

ORDINANCE NO. 946

AN ORDINANCE ADDING, ARTICLE VIII “EROSION AND SEDIMENT CONTROL TO CHAPTER 9.5 “ENVIRONMENT” OF THE CITY OF SOUTHLAKE CODE OF ORDINANCES TO PROVIDE FOR THE REGULATION OF EROSION PREVENTION AND SEDIMENT CONTROL AT CONSTRUCTION SITES WITHIN THE CITY OF SOUTHLAKE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR PUBLICATION IN THE MANNER AUTHORIZED BY LAW; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Southlake, Texas (“the City”) is a home rule city acting under its power adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) Rules and Regulations for *Municipal Separate Storm Sewer Systems (MS4)* state that a municipality must implement *Construction Site* storm water runoff controls; and

WHEREAS, the TCEQ Rules and Regulations for *MS4s* require a program be developed that will reduce *Pollutants* in any storm water runoff to the small *MS4* from construction activities that result in a land disturbance of greater than or equal to one acre or if that construction activity is part of a *Common Plan of Development* that would disturb one acre or more of land; and

WHEREAS, during the construction process, soil is highly vulnerable to erosion by wind and water and eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitats for fish and other desirable species; and

WHEREAS, siltation in waterways can increase the probability of flooding and necessitates repair of sewers and ditches and the dredging of ponds and lakes; and

WHEREAS, the City Council deems that it is necessary to adopt regulations in order to safeguard *Persons*, protect property, prevent damage to the environment in the City of Southlake and promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in the City of Southlake.

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

SECTION 1

That the Code of Ordinance of the City of Southlake is hereby amended by adding Article VII "Erosion and Sediment Control" to Chapter 9.5 Environment to read as follows:

"EROSION AND SEDIMENT CONTROL"

Sec. 9.5-400 Responsibility. It shall be the joint duty and responsibility of the *Directors* of Public Works and Planning and Development Services or their authorized representatives to administer, implement and enforce the provisions of this ordinance.

Sec. 9.5-401 Applicability. Only erosion and sedimentation from a *Construction Site* which impacts public property and public rights-of-way are governed by this ordinance. It is not a violation of this ordinance if erosion and sediment loss from a *Construction Site* occurs upon private property and is deposited upon private property unless the flow travels through the MS4.

Sec. 9.5-402 Definitions and Abbreviations. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Article, shall have the meanings hereinafter designated. Any terms not defined by this ordinance are understood to be defined by the Texas *Construction General Permit* TXR150000 or its successor.

Best Management Practice (BMP) or Control Measure means the schedule of activity, prohibition, maintenance procedures, structural controls, and other management practices meant to prevent or reduce the discharge of *Pollutants*. *BMPs* or control measures also include treatment requirements, operating procedures, and practices to control *Construction Site* runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

City of Southlake Erosion and Sediment Control Manual means a document prepared by the City of Southlake that contains details on the use and maintenance of *Erosion and Sediment Controls*.

Clearing or Commencement of Construction means the initial disturbance of soils associated with Clearing, Grading, or excavation activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition).

Common Plan of Development is as defined by the Texas *Construction General Permit* TXR150000 or its successor.

Construction General Permit (CGP) means the Texas Construction General Permit TXR150000, its successor or any other state regulation to control runoff from *Construction Sites* issued by the Texas Commission on Environmental Quality (TCEQ) or the state regulatory authority.

Construction Site(s) means any *Clearing, Grading*, and excavating that results in land disturbance. A Construction Site also includes but is not limited to any stockpiling or other activity that results in exposed soils. This includes the construction of pools and the installation and maintenance of public utilities such as telephone, gas, electric, telecommunications, etc. This excludes the disturbance of soils for emergency activities that are immediately necessary for the protection of life, property, or natural resources.

CSN means Construction Site Notice as defined by the *Construction General Permit TXR150000* or its successor.

Director means the Director of Public Works and/or the Director of Planning and Development Services or their authorized representatives.

Drainage Way or Conveyance means curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport storm water runoff.

Erosion Control means a measure that minimizes erosion to the maximum extent practicable.

Erosion and Sediment Control Submittal Packet means documents, including a set of plans prepared by or under the direction of the Owner or *Operator* of the *Construction Site* that indicate the specific measures and sequencing to be used to control erosion and sediment on a *Construction Site* during and after construction and supporting documents as specified by the City of Southlake *Erosion and Sediment Control Manual*.

Final Stabilization means all soil disturbing activities at the *Site* have been completed and a uniform (i.e. 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. These conditions are applicable to all *Construction Sites*, including individual residential lot *Construction Sites*.

Grading means changing the elevation of a parcel of land by means of moving earthen material including excavation or fill of material, including the resulting conditions thereof.

Multi-Sector General Permit (MSGP) means the Texas Multi-Sector General Permit, TXR050000, its successor, or any other state regulation to control runoff from industrial *Sites* issued by the Texas Commission on Environmental Quality (TCEQ) or the state regulatory authority.

Municipal Separate Storm Sewer System (MS4) means the separate storm sewer system owned and operated by the City of Southlake. The *MS4* includes all *Drainage Ways*, storm water *Conveyances*, bar ditches, swales, and streets owned and operated by the City of Southlake or any private *Drainage Way* that drains to or contributes flow to the public drainage system and conveys storm water discharges to the surface water of the state.

NOC means Notice of Change as defined by the *Construction General Permit TXR150000* or its successor.

NOI means Notice of Intent as defined by the *Construction General Permit TXR150000* or its successor.

NOT means Notice of Termination as defined by the *Construction General Permit TXR150000* or its successor.

Operator means the person or persons who, either individually or taken together, meet either of the following two criteria: (1) has operational control over the facility specifications (including the ability to make or direct modifications in specifications); or (2) has day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

Owner means the person who owns a facility or part of a facility.

Perimeter Control means a form of *Erosion Control* that prevents sediment from leaving a *Site*.

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

Pollutant means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, sediment, and industrial, municipal, and agricultural waste discharged into surface water of the state.

Sediment Control means measures that minimize eroded sediment from leaving the *Site* to the maximum extent practicable.

Secondary Containment means a structure designed to capture spills or leaks, as from a container or tank, and has the capacity to hold 110 (one hundred ten) percent of the original container.

Site means a parcel of land or a contiguous combination thereof, where *Grading* is performed as a single unified operation.

Texas Surface Water Quality Standards means the standards set forth in Title 30, Chapter 307 of the Texas Administrative Code.

Temporary Stabilization means a condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of *Pollutants*. *Temporary stabilization* may include *BMPs* listed in the Integrated Storm Water Management (iSWM) manual produced by the North Central Texas Council of Governments or subsequent similar documents (i.e. temporary seeding, geotextiles, mulches, *Perimeter Controls*, and other techniques to reduce or eliminate erosion until either *Final Stabilization* can be achieved or until further construction activities take place.)

Sec. 9.5-403 Applicability of Ordinance and Compliance Requirements.

- 1) This ordinance shall apply to all *Construction Sites* within the city limits of the City of Southlake.
- 2) *Requirements for Sites Disturbing Less Than One (1) Acre or within a Common Plan of Development that is Disturbing Less Than One (1) Acre.*
 - a) All *Construction Sites* disturbing less than one (1) acre of land or within a *Common Plan of Development* that is disturbing less than one (1) acre of land shall comply with all sections of this ordinance except Sections 9.5-408 and 9.5-409.
 - b) Any *Construction Site* disturbing less than one acre may be required, if directed by the Director of Public Works, to comply with Sections 9.5-408 and 9.5-409.
- 3) *Requirements for Sites Disturbing More Than One (1) Acre or within a Common Plan of Development that is Disturbing More Than One (1) Acre.*
 - a) All *Construction Sites* disturbing more than one (1) acre of land or within a *Common Plan of Development* that is disturbing more than one (1) acre of land shall comply with all sections of this ordinance.
 - b) The Owner or *Operator* shall ensure that copies of the *Notice of Intent (NOI)*, *Notice of Change (NOC)*, *Notice of Termination (NOT)*, and *Construction Site Notice (CSN)* are provided to the City of Southlake when appropriate.

4) *Requirement for all Construction Sites.*

a) All *Sites* shall comply with the requirements of the current *Construction General Permit (CGP)*, when appropriate based upon the acreage of the construction site.

b) *Inspections.*

i) All *Construction Sites* shall be inspected or cause to be inspected by the *Owner* or *Operator* of the *Site* for evidence of or potential for violations of this ordinance. *Construction Sites* subject to the *CGP* shall be inspected at the frequency required by the *CGP* or more frequently if directed by the Director of Public Works.

ii) All *Construction Sites* shall be inspected or caused to be inspected by the *Owner* or *Operator* within 24 hours after all rain events exceeding 2" in addition to inspection requirements in this section. Rain events are determined by the measurement documented by the City of Southlake.

iii) All *Owners* or *Operators* of a *Construction Site* disturbing more than one (1) acre of land or within a *Common Plan of Development* that is disturbing more than one (1) acre of land shall document inspections. When such a project is released for construction by the City of Southlake, as described in Sections 9.5-408 and 9.5-409, the City of Southlake will provide the applicant with a number and access code for that job on the website. The applicant shall:

(1) Within ten (10) working days of receipt of the permit number and access code, enter the website and create and/or confirm a list of *Erosion and Sediment Control* practices that are proposed on the approved plan.

(2) Within ten (10) working days of the actual start of work – enter the website and document that the practices have been installed in accordance with the approved plan.

(3) Provide an electronic version of inspection documentation at the frequency indicated by the *Erosion Control Submittal Packet* and of event driven inspections. Documentation will be of the condition of the practices and will note any repairs needed and action taken.

(4) Within ten (10) working days of installation of *Final Stabilization* enter the website and note that the project has been terminated and a *Notice of Termination (NOT)* has been submitted to the TCEQ and the City of Southlake, when appropriate.

(5) Upon written notice by an agent of the City of Southlake to the applicant or the applicant's designated representative regarding an *Erosion Control* action or repair needed to bring the *Site* into compliance, the *Owner* or *Operator* shall comply with noted actions or repairs, and record such

actions within 48 hours of the notification and prior to the next rain event. Failure to record such actions within 72 hours of notification shall be a violation of this ordinance.

- c) *Erosion and Sediment Control Measures.* *Erosion and Sediment Control* measures shall be designed and established at the *Construction Site* in a manner that minimizes erosion and retain sediment on-site to the maximum extent practicable with consideration of the topography, soil type, and rainfall. *BMPs* and Control Measures described in the Integrated Storm Water Management (iSWM) Manual produced by the North Central Texas Council of Governments or subsequent versions are minimum control measures where appropriate; however, *BMPs* not listed in the iSWM Manual may be considered.
- d) *Preserve existing vegetation.* The *Owner* or *Operator* of the *Site* shall ensure that existing vegetation is preserved to the maximum extent practicable. Should the existing vegetation not be preserved, the *Owner* or *Operator* shall take steps necessary to stabilize the *Site* in order to prevent erosion.
- e) *Stabilization.* *Erosion Control* and stabilization measures must be initiated as soon as practicable in portions of the *Construction Site* where construction activities have temporarily ceased. These measures must be initiated no more than 14 days after the construction activity in that portion of the *Construction Site* where activity has temporarily or permanently ceased, except where earth disturbing activities will be resumed within 21 days.
- f) *Minimize off-site tracking.* Off-site tracking of sediment, in the form of mud, rocks, dirt, etc. is not permitted. Where required to prevent off-site tracking of sediment, a construction entrance shall be established and maintained.
- g) *Maintenance.*
 - i) All *Temporary Stabilization* measures shall be maintained until *Final Stabilization* is established and a *Notice of Termination (NOT)* is filed with the TCEQ, when required by the CGP, and the finalization of a Southlake Termination Inspection has been conducted, as described in Section 9.5-410 of this ordinance, or transfer of operational control has been completed, as required by the CGP, when appropriate based on the acreage of the construction site.
 - ii) The *Owner* or *Operator* of any *Site* shall perform maintenance as necessary to maintain the continued effectiveness of storm water controls within 48 hours of discovery of failure, damage, or compromise and prior to the next rain event.
 - iii) Failure to maintain *BMPs* in proper working order shall be a violation of this ordinance.

- h) *Sediment or silt accumulation.* Should the control measures at a *Site* fail, in part or in total, the *Owner* or the *Operator* shall remove all sediment and siltation accumulation caused by *BMP* failure from the City's *MS4*, including streets and rights-of-way, within 48 hours of discovery or prior to the next rain event. Removal includes sweeping streets, sidewalks, and other infrastructure and removing sediment from the *MS4*.
- i) *Good housekeeping measures for chemicals and wastes.* Good housekeeping measures shall be provided on-site to prevent and contain spills of paints, solvents, fuels, septic waste, and other chemicals hazardous to the public or environment or might cause polluted runoff. Proper cleanup and disposal of any such spills shall be in accordance with state, federal, and local requirements.
- j) *Waste.*
 - i) A location shall be established on-site, or near the *Site*, for personal and construction waste so as to prevent waste from involuntarily leaving the *Site*.
 - ii) Proper waste disposal and waste management techniques shall be implemented, including covering waste materials, minimizing ground contact with regulated or hazardous chemicals and trash, and keeping trash receptacles off of paved surfaces or other locations that drain directly to a storm drain system or local waterway.
- k) *Sanitary waste.* Sanitary waste facilities shall be maintained so that the waste does not create a hazard to the public or the environment. Sanitary waste facilities should not be placed over any paved surfaces.
- l) *Dust suppression.* Techniques shall be employed to prevent air-borne dust from leaving the *Site*.
- m) *Street sweeping to remove sediments and siltation.*
 - i) Sediments and other materials that enter the streets shall be limited to the greatest extent practicable.
 - ii) Street sweeping shall be conducted in a manner that minimizes dust, including sweeping during periods of minimal wind or using a vacuum sweeper.
 - iii) All property *Owners* or *Operators* within a *Common Plan of Development* are expected to coordinate efforts to prevent sedimentation from entering the *MS4*. All *Owners* or *Operators* of contributing *Construction Sites*, as determined at the discretion of the City, shall be held responsible jointly and severally to remove sediments from the street.
 - iv) In absence of a coordinated effort amongst all property *Owners* or *Operators*, the City reserves the right to abate the problem and charge all the property *Owners* contributing to the violation.

- n) *Temporary Concrete batch plants.* Temporary concrete batch plants shall comply with zoning requirements.
- o) *Concrete wash-out.*
 - i) An *Operator* shall specify a containment area and/or a concrete wash-out device that will be established and maintained for all *Sites*.
 - ii) Signs six (6) square feet in size and emblazoned with “CONCRETE WASHOUT AREA” in both English and Spanish shall be posted in full view of any concrete delivery trucks.
 - iii) Failure of concrete delivery trucks to utilize specified concrete wash-out areas shall be a violation of this ordinance.
- p) No off street parking shall be permitted on vacant lots or where construction has commenced with the exception of short term delivery not to exceed two (2) hours on approved surfaces. Signs six (6) square feet in size and emblazoned with “OFF STREET PARKING PROHIBITED” in both English and Spanish shall be posted on vacant lots by developers and on permitted lots by the contractor.

Sec. 9.5-404 Responsibility of all On-Site Personnel.

It is a violation of this ordinance for any *Person* to damage or allow to be damaged any temporary or permanent storm water Control Measures through their actions or inactions without promptly restoring the Control Measure to an effective and efficient state.

Sec. 9.5-405 Training Required. After 180 days of the effective date of this ordinance:

- 1) no contractor or sub-contractor shall commence work on a *Construction Site* without first attending training on storm water impacts from construction activities and maintenance of Control Measures.
 - a) Training shall be provided by the City of Southlake.
 - b) Prior training or training provided by another entity shall be considered by City staff. Staff shall consider the merits of said alternative training and may disapprove of this training for any reason.
 - c) Proof of attendance of training provided by the City of Southlake shall be provided in the form of a certificate.
- 2) Contractors shall have proof of attendance available for inspection at any *Construction Site*. The contractor shall be responsible for ensuring that each of its employees is knowledgeable of the conditions of this ordinance.

Sec. 9.5-406 Allowable Discharges. The following non-storm water discharges may be discharged from the *Construction Site*:

- 1) water line flushing (excluding discharges of hyper-chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
- 2) runoff or return from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater or surface water resources;
- 3) discharges from potable water sources;
- 4) diverted stream flows;
- 5) rising ground waters and springs;
- 6) uncontaminated ground water infiltration;
- 7) uncontaminated pumped ground water;
- 8) flows from wetlands and riparian habitats;
- 9) discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities);
- 10) other allowable non-storm water discharges listed in 40 CFR § 122.26(d)(2)(iv)(B)(1) or its successor;
- 11) non-storm water discharges that are specifically listed in the Multi Sector General Permit (*MSGP*) and the *CGP*; and,
- 12) other similar occasional incidental non-storm water discharges unless the TCEQ develops permits or regulations addressing these discharges.

Sec. 9.5-407 Prohibited Discharges. The following list of discharges from a *Construction Site* to the City of Southlake's *MS4* are prohibited:

- 1) Excessive amounts of sediment that would cause accumulation of sediment in the City of Southlake's *MS4*.
- 2) motor oil or other vehicle fluids;
- 3) concrete truck wash out water;
- 4) rinse water or waste water from operations that are contaminated with chemicals or waste products from operations, including pool installation products;

- 5) wash-off water associated with concrete cutting and exposed aggregate pressure washing;
- 6) trash or debris associated with the *Construction Site*;
- 7) runoff that would cause the City of Southlake's *MS4* to discharge into the waters of the state water that would violate the Texas Surface Water Quality Standards;
- 8) Any polluted liquids.

Sec. 9.5-408 Erosion and Sediment Control Submittal Required.

An *Erosion and Sediment Control Submittal Packet* shall be submitted to the City and reviewed and released by the City prior to the Commencement of any activity on a *Construction Site*. Commencement of activity before the submittal, review and release of an *Erosion and Sediment Control Submittal Packet* shall be a violation of this ordinance.

- 1) The *Erosion and Sediment Control Submittal Packet* shall include all documentation required by the City's Erosion Control Submittal process as defined in the City of Southlake *Erosion and Sediment Control Manual*.
- 2) The *Erosion and Sediment Control Submittal Packet* shall be submitted to the City no later than 10 days prior to commencement of any construction activities.

Sec. 9.5-409 Review and Release for Implementation. Responsibility.

- 1) The City shall review each *Erosion and Sediment Control Submittal Packet* submitted for any *Construction Site* to determine its conformance with the provisions of this Chapter. The City shall, in writing
 - a) acknowledge the receipt of the *Erosion and Sediment Control Submittal Packet* and its completeness for review;
 - b) release for implementation the *Erosion and Sediment Control Submittal Packet* subject to reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and release work subject to these conditions; or
 - c) deny release of the *Erosion and Sediment Control Submittal Packet*, indicating the reasons and procedure for submitting a revised plan. Re-submittal and release for implementation of an *Erosion and Sediment Control Submittal Packet* must occur before *Clearing* or commencement of construction at a *Construction Site*.
- 2) Temporary approval. With approval from the Director of Public Works, a *Construction Site* may be temporarily approved for *Clearing* or commencement of construction before approval of the *Erosion and Sediment Control Submittal Packet*. This temporary approval may be revoked at any time for any reason a *Director* sees fit for revocation.

- 3) Responsibility. The *Owner* or *Operator* shall not be relieved of responsibility for damage to persons or property otherwise imposed by law, and the City or its officers or agents will not be made liable for such damage, by
 - a) the release for implementation of an *Erosion and Sediment Control Submittal Packet* under this ordinance;
 - b) the compliance with provisions of the *Erosion and Sediment Control Submittal Packet* or with conditions attached to it by the City;
 - c) failure of City officials to observe or recognize hazardous or unsightly conditions;
 - d) failure of City officials to recommend denial of release for implementation of an *Erosion and Sediment Control Submittal Packet* or to deny an *Erosion and Sediment Control Submittal Packet*;
 - e) granting exemptions from the requirements of this ordinance.
- 4) Materials used for temporary *Erosion Control* or *Sediment Control* (e.g., silt fences, inlet protection) and established in support of the *Construction Site*, shall be removed by the *Owner* or *Operator* of the *Site* once *Final Stabilization* has been established.

Sec. 9.5-410 Termination of Operational Control

- 1) A final acceptance of a public improvement associated with land development, issuance of a Certificate of Occupancy for a building or the issuance of a final “Green Tag” for other construction covered by this ordinance shall be contingent upon an inspection for termination.
- 2) *Submit* a Notice of Termination (NOT).
 - a. Where an *NOI* has been submitted to the TCEQ, a letter of final acceptance of public improvement, a Certificate of Occupancy, or final “Green Tag” shall not be issued until Final Stabilization is established and maintained as specified in the released Erosion Control Submittal Packet. The developer for a subdivision or other large plat shall continue to maintain all temporary Erosion and Sediment Control until *Final Stabilization* has been established on all those lots within the subdivision or large plat for which a building permit has not been issued or transfer of operational control has been established in compliance with the CGP.
 - b. A *NOT* should not be submitted to the TCEQ or other regulatory agency unless all requirements for submittal have been completed, when required by the CGP.

- c. The city reserves the right to refuse issuance of the final acceptance or certificate of occupancy when in disagreement with the submittal of an *NOT*.

Sec. 9.5-411 Right of Entry: Inspection and Sampling

A *Director* shall have the right to enter any *Site* discharging storm water to the *Municipal Separate Storm Sewer System (MS4)* or to waters of the state to determine if the *Owner* or *Operator* is complying with all requirements of this Chapter, and with any state or federal discharge permit, limitation, or requirement. *Owners* or *Operators* shall allow a *Director* ready access to all parts of the *Site* for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. *Owners* or *Operators* shall make available to a *Director*, upon request, any SWPPP's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, *Notices of Intent*, and any other records, reports, and other documents related to compliance with this Chapter and with any state or federal discharge permit.

- 1) Where the *Owner* or *Operator* has security measures in force which require proper identification and clearance before entry into its premises, the *Owner* or *Operator* shall make necessary arrangements with *its* security guards so that, upon presentation of suitable identification, the *Directors* or their authorized representative(s) will be permitted to enter without delay for the purposes of performing their responsibilities.
- 2) A *Director* shall have the right to set up on the *Site*, or require installation of, such devices as are necessary to conduct sampling and/or metering of the *Owner* or *Operator's* operations.
- 3) A *Director* may require any *Owner* or *Operator* to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.
- 4) A *Director* may require the *Owner* or *Operator* to install monitoring equipment as necessary at the discharger's expense. The *Site's* sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the *Owner* or *Operator* at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
- 5) Any temporary or permanent obstruction to safe and easy access to the *Site* to be inspected and/or sampled shall be promptly removed by the *Owner* or *Operator* at the written or verbal request of a *Director* and shall not be replaced. The costs of clearing such access shall be borne by the *Owner* or *Operator*.
- 6) Unreasonable delays in allowing a *Director* access to the *Site* shall be a violation of this Chapter.

Sec. 9.5-412 Search Warrants

If a *Director*, or his/her authorized representative, has been refused access to any part of a *Site* from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City 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 a *Director* may seek issuance of a search warrant from any court of competent jurisdiction. For purposes of this Section, the City Manager, Director of Public Works, the Director of Planning and Development, the City Engineer, and the duly authorized representatives of these City departmental *Directors* are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

Sec. 9.5-413 Warning Notice

When a *Director* finds that any *Person* has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, a *Director* may serve upon that *Person* a written Warning Notice, specifying the particular violation believed to have occurred and requesting the *Owner* or *Operator* to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this Section shall limit the authority of a *Director* to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

Sec. 9.5-414 Notification of Violation

When a *Director* finds that any *Person* has violated, or continues to violate, any provision of this Article, or any order issued hereunder, a *Director* may serve upon that *Person* a written Notice of Violation. Within ten (10) calendar days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the issuing *Director*. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the issuing *Director* within ten (10) calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of a *Director* to take any action, including emergency action or any other enforcement action, without first issuing a Notice of Violation. A *Director* may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any *Person* responsible for noncompliance with any provision in this Chapter or any order issued hereunder. Such documents may include specific action to be

taken by the *Person* to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 9.5-416, 9.5-417 and 9.5-418 of this Chapter and shall be judicially enforceable.

Sec. 9.5-415 Show Cause Hearing

A *Director* may order any *Person* who has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, to appear before the *Director* and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in Section 9.5-420(7) of this Chapter. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the alleged violator.

Sec. 9.5-416 Compliance Orders

When a *Director* finds that any *Person* has violated, continues to violate, or threatens to violate, any provision of this Chapter, or any order issued hereunder, the *Director* may issue an order to the violator directing that the violator come into compliance within a specified time limit, prior to commencement or continuance of operation, or immediately. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of *Pollutants* discharged to the *MS4* and waters of the state. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the *Person* of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Sec. 9.5-417 Remediation, Abatement, and Restoration Orders

When a *Director* finds that a *Person* has violated, or continues to violate, any provision of this Chapter, or any order issued hereunder, and that such violation has adversely affected the *MS4*, or the waters of the state, the *Director* may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the *MS4*, or the waters of the state, and/or to restore any part of the *MS4*, or the waters of the state. Such remedial, abatement, and restoration action may include, but not be limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention,

minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of City property or natural resources damaged by the violation. The order may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this Section does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this Section shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

Sec. 9.5-418 Emergency Cease and Desist Orders

When a *Director* finds that any *Person* has violated, continues to violate, or threatens to violate, any provision of this Chapter, or any order issued hereunder, or that the *Person's* past violations are likely to recur, and that the *Person's* violation(s), or threatened violation(s), have caused or contributed to an actual or threatened discharge to the *MS4* or waters of the state which reasonably appears to present an imminent or substantial endangerment to the health or welfare of *Persons* or to the environment, the *Director* may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- 1) Immediately comply with all requirements of this Chapter; and
- 2) 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.

Any *Person* notified of an emergency order directed to it under this Section shall immediately comply and stop or eliminate its endangering discharge. In the event of a *Person's* failure to immediately comply voluntarily with the emergency order, a *Director* may take such steps as deemed necessary to prevent or minimize harm to the *MS4* or Waters of the state, including immediate termination of a *Site's* water supply, sewer connection, or other municipal utility services. A *Director* may allow the *Person* to commence or recommence its discharge when it has demonstrated to the satisfaction of the *Director* that the period of endangerment has passed, unless further termination proceedings are initiated against the *Person*. The cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the *Person* under this Chapter. 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 harmful discharge and the measures taken to prevent any future occurrence, to the issuing *Director* within ten (10) calendar days of receipt of the emergency cease and desist order.

Sec. 9.5-419 Stop Work Orders

Whenever a *Director* finds that any *Owner* of *Operator* of a *Construction Site* has violated, threatens to violate, or continues to violate, any provision of this Chapter, or any

order issued hereunder, the *Director* may issue a Stop Work Order to the *Owner* or *Operator*, and require that a copy of the Stop Work Order be posted at the *Construction Site* and distributed to all City departments and divisions whose decisions affect any activity at the *Construction Site*. Unless express written exception is made by the issuing *Director*, the Stop Work Order shall prohibit any further construction activity, or any commencement of construction activity, at the *Site* and shall bar any further inspection or approval by the City associated with a building permit, grading permit, or any other City approval necessary to commence or continue construction or to assume occupancy at the *Site*. Issuance of a Stop Work Order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

Sec. 9.5-420 Reconsideration and Hearing

- 1) Any *Person* subject to a Compliance Order under Section 9.5-416, a Remediation, Abatement, or Restoration Order under Section 9.5-417, an Emergency Cease and Desist Order under Section 9.5-418, or a Stop Work Order under Section 9.5-419 of this Chapter may petition the issuing *Director* to reconsider the basis for his/her order within fifteen (15) calendar days of the affected *Person's* notice of issuance of such an order.
- 2) Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.
- 3) In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.
- 4) The effect of any Compliance Order under Section 9.5-416 Remediation, Abatement, or Restoration Order under Section 9.5-417, and any Stop Work Order under Section 9.5-419 shall be stayed pending the issuing *Director's* reconsideration of the petition, and any hearing thereon, unless the issuing *Director* expressly makes a written determination to the contrary. The effectiveness of any Emergency Cease and Desist Order under Section 9.5-418 shall not be stayed pending the issuing *Director's* reconsideration, or any hearing thereon, unless the issuing *Director* expressly and in writing stays his/her emergency order.
- 5) Within thirty (30) calendar days of the submittal of a petition for reconsideration, the issuing *Director* shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition without a hearing, if no material issue of fact is raised; or (3) if a hearing has been requested and a material issue of fact has been raised, set a hearing on the petition.

- 6) Written notice of any hearing set by the issuing *Director* pursuant to Section 9.5-420(5) above shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.
- 7) The issuing *Director* may himself/herself conduct the hearing and take evidence, or he/she may designate any employee of the City or any specially-designated attorney or engineer to:
 - a. issue in the name of the City notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;
 - b. take evidence;
 - c. transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the *Director* for action thereon.

At any hearing held pursuant to this Section, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

- 8) After the issuing *Director* has reviewed the evidence, he/she shall either (1) grant the petition; (2) deny the petition; or (3) grant the petition in part and deny it in part. The issuing *Director* may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

Sec. 9.5-421 Appeal

Any *Person* who remains adversely affected by a *Director's* order after petitioning for reconsideration pursuant to Section 9.5-420, or who is subject to an order of a *Director* issued following a Show Cause Hearing under Section 9.5-415, may challenge the final action of the *Director* in an appropriate court of competent jurisdiction.

Sec. 9.5-422 Civil Remedies

- 1) Whenever it appears that a *Person* has violated, or continues to violate, any provision of this Article that relates to:
 - a. the preservation of public safety relating to the materials or methods used in construction of any structure or improvement of real property;

- b. the preservation of public health or to the fire safety of a building or other structure or improvement;
- c. the establishment of criteria for land subdivision or construction of buildings, including street design;
- d. dangerously damaged or deteriorated structures or improvements;
- e. conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- f. point source effluent limitations or the discharge of a *Pollutant*, other than from a nonpoint source, into the *MS4*,

the City may invoke Sections 54.012 - 54.017 of the Texas Local Government Code and petition the State district court or the county court at law of Tarrant County, through the City Attorney, for either the injunctive relief specified in Section 9.5-422(2) or the civil penalties specified in Section 9.5-422(3) below, or both the specified injunctive relief and civil penalties.

- 2) Pursuant to Section 54.016 of the Texas Local Government Code, the City may obtain against the *Owner* or *Operator* of a *Site* a temporary or permanent injunction, as appropriate, that:
 - a. prohibits any conduct that violates any provision of this Chapter that relates to any matter specified in Sections 9.5-422(a)(1)-(6), above; or
 - b. compels the specific performance of any action that is necessary for compliance with any provision of this Chapter that relates to any matter specified in Section 9.5-422(1)(a)-(f), above.
- 3) Pursuant to Section 54.017 of the Texas Local Government Code, the City may recover a civil penalty of not more than \$1,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Sections 9.5-422(1)(a)-(e) above, and a civil penalty of not more than \$5,000 per day for each violation of any provision of this Chapter that relates to any matter specified in Section 9.5-422(1)(f) above, if the City proves that:
 - a. the defendant was actually notified of the provisions of the Chapter; and
 - b. after the defendant received notice of the provisions of this Chapter, the defendant committed acts in violation of the Chapter or failed to take action necessary for compliance with the Chapter.

Sec. 9.5-423 Criminal Penalties

- 1) Any *Person* who has violated any provision of this Chapter, or any order issued hereunder, shall be strictly liable for such violation, regardless of the presence or absence of a culpable mental state, and shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day.
- 2) Any *Person* who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this Chapter, or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be subject to a fine of not more than \$2000 per violation, per day.
- 3) In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

Sec. 9.5-424 Civil Suit Under the Texas Water Code

Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of the Texas Water Code, or any rule, permit, or order of the Texas Commission on Environmental Quality, has occurred or is occurring within the jurisdiction of the City, exclusive of its extraterritorial jurisdiction, the City, in the same manner as the Texas Commission on Environmental Quality, may have a suit instituted in a state district court through its City Attorney for the injunctive relief or civil penalties or both authorized in Sections 7.031 and 7.032 of the Texas Water Code, against the *Person* who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 7.351 of the Texas Water Code. In any suit brought by the City under this Section 9.5-418, the Texas Commission on Environmental Quality is a necessary and indispensable party.

Sec. 9.5-425 Remedies Nonexclusive

The remedies provided for in this Chapter are not exclusive of any other remedies that the City may have under state or federal law or other City ordinances. The City may take any, all, or any combination of these actions against a violator. The City is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

Sec. 9.5-426 Performance and Maintenance Bonds

A *Director* may, by written notice, order any *Owner* or *Operator* of a source of storm water discharge associated with construction or industrial activity to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the *Director* to be necessary to achieve consistent compliance with this Article, any order issued hereunder, any required *Best Management Practice*, and/or any SWPPP provision, and/or to achieve *Final Stabilization* of the *Site*. The City may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or any industrial activity at the *Site*, or to assume occupancy, until such a performance or maintenance bond has been filed.

Sec. 9.5-427 Liability Insurance

A *Director* may, by written notice, order any *Owner* or *Operator* of a source of storm water discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount greater than or equal to a value determined by the *Director*, that is sufficient to remediate, restore, and abate any damage to the *MS4*, the waters of the state, or any other aspect of the environment that is caused by the discharge.

SECTION 2.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Southlake, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4.

All rights and remedies of the City of Southlake are expressly saved as to any and all violations of the provisions of any ordinances affecting *Erosion and Sediment Control* which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.

The City Secretary of the City of Southlake is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

SECTION 6.

The City Secretary of the City of Southlake is hereby directed to publish caption, penalty clause, and effective date clause in any manner allowed by law.

SECTION 7.

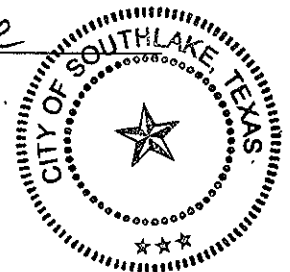
This Ordinance shall be in full force and effect from and after its passage and publication as provided by law or November 3, 2008, whichever occurs later, and it is so ordained.

PASSED AND APPROVED on the 1st reading the 11th day of September, 2008.



MAYOR *Mayor Pro Tem*

ATTEST:


CITY SECRETARY



PASSED AND APPROVED on the 2nd reading the 7th day of October, 2008.



MAYOR

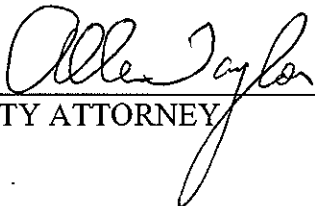
ATTEST:



CITY SECRETARY



APPROVED AS TO FORM AND LEGALITY:



CITY ATTORNEY