

**CITY OF SEABROOK
ORDINANCE NO. 2021-21**

STORMWATER REGULATION

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SEABROOK, TEXAS, CHAPTER 30 “ENVIRONMENT” BY ADDING A NEW ARTICLE IV. ENTITLED “CLEAN WATER”, DIVISION 1. “STORMWATER DISCHARGES”, RELATING TO THE REDUCTION OF POLLUTANTS IN STORMWATER RUNOFF AND THE EFFECTIVE PROHIBITION OF NON-STORMWATER DISCHARGES TO THE STORM SEWER SYSTEM; MAKING FINDINGS AND CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING A PENALTY THEREFORE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR A SAVINGS CLAUSE.

WHEREAS, the reduction of pollutants in stormwater runoff promotes and protects the health, safety and welfare of the public; and

WHEREAS, the Texas Commission on Environmental Quality issued a General Permit to Discharge Under the Texas Pollutant Discharge Elimination System (TPDES) to the City for its storm sewer system effective December 13, 2013 (the “TPDES General Permit TXR040000”); and

WHEREAS, the TPDES storm water permit requires the City, among other things, to enact an ordinance and implement programs to reduce pollutants in stormwater runoff from new development and significant redevelopment, and to effectively prohibit non-stormwater discharges to the City’s storm sewer system by December 13, 2023; and

WHEREAS, the City Council finds that, in order to promote the public health, safety, and general welfare of the City and to satisfy the TPDES stormwater permit requirements, it is desirable to adopt this Ordinance in order to:

- (1) Establish general rules and regulations to require the use of post-construction stormwater quality controls to reduce pollutants in stormwater runoff from certain new developments and significant redevelopment;
- (2) Establish general rules and regulations to require the use of temporary stormwater quality controls to address pollutants in stormwater runoff from certain construction activities; and
- (3) Establish general rules and regulations to prohibit non-stormwater discharges to the storm sewer system;

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

Section 1. FINDINGS OF FACT.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. AMENDMENT TO THE CODE.

That the Code of Ordinances of the City of Seabrook, Texas, is hereby amended by amending Chapter 30 “Environment” to add a new Article IV. Entitled “Clean Water”, Division 1. “Stormwater Discharges”, to provide as follows:

“CHAPTER 30 ENVIRONMENTAL

ARTICLE IV. CLEAN WATER

DIVISION 1. - STORMWATER DISCHARGES

Sec. 30-79. - Statement of purpose.

The intent of the ordinance from which this article derives is to satisfy conditions imposed by the city's Texas Pollutant Discharge Elimination System (TPDES) permit in accordance to law. Delegation of federal authority to the State of Texas, to administer NPDES permit requirements, has been made by the Environmental Protection Agency (EPA) pursuant to Section 1342(b) of Title 33 of the United States Code.

Sec. 30-80. - Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates another meaning:

Accessory structure shall mean a non-commercial structure of the type typically associated with a single-family residential dwelling unit, including but not limited to, a garage, carport or barn.

Applicant shall mean the owner of the land or their authorized agent on which new development or significant redevelopment will occur.

Authorized City Official shall mean the public works director, assistant public works director, city engineer, utility official, code enforcement officer, building official, any city peace officer, or any other city employee whose job responsibilities are substantively similar to those of the listed positions to undertake the activities in connection to development.

Building code shall mean [Chapter 18 - Buildings and Building Regulations](#) of the City of Seabrook.

CFR shall mean the Code of Federal Regulations, as it may be amended from time to time.

Clean Water Act shall mean the federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended from time to time.

Code shall mean the Code of Ordinances of the City of Seabrook.

Commercial activity shall mean any profit or not-for-profit activity involved in the manufacture, storage, transportation, distribution, exchange or sale of goods or commodities, or the sale or lease of real property in the provision of professional or nonprofessional services, or in the use of property for residential purposes other than single-family residential purposes.

Commercial landscaped property shall mean property that has no more than ten percent impervious coverage of buildings, parking lots, decks, etc. and is used for recreational purposes.

Construction permit shall mean an official document or certification issued by the Authorized City Official authorizing performance of a specified construction activity, including, but not limited to, building permits, plumbing permits, electrical permits, HVAC permits, lateral storm sewer permits, excavation permits, utility construction permits, paving permits, demolition permits, and development permits required by Chapter 18 of the City Code.

Design manual shall mean the City of Seabrook Subdivision Design Standards, Chapter 80, Article III, the Storm Water Quality Management Guidance Manual prepared by City of Houston, Harris County, and Harris County Flood Control District, as may be amended from time to time.

Developed parcel shall mean a parcel that is not undeveloped; that is, any lot or parcel of land that has been altered from its natural state by the construction, creation, or addition of impervious area, except public streets and highways.

Development shall mean (i) any activity that requires a subdivision plat, development plat or site development plan pursuant to chapter 80 or appendix A of this code; (ii) the further subdivision of any reserve tract that is part of a subdivision plat approved by the city planning and zoning commission or pursuant to chapter 80 or appendix A of this Code; or (iii) any activity that requires a construction permit.

Discharge shall mean the introduction or addition of any pollutant, stormwater or other substance into the MS4, or to allow, permit or suffer any such introduction or addition.

Discharger shall mean a person who causes or threatens to cause a discharge.

Dwelling unit shall mean a structure, or a portion of a structure, that has independent living facilities including provisions for non-transient sleeping, cooking and sanitation.

EPA shall mean the federal Environmental Protection Agency and any successor agency thereto.

Home occupation shall mean a commercial activity conducted entirely in a dwelling unit or accessory structure by a resident thereof that is incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character thereof.

Homeowners' association shall mean an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by a dedicatory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the single-family residential subdivision that has as one of its purposes the continued care and maintenance of all commonly owned properties within the subdivision, particularly the areas established for stormwater quality controls, and the authority and means to impose binding assessments upon the lot owners for that purpose.

Impervious surface shall mean any area that does not readily absorb water including, but not limited to, building roofs, parking and driveway areas, compacted or rolled areas, sidewalks, and paved recreation areas.

Industrial activity certification or IAC shall mean a certification filed with the city pursuant to section 30-115 of this Code.

Lot shall mean an undivided tract of land intended for single-family residential use contained within a block and designated on a subdivision plat by alphabetical or numerical designation.

Municipal separate storm sewer system or MS4 shall mean the system of conveyances owned and operated by the city that is designed or used for collecting or conveying stormwater and is not used for collecting or conveying sewage.

New development shall mean development of an undeveloped parcel of land one acre or larger without regard to the amount of land that will actually be disturbed. The term does not include development on an undeveloped and undivided parcel of one acre or more of one dwelling unit and one or more accessory structures.

Non-structural control shall mean a maintenance or operational practice designed to prevent or reduce the potential of stormwater runoff contact with pollution-causing activities.

Notice of intent or NOI shall mean a notice of intent that is required by the TPDES General Permit No. TXR050000, the EPA NPDES General Permit for Stormwater Discharges from Construction Activities in Region 6, or any similar general permit to discharge stormwater associated with industrial or construction activity that is issued by the EPA or TCEQ.

Notice of termination or NOT shall mean the notice of termination that is required by the TPDES General Permit No. TXR050000, the EPA NPDES General Permit for Stormwater Discharges from Construction Activities in Region 6, or any similar general permit to discharge stormwater associated with industrial or construction activity that is issued by the EPA or TCEQ.

NPDES shall mean National Pollutant Discharge Elimination System.

NPDES permit shall mean a permit issued by the EPA (or by the TCEQ, the state under authority assumed pursuant to Section 1342(b) of Title 33 of the United States Code) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general basis.

Parcel shall mean a contiguous piece of land that is under common ownership or control or that is part of a larger common plan of development or sale.

Person shall mean an individual, corporation, organization, governmental entity, business trust, partnership, association, or other legal entity, or an agent or an employee thereof.

Pollutant shall mean 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, and industrial, municipal and agricultural waste discharged into the MS4 or any waters of the United States.

Pollution shall mean the alteration of the physical, thermal, chemical or biological quality of, or the contamination of, any waters of the United States that renders the water harmful, detrimental or injurious to humans, animal life, vegetation or property or to public health, safety or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose.

Public utility shall mean a water line, sanitary sewer, storm sewer, pump station or lift station in a public right-of-way that is or will be owned and operated by the city or other political subdivision of the state for public purposes.

Publicly owned treatment works or POTW shall mean any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by the state or a municipality, and includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW.

Representative storm event shall mean a storm event that is greater than one-tenth of an inch in magnitude and that occurs at least 72 hours after the previously measurable (greater than one-tenth of an inch rainfall) storm event.

Significant redevelopment shall mean construction, alteration or improvement exceeding half an acre or more in areas of commercial, industrial, institutional or multifamily residential land uses.

Single-family residential shall mean the use of a lot with one building designed for and containing not more than two dwelling units.

Stormwater Management Handbook for Construction Activities shall mean the Stormwater Management Handbook for Construction Activities promulgated by the City of Houston, Harris County and Harris County Flood Control District, as it may be amended from time to time.

Stormwater discharges associated with construction activity shall mean stormwater discharges from construction activity, including clearing, grading, excavation and demolition activities, but not including operations that result in the disturbance of less than one acres of total land area that are not part of a larger common plan of development or sale. The term does not include discharges from facilities or activities excluded from the NPDES program under Part 122 of Title 40 of the CFR.

Stormwater discharges associated with industrial activity shall have the meaning provided in Section 122.26(b)(14) of Title 40 of the CFR, other than subsection (x) of that section.

Stormwater quality management plan or SWQMP shall mean a plan prepared pursuant to the requirements of division 2 of this article and the design manual.

Stormwater quality permit or SWQ permit shall mean a current, valid permit issued pursuant to division 2 of this article.

Structural control shall mean a structure or vegetative practice that is generally designed to reduce pollutant levels in stormwater runoff.

Structure shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work, including, but not limited to, a paved surface, that is artificially built up or composed of parts joined together in some definite manner. The term does not include a street or a public utility.

Substantial deviation shall mean a deviation that: (1) Increases the designed flow rate by more than five percent; (2) Increases or decreases the designed storage volume by more than five percent; (3) Increases or decreases the designed water surface elevation by more than six inches; or (4) Increases the risk of flooding caused by a 100-year storm event as that term is defined in chapter 38 of this Code.

SWQ permittee shall mean the holder of a SWQ permit.

Third-party agreement shall mean an agreement that satisfies the requirements of subsection 30-149(b) of this Code.

TCEQ shall mean the Texas Commission on Environmental Quality and any successor agency thereto.

TPDES means the Texas Pollutant Discharge Elimination System that was assumed by the state from the EPA pursuant to Section 1342(b) of Title 33 of the United States Code.

TPDES permit shall mean a permit issued by the TCEQ that authorizes the discharge of pollutants to water in the state, whether the permit is applicable on an individual, group, or general basis.

Undeveloped parcel shall mean a parcel on which there are no structures at the time that a construction permit, subdivision plat or other city approval is applied for or required.

Waters of the United States shall mean all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters, including interstate wetlands; all other waters the use, degradation or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as "waters of the United States" under this definition; all tributaries of water identified in this definition; all wetlands adjacent to waters identified in this definition; and any other waters within the federal definition of "waters of the United States" in Section 122.2 of Title 40 of the Code of Federal Regulations (CFR); but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

Wetlands shall mean an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Sec. 30-81. - Penal provisions applicable.

- (a) Any person who violates any provision of this article shall be guilty of a misdemeanor offense and upon conviction thereof, shall be punished by a fine of not less than \$250.00 nor more than \$2,000.00 for each violation as provided by the Code. Each day in which any violation shall occur shall constitute a separate offense. Prosecution or conviction under this section shall not preclude any civil remedy or relief for a violation of this article.
- (b) In addition to criminal prosecution, where applicable, the city shall have the right to seek the judicial remedies provided in this section 30 for any violation of this article.

Sec. 30-82. - Judicial provisions applicable.

The city, acting through the city attorney or any other attorney representing the city, is hereby authorized to file an action in a court of competent jurisdiction to:

- (1) Enjoin any person from violating or threatening to violate the terms, conditions and restrictions of any permit issued under this article;
- (2) Enjoin the violation or threatened violation of the provisions of this article; or
- (3) Recover damages from the owner of a parcel in an amount adequate for the city to undertake any construction or other activity necessary to bring about compliance with this article. This authority is in addition to all provisions of this Code relative to the definition of offenses and the provision of penalties for violations of such offenses.

Consistent with these provisions, the city attorney has the authority to pursue all legal, equitable, and criminal remedies appropriate to enforce all provisions of this chapter, including, but not limited to, authority under Chapter 54 of the Local Government Code providing for injunctive relief and court imposed civil penalties up to \$5,000.00 a day for violation of ordinances relating to discharge of a pollutant into a storm sewer system controlled by a municipality as provided by law.

Sec. 30-83. - Stop work orders.

Whenever any work authorized by a construction permit is being performed contrary to the provisions of divisions 2 or 3 of this article, or other pertinent laws or ordinances implemented through the enforcement of this article, the Authorized City Official may order the work (other than work to cure a violation) stopped by notice in writing served on any persons performing the work or causing the work to be performed, and any such persons shall forthwith stop the work until authorized by the Authorized City Official to proceed with the work.

Sec. 30-84. - Nuisances.

An actual or threatened discharge to the MS4 that violates or would violate this article is hereby declared to be a nuisance and shall be subject to enforcement pursuant to chapter 55 of this Code and related law. Further, committing a prohibited act or discharge to the MS4 that violates or would violate this article within 5,000 feet of the corporate limits of the City of Seabrook is found to be contrary to the public health and welfare and is hereby deemed and declared to be a nuisance pursuant to Section 217.042 of the Local Government Code or as otherwise provided by law.

Sec. 30-85. - Emergency suspension of utility service and MS4 access.

- (a) When the Authorized City Official determines that a person is causing or threatening to cause a discharge to the MS4 or a publicly owned treatment work in violation of this article that:
 - (1) Presents or may present an imminent and substantial danger to the environment or to the health or welfare of persons; or
 - (2) Presents or may present an imminent and substantial danger to the MS4 or waters of the United States;

The Authorized City Official may, without prior notice, suspend city water service, sanitary sewer service, and MS4 discharge access to the person causing or threatening to cause the discharge when the Authorized City Official determines that the service or access is an instrumentality of or contributes to the unlawful discharge and suspension is necessary to stop the actual or threatened discharge.

- (b) As soon as practicable after the suspension of service or MS4 discharge access, the Authorized City Official shall notify the discharger of the suspension of service or access by delivering notice by hand to the person in charge of the premises for which service is terminated or access denied if such person is present on the premises. The Authorized City Official shall send a notice by certified mail, return receipt requested, to the person and address identified in the city's water service records for the account at the property for which service is suspended or access denied and post notice on the property. If there is no water service account, the Authorized City Official shall send notice to the address of the owner of the property as shown on the Harris County Appraisal District's appraisal rolls and post notice on the property. The notice shall specify the basis for the suspension of service or access and shall order the discharger to cease the discharge or threatened discharge immediately.
- (c) If the discharger fails to comply with an order issued under subsection (b), the Authorized City Official may take such steps as necessary to prevent or minimize damage to the MS4 or waters of the United States or to minimize the danger to persons as practicable .
- (d) The city shall not reinstate suspended services or MS4 access to the discharger until:
 - (1) The discharger presents proof that the non-complying discharge or threatened discharge has been eliminated and its cause determined and corrected;
 - (2) The discharger pays the city for all costs the city incurred in responding to, abating, and remediating the discharge or threatened discharge or otherwise provides financial assurance to cover such expenses acceptable to City; and
 - (3) The discharger pays the city for all costs the city will incur in reinstating service or access or otherwise provides financial assurance to cover such expenses.
- (e) If the discharger does not pay the costs as provided by this section, the city shall be entitled to a lien against the property that is the subject of the suspension of service or access to recover its response costs.
- (f) The remedies provided in this section are in addition to any other remedies set out in this article or provided by law. Exercise of this remedy shall not be a bar against nor a prerequisite for taking other action against a discharger.
- (g) A person commits an offense if the person reinstates water service, sanitary sewer service or MS4 access that has been terminated pursuant to this section without the prior written approval of the Authorized City Official.

Sec. 30-86. - Non-emergency suspension of utility service and MS4 access.

- (a) When the Authorized City Official determines that a person is discharging or threatening to discharge to the MS4 in violation of this article, the Authorized City Official may terminate city water supply, sanitary sewer connection and MS4 access to the person discharging or threatening to discharge to the MS4 if it is determined that:
 - (1) The service or access is an instrumentality of or contributes to the unlawful discharge or threatened discharge; and
 - (2) Termination would prevent, abate or reduce: (i) The discharge of a pollutant; or (ii) The commission of any other act or activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or may cause pollution of any of the waters of the United States.
- (b) The Authorized City Official shall notify a discharger of the proposed suspension of its water supply, sanitary sewer connection or MS4 access pursuant to this section before the service is suspended or access denied. Notice shall be mailed, certified mail, return receipt requested, to the name and address on the city water service records for the account of the property where service is proposed to be suspended or access denied and post notice on the property. If there is no water service account, the Authorized City Official shall send notice to the address of the owner of the property as shown on the Harris County Appraisal District's appraisal rolls and post notice on the property. The notice shall specify the basis for the proposed suspension of service or access and shall order the discharger to cease the discharge or threatened discharge immediately.
- (c) The city shall not reinstate suspended services or MS4 access to the discharger until:
 - (1) The discharger presents proof that the unlawful discharge or threatened discharge has been eliminated and its cause determined and corrected; and
 - (2) The discharger pays the city for all costs the city will incur in reinstating service or otherwise provides financial assurance to cover such expenses.
- (d) The remedies provided by this section are in addition to any other remedies set out in this chapter. Exercise of this remedy shall not be a bar against nor a prerequisite for taking other action against a discharger.
- (e) A person commits an offense if the person reinstates water service, sanitary sewer service or MS4 access suspended pursuant to this section without the prior written approval of the Authorized City Official.

Sec. 30-87. - Regulations and forms authorized.

The Authorized City Official shall promulgate regulations and forms regarding compliance with the requirements of this article. Such regulations and forms shall be available at the offices of the public works department.

The regulations and forms established hereunder may be amended or supplemented from time to time by the Authorized City Official.

Sec. 30-88. - Cumulative effect.

- (a) This article is cumulative of other requirements imposed by ordinances and regulations of the city. To the extent of any inconsistency, the more restrictive provision shall govern.
- (b) Any authorization granted by or any affirmative defense to a violation allowed pursuant to this article does not excuse compliance with federal or state law or any other provisions of this Code or any other city ordinance relating to the activities regulated by this article.

Sec. 30-89. - Conflict.

No provision of this article is intended to, nor shall any part or portion hereof be construed, so as to conflict with the Texas Water Code, or related state or federal law.

Sec. 30-90. - Severability.

If any provision of this article or the application thereof to any person or circumstance shall be held to be void or invalid for any reason, the remainder of this article and the application of such provision to other persons and circumstances shall nevertheless be valid, and the city council hereby declares that this article would have been enacted without such invalid provision.

Sec. 30-91. - Remedies not exclusive.

The remedies listed in this article 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 suspension, revocation, cancellation, or denial of any permit issued under this article shall not prohibit imposition of any civil or criminal penalty. The imposition of a civil or criminal penalty shall not prohibit any other remedy and shall not prohibit the suspension, revocation, or denial of any permit issued under this article.

Sec. 30-92. - Access to facilities and records.

- (a) When it is necessary to make an inspection to enforce the provisions of this article or to inspect or investigate conditions related to water quality, an authorized city official may enter a building or premises at reasonable times to inspect or to perform the duties imposed by this article or to inspect or review records, reports, data, plans, or other documents

relating to compliance with this article or with any TPDES or NPDES stormwater permit. If the building or premises is occupied, credentials must be presented to the occupant and entry requested. If the building or premises is unoccupied, the authorized city official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If refused, the authorized city official shall have recourse to the remedies provided by law to secure entry.

- (b) When, due to emergency, immediate entry is necessary to protect life or property, or when the authorized city official shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the authorized city official for the purpose of inspection and investigation pursuant to this article or other laws relating to water quality.
- (c) The public works director, assistant public works director, city engineer, utility official, code enforcement officer, building official, any city peace officer, or any other city employee whose job responsibilities are substantively similar to those of the listed positions is hereby authorized to undertake the activities authorized by this section.

[Sec 30-93 – Sec. 30-112 Reserved]

DIVISION 2. - POST-CONSTRUCTION CONTROLS ON NEW DEVELOPMENT AND SIGNIFICANT REDEVELOPMENT

Subdivision A. - General

Sec. 30-113. - Applicability.

- (a) This division shall apply to new development and significant redevelopment within the city:
 - (1) Of any kind by a private individual or entity, except for the construction of major thoroughfares and major collector streets designated on the city's major thoroughfare and freeway plan and any public utilities in the rights-of-way for such thoroughfares and streets, or
 - (2) Of a structure, parking or storage area, or park or recreational facility by a governmental entity.
- (b) If the use of a parcel that was previously excluded from the definition of new development because it was development on an existing undeveloped and undivided parcel of one acre or more of one dwelling unit and one or more accessory structures changes to a commercial activity that is not an authorized home occupation or use, or the property is further

subdivided, the owner of the parcel shall at that time comply with all requirements of this article.

- (c) This division shall not apply to the demolition by the substandard building commission, or a contractor of that division, of a dangerous building pursuant to chapter 18 of this Code.

Sec. 30-114. - General requirements.

- (a) Subject to the limitation in subsection (c) of this section, all new development and significant redevelopment subject to this article shall either obtain and continuously maintain an approved stormwater quality permit or file an approved industrial activity certification. If a parcel subject to the requirements of this section is located partially in the city and partially in the unincorporated area of Harris County and stormwater from any portion of the parcel drains into the MS4, a SWQ permit or IAC shall be required for the parcel
- (b) The SWQ permit is in addition to any other construction permit required for the new development or significant redevelopment.
- (c) Subject to the limitations in this subsection, the obligation to have and comply with a SWQ permit shall continue in perpetuity or as provided by law and shall run with all the land covered by the original SWQ permit. The owner of the land shall have the obligation to have and comply with a SWQ permit unless that obligation is transferred to another person pursuant to section 30-149 of this Code. If pursuant to sections 30-149(a) or 30-149(b) of this Code the obligation to comply is transferred to a homeowners' association or other person, the homeowners' association or the other person shall have the obligation to maintain and comply with a SWQ permit.
- (d) For new development or significant redevelopment that includes, in whole or in part, the platting of a single-family residential subdivision, a SWQ permit for the single-family residential portion of the subdivision shall be obtained before the release of the plat for recordation. For all other new development or any significant redevelopment, a SWQ permit shall be obtained before the issuance of any construction permit for the new development or significant redevelopment, as determined by the City.

Sec. 30-115. - Industrial activity certification.

If the new development or significant redevelopment occurs at a facility that either has or will have permit coverage for stormwater discharges from industrial activity issued by the state before the industrial activity will commence, the operator shall either submit an industrial activity certification in a form approved by the Authorized City Official or obtain a SWQ permit. The industrial activity certification shall include any of the following:

- (1) A copy of the application for an individual permit from the state for stormwater discharges from industrial activity at the facility;
- (2) A copy of the permit issued by the state for stormwater discharges from industrial activity at the facility;
- (3) A copy of the NOI for coverage under a general permit for stormwater discharges associated with industrial activity issued by the state;
- (4) A statement of commitment to file an application for an individual permit from the state for stormwater discharges from industrial activity at the facility; or
- (5) A statement of commitment to file a NOI for coverage under a general permit for stormwater discharges associated with industrial activity issued by the state.

Sec. 30-116. - Denial of plat recordation.

The Authorized City Official shall not release for recordation a subdivision plat for new development or significant redevelopment consisting in whole or in part of single-family residential lots that does not have a SWQ permit for the residential lots.

Sec. 30-117. - Denial of construction permit.

- (a) The Authorized City Official shall not issue any construction permit or letter to proceed required for new development or significant redevelopment that has not filed an IAC or that has not obtained or is not in compliance with a SWQ permit.
- (b) If the SWQMP on which the SWQ permit is based includes one or more structural controls, the Authorized City Official shall not issue any construction permit, except permits for streets, public utilities, demolition or stormwater controls, for all or part of the new development or significant redevelopment unless:
 - (1) The Authorized City Official has confirmed the proper installation of all structural controls included in the SWQMP for all or that portion of the new development or significant redevelopment and the SWQ permittee has satisfied the requirements of subsection 30-148(a).
- (c) If the SWQMP on which the SWQ permit is based does not include one or more structural controls, the Authorized City Official shall not issue any construction permit for all or a part of the new development or significant redevelopment unless the SWQ permittee has satisfied the requirements of subsection 30-148(b).

Sec. 30-118. - Denial of utility connections.

The public works department shall not permit any new development or significant redevelopment to receive any service from the city water distribution or wastewater collection systems unless, at the time of the application for service, the new development or significant redevelopment has and is in compliance with a SWQ permit or an industrial activity certification.

Sec. 30-119. - Denial of certificate of occupancy.

The building department shall not issue a certificate of occupancy for any new development or significant redevelopment unless the new development or significant redevelopment has and is in compliance with a SWQ permit or an industrial activity certification.

Sec. 30-120. - Fees.

The public works department shall, from time to time, prepare and submit for approval by the city council a schedule of fees that shall be paid pursuant to this division. Payment of any applicable fees, when due, is a condition of the processing of any application, renewal, or amendment under this article.

Subdivision B. - Stormwater Quality Permit Process

Sec. 30-131. - Stormwater quality permit application generally.

An applicant for a SWQ permit shall submit a stormwater quality permit application on the form specified by the public works department. The application shall include a stormwater quality management plan that:

- (1) Complies with the design manual;
- (2) Includes a proposed inspection checklist, maintenance plan, and associated construction drawings; and
- (3) Is sealed by a professional engineer licensed as such in the State of Texas.

Each application for a SWQ permit shall be accompanied by the applicable application fee.

Sec. 30-132. - Issuance of SWQ permit.

- (a) The public works department shall review the SWQ permit application and the SWQMP and either approve or deny the application based on compliance with the applicable provisions of this article and the Code. The public works department shall also deny the application if any statement made in the application or any documents submitted therewith were known to be false or should have been known to be false by the applicant.

- (b) The SWQ permit shall be issued to the owner of the land covered by the SWQ permit and shall run with the land and be binding on all subsequent owners unless responsibility for compliance has been transferred pursuant to section 30-149 of this Code.
- (c) The granting of a SWQ permit does not imply that federal or state stormwater management requirements or criteria have been met.

Sec. 30-133. - Amendment of SWQ permit.

- (a) An amendment to the SWQ permit is required in the following events:
 - (1) The person responsible for compliance with the SWQ permit changes either as a result of:
 - a. The transfer of ownership of the parcel to a different person; or
 - b. The transfer of the obligation to comply with this Code to a third-party permittee pursuant to section 30-149 of this Code.
 - (2) Any substantial deviation is made to a structural control or any change is made to a non-structural control in the SWQMP on which the SWQ permit is based; or
 - (3) The subsequent new development or significant redevelopment of any parcel covered by that SWQ permit (unless the subsequent new development or significant redevelopment has already been anticipated and provided for in the SWQMP on which the SWQ permit is based).
- (b) Applications to amend a SWQ permit to satisfy subsection (a)(1) of this section shall be submitted within ten days after any such transfer to a subsequent owner or to a third-party permittee. Amendments to a SWQ permit to satisfy subsections (a)(2) and (a)(3) of this section must be obtained before commencement of the activity that triggers the need for the amendment.
- (c) An application to amend a SWQ permit to transfer the SWQ permit to a subsequent owner or a third-party permittee shall include an attestation by the subsequent owner or third-party permittee that he has read the SWQMP and agrees to adhere to the operation and maintenance requirements specified therein.
- (d) To amend a SWQ permit, the SWQ permittee must submit a revised SWQMP, including any revisions to the inspection checklist, maintenance plan and associated construction drawings, together with the appropriate form and amendment fee. The public works department shall review the amendment application and either approve or deny the amendment application based on compliance with the applicable provisions of this article and the Code.

- (e) If the amendment includes the transfer of responsibility for compliance with this division to a third-party permittee pursuant to subsection 30-149(b) of this Code, the legal agreement documenting that transfer shall be referred to the city attorney for a determination of whether the legal agreement is adequate to assure compliance. If the city attorney determines that the legal agreement is not adequate and the applicant does not provide a substitute legal agreement deemed adequate by the city attorney, the amendment application shall be denied.

Sec. 30-134. – Revocation of SWQ permit.

- (a) The public works department shall revoke a SWQ permit if it is found that:
 - (1) The applicant knew or should have known that a statement made in the application for the SWQ permit was false and or failed to disclose relevant facts;
 - (2) The SWQ permittee has violated any provision of its SWQ permit or of this division including, but not limited to, failure to amend a SWQ permit as required by section 30-133 of this Code;
 - (3) The SWQ permit has been issued in error.
- (b) The public works department shall send a written notification by certified mail, return receipt requested, to the SWQ permittee informing him of the grounds for revoking his SWQ permit.

Sec. 30-135. - Duration.

An initial SWQ permit shall be valid for one year from date of issuance, but may be renewed. All subsequent renewals of a SWQ permit shall be valid for one year.

Sec. 30-136. - Renewal.

SWQ permits are valid for one year from date of issuance. To renew a SWQ permit, the SWQ permittee shall submit a renewal application on a form prescribed by the public works department and the applicable renewal fee not more than 30 days but not less than five days prior to expiration of the SWQ permit. As part of the renewal application, the SWQ permittee shall certify that all controls have been maintained as specified in the SWQMP. If structural controls are used, a state licensed professional engineer shall also certify that all structural controls still generally conform to the plans and technical specifications in the SWQMP. The public works department shall deny a renewal application if it is found that the SWQ permittee failed to seek an amendment to its SWQ permit if required to do so pursuant to section 30-133 of this Code.

[Sec. 30-137 – 30-146 Reserved]

Subdivision C. - Stormwater Quality Permit Requirements

Sec. 30-147. - Incorporation by reference.

The SWQMP, including the proposed inspection checklist, maintenance plan and associated construction drawings, shall be incorporated into the SWQ permit by reference. Failure to comply with the SWQMP shall be a violation of this article.

Sec. 30-148. – Certifications and attestations.

- (a) If the SWQMP on which the SWQ permit is based includes one or more structural controls, the SWQ permittee shall submit a certificate sealed by a professional engineer licensed as such in Texas within 14 days after the structural controls specified in the SWQMP for all or that part of the new development or significant redevelopment have been installed. The certificate shall certify that all structural controls are in general accordance with the plans and technical specifications in the SWQMP. At the same time this certificate is filed, the SWQ permittee shall also submit an attestation that he has read the SWQMP and agrees to adhere to the operation and maintenance requirements specified therein.
- (b) If the SWQMP on which the SWQ permit is based does not include one or more structural controls, the SWQ permittee shall, before the issuance of a construction permit for any structure on land included in the SWQMP, submit an attestation that he has read the SWQMP and agrees to adhere to the operation and maintenance requirements specified therein.

Sec. 30-149. - Transfer of permit; third-party permittees.

- (a) The provisions of this subsection (a) shall apply to subdivisions that include lots for single-family residential use. Prior to the sale of the first lot in the subdivision or any section thereof, the owner of land that is being subdivided, in whole or in part, into single-family residential lots shall transfer the obligation to comply with all requirements of this division for acceptance to a homeowners' association established for all or that part of the subdivision. The homeowners' association must have fee simple title to all structural controls and, at a minimum, an easement in favor of the homeowners' association allowing access to maintain structural controls or to implement non-structural controls. Further, the owner must require that any homeowners' association for the subdivision have the authority to impose fees or otherwise generate monies to fund operation and maintenance measures and bond requirements. After a homeowners' association complying with the provisions of this subsection has been established, the owner may seek to amend the SWQ permit pursuant to section 30-133 of this Code to transfer the SWQ permit to the homeowners' association. Until the city has approved the transfer to the homeowners' association, the owner shall remain responsible for compliance with the requirements of this division.

- (b) The provisions of this subsection (b) shall apply to all new development or significant redevelopment that is not governed by subsection (a) above. The SWQ permit may be transferred to a person other than the owner of the land subject to the SWQ permit if the person and the owner enter into a binding legal agreement that meets the requirements of this subsection. The person must agree to comply with the requirements of this division and with the terms and conditions of the SWQ permit, including adherence to the operation and maintenance requirements specified therein. The third-party agreement shall grant fee simple title to all structural controls to the person, provide an easement if necessary to allow access by person across the owner's property to maintain structural controls or to implement non-structural controls, and if necessary, to allow stormwater from the owner's property to drain across any adjacent property to a designated structural control. The legal agreement shall also provide that in the event of its termination for any reason, including by either choice or default, the obligation to comply with the provisions of this division shall revert to the owner of the land.

Sec. 30-150. - Recordation.

- (a) The obligation for a parcel to comply with the SWQ permit requirements shall be recorded in the real property records of the county in which the parcel is located. The recordation shall note that all structural or non-structural controls on or for the parcel may not be changed from the plans and technical specifications in the SWQ permit for the parcel unless the provisions of section 30-133 have been met.
- (b) For new development that includes the platting of a reserve tract, a notation shall be placed on the subdivision plat that a SWQ permit must be obtained before the issuance of any construction permit for a structure on all or a part of the reserve tract.
- (c) Third-party permittees: For subdivisions of lots for single-family residences, the homeowners' association agreement shall be recorded for all parcels in the subdivision at the time of the transfer of the SWQ permit to the homeowners' association. For other new development or significant redevelopment for which there is a third-party permittee, the third-party agreement shall be recorded for all parcels subject to the rights and obligations specified in the agreement at the time of the transfer of the SWQ permit to the third-party permittee.
- (d) The SWQ permit applicant or, if the SWQ permit has already been issued, the SWQ permittee, shall pay all recording fees required by the county clerk's office.

[Sec. 30-151 – Sec. 30-160 Reserved]

DIVISION 3. - STORMWATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY

Sec. 30-161. - Applicability.

This division shall apply to all facilities located within the city that have stormwater discharges associated with construction activity.

Sec. 30-162. - Unpermitted discharges prohibited.

A person who is the operator of a facility that has stormwater discharges associated with construction activity commits an offense if the person discharges, or causes to be discharged, stormwater associated with construction activity without first having obtained an NPDES or TPDES permit to do so.

Sec. 30-163. - Submission of NOI.

- (a) The operator of a facility required to have an NPDES or TPDES permit to discharge stormwater associated with construction activity shall submit a certification that he has submitted an NOI to the EPA or TCEQ, a copy of that NOI, and a copy of a site plan detailing the location of erosion control measures to the Authorized City Official prior to obtaining a construction permit for that activity.
- (b) A person commits an offense if the person operates a facility that is discharging stormwater associated with construction activity without having submitted a copy of the NOI to do so to the city.

Sec. 30-164. - Submission of NOT.

- (a) If required to submit an NOT to EPA pursuant to an NPDES or TPDES permit to discharge stormwater associated with construction activity, an operator shall submit a certification that he has submitted an NOT to the EPA or TCEQ and a copy of that NOT to the Authorized City Official at the same time the operator submits the NOT to the EPA or the TCEQ as applicable. If final stabilization as required by EPA has not been achieved at the time the operator submits the NOT, the operator shall also submit a copy of the NOI for the operator who is assuming responsibility for the site.
- (b) A person subject to the requirements of subsection (a) of this section commits an offense if the person fails to submit a copy of the NOT to the city.

Sec. 30-165. - Compliance with permit.

- (a) A facility that has stormwater discharges associated with construction activity shall be operated in strict compliance with the requirements of its NPDES or TPDES permit to discharge stormwater associated with construction activity.

- (b) The stormwater pollution prevention plan implemented to satisfy the requirements of an NPDES or TPDES permit to discharge stormwater associated with construction activity shall comply with the Stormwater Management Handbook for Construction Activities.
- (c) A person commits an offense if the person operates a facility that has stormwater discharges associated with construction activity in violation of this article, the facility's NPDES or TPDES permit to discharge stormwater associated with construction activity.

Sec. 30-166. - Modification of stormwater pollution prevention plans.

- (a) The Authorized City Official may require the operator of a facility that has stormwater discharges associated with construction activity to modify the facility's stormwater pollution prevention plan if, in the best professional judgment of the Authorized City Official, the stormwater pollution prevention plan does not comply with the requirements of the facility's NPDES or TPDES permit to discharge stormwater associated with construction activity.
- (b) Notification of the deficiencies in a facility's stormwater pollution prevention plan shall be made in writing, and the facility operator will be given a reasonable amount of time, not to exceed 30 days, to make the necessary changes in the stormwater pollution prevention plan.

[Sec. 30-167 – 30-186 Reserved]

DIVISION 4. - STORMWATER DISCHARGES FROM INDUSTRIAL AND HIGH RISK FACILITIES

Subdivision A. - Stormwater Discharges Associated with Industrial Activity

Sec. 30-187. - Unpermitted discharges prohibited.

A person who is the owner or the operator of a facility that has stormwater discharges associated with industrial activity commits an offense if the person discharges, or causes to be discharged, stormwater associated with industrial activity without having first obtained an NPDES or TPDES permit to do so, or otherwise violates this article.

Sec. 30-188. - Submission of NOI.

- (a) A person who is the owner or the operator of a facility that has stormwater discharges associated with industrial activity shall submit to the Authorized City Official a copy of:
 - (1) The notice of intent to obtain coverage under TPDES permit number TXR050000 for the facility;

- (2) The notice of intent to obtain coverage under any other TPDES general stormwater permit for the facility;
 - (3) The individual TPDES stormwater permit for the facility; or
 - (4) The no exposure certification form submitted to TCEQ for the facility pursuant to the provisions of TPDES permit number TXR050000.
- (b) A copy of the NOI or the no exposure certification form shall be submitted to the city no later than 14 calendar days after filing the NOI or no exposure form with the TCEQ for such coverage. A copy of the individual TPDES permit shall be submitted to the city no later than 14 calendar days after TCEQ signs the permit.

Sec. 30-189. - Submission of NOT.

- (a) A person who is the owner or operator of a facility that has stormwater discharges associated with industrial activity shall submit to the Authorized City Official a copy of an NOT for the facility which shall include any information required for notice of termination under TPDES permit number TXR050000 or any other TPDES general stormwater permit, whenever:
- (1) All stormwater discharges associated with industrial activity are eliminated at the facility; or
 - (2) The operator of the facility changes. If the NOT is being submitted because the operator of the facility has changed, a copy of the NOI for the new operator shall be submitted with the NOT.
- (b) The copy of the NOT shall be submitted no later than 24 calendar days after either all stormwater discharges associated with industrial activity are eliminated at the facility or the operator of the facility changes.”

SECTION 3. INCORPORATION INTO THE CODE; PENALTY CLAUSE.

This Ordinance is hereby incorporated and made a part of the Seabrook City Code. Violation of this Ordinance is subject to the penalty section of said Code of Ordinances, Section 1-15, “General penalty; continuing violations” which provides that any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000, or the maximum amount provided by law. Each day of violation shall constitute a separate offense.

SECTION 4. SEVERABILITY.

In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part of provisions hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Seabrook, Texas declares that it would have passed each every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

SECTION 5. REPEAL OF PREVIOUS ORDINANCE.

All ordinances or parts of ordinances in conflict or inconsistent with this Ordinance are hereby expressly repealed.

SECTION 6. NOTICE.

The City Secretary shall give notice of the enactment of this Ordinance by promptly publishing it or its descriptive caption and penalty after final passage in the official newspaper of the City; the Ordinance to take effect upon publication.

PASSED AND APPROVED on first reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this 19th day of October, 2021.

PASSED, APPROVED, AND ADOPTED on final reading with a quorum present, by an affirmative vote of a majority of Councilmembers present, in accordance with Seabrook City Charter Section 2.10 on this 2nd day of November, 2021.



Thomas G. Kolupski

By: _____
Thomas G. Kolupski
Mayor

ATTEST:

APPROVED AS TO FORM:

Robin Lenio

By: _____
Robin Lenio TRMC
City Secretary

Steven L. Weathered

Steven L. Weathered
City Attorney