compliance with requirements of the Texas Pollutant Discharge Elimination System Permit No. TXR040000 for small Municipal Separate Storm Sewer Systems. The provisions of this article are cumulative and in addition to other regulations or rules of the city that may be applicable to the development of property.

Sec. 18-255. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Clearing means any activity which removes the vegetative surface cover.

Drainageway means any channel that conveys stormwater runoff throughout the site.

Erosion and sediment control plan means a set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used controlling sediment and erosion on a development site including, before, during and after construction.

Erosion control means measures that prevent erosion.

Grading means excavation or fill of material, including the resulting conditions thereof.

Perimeter means the area of a lot or tract of land that is 30 feet wide and parallel to and adjacent to the property lines of the lot or tract of land.

Perimeter control means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Phasing means clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Sediment control means measures that prevent eroded sediment from leaving the site.

Site means a parcel of land, or a contiguous combination thereof, where grading work is performed as a single unified operation.

Site development permit means a permit issued by the city for which the construction or alteration of ground improvements and structures for the control of erosion, runoff and grading.

Stabilization means the use of practices that prevent exposed soil from eroding.

Start of construction means the first land disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

Watercourse means any natural or artificial body of surface water, including, but not limited to, bayous, channels, creeks, lakes, ponds, rivers, sloughs and streams defined by a bed and banks.

Waterway means a channel that directs stormwater runoff to a watercourse or to the public storm drain.

Sec. 18-256. - Permit required.

(a) No person shall be granted a site development permit for land disturbing activity that would require the uncovering of 5,000 or more square feet without the approval of an erosion and sediment control plan by the city engineer.

(b) No site development permit is required, however, for the following activities:

(1) Any emergency activity that is immediately necessary for the protection of life, property or natural resources.

- (2) Existing nursery and agricultural operations conducted as a permitted main or accessory use.
- (3) Any activities on a lot less than one acre in area and used for single-family or two-family residential purposes only.
- (c) Each application shall bear the names, addresses and contact numbers of the owners and developers of the site, and of any consulting firm retained by the applicant, together with the name of the applicant's principal contact at such firm, and shall be accompanied by a filing fee.
- (d) Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the erosion and sediment control plan.
- (e) The applicant shall file with city a faithful performance bond, letter of credit, or other improvement security in an amount deemed sufficient by the city engineer to cover all costs of improvements, landscaping, and maintenance of improvements for such period as specified by the city, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.
- (f) As an alternative to an erosion and sediment control plan described in this section, the City will accept applications for site development permit from all small and large construction activities discharging to the small MS4 who have developed and implemented a stormwater pollution prevention plan (SWP3) in accordance with the TPDES Construction General Permit No. TXR150000.

Sec. 18-257. - Review and approval.

- (a) The city engineer will review each application for a site development permit to determine its conformance with the provisions of this article. Within 30 days after receiving an application, the city engineer shall, in writing:
 - (1) Approve the permit application;
 - (2) Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
 - (3) Disapprove the permit application, indicating the deficiencies and the procedure for submitting a revised application and/or submission.
- (b) Failure of the city engineer to act on original or revised applications within 30 days of receipt shall authorize the applicant to proceed in accordance with

the plans as filed unless such time is extended by agreement between the applicant and the city engineer. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the city engineer.

- (c) Any permit issued under this article shall expire six months following its issuance; provided, however, that the city engineer may extend a permit to complete work substantially completed under that permit.

Sec. 18-258. - Erosion and sediment control plan.

- (a) The erosion and sediment control plan shall include:
 - (1) A natural resources map identifying soils, forest cover, and resources protected under other chapters of this Code.
 - (2) The map shall be at a scale no smaller than one inch equals 100 feet.
 - (3) The map of the perimeter of the trees to remain, including a tree survey showing the location, diameter, and name of all trees with eight-inch caliper or more measured three feet from the ground.
 - (4) A sequence of construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings, and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, and the sequence of clearing, installation of temporary erosion and sediment measures, and establishment of permanent vegetation.
 - (5) All erosion and sediment control measures necessary to meet the objectives of this article throughout all phases of construction and permanently, after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.
 - (6) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.
 - (7) Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
 - (8) Identification of the representative for site activities.

(b) Modifications to the plan.

(1) Major amendments of the erosion and sediment control plan shall be submitted to the city engineer and shall be processed and approved, or disapproved, in the same manner as the original plans.

(2) Field modifications of a minor nature may be authorized by the city engineer by written authorization to the permittee.

Sec. 18-259. - Design requirements.

(a) *Generally.* Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the city engineer.

(b) *Clearing and grading.*

(1) Clearing and grading of natural resources, such as forests, wetlands and floodplains, shall not be permitted, except when in compliance all other chapters of this Code. These standards are cumulative of other federal, state, and local jurisdictional requirements.

(2) Clearing techniques that retain natural vegetation and retain natural drainage patterns, as described in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, shall be used to the satisfaction of city engineer.

(3) Phasing shall be required on all sites disturbing greater than 30 acres, with the size of each phase to be established at plan review and as approved by the city engineer.

(4) Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.

(5) Cut and fill slopes shall be no greater than 2:1, except as approved by the city engineer to meet other community or environmental objectives.

(c) *Erosion control.*

(1) Soil must be stabilized within five days of clearing or inactivity in construction.

(2) If vegetative erosion control methods, such as seeding, have not become established within two weeks, the city engineer may require that the site be reseeded, or that a nonvegetative option be employed.

(3) On steep slopes or in drainageways, special techniques that meet the design criteria outlined in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition, shall be used to ensure stabilization.

(4) Soil stockpiles must be stabilized or covered at the end of each work-day.

(5) At the close of the construction season, the entire site must be stabilized, using a heavy mulch layer, or another method that does not require germination to control erosion.

(6) Techniques shall be employed to prevent the blowing of dust or sediment from the site.

(7) Techniques that divert upland runoff past disturbed slopes shall be employed.

(d) *Sediment controls.*

(1) Sediment controls shall be provided in the form of settling basins or sediment traps or tanks, and perimeter controls.

(2) Where possible, settling basins shall be designed in a manner that allows adaptation to provide long-term stormwater management.

(3) Adjacent properties shall be protected by the use of a vegetated buffer strip, in combination with perimeter controls.

(e) *Waterways and watercourses.*

(1) When a wet watercourse must be crossed regularly during construction, a temporary stream crossing shall be provided.

(2) When in-channel work is conducted, the channel shall be stabilized before, during and after work.

(3) All on-site stormwater conveyance channels shall be designed according to the criteria outlined in the Stormwater Management Handbook for Construction Activities, City of Houston, Harris County, and HCFCD, 2006 edition.

(4) Stabilization adequate to prevent erosion shall be provided at the outlets of all pipes and paved channels.

(f) *Construction site access.*

(1) A temporary access road shall be provided at all sites.

(2) Other measures may be required at the discretion of the city engineer in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains.

Sec. 18-260. - Inspection.

(a) The city engineer or his designated agent shall make inspections as hereinafter required and shall either approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the erosion and sediment control plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp of approval of the city engineer shall be maintained at the site during the progress of the work. In order to obtain inspections, the permittee shall notify the city engineer at least two working days before the following:

(1) Start of construction;

(2) Erosion and sediment control measures are in place and stabilized;

(3) Site clearing has been completed;

(4) Rough grading has been completed;

(5) Final grading has been completed;

(6) Close of the construction season; and

(7) Final landscaping .

(b) The permittee or his agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved erosion and sediment control plans. The purpose of such inspections will be to determine the overall effectiveness of the control plan, and the need for additional control measures. All inspections shall be documented in written form and submitted to the city engineer at the time interval specified in the approved permit.

- (c) The city engineer or his designated agent shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under subsection (b) of this section.

Sec. 18-261. - Enforcement.

(a) *Stop work order; revocation of permit.*

(1) The city engineer may issue a stop work order for any clearing or tree removal activity being conducted without a permit required by this article.

(2) In the event that any person holding a site development permit pursuant to this article violates the terms of the permit, or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the city engineer may suspend or revoke the site development permit.

(b) *Violation and penalties.*

(1) No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this article.

(2) A person commits an offense if the person intentionally or knowingly clears land or removes trees, or causes the clearing of land or removal of trees, without a permit for such clearing of land or removal of trees required by this article.

(3) A person commits an offense if the person intentionally or knowingly clears land or removes trees, or causes the clearing of land or removal of trees, in violation of the terms of a permit issued under this article.

(4) Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor.

(5) Penalties may be imposed at the discretion of the administrator of this Article up to the maximum allowed in Chapter 54 – Enforcement of Municipal Ordinances in the Texas Local Government Code.”

Secs. 18-262—18-285. - Reserved.

Section 3. The Code of Ordinances is further amended by adding a new Article VIII, Illicit Discharge Program, to Chapter 18, Environment, said Article VIII to read as follows:

“ARTICLE VIII –ILLICIT DISCHARGE PROGRAM

Sec. 18-287. Purpose.

The purpose of this article is to reduce the discharge of pollutants from illicit discharges into and from the City’s municipal separate storm sewer system to the maximum extent practicable and to support the City’s compliance with requirements of the Texas Pollutant Discharge Elimination System Permit No. TXR040000.

Sec. 18-288. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Best Management Practices (BMPs) shall mean the schedules of activities, prohibitions of practices, maintenance procedures, structural controls, non-structural controls, local regulations, and other management practices to prevent or reduce the discharge of pollutants. They also include treatment requirements, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

Household hazardous waste shall mean waste from materials utilized for residential or housekeeping purposes containing regulated substances which either singularly or by its interaction with other wastes or by its accumulation in the municipal separate storm sewer system becomes injurious or potentially injurious to human, plant, or animal life, or property. For purposes of this chapter household hazardous wastes include, but are not limited to, paint, paint thinners, paint solvents, bleaches, drain cleaners, landscaping chemicals, pesticides, herbicides, and automotive fluids.

Illicit Discharge shall mean any discharge to a municipal separate storm sewer that is not composed entirely of storm water except runoff of landscape watering, discharges pursuant to a National Pollutant Discharge Elimination System or Texas Pollutant Discharge Elimination System permit (other than the National Pollutant Discharge Elimination System or Texas Pollutant Discharge Elimination System permit for discharges from the municipal separate storm sewer), allowable non-stormwater discharges specified elsewhere in this Article, and discharges resulting from fire-fighting activities.

Municipal Separate Storm Sewer System (MS4) shall mean the system of conveyances, including but not limited to, roads with drainage systems, streets, catch basins, curbs, gutters, ditches, creeks, streams, tributaries, man-made channels, or storm drains, which: (1) Provide collection or conveyance of stormwater, rain water, flood water, or other surface water; and (2) Are located on public property; and (3) Are not designed and intended to be part of the collection system of a sanitary sewer system utilized by a publicly owned treatment works as defined in Title 40 C.F.R. 122.2.

Outfall shall mean a location where an MS4 discharges to waters of the U.S. and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S. For the purpose of this permit, sheet flow leaving a linear transportation system without channelization is not considered an outfall. Point sources such as curb cuts; traffic or right-of-way barriers with drainage slots that drain into open culverts, open swales or an adjacent property, or otherwise not actually discharging into waters of the U.S. are not considered an outfall.

Person shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or the legal representatives, agents, or assigns thereof.

Pollutant shall mean for the purpose of this ordinance, biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids (TSS), turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from an MS4. (Definition from 40 CFR § 122.32(e)(3)).

Responsible Party shall mean any person or legal entity, individual or corporate, including an owner, operator, contractor, or subcontractor, any or all of whom may be engaged in, consent to, or actually perform a construction project or construction activity.

Storm Water Management Program shall mean the state required plan that defines the City's schedule of BMPs to be implemented to reduce the discharge of pollutants in storm water runoff from the City's MS4 to the maximum extent practicable.

TCEQ shall mean the Texas Commission on Environmental Quality.

Texas Pollutant Discharge Elimination System (TPDES) shall mean a program to issue authorizations to discharge pollutants into waters of the state if certain conditions are met.

Sec. 18-289. Administrator and enforcement.

(a) Administrator. The administrator of this Article shall be the City Manager, or their designee.

(b) Enforcement. This Article shall be enforced by the City Manager, or their designee.

Sec. 18-290. Prohibited discharges into the MS4.

(a) It shall be a violation of this Article for any person to deposit, throw, drain, discharge, cause or allow to be deposited, thrown, drained or discharged, or otherwise cause to be injected into the municipal separate storm sewer system, or any storm sewer manhole, catch basin, private drain, ditch, street, gutter, creek, stream, tributary, or any other drainage device which connects with or drains into the municipal separate storm sewer system, anything not listed in Sec. 18-293.

Sec. 18-291. Reserved.

Sec. 18-292. Right of entry.

(a) Power to enter property draining to the municipal separate storm sewer system.

(1) Duly authorized employees of the City bearing proper credentials and identification are entitled to enter any public or private property discharging stormwater runoff to the City's municipal separate storm sewer system at any reasonable time for the purpose of enforcing this chapter.

(2) Anyone acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security and fire protection.

(3) Duly authorized employees of the City bearing proper credentials and identification are entitled to inspect stormwater discharges, discharge or pollutant sources, and activities generating any pollutant discharges in stormwater runoff.

Sec. 18-293. Allowable non-stormwater discharges.

The following non-stormwater discharges are authorized under this provision:

- (a) Water line flushing (excluding discharges of hyper-chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
- (b) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater, or surface water sources;
- (c) Discharges from potable water sources that do not violate Texas Surface Water Quality Standards;
- (d) Diverted stream flows;
- (e) Rising ground waters and springs;
- (f) Uncontaminated ground water infiltration;
- (g) Uncontaminated pumped ground water;
- (h) Foundation and footing drains;
- (i) Air conditioning condensation;
- (j) Water from crawl space pumps;
- (k) Individual residential vehicle washing;
- (l) Flows from wetlands and riparian habitats;
- (m) Dechlorinated swimming pool discharges that do not violate Texas Surface Water Quality Standards;
- (n) Street wash water excluding street sweeper waste water;
- (o) Discharges or flows from emergency firefighting activities (firefighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
- (p) Other allowable non-stormwater discharges listed in 40 CPR § 122.26(d)(2)(iv)(B)(1);

- (q) Non-stormwater discharges that are specifically listed in the TPDES Multi Sector General Permit (MSGP) TXR050000 or the TPDES Construction General Permit (CGP) TXR150000;
- (r) Discharges that are authorized by a TPDES or NPDES permit or that are not required to be permitted; and
- (s) Other similar occasional incidental non-stormwater discharges such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges.

Sec. 18-294. Penalty.

Penalties may be imposed at the discretion of the administrator of this Article up to the maximum allowed in Chapter 54 – Enforcement of Municipal Ordinances in the Texas Local Government Code.

Sec. 18-295. Conflict and Severability.

- (a) No provision of this Section is intended to, nor shall any part or portion hereof be construed, so as to conflict with the Texas Water Code.
- (b) If any provision of this Section or the application thereof to any person or circumstance shall be held to be void or invalid for any reason, the remainder of this chapter and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this chapter would have been enacted without such invalid provision.”

Section 4. The Code of Ordinances is further amended by adding a new Article IX, Post-Construction Runoff Control Program, to Chapter 18, Environment, said new Article IX to read as follows:

“ARTICLE IX. – POST-CONSTRUCTION RUNOFF CONTROL PROGRAM

Sec. 18-296. Purpose.

The purpose of this article is to satisfy conditions imposed by the City's Texas Pollutant Discharge Elimination System Permit (TXR040000) and Stormwater Management Program which require the City to develop and implement a Post-Construction Stormwater Management Program to reduce the discharge of pollutants in stormwater runoff from new development and significant

redevelopment to the maximum extent practicable, in order to protect public health, safety and welfare.

Sec. 18-297. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Certificate of Completion shall mean a form used by the owner or operator of a permitted site to self-certify that the site or facility has been constructed in accordance with the site's Stormwater Quality Permit and SWQMP.

Development shall mean any human-caused change to improved or unimproved real estate including, but not limited to, buildings, process equipment, structures, filling, dredging, mining, grading, paving, excavation, drilling operations, or storage of equipment or materials, and any activity that requires a subdivision plat or that is part of a subdivision plat approved by a county or municipality.

Engineer's As-Built Certification shall mean a form used by a professional engineer retained by the owner or operator of a permitted site to certify that a site with structural controls has been constructed in accordance with the site's construction plans, Stormwater Quality Permit, and SWQMP.

Inspection, Operations, and Maintenance Plan shall mean a document which describes the activities (and the frequency of their occurrence) that must be conducted by the owner or operator of a New Development site or a Significant Redevelopment site to keep site stormwater BMPs functioning as planned, designed, and implemented.

New Development shall mean development after January 1, 2018 of an undeveloped parcel of land one (1) acre or larger without regard to the amount of land that will actually be disturbed, except for: (1) development on an existing undeveloped and undivided parcel of one acre or more of one single-family dwelling unit and one or more accessory structures; however, if the use of the property excluded under the foregoing exception at any time changes to a commercial use, including further subdividing of the property, the owner of the property shall comply with all applicable requirements of these regulations; (2) development of a single-family residential subdivision if: (a) each lot in the subdivision will have no more than 20% impervious cover; (b) no on-site detention for water quantity purposes is required by the City of Tomball, Harris County, the Harris County Drainage District, or by any other special district; and (c) each lot in the subdivision will front on and will take direct access from an existing public road; (3) projects constructed within waters of the United States

and not associated with subdivisions, roads, or other commercial development; and (4) development that results in no impervious surface on the land disturbed.

Non-Structural Controls shall mean a maintenance, educational, or operational practice designed to prevent or reduce the potential for pollutants to be discharged in stormwater runoff.

Permit for Stormwater Quality shall mean a document issued to a particular development site, by the City, indicating that the drainage system; Stormwater Quality Management Plan; Inspection, Operations, and Maintenance Plan; and stormwater quality controls presented in the application have been designed to meet or exceed the provisions of the City's Design Criteria and appear to reduce the discharge of pollutants to the maximum extent practicable.

Pollutant shall mean any substance introduced into the environment that adversely affects a resource. Pollutant includes, but is not limited to, soil, soil material, sediment, human waste, other wastes, and debris generated at construction sites.

Significant Redevelopment shall mean an increase in the total amount of impervious surface on a previously developed one-acre or larger parcel so that the total resulting impervious surface is one acre or larger. Only additions of impervious surface after January 1, 2018 shall be totaled and counted toward the one-acre threshold.

Significantly Amended shall mean a change to a site's engineering design plans pertaining to site activities, final drainage system elements, the site's Stormwater Quality Management Plan, or landscaping that is likely to change the volume of, or pollutant levels in, site runoff to the MS4.

Stormwater Quality Management Plan (SWQMP) shall mean a plan prepared by an engineer licensed in the State of Texas that defines the permanent stormwater quality BMPs to be used at a development or significant redevelopment site to reduce the discharge of pollutants in stormwater runoff to the maximum extent practicable. The plan also describes the operations and maintenance activities required to keep the BMPs functioning properly.

TCEQ shall mean the Texas Commission on Environmental Quality.

Texas Pollutant Discharge Elimination System (TPDES) shall mean a program to issue authorizations to discharge pollutants into waters of the state if certain conditions are met.

Sec. 18-298. Administrator and enforcement.

- (a) Administrator. The administrator of this Article shall be the City Manager, or their designee.
- (b) Enforcement. This Article shall be enforced by the City Manager, or their designee.

Sec. 18-299. Permit required for stormwater quality.

- (a) All new development or significant redevelopment within the City must obtain a *Permit* issued by the City. Nonstructural or structural best management practices (BMPs) or both, shall be required in accordance with this Article, and the latest edition of the City's "Permanent Stormwater Quality Design Criteria Manual."

(b) Application for Permit.

(1) Unless previously approved by the City, an application along with the required plans, documentation, and fee for a Permit shall be submitted in accordance with this Article.

(2) The owner/developer shall submit a Permit application prior to the commencement of construction activities. The application packet shall include:

- a. A completed application form;
- b. Construction plans for the finished facility or project;
- c. Stormwater Quality Management Plan (SWQMP) showing structural and nonstructural BMPs;
- d. *An Inspections, Operations, and Maintenance Plan.*

(3) If structural BMPs are used, the owner/developer shall submit Engineer's As-Built Certificate within sixty (60) days of completion of construction activities. If structural BMPs are not used, the owner/developer shall submit a Certificate of Completion within sixty (60) days of completion of construction activities.

- (c) Duration. Development activity under the Permit must begin within one hundred eighty (180) days from the date of issuance. Extensions to the period of validity of the Permit prior to the start of development activities must be requested by the permittee in writing to the City.

- (d) Amendment required. Approved plans shall not be significantly amended without authorization of the City.

(e) Suspension or revocation. The Permit may be suspended or revoked by the City because of incorrect information supplied or for any violation of the provisions of these Rules.

(f) Exemptions. With the approval of the City, the following activities may be exempted from the provisions of this Article:

(1) Any project that has received an initial construction plan review from the City before the effective date of this Article, provided the project is substantially underway one (1) year from the effective date of this Article.

(2) Any linear projects such as underground pipelines, utilities, or drainage where the resulting impervious surface is limited to less than three thousand six hundred (3,600) square feet. Plans and drawings showing the total resultant impervious surface must be submitted to the City to obtain this exemption. Future extensions or changes to the impervious surface shall be counted toward the three thousand six hundred (3,600) square feet threshold.

(3) Any new development or redevelopment project that has or will have permit coverage under the Texas Pollutant Discharge Elimination System Industrial Stormwater Permit issued by the Texas Commission on Environmental Quality (TCEQ). In lieu of the Stormwater Quality Approval, the owner/developer/operator shall submit one (1) of the following:

a. A copy of the application for an individual permit from the TCEQ or the U.S. Environmental Protection Agency (EPA) for Stormwater Discharges Associated with Industrial activity at the facility;

b. A copy of the permit issued by the TCEQ or EPA for Stormwater Associated Industrial Activity at the facility;

c. A copy of the Notice of Intent (NOI) for coverage under a general permit for Stormwater Discharges Associated with Industrial Activity issued by the TCEQ, or the No Exposure Certification (NEC) for Stormwater Discharges Associated with Industrial Activity;

d. A statement of commitment to file an application for an individual permit from the TCEQ for Stormwater Discharges Associated with Industrial Activity at the facility; or

e. A statement of commitment to file an NOI for coverage under a general permit for Stormwater Discharges Associated with Industrial Activity issued by the TCEQ.

(4) Any new development or redevelopment project that drains to a regional detention facility operated by an entity holding a small MS4 permit authorization.

(g) Standards and Evaluation Criteria. The standards for evaluating the applications for Permits will be published by the City from time to time and may be found in the City's "Permanent Stormwater Quality Design Criteria Manual." Design guidelines for nonstructural and structural controls will be published by the City from time to time. Permits will be generally be issued if proposed BMPs and the defined operations and maintenance activities are consistent with City guidance and will result in the reduction in the discharge of pollutants in stormwater runoff to the maximum extent practicable.

(h) Enforcement. The City retains the authority to inspect sites with Permits upon reasonable notice. If sites are found to not be operating in accordance with their Permit or SWQMP or to be violating the provisions of these regulations, the site owner/operator may be held responsible for correcting site deficiencies. Should the site owner/operator fail to cure the deficiencies within a reasonable time period (as determined by the City), the City may, at its sole option, perform the necessary work and invoice the site owner or operator, as applicable, for the full amount of the work performed.

Secs. 18-300 – 18-301. Reserved.

Sec. 18-302. Right of entry.

(a) Power to enter property draining to the municipal separate storm sewer system.

1. Duly authorized employees of the City bearing proper credentials and identification are entitled to enter any public or private property discharging stormwater runoff to the City's municipal separate storm sewer system at any reasonable time for the purpose of enforcing this chapter.

2. Anyone acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security and fire protection.

3. Duly authorized employees of the City bearing proper credentials and identification are entitled to inspect stormwater discharges, pollutant sources, activities generating any pollutant discharges in stormwater runoff, or stormwater quality controls.

Sec. 18-303. Penalty.

Penalties may be imposed at the discretion of the administrator of this Article up to the maximum allowed in Chapter 54 – Enforcement of Municipal Ordinances in the Texas Local Government Code.

Sec. 18-304. Conflict and Severability.

(a) No provision of this Section is intended to, nor shall any part or portion hereof be construed, so as to conflict with the Texas Water Code.

(b) If any provision of this Section or the application thereof to any person or circumstance shall be held to be void or invalid for any reason, the remainder of this chapter and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this chapter would have been enacted without such invalid provision.”

Section 5. The Code of Ordinances is further amended by adding a new Article X, Pet Waste Management, to Chapter 18, Environment, said new Article X to read as follows:

“ARTICLE X. - PET WASTE MANAGEMENT

Sec. 18-305. Purpose

The purpose of this article is to satisfy conditions imposed by the City's Texas Pollutant Discharge Elimination System Permit (TXR040000) and Stormwater Management Program which require the City to develop and implement a Pet Waste Management Program, to reduce the discharge of bacteria in stormwater runoff from pet waste to the maximum extent practicable, in order to protect public health, safety and welfare.

Sec. 18-306. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Pet Owner shall mean any person who possesses, maintains, houses, harbors, or has full time or part time custody of any pet. This definition includes persons who provide caregiving services to pets owned by others.

Pet shall mean a domesticated animal kept for amusement or companionship.

Pet solid waste shall mean waste matter expelled from the bowels of a pet including feces or excrement.

Sec. 18-307. Removal required.

Pet owners and caregivers are required to immediately remove solid pet waste from any public or private property not owned or possessed by that person. Pet waste shall be properly disposed of by placement in a designated waste receptacle or other sealed container and discarded in a garbage or trash receptacle which is regularly emptied, or by placement into a domestic sewage system. Disposal of any pet waste or associated material into a storm drain or stormwater management system is prohibited.

Sec. 18-308. Penalty.

Penalties may be imposed at the discretion of the administrator of this Article up to the maximum allowed in Chapter 54 – Enforcement of Municipal Ordinances in the Texas Local Government Code.”

Section 6. **Penalty.** Any person who intentionally, knowingly, recklessly or with criminal negligence violates any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each violation occurrence shall constitute a separate offense.

Section 7. **Repealer.** All ordinances or parts of ordinances inconsistent or in conflict herewith, are, to the extent of such inconsistency or conflict, hereby repealed.

Section 8. **Severability.** In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 9. This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF SEPTEMBER 2017.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>NAY</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 2ND DAY OF OCTOBER 2017.

COUNCILMAN FORD	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>ABSENT</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary