

ORDINANCE NO. 2010-29

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY ADDING TO THERETO A NEW CHAPTER 31, ENTITLED "STORM WATER PROTECTION"; PROVIDING RULES AND REGULATIONS GOVERNING DISCHARGE INTO THE CITY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM; PROHIBITING CERTAIN DISCHARGES INTO OR CONNECTIONS TO SUCH MUNICIPAL STORM SEWER SYSTEM AND DECLARING SUCH DISCHARGES OR CONNECTIONS A NUISANCE; PROVIDING DEFINITIONS; PROVIDING REGULATIONS FOR EMERGENCY AND NON-EMERGENCY SUSPENSION OF UTILITY SERVICE AND STORM SEWER SYSTEM ACCESS FOR DISCHARGING INTO OR CONNECTION WITH SUCH STORM SEWER SYSTEM; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$2,000 FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HERewith; AND PROVIDING FOR SEVERABILITY.

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Section 1. The Code of Ordinances of the City of Rosenberg, Texas, is hereby amended by adding thereto a new Chapter 31, entitled "Storm Water Protection," to provide as follows:

"Chapter 31

STORM WATER PROTECTION

ARTICLE I. IN GENERAL

Section 31-1. Definitions.

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

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

Best Management Practices or *BMP* shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of the MS4, Waters of the State, and Waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

CFR shall mean the *Code of Federal Regulations*.

City shall mean the City of Rosenberg, Texas.

City Manager shall mean the City Manager of the City or the City Manager's authorized representative.

Contaminated shall mean containing a harmful quantity of any substance.

Contamination shall mean the presence of or entry into a public water supply system, the MS4, Waters of the State, or Waters of the United States of any substance that may be deleterious to the public health and/or the quality of the water.

Cosmetic cleaning shall mean cleaning performed for cosmetic purposes. It does not include industrial cleaning, cleaning associated with manufacturing activities, hazardous or toxic waste cleaning, or any cleaning otherwise regulated under federal, state, or local laws.

Discharge shall mean any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the MS4, into Waters of the State, or Waters of the United States.

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

Environmental Protection Agency or *EPA* shall mean the United States Environmental Protection Agency, or any duly authorized official thereof.

Facility, as used in Article III hereof, shall mean any facility, including construction sites, required by the Federal Clean Water Act to have a permit to discharge storm water associated with industrial activity.

Fire Code shall mean the 2006 *International Fire Code*, and all subsequent revisions and updates, as adopted by the City.

Fire Department shall mean the Fire Department of the City of Rosenberg, or any duly authorized representative thereof.

Fire protection water shall mean any water, and any substances or materials contained therein, used by any person other than the Fire Department to control or extinguish a fire.

Harmful quantity shall mean the amount of any substance that will cause pollution of Waters of the State, Waters of the United States, or that will cause lethal or sub-lethal adverse effects on representative, sensitive aquatic organisms, upon their exposure to samples of any discharge into Waters of the State, Waters of the United States, or the MS4.

Mobile commercial cosmetic cleaning shall mean power washing, steam cleaning, and any other mobile cosmetic cleaning operation, of vehicles and/or exterior surfaces, engaged in for commercial purposes.

Municipal separate storm sewer system or *MS4* shall mean the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage.

National Pollutant Discharge Elimination System or *NPDES* shall mean the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the federal Clean Water Act.

Non-point source shall mean any source of any discharge of a pollutant that is not a "point source."

Notice of Intent or *NOI* shall mean the Notice of Intent that is required by the NPDES Storm Water Multi-Sector General Permit, the EPA Region 6 NPDES Storm Water Construction general permit, the TCEQ Storm Water Construction general permit, or any similar general permit that is issued by the EPA or the TCEQ.

NPDES permit shall mean a permit issued by EPA (or by the State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to Waters of the United States, whether the

permit is applicable to an individual or group, or on a general area-wide basis.

Operate shall mean drive, conduct, work, run, manage, or control.

Operator, as used in Article III hereof, shall mean the party or parties that either individually or taken together meet the following two criteria: 1) They have operational control over the site specifications (including the ability to make modifications in specifications); and 2) they have the day-to-day operational control of those activities at the site necessary to ensure compliance with SWPPP requirements and any permit conditions.

Person shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

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

Pollutant shall mean dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; filter backwash; munitions; chemical wastes; biological materials; toxic materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, recreational, and agricultural waste discharged into water or into the MS4.

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

Publicly owned treatment works or *POTW* shall mean a sewage treatment plant that is owned, and operated, by the City of Rosenberg.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or

disposing into groundwater, subsurface soils, surface soils, the MS4, the Waters of the State, or the Waters of the United States.

State shall mean the State of Texas.

Storm water shall mean any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snow melt.

Storm water discharge associated with industrial activity shall mean the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR part 122. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in paragraphs (i)-(xi) of this definition) include those facilities designated under the provisions of 40 CFR §122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity":

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR §434.11(1) because the performance bond issued to the facility by the appropriate federal Surface Mining Control and Reclamation Act (SMCRA) authority has been released, or except for areas of non-coal mining operations that have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, or sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

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

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

(vi) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and

automobile junk yards, including, but limited to, those classified as Standard Industrial Classification 5015 and 5093;

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

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

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

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

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

Storm water pollution prevention plan or SWPPP shall mean a plan required by a permit to discharge storm water associated with industrial activity, including construction, and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility.

TAC shall mean the *Texas Administrative Code*.

TCEQ shall mean the Texas Commission on Environmental Quality.

Texas Pollutant Discharge Elimination System or *TPDES* shall mean the program delegated to the State of Texas by the EPA pursuant to 33 USC §1342(b).

Total suspended solids or *TSS* shall mean solids that either float on the surface, or are in suspension in, water, wastewater, or other liquids, and which are generally removable by a laboratory filtration device. *TSS* is expressed in milligrams per liter.

Uncontaminated shall mean not containing a harmful quantity of any substance.

USC shall mean the *United States Code*.

Wastewater shall mean any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Waters of the State shall mean groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, wetlands, marshes, inlets, canals inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the bed and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.

Waters of the United States shall mean all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as Waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "Waters of the United States" at 40 CFR § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

Wetland shall mean an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of

vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Section 31-2. Administration.

The City Manager or an authorized representative is authorized to administer, implement, and enforce the provisions of this chapter.

[Sections 31-3 through 31-9 reserved]

ARTICLE II. STORM WATER DISCHARGES GENERALLY

Section 31-10. Discharge to MS4 prohibited.

(a) A person commits an offense if the person introduces or causes to be introduced into the MS4, Waters of the State, or Waters of the United States, any discharge, within the corporate boundaries of the municipality, which is not composed entirely of stormwater.

(b) It is an affirmative defense to any enforcement action for a violation of subsection (a) of this section that the discharge was composed entirely of one or more of the following categories of discharges:

(1) A discharge authorized by, and in full compliance with, an NPDES permit (other than the NPDES permit for discharges from the MS4);

(2) A discharge or flow resulting from firefighting activities by the Fire Department;

(3) A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials that the Fire Code requires to be contained and treated prior to discharge, in which case treatment adequate to remove harmful quantities of pollutants must have occurred prior to discharge;

(4) Agricultural stormwater runoff;

(5) A discharge or flow from water line flushing or disinfection that contains no harmful quantity of total residual chlorine (TRC) or any other chemical used in line disinfection;

(6) A discharge or flow from lawn watering or landscape irrigation;

(7) A discharge or flow from a diverted stream flow or natural spring;

(8) A discharge or flow from uncontaminated pumped groundwater or rising groundwater;

(9) Uncontaminated groundwater infiltration (as defined at 40 CFR Section 35.2005(20)) to the MS4;

(10) Uncontaminated discharge or flow from a foundation drain, crawl space pump, or footing drain;

(11) A discharge or flow from a potable water source that does not contain any harmful substance or material from the cleaning or draining of a storage tank or other container;

(12) A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;

(13) A discharge or flow from individual residential car washing or other non-commercial car washing;

(14) A discharge or flow from a riparian habitat or wetland;

(15) A discharge or flow from cold water (or hot water with prior permission of the City Manager or an authorized representative) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;

(16) Drainage from a private residential swimming pool containing no harmful quantities of chlorine or other chemicals (Drainage from swimming pool filter backwash is prohibited); or

(17) A discharge or flow of uncontaminated storm water pumped from an excavation.

(c) No affirmative defense shall be available under subsection (b) if:

(1) the discharge or flow in question has been determined by the City Manager or an authorized representative to be a source of a pollutant or pollutants to the MS4, Waters of the State, or Waters of the United States;

(2) written notice of such determination and notice to cease the discharge has been provided to the discharger; and

(3) the discharge has continued after expiration of the time given in the notice to cease the discharge.

(d) A person commits an offense if the person introduces, or causes to be introduced, into the MS4, Waters of the State, or Waters of the United States any harmful quantity of any substance.

Section 31-11. Connection of sanitary sewer prohibited.

A person commits an offense if the person connects a line conveying sewage to the MS4, Waters of the State, or Waters of the United States or allows such a connection to continue.

Section 31-12 Nuisances.

(a) An actual or threatened discharge to the MS4, Waters of the State, or Waters of the United States that violates or would violate this Article is hereby declared to be a nuisance.

(b) A line conveying sewage or designed to convey sewage that is connected to the MS4, Waters of the State, or Waters of the United States is hereby declared to be a nuisance.

Section 31-13. Emergency suspension of utility service and MS4 access.

(a) The City may, without prior notice, suspend water service, sanitary sewer service, and/or discharge access to a person discharging to the MS4, Waters of the State, or Waters of the United States when such suspension is necessary to stop an actual or threatened discharge which:

(1) presents or may present imminent and substantial danger to the environment or to the health or welfare of persons; or

(2) presents or may present imminent and substantial danger to the MS4, Waters of the State, or Waters of the United States.

(b) When the City Manager or an authorized representative determines that City-provided water service, sanitary sewer service, and/or discharge access, needs to be suspended pursuant to subsection (a), the City Manager or an authorized representative shall submit a

request to the Director of the Utility Department to suspend such service or access.

(c) Within twenty-four (24) hours, or in a reasonable time if twenty-four (24) hours is not possible, of the suspension of water service, sanitary sewer service, and/or discharge access, the City Manager or an authorized representative shall notify the violator of the suspension in person and/or send notice of such suspension by certified mail, return receipt requested. Notice shall contain an order requiring the violator to cease the illicit discharge immediately. If possible and time permits, the City Manager or an authorized representative shall also attempt to notify the violator prior to suspending service or access, so long as this prior notification process does not delay suspension of service or access, and therefore cause additional danger to the environment or to the health or welfare of persons.

(d) If the violator fails to comply with an order issued under the notice provisions of subsection (c) above, the City Manager or an authorized representative may take such steps allowed by law as the City Manager or an authorized representative deems necessary to prevent or minimize damage to the MS4, Waters of the State, or Waters of the United States, and further minimize danger to the environment or to the health or welfare of persons.

(e) The City shall not reinstate suspended services or discharge access to the violator until:

(1) The violator presents proof, satisfactory to the City Manager or an authorized representative, that the noncomplying discharge has been eliminated and its cause determined and corrected;

(2) The violator pays the City for all costs the City incurred in responding to abating, and remediating the discharge or threatened discharge; and

(3) The violator pays the City for all costs the City will incur in reinstating service or access.

(f) Any violator whose service or access has been suspended or disconnected by order of the City Manager or an authorized representative may petition the City Manager or an authorized representative for reconsideration. Such petition must be made by filing notice of such reconsideration with the City Manager or an authorized representative within five (5) days of the receipt of notice of the suspension of service or access. The City Manager or an authorized

representative shall hear the reconsideration request within ten (10) days from the date such request is filed. After a final decision has been made by the City Manager or an authorized representative, any violator may appeal such decision to the City Council, which shall hear the matter at a meeting of the City Council to occur not more than thirty (30) days from the date the appeal is filed. Any persons seeking to appeal as herein provided shall file a notice of appeal with the City Secretary within ten (10) days of the date a final decision on the request for reconsideration has been made by the City Manager or an authorized representative. Failure to commence a petition for reconsideration or an appeal timely shall render the decision of the City Manager or authorized representative final and binding and not subject to appeal or other proceedings. Such reconsideration and/or appeal shall not stay the enforcement of any provisions of this Chapter. The City Council, upon hearing the matter, shall consider the facts and evidence presented at the hearing and shall, upon the completion of all proceedings, enter a final and binding order that shall not be appealable to any other body or tribunal.

(g) If prior notification of the violation is given and the violator fails to cease the discharge immediately, the City may assess a lien against the property to recover its actual response costs to suspend water service, sanitary sewer service, and/or discharge access.

(h) The remedies provided by this Section are in addition to any other remedies set out in this Chapter. Exercise of any remedies provided by this Section shall not be a bar against, nor a prerequisite for, taking other action against a violator.

(i) A person commits an offense if the person reinstates water service, sanitary sewer service, and/or discharge access to a premises with terminated service and/or access, pursuant to this Section, without the prior written approval of the City Manager or an authorized representative.

Section 31-14. Non-emergency suspension of utility service and MS4 access.

(a) The City may terminate the City-provided water service, sanitary sewer service, and/or discharge access to any person discharging into the MS4, the Waters of the State, or Waters of the United States, in violation of this Article, if such termination would abate or reduce the illicit discharge.

(b) The City Manager or an authorized representative shall notify a violator of the proposed termination of its water service, sanitary sewer service, and/or discharge access. Notice shall be sent to the

violator in person and/or by certified mail, return receipt requested, and shall contain an order requiring the violator to cease the illicit discharge immediately. If the violator fails to comply with an order issued under the notice provisions of this subsection, the City Manager or an authorized representative may take such steps allowed by law as the City Manager or an authorized representative deems necessary to prevent or minimize damage to the MS4, Waters of the State, or Waters of the United States, and further minimize danger to the environment or to the health or welfare of persons. The violator may petition the City Manager or an authorized representative for reconsideration, and, if necessary, file an appeal to the City Council with the City Secretary, in accordance with the procedures set forth in Section 31-13(f) of this Article.

(c) The City shall not reinstate suspended services or MS4 access to the discharger until:

(1) The violator presents proof, satisfactory to the City Manager or an authorized representative, that the noncomplying discharge has been eliminated and its cause determined and corrected;

(2) The violator pays the City for all costs the City will incur in reinstating service or access; and

(3) If applicable, the violator pays the City for all costs the City incurred in responding to abating, and remediating the discharge or threatened discharge.

(d) The remedies provided by this Section are in addition to any other remedies set out in this Chapter. Exercise of any remedies provided by this Section shall not be a bar against, nor a prerequisite for, taking other action against a violator.

(e) A person commits an offense if the person reinstates water service, sanitary sewer service, and/or discharge access to a premises with terminated service and/or access, pursuant to this Section, without the prior written approval of the City Manager or an authorized representative.

[Sections 31-15 through 31-30 reserved]

ARTICLE III. STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY, INCLUDING CONSTRUCTION ACTIVITY

Section 31-31. Applicability.

This Article applies to all facilities located within the corporate limits of the City that have storm water discharges associated with industrial activity, including construction activity.

Section 31-32. Access to facilities.

(a) The City Manager or an authorized representative is authorized by this Section to enter and inspect facilities subject to regulation as provided for in this Article.

(b) Facility operators shall allow the City Manager or an authorized representative ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES or TPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(c) The City Manager or an authorized representative shall have the right to set up, on any permitted facility, such devices as are necessary in the opinion of the City Manager or an authorized representative to conduct monitoring and/or sampling of the facility's storm water discharge.

(d) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the City Manager or an authorized representative and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(e) Unreasonable delays in allowing the City Manager or an authorized representative access to a permitted facility are a violation of a storm water discharge permit and of this Article. A person who is the operator of a facility with a NPDES or TPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City Manager or an authorized representative reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Article.

Section 31-33. Unpermitted discharges prohibited

A person who is the operator of a facility commits an offense if the person discharges, or causes to be discharged, storm water associated with industrial activity without first having obtained a NPDES or TPDES permit for such discharge.

Section 31-34. Submission of NOI to City.

(a) The operator of a facility, including construction sites, required to have a NPDES or TPDES permit to discharge storm water associated with industrial activity, shall submit a copy of the NOI to the City Manager or an authorized representative at the same time the operator submits the original NOI to the EPA or the TCEQ, as applicable.

(b) The copy of the NOI must be delivered to the City Manager or an authorized representative, either in person or by mailing it to:

City of Rosenberg
2220 4th Street
Rosenberg, Texas 77471
Attn: City Manager (or identify an authorized representative)

Any NOI mailed to the address stated above must have "**Notice of Intent to Discharge Storm Water Associated with Industrial Activity**" clearly marked on the exterior of the envelope or package.

(c) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the NOI with the City Manager or an authorized representative.

Section 31-35. Compliance with permit.

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

(b) A person commits an offense if the person operates a facility in violation of a requirement of the facility's NPDES or TPDES permit to discharge storm water associated with industrial activity.

Section 31-36 Modification of storm water pollution prevention plans.

(a) The City Manager or an authorized representative may require any operator of a facility to modify the facility's storm water pollution prevention plan if, in the best professional judgment of the City Manager or an authorized representative, the SWPPP does not comply with the requirements of the facility's NPDES or TPDES permit to discharge storm water associated with industrial activity.

(b) The deficiencies in a facility's SWPPP will be made in writing, and the City Manager or an authorized representative will give the facility operator a reasonable amount of time, not to exceed thirty (30) days, to make the necessary changes in the SWPPP.

(c) The facility operator may petition the City Manager or an authorized representative for reconsideration of the determination of deficiencies in a facility's SWPPP, and, if necessary, file an appeal to the City Council with the City Secretary, in accordance with the procedures set forth in Section 31-13(f) of this Article."

Section 2. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense.

Section 3. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances 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 Rosenberg, 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.

PASSED AND APPROVED by a vote of 7 "ayes" in favor and 0 "noes" against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on the 1th day of December 2010.

ATTEST:

APPROVED:

Linda Cernosek
Linda Cernosek, **City Secretary**

Joe M. Gurecky
Joe M. Gurecky, **Mayor**

APPROVED AS TO FORM:

W. A. Olson, Jr.
William A. Olson, Jr.
CITY ATTORNEY

