

ORDINANCE NO. 15-2081

AN ORDINANCE AMENDING CHAPTER 38 ENVIRONMENT TO CLARIFY THE TYPES OF DISCHARGES CONTAMINATE STORM WATER RUNOFF; PROVIDING THAT ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH SHALL BE REPEALED TO THE EXTENT OF THE CONFLICT ONLY; PROVIDING FOR A PENALTY; PROVIDING A SAVINGS CLAUSE; AND PROVIDING THAT THIS ORDINANCE SHALL TAKE EFFECT AND BE IN FORCE FIVE DAYS AFTER PUBLICATION.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAKE JACKSON, TEXAS:

Section 1: That section 38-127 shall be amended to read as follows:

Sec. 38-127. Allowable nonstormwater discharges.

(a) The following nonstormwater discharges may be discharged to the MS4, provided that subsection (b) below does not apply:

- (1) A discharge authorized by, and in full compliance with, a TPDES or NPDES permit;
- (2) Water line flushing (excluding discharges of hyperchlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
- (3) Runoff or return flow from landscape irrigation, lawn irrigation, and other irrigation utilizing uncontaminated sources of potable water, groundwater, or surface water;
- (4) Discharges from a potable water source;
- (5) Diverted stream flows;
- (6) Rising ground waters and springs;
- (7) Uncontaminated ground water infiltration;
- (8) Uncontaminated pumped ground water;
- (9) A discharge from a foundation drain or a footing drain;
- (10) Air conditioning condensate;
- (11) Water from a crawl space pump;
- (12) A discharge from residential car washing and non-commercial car washing events;
- (13) Flows from a riparian habitat or wetland;
- (14) Dechlorinated swimming pool discharges;
- (15) Street wash water;
- (16) Dye testing if verbal notification to the City is given prior to the time of the test;
- (17) A discharge or flow from emergency fire fighting activities; and
- (18) Other similar occasional non-storm water discharges, unless the TCEQ develops permits or regulations addressing these discharges.

(b) The city may, on a case-by-case basis, prohibit any of the above listed allowable nonstormwater discharges in subsection (a) provided:

- (1) The discharge or flow in question has been determined by the TCEQ or City Manager to be a significant contributor of a pollutant or pollutants to water in the state or the MS4; and
- (2) Written notice of such determination has been provided to the discharger.

(c) *Specific Prohibitions of Construction Related Illicit Discharges.* It is unlawful for a person to create, cause, introduce, or contribute to creating, causing or introducing any discharge that causes and/or contributes to a violation of applicable water quality standards, including, but not limited to, a discharge or flow composed of one or more of the following from a construction site:

- (1) Pollutants from equipment, vehicle and/or other wash waters;
- (2) Pollutants from exposed building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste or other similar materials;
- (3) Pollutants from spills and/or leaks;
- (4) Pollutants from washout wastewater, fuels, oils, soaps, solvents, and dewatering activities.
- (5) Sediment, silt, earth, soil, dirt, sand and gravel; lime, liquids, solids, and semi-solids used for soil treatment, preparation, or amendment;
- (6) Concrete, slurries, grout, tar, and asphalt;
- (7) Construction vehicle maintenance fluids such as hydraulic fluids, lubricants, fuels, brake fluids, and coolants;
- (8) Hazardous or extremely hazardous materials;
- (9) Materials resulting from repair, renovation, or demolition such as concrete, reinforcing bar, steel, wire, tar paper, roofing materials, sheet rock, plaster, wood, cellar dirt and carpeting;
- (10) Residual and surplus construction materials; and
- (11) Paint thinner, paint equipment cleaner and wastewater from the cleaning of painting equipment and supplies.

Section 2: That section 38-136 shall be amended to read as follows:

Sec. 38-136. Construction Site.

(a) A construction site includes all areas where construction activity, which is all or part of a common development or project, are occurring, proposed to occur, or have occurred, irrespective of whether that construction is in compliance with this Chapter, irrespective of whether that construction activity is ongoing or temporarily suspended for any purpose, and irrespective of whether the City Manager has granted authorization to undertake the construction activity. A construction site shall encompass:

1. All land and surface water areas where construction activities of any type, including all areas of land surface disturbed by or as a consequence of the construction activities or other activities in support of the construction activities, are undertaken as part of a common plan of development or project;
2. All areas of land to be disturbed by construction of a common plan of development or project, irrespective of whether such construction is undertaken or planned to be undertaken in one phase or stage or different phases or stages and irrespective of whether such construction is undertaken or planned to be undertaken at different, separate, or simultaneous times;
3. All areas of land where the land is to be disturbed by construction of a common plan of development or project, irrespective of whether undertaken at contiguous or separate locations within the general area encompassed by the common plan of development or project, provided

such boundary lies on or is within the boundary of property collectively owned or leased by one or more parties undertaking any or all of the construction activities; and

4. All areas of ongoing, temporarily suspended, yet-to-be undertaken, and completed construction encompassing the totality of the construction activities, irrespective of whether any or all the construction activities are within compliance with this chapter.

(b) The City Manager shall have the right to redefine, for purposes of compliance with this chapter, the limits of a construction site in extent and amount necessary and sufficient in the judgment of the City Manager to prevent the actual or potential discharge of pollutants from the construction site to the MS4 or waters of the U.S., provided the limits lie on or within the boundary of property collectively owned or leased by one or more operators undertaking any or all of the construction activities at the site.

(c) A construction site shall cease to be a construction site only at such time that all requirements for closure of the construction site as specified by this chapter and in the storm water permit have been met, at which time the storm water permit will automatically terminate.

(d) The storm water permit coverage will automatically terminate two (2) years after the permit issuance date. If a permit is needed beyond the termination or expiration date, a new permit must be issued.

(e) A construction site for which active and ongoing on-site construction activities have halted for a period of twenty-one (21) continuous calendar days and for which proper closure actions as required by this chapter have not been conducted, shall be considered in violation of this chapter, unless the construction site owner and/or operator has demonstrated to the satisfaction of the City Manager that:

1. Such lack of active and ongoing on-site construction activity is a result of only temporary suspension of activities; and

2. Temporary stabilization practices were initiated no later than fourteen (14) calendar days after the site becoming inactive.

(f) Any and all responsible parties shall use best management practices to control, reduce, and prevent, to the maximum extent practicable, illicit discharges to the MS4 and/or waters of the U.S.

Section 3: That section 38-142 shall be amended to read as follows:

Sec. 38-142. Storm Water Quality Plan.

a) The Storm Water Quality Plan shall be prepared in accordance with the Brazoria County Storm Water Quality Coalition MS4 Construction Guidance Document and Best Management Practices (BMPs). The objective of the plan is to identify potential sources of pollution, including sediment, which will affect the quality of storm water discharges associated with construction and development. The plan must describe the implementation of BMPs that will be used to reduce the pollutants in storm water discharges associated with construction and post-development runoff. Storm Water Quality Plans shall be retained on site during the course of construction and shall be available for inspection by the City upon request.

b) Contents of Storm Water Quality Plan

1) Site Description

a. Total area of the site, and total disturbed area, including off-site staging/storage areas;

b. A description of the existing vegetation at the site, including coverage;

c. The location of other sources of pollution, such as vehicle fueling, storage of chemicals, concrete washout areas, etc.; and

d. The name of the receiving water(s) and description of any outfalls (size, type, and location), if the discharge is to a MS4, the name of the system, the location of the storm sewer discharge, and the ultimate receiving water(s).

2). Construction Documents

- a. A description of the construction activity;
- b. A copy of the development plans; and
- c. Construction schedule.

3). Best Management Practices (BMPs)

a. The BMPs must include locations and descriptions of control measure for each phase of development, including before clearing and grading activities begin; during all phases of construction; and post-construction/post development.

4). Control Measures

a. Construction phase control measures should include, but are not limited to, the following:

1) Temporary Sediment Control Measures

- a) silt fence
- b) sand bag berms
- c) hay bales
- d) check dams
- e) interceptor swales/dikes

2) Temporary Stabilization Measures

- a) temporary seeding
- b) erosion control blankets/matting
- c) mulch/compost
- d) temporary sodding

3) Final Stabilization Measures

- a) permanent seeding
- b) permanent sodding
- c) impervious surfaces

c) Post-Construction Phase control measures must be incorporated into the Storm Water Quality Plan to preserve pre-development hydrologic regimes. These control measures do not apply to residential home construction. Post-construction phase control measures should include, but are not limited to, the following:

1) Velocity Dissipation Measures

- a) On-Site
 - i) vegetated swales
 - ii) check dams

- iii) vegetated filter strips
- iv) level spreaders
- v) velocity dissipation structures

b) Off-Site

- i) surrounding local topography
- ii) concrete-lined drainage channels
- iii) low velocity drainage channels

2) Pre-development Peak Flow Preservation

a) On-Site

- i) detention basins/ponds
- ii) constructed wetlands
- iii) bio-retention
- iv) wet basins

b) Off-Site

- i) in-line detention
- ii) outfall pump systems
- iii) off-site (regional) detention
- iv) low velocity drainage channels

3) Nonstructural Controls

- i) adequate litter and trash services/receptacles
- ii) sweeping and cleaning of streets and parking lots

c. Long Term Maintenance of On-Site Post-Construction Control Measures

1) For new and significant redevelopment projects that are determined by the City to require on-site control post-construction control measures such as detention ponds, constructed wetlands, bio-retention systems, the developer or the person or persons who will be responsible for the maintenance of the control measures shall execute an affidavit that states that post-construction control measures shall be in place and maintained for as long as required.

2) The affidavit must be submitted to the City Manager no later than ten (10) calendar days before the commencement of construction activities and will serve as a legal commitment to the City.

3) The City Manager may also require that a Maintenance Bond be issued to ensure the maintenance is performed according to the said legal commitment.

d.. Inspections

1) The plan shall provide that qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of any construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that

they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, best management practices shall be modified as appropriate, and as soon as is practicable.

e. Revisions to Storm Water Quality Plan

1) The Storm Water Quality Plan shall accurately reflect site conditions and the construction activities proposed to be undertaken. Revisions necessary to maintain an accurate and up-to-date Storm Water Quality Plan shall be made in a timely fashion but in no case later than two (2) working days after the occurrence of conditions or activities requiring such revisions.

2) If the conditions or activities described by a Storm Water Quality Plan revision could be reasonably expected to result in an increase in the actual or potential discharge of pollutants from the site, such revision must be approved by the City Manager prior to implementation of the proposed revision.

3) If the City Manager does not approve or reject of the revision within ten (10) working days, the revision(s) shall be assumed to be approved.

Section 4: A violation of this ordinance shall be a Class C misdemeanor and the penalty for violating this ordinance shall be as provided for in Sec. 1-5 of the Code of Ordinances of the City of Lake Jackson. Each day that a violation of this ordinance occurs shall be considered a separate violation.

Section 5: All ordinances or part of ordinances in conflict herewith are hereby repealed to the extent of the conflict only.

Section 6: If any part or portion of this ordinance shall be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect or impair any remaining portions or provisions of the ordinance.

Section 7: The City Secretary shall publish the caption of this ordinance within ten (10) days of final passage in the official newspaper of the City. This ordinance shall take effect and be in force five (5) days after publication in accordance with Section 3-15 of the Charter of the City of Lake Jackson, Texas.

PASSED AND APPROVED on first reading on the 21st day of September 2015.

PASSED AND ADOPTED on second and final reading this 5th day of October, 2015.

Joe Rinehart, Mayor
City of Lake Jackson

ATTEST:

Alice Rodgers
City Secretary

APPROVED AS TO FORM:

Sherri Russell
City Attorney