

TOWN OF FLOWER MOUND, TEXAS

ORDINANCE NO. 65-11

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE TOWN OF FLOWER MOUND, TEXAS, BY AMENDING CHAPTER 70, "UTILITIES," BY ADOPTING A NEW ARTICLE XIV, ENTITLED "STORMWATER QUALITY MANAGEMENT AND DISCHARGE CONTROL;" REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Environmental Protection Agency (EPA) delegated authority to the Texas Commission on Environmental Quality (TCEQ) to establish and implement regulations governing stormwater drainage under the Texas Pollutant Discharge Elimination System (TPDES) that requires the Town of Flower Mound (Town) to obtain a TPDES permit for storm water drainage; and

WHEREAS, pursuant to Chapter 54 of the Local Government Code, the Town is authorized to adopt Ordinances necessary to preserve and conserve its water resources; and

WHEREAS, the Town deems it prudent to adopt new regulations to effectively address stormwater quality management and control illegal discharges to the Town's municipal storm sewer system; and

WHEREAS, the Town of Flower Mound, as a home-rule municipality, is authorized and empowered by the Texas Constitution to adopt such standards as are contained in this Ordinance; and

WHEREAS, the Town Council of the Town of Flower Mound, Texas, has determined that it is in the public's best interest and in furtherance of the health, safety, morals, and general welfare of the citizens of the Town to adopt standards regulating stormwater quality and the discharge of pollutants.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, THAT:

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the Town of Flower Mound and they are hereby approved and incorporated into the body of this Ordinance, as if copied in their entirety.

SECTION 2

From and after the effective date of this Ordinance, a new Article XIV, entitled "Stormwater Quality Management and Discharge Control," is hereby added to Chapter 70, "Utilities," to read as follows:

"ARTICLE XIV. STORMWATER QUALITY MANAGEMENT AND DISCHARGE CONTROL

DIVISION 1. TITLE, PURPOSE AND GENERAL PROVISIONS

Sec. 70-1001. Title.

This Article shall be known as the "Stormwater Quality Management and Discharge Control Ordinance" of the Town of Flower Mound and may be so cited.

Sec. 70-1002. Purpose and Intent.

The purpose and intent of this article is to ensure the health, safety, and general welfare of citizens, and protect and enhance the water quality, and to satisfy the appropriate water quality requirements of the TPDES General Permit issued pursuant to Section 26.040 of the Texas Water Code and Section 402 of the Clean Water Act, by reducing the discharge of pollutants from the municipal separate storm sewer system (MS4), to the maximum extent practicable.

Sec. 70-1003. Definitions.

The term used in the Article shall have the following meanings:

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251 et seq., and any subsequent amendments thereto.

Best Management Practices ("BMP") means the schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMP also include treatment requirements, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

Clean Water Act (CWA) means the Federal Water Pollution Control Act, as amended, 33 USC 1251, et seq., and any subsequent amendments thereto.

Commercial Activity means any public or private activity involved in the storage, transportation, distribution, exchange or sale of goods and/or commodities or providing professional and/or non professional services.

Construction or Construction Site means causing or carrying out any building, bulk heading, filling, clearing, excavation, or substantial improvement to land or the size of any structure.

Discharge, when used without a qualifier, refers to the discharge of stormwater runoff or certain non-stormwater discharges as allowed under the authorization of the Texas Pollutant Discharge Elimination System ("TPDES") general permit.

Fundraising Car Wash means the washing of a vehicle, by someone other than the vehicle's owner, at an event for the sole benefit of a charitable, religious, philanthropic, educational or civic institution.

Hazardous Material means any material, including any substance, waste, or combination thereof, which because of its quality, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit Connection means any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

Illegal Discharge means any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except discharges authorized under the TPDES general permit or a separate authorization and discharges resulting from fire fighting activities.

Industrial Activity means manufacturing, processing, material storage, and waste material disposal areas (and similar areas where stormwater can contact industrial pollutants related to the industrial activity) at an industrial facility described by the TPDES Multi Sector General Permit TXR050000, or by another TCEQ or TPDES permit.

Mobile Car Wash means a business providing or equipped to provide vehicle cleaning or detailing services for a vehicle owner at a non-fixed location.

Municipal Separate Storm Sewer System (MS4) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, bar ditches or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (CWA) that discharges to waters of the United States;
2. Designed or used for collecting or conveying stormwater;
3. Which is not a combined sewer; and
4. Which is not part of a publicly owned treatment works (POTW). [40 CFR 122.26(b)(8)].

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

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials; radioactive materials, heat, wrecked or discharged equipment; rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

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

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

Remediation means the abatement or removal of pollution or contaminants from land or water (including sediments in waterways) for the general protection of human health and the environment.

Storm Sewer means a public sewer which carries stormwater and surface water and drainage and into which domestic wastewater or industrial waste are not intentionally passed.

Stormwater and Stormwater Runoff means any flow occurring during or following any form of natural precipitation and resulting therefrom, including but not limited to, rainfall runoff, snow melt runoff and surface runoff and drainage.

Stormwater Management Program ("SWMP") means a comprehensive program to manage the quality of discharges from the municipal separate storm sewer system (MS4).

Texas Pollutant Discharge Elimination System Stormwater Discharge Permits means a permit issued pursuant to section 402 of the Act (33 USC 1342).

Town means the Town of Flower Mound.

Town Manager means the Town Council appointed manager of the Town, or his/her designee.

Waters of the State means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any of its portions.

Waters of the United States ("U.S.") (40 CFR 230.3(s)) means:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;
6. The territorial sea;
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Sec. 70-1004. Applicability and Effective Dates.

This Article, including any amendments or revisions thereto, shall apply to all water entering the municipal separate storm sewer system

generated on or flowing over any developed and undeveloped land lying within the Town of Flower Mound.

The provision and requirements of this Article shall become effective upon its adoption by the Town Council.

Sec. 70-1005. Responsibility for Administration.

The Town Manager shall administer, implement, and enforce the provisions of this Article.

Sec. 70-1006. Severability.

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

Sec. 70-1007. Regulatory Consistency.

This Article shall be construed to assure consistency with the requirement of the Clean Water Act, and any amendments thereto, or any applicable implementing regulations.

Sec. 70-1008. Ultimate Responsibility of Discharger.

The standards set forth herein and promulgated pursuant to this Article are minimum standards; therefore this Article does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into Waters of the State caused by said person. This Article shall not create liability on the part of the Town, or any agent or employee thereof for any damages that result from any discharger's reliance on this Article or any administrative decision lawfully made thereunder.

DIVISION 2. DISCHARGE PROHIBITIONS

Sec. 70-1009. Prohibition of Illegal Discharges.

No person or entity shall discharge or cause to be discharged into the municipal separate storm sewer system or Waters of the State any material, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable

water quality standards, other than stormwater. Waste deposited in streets in proper waste receptacles for the purposes of collection is exempted from this prohibition.

- (a) Illegal discharges into the municipal separate storm sewer system or Waters of the State include, but are not limited to, the following types of discharges and are prohibited, unless the discharge is permitted under a separate TPDES permit, or as allowed by the proper application of BMP adopted by the Town:
- (1) Water from the cleaning of gas stations, vehicles services garages, or other types of vehicles service facilities.
 - (2) Water, cleansers, or solvents from the cleaning of vehicles, machinery or equipment, and other such commercial and industrial activities.
 - (3) Water from the washing or rinsing of vehicles containing soap, detergents, solvents, or other cleaners (an individual washing his/her private vehicle is exempt per Sec. 70-1009(b)).
 - (4) Water from the washing or rinsing of vehicles engine, with or without soap from auto body repair shop.
 - (5) Water from the cleaning or rinsing of vehicle engine, undercarriage, or auto parts cleaning.
 - (6) Vehicle fluids.
 - (7) Mat wash and hood cleaning water from food services facilities.
 - (8) Food and kitchen cleaning water from food services facilities.
 - (9) Leakage from dumpsters, trash containers, or grease traps and containers.

- (10) Water from the cleaning or rising of garbage dumpster areas and areas where garbage or waste is stored or contained.
- (11) Water from pressure washing, steam cleaning, and hand scrubbing of sidewalks, gutters, plazas, alleyways, outdoor eating areas, steps, building exteriors, walls, driveways, and other outdoor surfaces.
- (12) Wastewater or cleaning fluids from carpet cleaning.
- (13) Swimming pools and spa water;
- (14) Water out from concrete trucks; Any concrete, mortar, ceramic, or asphalt base material or hydromulch material, or material from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
- (15) Runoff from areas where hazardous substances, including diesel fuel, gasoline and motor oil are stored, except as allowed by Sec. 70-1011.
- (16) Super-chlorinated water normally associated with the disinfection of potable water systems.
- (17) Debris, such as, but not limited to construction debris and sediment, trash, yard waste, grass clippings, leaves, paint, and wash water.
- (18) Sewage or other forms of pollutants from commercial and/or residential facilities and recreational activities.
- (19) A mobile car wash.

The commencement, conduct or continuance of any illegal discharge to the storm sewer system is prohibited except as described as follows:

- (b) Discharge from the following sources will not be considered a source of pollutants to the storm sewer system and to the state when properly managed to

ensure that no potential pollutants are present; therefore, discharges from the following list shall not be considered illegal discharges, unless determined to cause a violation of the provisions of the Clean Water Act or this ordinance:

- (1) Potable water line flushing.
- (2) Pumped groundwater not containing pollutants and other discharges from potable water sources.
- (3) Landscape irrigation and lawn watering.
- (4) Diverted stream flows.
- (5) Rising ground water.
- (6) Ground water infiltration (as defined in 40 CFR 35.2005(20)) not containing pollutants.
- (7) Water from crawl space pumps not containing pollutants.
- (8) Air conditioning condensations.
- (9) Non-industrial roof drains not containing pollutants.
- (10) Springs.
- (11) An individual washing his/her private vehicle(s) (except as provided in § 70-1009(a)).
- (12) Flow from riparian habitats and wetlands.
- (13) De-chlorinated swimming pool discharges.
- (14) Flow from fire fighting.
- (15) Flow from a fundraising car wash.
- (16) Agricultural stormwater runoff.

- (17) A discharge authorized by, and in full compliance with, a TPDES permit (other than the TPDES permit for discharges from the MS4).
- (c) The Prohibition shall not apply to any non-stormwater discharge permitted under an TPDES permit, waiver, or waste discharge order issued to the discharger and administered by the State of Texas under the authority of the Federal Environmental Protection Agency, provided that the discharge is in full compliance with all requirements of the permit, waiver or order and the applicable law and regulations, and provided that written approval has been granted by the Town of Flower Mound. The Town may exempt in writing other non-stormwater discharge which are not a source of pollutants to the municipal separate storm sewer system or Waters of the State.

Sec. 70-1010. Prohibition of Illicit Connections.

- (a) The construction, use, maintenance or continued existence of illicit connections to the storm sewer system is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

Sec. 70-1011. Discharges in Violation of Industrial or Construction Activity TPDES Stormwater Discharge Permit.

Any person subject to an Industrial or Construction activity TPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town Manager prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

DIVISION 3. REGULATIONS AND REQUIREMENTS**Sec. 70-1012. Requirement to Prevent, Control, and Reduce Stormwater Pollutants.**

- (a) Authorization to Adopt and Impose Best Management Practices. The Town may adopt requirements identifying BMP for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the municipal separate storm sewer system, or Waters of the State as a separate best management practice of the Stormwater Management Program. Where BMP requirements are promulgated by the Town or any Federal, State, or regional agency for any activity, operation, or facility which would otherwise cause the discharge of pollutants to the storm sewer system or Waters of the U.S., every person undertaking such activity or operation, or owning or operating such facility shall comply with such requirements.

The Town Manager will periodically report to the Town Council on the status of implementation of BMP and any new BMP to be developed for inclusion in the Town of Flower Mound's Stormwater Management Program.

- (b) New Development and Redevelopment. The Town may require any owner or person developing real property to identify appropriate BMP to control the volume, rate, and potential pollutant load of stormwater runoff from new development and redevelopment projects as may be appropriate to minimize the generation, transport and discharge of pollutants. The Town shall incorporate such requirements in any land use entitlement and construction or building-related permit to be issued relative to such development or redevelopment. The Owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required in this Article and the Town Stormwater Utility Ordinance, Chapter 70, Article XI. (Required by SmartGrowth and the Design Standards)

These requirements may include a combination of structure and non-structural BMP, and shall include requirements to ensure the proper long term operation and maintenance of these BMP.

- (c) Construction Sites. BMP to reduce pollutants in any stormwater runoff activity shall be incorporated in any land use entitlement and construction or building-related permit. The owner and developer shall comply with terms, provisions, and conditions of such land use entitlement and building permits as required by the Town.
- (d) Responsibility to Implement Best Management Practices. Notwithstanding the presence or absence of requirements promulgated pursuant to subsections (a), (b), and (c) above, any person or entity engaged in activity or operations, or owning facilities or property which will or may result in pollutants entering stormwater, the municipal separate storm sewer system, or Waters of the State shall implement BMP to the extent they are technologically achievable to prevent and reduce such pollutants. Facilities designed to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner or operator's expense.

Sec. 70-1013. Requirement to Eliminate Illegal Discharges.

Notwithstanding the requirements of 70-1019 herein, the Town Manager may require by written notice that a person or entities responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges.

Sec. 70-1014. Requirement to Eliminate or Secure Approval for Illicit Connections.

- (a) The Town Manager may require by written notice that a person or entity responsible for an illicit connection to the storm sewer system comply with the requirements of this Article to eliminate or to secure approval for the illicit connection by a specified date, regardless of whether the connection or discharge has been established or approved prior to the effective date of this Article.
- (b) If, subsequent to eliminating a connection found to be in violation of this Article, the responsible person or entity can demonstrate that an illegal discharge will no longer occur, said person or entity may request Town approval to reconnect. The

reconnection or reinstallation of the connection shall be at the responsible party's expense.

Sec. 70-1015. Watercourse Protection.

Every person or entity owning property through which a watercourse passes, or such owner's lessee shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other manmade or unnatural obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse. The owner or lessee shall not remove healthy bank vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner or such owner's lessee shall be responsible for maintaining and stabilizing that portion of the watercourse that is within their property lines in order to protect against erosion and degradation of the watercourse originating or contributed from their property.

Sec. 70-1016. Requirement to Remediate.

Whenever the Town Manager finds that a discharge of pollutants is taking place or has occurred which will result in or has resulted in pollution of stormwater, the municipal separate storm sewer system, or Waters of the U.S., the Town Manager may require by written notice to the owner of the property and/or the responsible person or entity that the pollution be remediated and the affected property restored within a specified time pursuant to the provision of Sec. 70-1021 through Sec. 70-1023 below.

Sec. 70-1017. Requirement to Monitor and Analyze.

The Town Manager may require by written notice that any person or entity engaged in any activity and/or owning or operating a facility which may cause or contribute to stormwater pollution, illegal discharge, and/or non-stormwater discharges to the municipal separate storm sewer system or Waters of the State, to undertake at said person's or entity's expense such monitoring and analyses and furnish such reports to the Town of Flower Mound as deemed necessary to determine compliance with this Article.

Sec. 70-1018. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of material which are resulting or may result in illegal discharge or pollutants discharging into stormwater, the municipal separate storm sewer system or Waters of the State from said facilities, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such releases. In the event of such a release of a hazardous material said person shall immediately notify emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of non-hazardous material, said person shall notify the Town Manager in person or by phone or facsimile no later than 5:00 pm of the next business day. Notification in person or by phone shall be confirmed by written notice addressed and mailed to the Environmental Services within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

For site development or construction activities already regulated under a TPDES General Construction Permit, which is limited to: Construction activities that disturb less than 1 acre; small construction activities that disturb 1 acre to 5 acres; large construction activities that disturb 5 acres or greater; or a common plan of development, relative to erosion and sediment control, the TPDES General Construction Permit shall regulate said activities and exempt the operator from the spill notification requirements relative to sediment and/or erosion control.

DIVISION 4. INSPECTION AND MONITORING**Sec. 70-1019. Authority to Inspect.**

Whenever necessary to make an inspection to enforce any provision of this Article, or whenever the Town Manager has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article, the Town Manager may enter such premises at all reasonable times to inspect the same and copy records related to stormwater compliance. In the event the owner or occupant refuses entry after a request to enter and

inspect has been made, the Town is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

Sec. 70-1020. Authority to Sample, Establish Sampling Devices, and Test.

During any inspection as provided herein, the Town Manager may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

DIVISION 5. ENFORCEMENT

Sec. 70-1021. Enforcement and Administration.

1. Violations of provisions of this Article or failure to comply with any of its requirements shall constitute an offense punishable by fine not to exceed two thousand dollars (\$2,000.00) per violation, per day. Any person who violates this Article shall, upon conviction thereof, be fined in accordance with the provisions of this Article. Each day such violation continues shall be considered a separate offense.
2. The owner or operator of any facility, construction site, structure, premises, or party thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.
3. Violations of this Article may be remedied using the procedures set forth in Section 1-13 of the Town of Flower Mound Code, entitled General Penalty; continuing violations. These remedies shall be in addition to all other legal remedies, criminal or civil, which may be pursued by the Town to address any violation of this Article. In addition, the Town Manager may require without limitation:
 - (a) The performance of monitoring, analyses, and reporting;
 - (b) The elimination of illicit connections or discharge;
 - (c) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and

- (d) The implementation of source control or treatment BMP.

Sec. 70-1022. Emergency Abatement.

The Town Manager is authorized to require immediate abatement of any violation of this Article that constitutes an immediate threat to the health, safety or well being of the public. If any such violation is not abated immediately as directed by the Town Manager, the Town of Flower Mound is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Town of Flower Mound shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the Town from seeking other and further relief authorized under this Article.

Sec. 70-1023. Compensatory Action.

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

Sec. 70-1024. Violation Deemed a Public Nuisance.

In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the Town at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the Town.

Sec. 70-1025. Stop Orders.

1. The Town Manager shall retain the authority to issue stop work orders for any construction site in violation of this Article.
2. If the Town Manager determines that compliance is not being attained, that a construction site is operating in a dangerous or unsafe manner, or that conditions exist at a construction site that may lead to an illicit discharge, upon written notice of an

issuance of a stop work order, such work or conditions shall be immediately terminated or remedied. Written notice of such action shall be provided to the owner, operator, and responsible party of the construction site and shall state the conditions under which work may be resumed. However, where an emergency exists which may result in discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to property, natural resources, wildlife, or habitat written notice shall be delivered as soon as practicable.

Sec. 70-1026. Acts Potentially Resulting in a Violation of the Federal Clean Water Act.

Any person who violates any provision of this Article or any provision of any requirement issued pursuant to this chapter may also be in violation of the Clean Water Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this Article shall also include written notice to the violator of such potential liability.

Sec. 70-1027. Civil Penalties to be Deposited in the Stormwater Utility Fund.

Any civil penalties collected by the Town as a result of violations of this Article shall be deposited in the Stormwater Utility Fund.

DIVISION 6. JUDICIAL ENFORCEMENT REMEDIES

Sec. 70-1028. Injunctive Relief.

When the Town Manager finds that a person has violated, or continues to violate, any provision of this Article, or any order issued hereunder, the Town Manager may petition any court of competent jurisdiction, as appropriate, which restrains or compels the specific performance by that person of any requirement imposed by this Article or any order issued hereunder. The Town Manager may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for a violator to conduct environmental remediation, abatement, or restoration. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a violator.

Sec. 70-1029. Civil Suit Under the Texas Water Code.

Whenever it appears that a violation of any provision of the Texas Water Code, or any rule, permit, or order of the TCEQ, has occurred or is occurring within the jurisdiction of the Town of Flower Mound, exclusive of its extraterritorial jurisdiction, the Town, in the same manner as the TCEQ, may have a suit instituted in a state district court, through its attorney, for the injunctive relief or civil penalties or both authorized in Chapter 7 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 Chapter 7 of the Texas Water Code, and in suits brought thereunder, the TCEQ shall be a necessary and indispensable party.

Sec. 70-1030. Remedies Nonexclusive.

The remedies provided for in this Article are not exclusive. The Town may take any, all, or any combination of these actions against a violator. The Town is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently. All remedies are cumulative."

SECTION 3

This Ordinance shall be cumulative of all provisions of ordinances of the Town of Flower Mound, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 4

If any section, subsection, clause, phrase or provision of this Ordinance and the Code, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases or provisions of this Ordinance and the Code, or the application thereof to any person or circumstances, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 5

Any person, firm, or corporation who violates any provision of this Ordinance as adopted by the Town Council of the Town of Flower Mound shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as specifically provided in the above-quoted text of this Ordinance and, to the

extent not otherwise provided for in above-quoted text of this Ordinance then as provided in Section 1-13 of the Code of Ordinances of the Town of Flower Mound. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 6

This Ordinance shall take effect and be in full force from and after its publication date as provided by the laws of the State of Texas and the Home Rule Charter of the Town of Flower Mound, Texas.

DULY PASSED, APPROVED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS, BY A VOTE OF 4 TO 0, ON THIS THE 19th DAY OF DECEMBER, 2011.


Melissa D. Northern, MAYOR

ATTEST:


Theresa Scott, TOWN SECRETARY

APPROVED AS TO FORM AND LEGALITY:


Terrence S. Welch, TOWN ATTORNEY