

ORDINANCE NO. 04-06-12

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ALAMO, TITLE 8, PUBLIC UTILITIES, ADDING CHAPTER 7, ILLICIT DISCHARGE AND CONNECTION TO THE STORMWATER SYSTEM; BY ADOPTING AS SET OUT THEREIN; PROVIDING FOR EFFECTIVE DATES; PROVIDING FOR PUBLICATION PROVIDING FOR SEVERABILITY CLAUSE AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER THEREOF

WHEREAS, the City of Alamo, a home-rule city of the State of Texas, may adopt and enforce ordinances necessary to protect health, safety, life property and the general welfare of the City of Alamo and its residents and visitors through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law; and

WHEREAS, the City of Alamo will establish methods of controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the Texas Pollutant Discharge Elimination System (TPDES) and the National Pollutant Discharge Elimination System (NPDES) permit process;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ALAMO, TEXAS THAT:

SECTION I. The Code of Ordinances of the City of Alamo, Title 8-Utilities, Chapter 7, Illicit Discharge and Connection is hereby amended to read as follows:

any 8-7-1: **Purpose:** The objectives are to regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by user; to prohibit illicit connections and discharges to the municipal separate storm sewer system; and to establish legal authority to carry out all inspections, surveillance and monitoring procedures necessary to ensure compliance. This Ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

8-7-2: **Definitions:** For the purposes of this Ordinance only, the following terms, words and phrases; and their derivations, shall have the meanings set forth below, except where the context clearly indicates a different meaning:

Authorized Enforcement Agency means employees or designees of the Director of the municipal agency, the TCEQ, and/or the EPA designated to enforce this Ordinance and/or to enforce the TPDES and/or to enforce the NPDES regulations.

Best Management Practices (BMP) means schedules of activities, prohibitions of

practices, general good housekeeping practices, pollution prevention and educational procedures, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, storm water conveyance systems. BMPs also includes treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material storage.

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

Construction Activity means construction activities subject to TPDES Construction Permits. Currently these include construction projects resulting in land disturbance of one (1) acre or more, as defined by the TPDES program. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

Hazardous Materials means any material, including any substance, waste or combination thereof, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge means any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 8-7-6 of this Ordinance.

Illicit Connections means drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non- storm water discharge including sewage, process wastewater, and wash water to enter the storm drains system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has been documented in plans, maps, or equivalent records and approved by the authorized enforcement agency, or approved by an individual NPDES or TPDES permit.

Industrial Activities means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b) (14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by the Environmental Protection Agency (EPA) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge means any discharge to the storm drain system that is not composed entirely of storm water.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant means anything which causes, contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System means publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Storm Water means any surface flow, runoff, and drainage consisting entirely of water from any form of precipitation and resulting from such precipitation.

Storm Water Pollution Prevention Plan means a document which describes the Best Management Practices activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Texas Pollutant Discharge Elimination System (TPDES) Storm Water Discharge Permit means a permit issued by the State of Texas, namely the Texas Commission on Environmental Quality (TCEQ), 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 on an individual, group, or general area-wide basis.

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

8-7-3: **Responsibility for administration:**

The Storm Water Department shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the

authorized enforcement agency may be delegated in writing by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

Solely the authorized individual under this Section designated to enforce this Ordinance shall have the authority to enforce this Ordinance in its entirety and shall be designated as a TPDES Storm Water Manager and/or designee. The Storm Water Department shall issue individual badges, identification, credentials, and provide for annual training to assure compliance with the laws of the state and federal regulators.

All municipal departments shall comply with the requirements of this Ordinance and are required to incorporate the authority of the authorized individual into its respective daily operations.

8-7-4: Severability:

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

8-7-5: Ultimate Responsibility:

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

8-7-6: Discharge Prohibitions:

Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited. This prohibition expressly includes, illicit connections made in the past, regardless of whether the connection was permissible under law applicable or prevailing at the time of connection except as described as follows:

- (a) The following discharges are exempt from discharge prohibitions established by this Ordinance: water line flushing or other potable sources, landscape, irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated

other

pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if de-chlorinated typically less than one PPM chlorine), fire fighting activities, and any water source not containing pollutants.

- (b) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge but requires authorization by the Storm Water Department, prior to the time of the test.
- (d) The prohibition shall not apply to any non-storm water discharge permitted under the TPDES or NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the TCEQ or the EPA, provided that the discharger is in full compliance with all the requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Prohibition of Illicit Connections.

- (a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (b) This prohibition expressly includes, without limitations, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (c) A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

8-7-7: **Suspension of MS4 access:** Suspension due to Illicit Discharges in Emergency Situations.

The Storm Water Department may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Water of the United States, or to minimize danger to persons.

Suspension due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination

of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

8-7-8: Industrial or Construction Activity Discharges:

Any person subject to an industrial or construction activity TPDES or NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Storm Water Department prior to the allowing of discharges to the MS4.

8-7-9: Monitoring of Discharges:

A. Applicability.

This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

B. Access to Facilities.

1. The Storm Water Department or designee shall be permitted to enter and inspect facilities subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

2. Facility operators shall allow the Storm Water Department 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 a TPDES or NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

3. The Storm Water Department shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Storm Water Department to conduct monitoring and/or sampling of the facility's storm water discharge.

and
4. The Storm Water Department has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

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5. Any temporary or permanent obstruction to safe and easy access to facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Storm Water Department and shall not be replaced. The costs of clearing such access shall be borne by the operator.
 6. Unreasonable delays in allowing the Storm Water Department access to a permitted facility is a violation of the storm water discharge permit and of this Ordinance. A person who is the operator of a facility with a TPDES or NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
 7. If the Storm Water Department has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with Ordinance or any issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.
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8-7-10: **Requirements to Prevent, Control, and Reduce Storm Water Pollutants by the Use of Best Management Practices:**

The Storm Water Department will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the State and U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to

implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid TPDES or NPDES permit authorizing the discharge of storm water associated with industrial activity, the extent practicable, shall be deemed compliance with the provisions of this Section. These BMPs shall be part of a storm water pollution prevention plan (SWP3) as necessary for compliance with requirements of the TPDES or NPDES.

8-7-11: Watercourse Protection:

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

8-7-12: Notification of Spills:

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the State or U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notification in person or by phone shall be confirmed by written notice addressed and mailed to the Storm Water Department within three (3) calendar days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

8-7-13: Enforcement:

Notice of violation.

Whenever the Storm Water Department finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Storm Water Department may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges
3. That violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
5. Payment of a fine to cover administrative and remediation costs; and
6. The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which 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 a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

8-7-14: Appeal of Notice of Violation:

Any person receiving a Notice of Violation may appeal the determination of the Storm Water Department. The notice of appeal must be received within ten (10) calendar days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within fifteen (15) calendar days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

8-7-15: Enforcement Measures after Appeal:

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, within fifteen (15) calendar days of the decision of the municipal authority upholding the decision of the authorized enforcement agency, then representatives of the Storm Water Department or designee shall enter upon the subject property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

8-7-16: Cost of Abatement of the Violation:

Within thirty (30) calendar days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) calendar days. If the amount due is not paid within fifteen (15) calendar days as determined by the decision of the municipal

authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this Ordinance shall become liable to the City by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of ten (10%) per annum shall be assessed on the balance beginning on the tenth (10th) calendar day following discovery of the violation.

8-7-17: Injunctive Relief:

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the Storm Water Department may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or

remediation of the violation.

8-7-18: Compensatory Action:

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the Storm Water Department may impose upon a violator, alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshop, creek cleanup, etc.

8-7-19: Violations Deemed a Public Nuisance:

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

8-7-20: Criminal Prosecution:

Any person that has violated or continues to violate this Ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty as per Section 1-4-1 of the City Code and/or imprisonment in accordance with V.T.C.A., Code of Criminal Procedures §26.01 et seq. The Storm Water Department may recover all attorneys' fees, court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

8-7-21: Remedies not Exclusive:

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

8-7-22: Fines and Policy:

The Storm Water Department is authorized to develop a schedule of fines and to develop policy from time to time to assure the requirements of this Ordinance are met. The schedule of fines shall adhere to applicable local, state and federal laws. The policy shall include, but will not be limited to development of a comprehensive TPDES enforcement program, staff training requirements, development of job descriptions, assignment of fines to specific violations, budget requirements, and job assignments.

SECTION II. The City Secretary is hereby directed to cause this Ordinance to be published in the Code of the City of Alamo.

SECTION III. The City Secretary is hereby authorized to publish a notice of the official newspaper in and for the City of Alamo, Texas, according to law

SECTION IV. This Ordinance shall be effective after its passage and signature by the Mayor of the City of Alamo.

SECTION V. If any section, or part of any section, paragraph or clause of this Ordinance is declared invalid or unconstitutional for any reason, such declaration shall not be held to invalidate or impair the validity, force or effect of any other section, part of any section, paragraph or clause of this Ordinance.

PASSED AND APPROVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF ALAMO, TEXAS, at a Regular Meeting called and held on this the 5th day of June, 2012, held in accordance with the provisions of Chapter 551 of the Texas Government Code.

CITY OF ALAMO:

Diana Martinez, Mayor

ATTEST:

Margot Saenz, City Secretary

APPROVED AS TO FORM ONLY:

Ramirez & Guerrero, LLP
City Attorney