

ORDINANCE NO. 891

AN ORDINANCE AMENDING CHAPTER 50 "UTILITIES", OF THE CODE OF ORDINANCES OF THE CITY OF KYLE, TEXAS, BY THE ADDITION OF ARTICLE IX, "STORMWATER REGULATIONS; PROVIDING FINDINGS AND DEFINITIONS; PROVIDING FOR THE REGULATION NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM TO THE MAXIMUM EXTENT PRACTICABLE AS REQUIRED BY BOTH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR PENALTIES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City of Kyle to utilize its police power in order to protect the public health, safety and welfare of its citizens; and

WHEREAS, it is the intent of the City of Kyle to comply with the regulations mandated by both the United States Environmental Protection Agency and the Texas Commission on Environmental Quality through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law; and

WHEREAS, this ordinance establishes methods for controlling the introduction of pollutants into the municipal storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System permit process; and

WHEREAS, Texas Local Government Code Section 51.001 provides that the governing body of a municipality may adopt, publish or repeal an ordinance that is for the good government, peace, or order of the municipality.

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

SECTION 1. Article IX, Stormwater Regulations, Sections 50-400 to 50-~~423~~ are hereby added to Chapter 50 "Utilities" of the Code of Ordinances, and is hereby amended to read and be as follows:

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ARTICLE IX. STORMWATERREGULATIONS

Sec. 50-400. - Purpose and intent.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Kyle through the regulation of non-stormwater discharges to the Municipal Separate Storm Sewer System (MS4) of any land within the city limits, ETJ to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for

controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (a) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- (b) To prohibit illicit connections and discharges to the MS4.
- (c) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

Sec. 50-401. - Definitions.

For the purposes of this ordinance, the following shall mean:

Best Management Practices (BMPs) means any 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.

Business Day means any day of the week, excluding Saturdays, Sundays, and legal holidays.

Calendar Day means any day of the week, including Saturdays, Sundays, and legal holidays, with no days being exempted.

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

Common Plan of Development means a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as a "common plan of development or sale") is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities. A common plan of development does not necessarily include all construction projects within the jurisdiction of the city. Construction of roads or buildings in different parts of the city would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located $\frac{1}{4}$ mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not included in the area to be disturbed.

Construction Activity means the disturbance of soils associated with, but not limited to, clearing, grubbing, grading, excavating, and demolition activities or other construction activities.

Conveyance means any of the following by way of illustration and not limited to: stream channel, drainage way, drainage/dry well, ephemeral stream, floodplain, karst feature, storm drainage system, drainage system appurtenance, waterbody, watercourse, waterway, curbs, gutters, man-made channels and ditches, drains, pipes, or other constructed features designed or used for flood control, or to otherwise transport stormwater runoff.

Discharge means any addition or introduction of any pollutant, stormwater, or any other substance whatsoever into the Municipal Separate Storm Sewer System (MS4), storm drain system, or conveyances.

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

Final Stabilization means a construction site status where all soil disturbing activities at the site have been completed and a uniform (that is, evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

Hazardous Materials means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261, 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.

Illicit Connection means any connection defined as either of the following:

- (1) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the storm drain system including but not limited to any conveyances that allow any non-stormwater 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 the city or,
- (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by the city.

Illicit Discharge means any direct or indirect non-stormwater discharge to the storm drain system, MS4, or conveyances, except as specifically exempted in this ordinance.

Industrial Activity means any activities subject to National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater Permits as defined in 40 CFR, Section 122.26 (b) (14) or Texas Pollutant Discharge Elimination System (TPDES) Industrial Stormwater Permits as defined in the TPDES Multi-Sector Industrial General Permit for Stormwater TXR050000.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances by which stormwater is collected and/or conveyed, including but not limited to sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, inlets, pumping facilities, retention and detention basins, natural and/or human-made drainage channels, reservoirs, storm drains and/or other drainage structures that are not used for collecting or conveying sewage.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means any permit issued by EPA (or by a 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 on an individual, group, or general area-wide basis.

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

Operator means the person or persons associated with a large or small construction activity that is either a primary or secondary operator as defined below:

- (1) **Primary Operator** means the person or persons associated with a large or small construction activity that meets either of the following two criteria:
 - (A) the person or persons have on-site operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or
 - (B) the person or persons have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a Stormwater Pollution Prevention Plan (SWP3) for the site or other permit conditions (for example, they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).
- (2) **Secondary Operator** means the person or entity, often the property owner, whose operational control is limited to:
 - (A) the employment of other operators, such as a general contractor, to perform or supervise construction activities; or
 - (B) the ability to approve or disapprove changes to construction plans and specifications, but who does not have day-to-day on-site operational control over construction activities at the site.

Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications. If there is not a primary operator at the construction site, then the secondary operator is defined as the primary operator and must comply with the requirements for primary operators.

Person means any individual, association, homeowners association, organization, partnership, co-partnership, firm, company, corporation, trust, estate, operator, governmental entity, or any other legal entity, or their legal representatives, agents, lessees, or assigns. This term shall also include all federal, state, and local governmental entities.

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, 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; silt, sediment, sand, soil; and noxious or offensive matter of any kind. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

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

Repeat violation means the same violation is documented two (2) times within the most recent 5-year period at the same premises, including the notification for the current violation.

Storm Drainage System means see definition for *Municipal Separate Storm Sewer System (MS4)*.

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

Stormwater Pollution Prevention Plan (SWP3) means a plan required by either the construction general permit, TXR150000, or the industrial general permit, TXR050000, which describes BMPs and ensures the implementation of such BMPs used by a person or business to reduce pollutants to the Maximum Extent Practicable in stormwater discharges associated with construction and/or industrial activity for a specific location.

Texas Pollutant Discharge Elimination System (TPDES) means the state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under the Clean Water Act §§ 307, 402, 318 and 405, Texas Water

Code, and Texas Administrative Code regulations.

Violator means any individual, association, homeowners association, organization, partnership, co-partnership, firm, company, corporation, trust, estate, operator, governmental entity, or any other legal entity, or their legal representatives, agents, lessees, or assigns who knowingly or unknowingly commits an offense of this ordinance. This term shall also include all federal, state, and local governmental entities.

Wastewater means all liquids and waterborne waste, drainage water, and sewage, whether treated or untreated, from residential dwellings, commercial buildings, or industrial or manufacturing facilities and institutions.

Watercourse means see definition for *Conveyance*.

Sec. 50-402. - Applicability.

This ordinance shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by the city. This ordinance applies to developed and/or undeveloped lands within the city limits, ETJ or any property owned by the city.

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Sec. 50-403. - Responsibility for administration.

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

Sec. 50-404 - Compatibility with other regulations.

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other 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.

Sec. 50-405. - Minimum standards.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance with this ordinance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants. Additionally, no inference is intended that compliance with this article will serve to extend any deadline established by a state or federal standard requirement, nor is any inference intended that compliance with this ordinance will relieve a person of liability for any violation or continuing violation.

Sec. 50-406. - Prohibitions.

(a) *Prohibition of Illicit Discharges.*

No person within the city limits, extraterritorial jurisdiction, or property of the city shall

dump, spill, leak, pump, pour, emit, empty, leach, dispose, or otherwise introduce, discharge, cause, allow, or permit to be introduced any materials, including but not limited to pollutants or waters containing any pollutants, into the city's MS4 or conveyances.

(b) *Prohibition of Illicit Connections.*

- (1) The construction, use, maintenance or continued of a new or existing illicit connection(s) to the storm drain system, MS4, or any conveyances is prohibited.
- (2) 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.
- (3) 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.
- (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm drain system, shall be located by the owner or occupant of that property upon written notice 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 drain, sanitary sewer or other, and that the outfall location or point of connection to the storm drain system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the city.

(c) *Allowable Discharges.*

- (1) A discharge authorized by, and in full compliance with, a TPDES permit;
- (2) a discharge or flow resulting from firefighting by the Fire Department;
- (3) a discharge or flow of fire protection water that does not contain oil or hazardous substances;
- (4) agricultural stormwater runoff;
- (5) a discharge or flow from water line flushing, but not including a discharge from water line disinfection by super chlorination or other means unless the total residual chlorine (TRC) has been reduced to less than 1.0 mg/l and it contains no harmful quantity of chlorine or any other chemical used in line disinfection;
- (6) a discharge or flow from lawn watering, or landscape irrigation, or other irrigation water;
- (7) a discharge or flow from a diverted stream or natural spring;
- (8) a discharge or flow from uncontaminated pumped groundwater or rising groundwater;
- (9) uncontaminated groundwater infiltration (as defined as 40 C.F.R. § 35.2005(20)) to the MS4;
- (10) uncontaminated discharge or flow from a foundation drain, crawl space pump, footing drain, or sump pump;
- (11) a discharge or flow from a potable water source not containing 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;
- (14) a discharge or flow from water used in street washing that is not contaminated with any

soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;

- (15) stormwater runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber or filter or any other source of pollutant;
- (16) swimming pool water that has been dechlorinated so that total residual chlorine (TRC) is less than 1.0 mg/l and that contains no harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning.

Sec. 50-407. - 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.

Sec. 50-408. - Industrial activity discharges.

Any person subject to an industrial activity NPDES/TPDES stormwater discharge permit shall comply with all provisions of such permit; ~~the city can enforce compliance with said permit. regarding discharges to the MS4.~~

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Sec. 50-409. - Construction activity discharges.

Any person subject to a TPDES Construction General Permit (CGP) shall comply with all provisions of such permit; ~~the city can enforce compliance with said permit. regarding discharges to the MS4.~~

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(a) Upon determination made by the city, erosion and sedimentation controls may be required for all construction, development and redevelopment, regardless of how much land will be disturbed, conducted with or without a permit, including without limitation to commercial, multi-family, single-family, and duplex construction, roads, utilities, parks, golf courses, water quality basins, detention basins, and all other activities utilizing clearing, trenching, grading or other construction techniques.

(b) The city may withhold a temporary or final certificate of occupancy, certificate of acceptance, or fiscal security until the city has conducted a final stormwater inspection and given approval.

Sec. 50-410. - ~~Best Management Practices (BMPs) and Erosion and sediment controls (ESCs).~~

(a) ESCs shall be designed, installed and maintained to ~~minimize~~ prevent the discharge of pollutants.

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(b) Soil stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.

(c) ~~Best Management Practices (BMPs)~~ shall be designed, installed, implemented, and maintained to ~~minimize~~ prevent the discharge of pollutants to the ~~city's small~~ MS4. At a minimum, such BMPs must be designed, installed, implemented and maintained to:

(1) prevent ~~minimize~~ the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters;

(2) prevent ~~minimize~~ the off-site vehicle tracking of sediment and remove any off-site vehicle tracking that occurs;

(3) control the generation of dust;

(4) control ~~minimize~~ the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Materials exposed to stormwater shall be managed in a way to prevent the material from running off-site;

(5) prevent ~~minimize~~ the discharge of pollutants from spills and leaks; and

(6) prevent trash and construction waste from leaving the construction site. Any trash, debris and/or construction waste that leaves the construction site shall be collected and disposed of properly daily.

(d) Temporary ESCs:

(1) are required for all construction activities until permanent revegetation or final stabilization has been established; and

(A) must be removed after all soil disturbing activities at the site have been completed and final stabilization has been achieved.

(B) for individual lots in a residential construction site, temporary ESCs must be removed after all soil disturbing activities at the site have been completed and final stabilization has been achieved by either:

(i) the homebuilder completing final stabilization as specified in condition (A) above; or

(ii) the homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization. If temporary stabilization is not feasible, then the homebuilder may fulfill this requirement by retaining perimeter controls or BMPs, and informing the homeowner of the need for removal of temporary controls and the establishment of final stabilization.

(e) Modification of ESCs.

(1) The city may require modifications to ESCs:

(A) if the modification is a minor change to upgrade erosion controls or reflect construction progress; or

(B) the city determines that the erosion and sediment controls are inappropriate or inadequate.

(f) A person commits an offense if the person allows sediment from a construction site to enter a waterway or migrate off-site by failing to maintain ESCs.

(1) If the temporary or permanent controls fail such that construction sediment evades the controls and migrates off the site, it shall be the responsibility of the contractor to:

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- (A) retrieve the fugitive sediment to the satisfaction of the city;
- (B) restore the off-site areas impacted by fugitive sediment to pre-disturbance conditions determined by the city; and
- (C) revise or repair ESCs within 48 hours of failure to the satisfaction of city.

(g) The city can proceed with enforcement and/or penalties immediately in the following situations:

- (1) starting construction prior to the preconstruction meeting.
- (2) initiating land disturbance and/or construction without having installed temporary controls.
- (3) significant or irreparable damage is determined to be occurring on a construction site.

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Sec. 50-411. - Overland flow.

(a) Drainage patterns must be designed to:

- (1) prevent erosion;
- (2) maintain infiltration and recharge of local seeps and springs;
- (3) attenuate the harm of contaminants collected and transported by stormwater; and
- (4) where possible, maintain and restore overland sheet flow, maintain natural drainage features and patterns, and disperse runoff back to sheet flow.

(b) The applicant shall design an enclosed storm drain to mitigate potential adverse impacts on water quality by using methods to prevent erosion and dissipate discharges from outlets. Applicant shall locate discharges to maximize overland flow through buffer zones or grass-lined swales wherever practicable.

Sec. 50-412. - Long-term maintenance of post-construction stormwater control measures.

Maintenance performed by the owner or operator of a new development or redeveloped site shall have a maintenance plan. The maintenance plan must be filed in the real property records of the county in which the property is located. The owner or operator of any new development or redeveloped site shall develop and implement a maintenance plan addressing maintenance requirements for any structural control measures installed on site. Operation and maintenance performed shall be documented and retained on site, such as at the offices of the owner or operator, and made available for review by the city.

Sec. 50-413. - Low impact development.

The city encourages the use of Low Impact Development (LID). See Appendix A – Low impact development.

Sec. 50-414. - Compliance monitoring.

(a) *Right of Entry: Inspection and Sampling.*

This section applies to all facilities that have stormwater discharges associated with industrial activity and/or construction activity. The city shall be permitted to enter and inspect premises subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance and have the right to enter the premises of any person or entity discharging stormwater to the MS4 or to waters of the United States to determine if the discharger is complying with all requirements of this ordinance as well

as state and federal rules and regulations.

- (1) The city shall have immediate 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/TPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (2) If a discharger has security measures in force which require proper identification and clearance before entry into/onto its premises, the person shall make the necessary arrangements to allow city staff access, upon presentation of identification, without delay for the purposes of performing the city's responsibilities.
- (3) The city shall have the right to set up on any discharger's property, or require installation on the discharger's property, such devices as the city deems necessary to conduct monitoring, sampling, and/or metering of the discharger's operations.
- (4) The city may require the discharger to conduct specific sampling, testing, analysis, and other monitoring of its stormwater discharges at the discharger's expense, and may specify the frequency and parameters of any such monitoring.
- (5) The city may require the discharger to install monitoring equipment as necessary at the discharger's expense. All equipment used to measure flow and quality of discharges shall be maintained at all times in a safe and proper operating condition and calibrated to ensure accuracy at the discharger's expense.
- (6) Any temporary or permanent obstruction to safe and easy access to the 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.
- (7) Unreasonable delays in allowing the city access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES/TPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (8) Unreasonable delays in allowing the city access to the discharger's premises shall be deemed a violation of this ordinance.

(b) Search Warrants.

If the city has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a 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 this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 50-415. - Requirement to prevent, control, and reduce stormwater pollutants by the use of BMPs.

The city will require BMPs for any activity, operation, or premises which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of

the United States. The owner or operator of such activity, operation, or premises shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the city's storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that 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 MS4. Compliance with all terms and conditions of a valid NPDES/TPDES permit authorizing the discharge of stormwater associated with industrial activity and/or construction activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a SWP3 as necessary for compliance with requirements of the NPDES/TPDES permit.

Sec. 50-416. - Notifications of spills.

- (a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, premises or operation, or person responsible for emergency response for a facility, premises or operation, has information of any known or suspected release of materials which are resulting, may result, or has resulted in an illicit discharge or pollutants discharging into stormwater, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such discharge.
- (1) 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.
 - (2) In the event of a release of non-hazardous materials, said person shall notify the city's Stormwater Management Plan Administrator in person, by phone or facsimile no later than the next business day.
 - (3) A written notification of any and all discharges shall be confirmed, addressed and mailed to the city's Stormwater Management Plan Administrator within three (3) business days, of the date of the discharge.
 - (4) 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 a minimum of three (3) years.
 - (5) Failure to provide notification of a release as provided above is a violation of this ordinance.

Sec. 50-417. - Enforcement.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the city is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The city is authorized to seek costs of the abatement as outlined in this ordinance.

The city has the authority to assess penalties, including monetary, civil, or criminal penalties. In addition to other remedies, the city may institute any appropriate action or proceedings to prevent or abate any activity(ies) in violation of this ordinance. Appropriate action or proceedings include without limitation, the termination of utility services (electric, water, wastewater); revocation of permits, licenses, or bonds; stop work orders; and institution of legal action in a court of competent jurisdiction. Initiation of one form of enforcement activity by city employees shall not preclude city employees from initiating any other form of enforcement activity.

(a) *Notice of Violation (NOV).*

- (1) Whenever the city finds that a person has violated ~~a prohibition~~ and/or failed to meet a requirement of this ordinance, the city may order compliance by ~~a written~~ or verbal NOV 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 stormwater pollution or contamination hazards and the restoration of any affected property;
- (E) payment of a ~~penalty; and/or fine to cover administrative and remediation costs;~~
- (F) the implementation of source control or treatment BMPs.

- (2) ~~Within ten calendar days from the timeframe stated in~~ date of the NOV, The alleged violator shall submit to the Stormwater Management Plan Administrator, ~~documentation, a written description~~ of actions taken, including supporting documentation, to correct and prevent the reoccurrence of the alleged violation. Submission of corrective actions taken shall in no way relieve the alleged violator of liability for any alleged violation occurring before or after receipt or notification of the NOV. Nothing herein shall limit the authority of the city to take action, including emergency action, issuance of a stop work order or any other enforcement action, in the absence of the issuance of an NOV.

(b) *Repeat violations.*

~~Civil~~ Penalties may be imposed if the same violation is documented two (2) times within the most recent 5-year period, including the notification for the current violation.

- (c) If abatement of a violation and/or restoration of an affected property is required, the NOV ~~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 the affected property 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.

(d) *Compensatory Action.*

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

(e) *Suspension of MS4 Access.*

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(1) Emergency Cease and Desist Orders

When the city finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has/have caused or contributed to an actual or potential discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the city may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (A) immediately comply with all ordinance requirements; and
- (B) take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(2) Any person notified of an emergency cease and desist order shall immediately comply and stop or eliminate the discharge. In the event of a violator's failure to immediately comply voluntarily with the emergency order, the city may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a premises and/or facility's water supply, sewer connection, or other municipal utility services. The city may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the city that the period of endangerment has passed, unless further termination proceedings are initiated against the violator under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the discharge and the measures taken to prevent any future occurrence, to the city's Stormwater Management Plan Administrator within three (3) calendar days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(f) *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 potential 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 city 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.

(g) *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 city will notify a discharger of the proposed termination of its MS4 access. The discharger may petition the city 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 city.

Sec. 50-418. - Civil Penalties.

(a) Criminal Penalty - any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a penalty or fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

(b) Civil Penalty - the city may file suit to recover any charges due hereunder, together with maximum interest, attorney fees and other costs and charges that may be allowed by the Act or other law, which is not paid when due. Nothing herein shall prevent the city from taking such lawful action as is necessary to prevent or remedy any violation.

In the event a person fails to take the remedial measures set forth in the NOV, otherwise fails to resolve the violations within the specified deadlines, or receives a repeat violation at the same premises, the city may impose a penalty not to exceed \$2,000.00 per violation per calendar day the violation(s) remains unresolved after receipt of the NOV or upon the second time the person receives a repeat violation.

Sec. 50-419. - 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 of \$2,000.00 per violation per calendar day and/or imprisonment for a period of time not to exceed 10 calendar days. Each act of violation and each day upon which any violation occur shall constitute a separate offense. The city may recover all attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Sec. 50-419. - Appeal of NOV.

Any person receiving an NOV may appeal the determination of the city. The notice of appeal must be received within 10 calendar days from the date of the NOV. Hearing on Review of the appeal shall take place within 30 calendar days from the date of receipt of the notice of appeal. The decision of the City Manager or their designee shall be final.

Sec. 50-420. - Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the NOV, or in the event of an appeal, within the timeframe noted in 10 calendar days of the decision of the municipal authority upholding the decision of the city, then representatives of the city shall 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 city or designated contractor to enter upon the premises for the purposes set forth above.

Sec. 50-421. - Cost of abatement of the violation.

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~~Within 20 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 ~~10 calendar days~~ of receipt of the costs. If the amount due is not paid within ~~the specified timeframe~~ a timely manner as determined by the decision of the ~~municipal authority~~ city 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 article shall become liable to the city by reason of such violation. ~~The liability shall be paid in not more than 12 equal payments.~~

Sec. 50-422. - 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 ~~discharger's~~ violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Sec. 50-423. - 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 city to seek cumulative remedies. The city may recover all attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 2. SEVERABILITY CLAUSE: If any section, subsection, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be stricken from the ordinance, and such holding shall not affect the validity of the remaining portions thereof. The balance of the ordinance shall be construed as one instrument and as if the offending portion had not been included.

SECTION 3. SAVINGS CLAUSE: All ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

SECTION 4. EFFECTIVE DATE: Effective immediately following the publication in accordance with the City's Charter.

PASSED AND ADOPTED this ____ day of _____, 2017.

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Deleted: Effective immediately following the publication of this ordinance in the local newspaper as required by Section 51.052 of the Texas Local Government Code, the provisions of this ordinance will apply within the developed and/or undeveloped lands within the city limits, ETJ or any property owned by the City of Kyle, Texas.

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R. Todd Webster, Mayor

ATTEST:

~~Jennifer Vetrano~~ ~~Amelia Sanchez~~, City Secretary

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APPROVED AS TO LEGAL FORM:

Frank J. Garza, City Attorney