

TOWN OF ADDISON, TEXAS

ORDINANCE NO. 010-016

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS ADOPTING A NEW CHAPTER 72 ESTABLISHING ILLICIT DISCHARGE RESTRICTIONS IN THE TOWN PURSUANT TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY GUIDELINES AND SUBSEQUENTLY ADOPTED TEXAS COMMISSION ON ENVIRONMENTAL QUALITY STANDARDS; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Amendment. The Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by adding thereto a new Chapter 72 regarding illicit discharges and restrictions as set forth in Exhibit A attached hereto and incorporated herein for all purposes, and all other chapters, articles, sections, subsections, sentences, phrases and words of the said Code of Ordinances are not amended hereby.

Section 2. Savings; Repealer. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those ordinances are in direct conflict with the provisions of this Ordinance. Provided, however, that the repeal of such ordinances or parts of such ordinances, and the amendments and changes made by this Ordinance, shall not affect any right, property or claim which was or is vested in the City, or any act done, or right accruing or accrued, or established, or any suit, action or proceeding had or commenced before the time when this Ordinance shall take effect; nor shall said repeals, amendments or changes affect any offense committed, or any penalty or forfeiture incurred, or any suit or prosecution pending at the time when this Ordinance shall take effect under any of the ordinances or sections thereof so repealed, amended or changed; and to that extent and for that purpose the provisions of such ordinances or parts of such ordinances shall be deemed to remain and continue in full force and effect.

Section 4. Penalty. It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Section 5. Severability. The provisions of this Ordinance are severable, and if any section or provision of this Ordinance or the application of any section or provision to any

person, firm, corporation, entity, situation or circumstance is for any reason adjudged invalid or held unconstitutional by a court of competent jurisdiction, the same shall not affect the validity of any other section or provision of this Ordinance or the application of any other section or provision to any other person, firm, corporation, entity, situation or circumstance, and the City Council declares that it would have adopted the valid portions of this Ordinance adopted herein without the invalid or unconstitutional parts and to this end the provisions of this Ordinance adopted herein shall remain in full force and effect.

Section 6. Effective Date. This Ordinance shall become effective from and after its passage and approval and its publication as may be required by law (including, without limitation, the City Charter and the ordinances of the City).

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 8th day of June, 2010.



Joe Chow, Mayor

ATTEST:

By: 

Lea Dunn, City Secretary

APPROVED AS TO FORM:

By: 

John Hill, City Attorney

EXHIBIT A
TO ORDINANCE NO. 010-016

CHAPTER 72
ILLICIT DISCHARGES

ARTICLE I. IN GENERAL.

Section 72-1. Purpose, Intent.

The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City 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. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) and Texas Pollutant Discharge Elimination System (TPDES) permit process. The objectives of this chapter are to:

- (a) Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user;
- (b) Prohibit Illicit Discharges and Illicit Connections to the municipal separate storm sewer system;
- (c) Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter;
- (d) Provide appropriate enforcement procedures and actions for chapter violations.

Section 72-2. Definitions.

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

Authorized Enforcement Personnel means the City Manager or the City Manager's designee or designees authorized to enforce this chapter.

Best Management Practices (BMPs) include schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

City means the Town of Addison, Texas.

Construction Activity means any activity subject to NPDES or TPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. 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 ___ of this chapter.

Illicit Connections are defined as any of the following:

(1) Any 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 drain 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

(2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity 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 or 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 means 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, also known as a municipal separate storm sewer system (MS4). The MS4 includes but is not limited to any roads with drainage systems, bar ditches, municipal streets, gutters, curbs, inlets, piped storm drains, culverts, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

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

Storm Water Pollution Prevention Plan means a document which describes the Best Management Practices and 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 stormwater, 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 Texas Commission on Environmental Quality (TCEQ) 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.

Section 72-3. Applicability.

This chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City.

Section 72-4. Responsibility for Administration.

The authorized enforcement personnel shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the authorized enforcement personnel may be delegated by the City Manager to persons or entities acting in the beneficial interest of or in the employ of the City.

Section 72-5. Compatibility with Other Regulations.

This chapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this chapter are in addition to the requirements of any other chapter, article, section, or subsection of the Code of

Ordinances of the City, and any ordinance, rule, regulation, or other provision of law, and where any provision of this chapter imposes restrictions different from those imposed by any other chapter, article, section, subsection of the said Code of Ordinances or any ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Section 72-6. Severability.

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

Section 72-7. Ultimate Responsibility.

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

ARTICLE II. PROHIBITIONS.

Section 72-8. 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 except as described as follows:

(a) The following discharges are exempt from discharge prohibitions established by this chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, individual residential washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.

(b) Discharges or flow from fire fighting, and other specified in writing by the City as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge, but requires a verbal notification to the City prior to the time of the test.

(d) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES or TPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA or TCEQ, provided that the discharger is in full compliance with all 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.

Section 72-9. 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 limitation, 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 chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(d) Improper connections in violation of this chapter must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City.

(e) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City.

ARTICLE III. SUSPENSION OF MS4 ACCESS.

Section 72-10. Suspension due to Illicit Discharges in Emergency Situations.

The City 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 to 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 waters of the United States, or to minimize danger to persons.

Section 72-11. Suspension due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement personnel 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 personnel.

ARTICLE IV. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Section 72-12. Industrial or Construction Activity.

Any person subject to an industrial or construction activity NPDES or TPDES 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 City prior to the allowing of discharges to the MS4.

ARTICLE V. MONITORING OF DISCHARGES.

Section 72-13. Applicability.

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

Section 72-14 Access to Facilities.

(a) The authorized enforcement personnel shall be permitted to enter and inspect facilities and premises subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. 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 the authorized enforcement personnel.

(b) Facility operators shall allow the authorized enforcement personnel 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 authorized enforcement personnel shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

(d) The authorized enforcement personnel has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and 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 stormwater flow and quality shall be calibrated to ensure their accuracy.

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

(f) Unreasonable delays in allowing the authorized enforcement personnel access to a permitted facility is a violation of a storm water discharge permit and of this chapter. 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 authorized enforcement personnel reasonable access to the permitted facility or premises for the purpose of conducting any activity authorized or required by this chapter.

(g) If the authorized enforcement personnel has been refused access to any part of the premises from which storm water is discharged, and the authorized enforcement personnel is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 this chapter or any order 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.

ARTICLE VI. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

Section 72-15. Best Management Practices.

The City 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 United States. 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 NPDES or TPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this article. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES or TPDES permit.

ARTICLE VII. WATERCOURSE PROTECTION.

Section 72-16. Watercourses.

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.

ARTICLE VIII. NOTIFICATION OF SPILLS.

Section 72-17. Notification.

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 water of the United States, 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 personnel in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town of Addison Director of Public Works within three business 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 years.

ARTICLE IX. ENFORCEMENT; APPEAL; PENALTY.

Section 72-18. Compliance; Notice.

Whenever authorized enforcement personnel finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the authorized enforcement personnel may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;

- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) 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.

Section 72-19. Appeal of Notice of Violation; Board of Appeals.

Any person receiving a notice of violation may appeal the determination of the authorized enforcement personnel. The notice of appeal must be filed with the City Secretary and received by the City Secretary within 10 days from the date of the notice of violation. The appeal shall be heard by a board of appeals (the "board of appeals"), hereby created, consisting of the members of the City's board of adjustment appointed by the City Council pursuant to Appendix A, Article XXIV of the Code of Ordinances of the Town of Addison. Hearing on the appeal before the board of appeals shall take place within 15 days from the date of the City Secretary's receipt of the notice of appeal. At a hearing of the board of appeals pursuant to this appeal process, the appellant, the appellant's representative, the authorized enforcement personnel, and any person whose interests are affected shall be given an opportunity to be heard. The decision of the board of appeals shall be final.

The number of members of the board of appeals shall be equal to the number of members of the said board of adjustment, and alternate members of the said board of adjustment shall be alternate members of the board of appeals who may serve in the absence of one or more regular members when requested to do so by the City Manager or the City Manager's designee. Appointment to (including the filling of a vacancy), removal from, and the terms (including term limits) of the members of the board of appeals shall be the same as for members of the board of adjustment. Four (4) members of the board of appeals (including, in the absence of one or more regular members, alternate members) shall constitute a quorum for the conduct of business of the board of appeals, and any action of the board of appeals shall require at least three (3) affirmative votes to be adopted or passed.

Section 72-20. 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 10 days following the date of the decision of the board of appeals upholding the decision of the authorized enforcement personnel, then authorized enforcement personnel shall, in accordance with law, enter upon the subject private 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.

Section 72-21. Cost of Abatement of the Violation.

If measures are taken to abate a violation and/or restore property as set forth in Section 72-20, then within 30 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 cost within 10 days after the property owner's receipt of the notice. If the amount due is not paid within a timely manner as determined by the decision of the board of appeals (in the event of an appeal as set forth in Section 72-19) 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, and a record thereof may be filed in the real property records of the county in which the property is located.

Section 72-22. Unlawful Violation; Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the City may, among its other rights and remedies, 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.

Section 72-23. Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the Town of Addison may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, and other actions.

Section 72-24. Violations Deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided in this chapter or by any other law, rule, code, standard, or regulation, any condition caused or permitted to exist in violation of any of the provisions of this chapter 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.

Section 72-25. Remedies Not Exclusive.

The rights and remedies listed in this chapter are not exclusive of any other rights or remedies available to the Town of Addison under any applicable federal, state or local law, and it is within the discretion of the Town of Addison to seek cumulative remedies.

Section 72-26. Penalty.

It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this chapter, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than Five Hundred and No/100 Dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.