



Kimberly McGehee Aldrich, Mayor

Sylvia Apodaca
Christopher Garza
Janeshia Grider

Mike Martin
Susan Street
Debbie Walczyk

**CITY COUNCIL AGENDA
REGULAR MEETING
THURSDAY, JULY 14, 2022 – 7:00 P.M.
CITY HALL COUNCIL CHAMBER
112 BAUMAN, KIRBY, TX 78219**

This meeting will also be held by videoconference call. The location where a quorum of the governmental body will be physically present is City Hall, City Council Chambers at 112 Bauman Street, Kirby, Texas 78219 and it is the intent to have a quorum present at that location and for the member of the governmental body presiding over the meeting to be physically present at that location. A member of the public may testify from a remote location by videoconference at:

Topic: Regular City Council Meeting

Date and Time: July 14, 2022 at 7:00 p.m. (Central Time)

Join Zoom Meeting:

Video Participation: Join Zoom Meeting

<https://zoom.us>

Meeting ID: 956 855 1663 and Passcode: 1955

1. **Call Meeting to Order**
2. **Invocation and Pledge of Allegiance to the Flag**
3. **Mission Statement**

"The City of Kirby is dedicated to delivering excellent municipal services to our community in a fiscally responsible manner."
4. **Roll Call**
5. **Citizen Participation**

Citizens Participation Is For The City Council To Receive Information On Issues That May Be Of Concern To The Public. Citizens Participation Is Limited To Five (5) Minutes. A

Purpose Of The Open Meetings Act Is To Insure That The Public Is Always Given Notice Of The Items That Will Be Discussed By The Council. Should A Member Of The Public Bring An Item To The Council For Which The Subject Was Not Posted On The Agenda For The Meeting, The Council May Receive The Information, But Cannot Discuss Or Act Upon It At The Meeting.

6. Presentation

- a. Presentation And Discussion On City Limit Signage Located On FM78 – Dale Picha, Texas Department Of Transportation
- b. Presentation Of Life Saving Award, Chief Cardona
- c. Presentation Of Retirement Recognition To Corporal Seth Scurlock, Chief Cardona
- d. Presentation And Report On Water Loss Emergency, Mayor Aldrich, Chief Hilburn, Chief Cardona

7. Public Hearing

- a. Crime Control And Prevention District Fiscal Year 2022-2023 Budget

8. Consideration Of And Action On Minutes

- a. Budget Workshop Minutes – June 23, 2022
- b. Regular Minutes – June 23, 2022

9. Discussion And Possible Action

- a. Discussion And Possible Action On National League Of Cities (NLC) Service Line Warranty Program
- b. Discussion And Possible Action On Crime Control And Prevention District Fiscal Year 2022-2023 Budget.
- c. Discussion And Possible Action On An Ordinance Of The City Of Kirby, Texas, Amending Chapter 54 Of The Code Of Ordinances In Regard To Illicit Discharge Restrictions Pursuant To U.S. Environmental Protection Agency Guidelines And Adopted Texas Commission On Environmental Quality Standards, And Providing A Penalty Upon Conviction Of A Violation Of This Chapter In An Amount Not To Exceed \$500.00 Per Violation Per Day Unless The Violator Receives Actual Notice Of The Provisions Of This Ordinance In Which Case The Penalty Upon Conviction Is Not To Exceed \$1,000 Per Violation Per Day Or Not To Exceed \$5,000 Per Violation Per Day For Certain Violations Relative To Point Source Effluent Limitations Or The Discharge Of A Pollutant (Other Than From A Non-Point Source) Into A Sewer System, Including A Sanitary Or Storm Water Sewer System, Owned

Or Controlled By The City, And Establishing An Effective Date. This Is The Second Reading.

- d. Discussion And Possible Action On An Ordinance Of The City Of Kirby, Texas, Amending Chapter 55 Of The Code Of Ordinances In Regard To Construction Storm Water Management Practices As Required By The United States Environmental Protection Agency And The Texas Commission On Environmental Quality; And Providing That The City May Seek Injunctive Relief To Restrain Violations Or To Compel Abatement Or Remediation Of Violations; Providing For A Civil Penalty Of Up To \$1,000 Per Day For A Violation Of This Chapter; Setting A Fee For Reviewing Proposed Storm Water Pollution Prevention Plans; And Providing For An Effective Date. This Is The First Reading.
- e Reports By Council Liaisons
 - 1. Animal Advisory Committee – Council Member Walczyk
 - 2. Beautification And Recycle Committee – Mayor Pro-Tem Grider
 - 3. Building And Standards Commission – Council Member Martin
 - 4. Crime Control And Prevention District – Council Member Garza
 - 5. Economic Development Committee Council Member Apodaca
 - 6. Planning And Zoning Commission – Mayor Aldrich
 - 7. Senior Center Corporation Board – Council Member Street

10. Request And Announcements

- a. Requests By Mayor And Council Members For Items To Be Placed On Future City Council Agendas And Announcements On City Events/Community Interest

11. Adjournment

Monique L. Vernon
City Manager

Patty Cox, TRMC
City Secretary

The City Council reserves the right to adjourn into executive session at any time to discuss any of the matters listed on this agenda if authorized by Texas Government Code Section 551.071, Consultation with Attorney, Texas Government Code Section 551.072, Deliberations about Real Property, Texas Government Code Section 551.074, Personnel Matters, and Texas Government Code Section 551.076, Security Devices or Security Audits.

This meeting is wheelchair parking accessible at the main entrance located at 112 Bauman. Auxiliary services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours prior to the meeting) by calling 210/661-3198 or Relay Texas 800/735-2989 (hearing/speech impaired assistance)

DATE OF POSTING: July 11, 2022
TIME OF POSTING: 6:45 P.M.
DATE REMOVED

<input type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input checked="" type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 6 a.

6. Presentation

Presentation And Discussion On City Limit Signage Located On FM78 – Dale Picha,
Texas Department Of Transportation

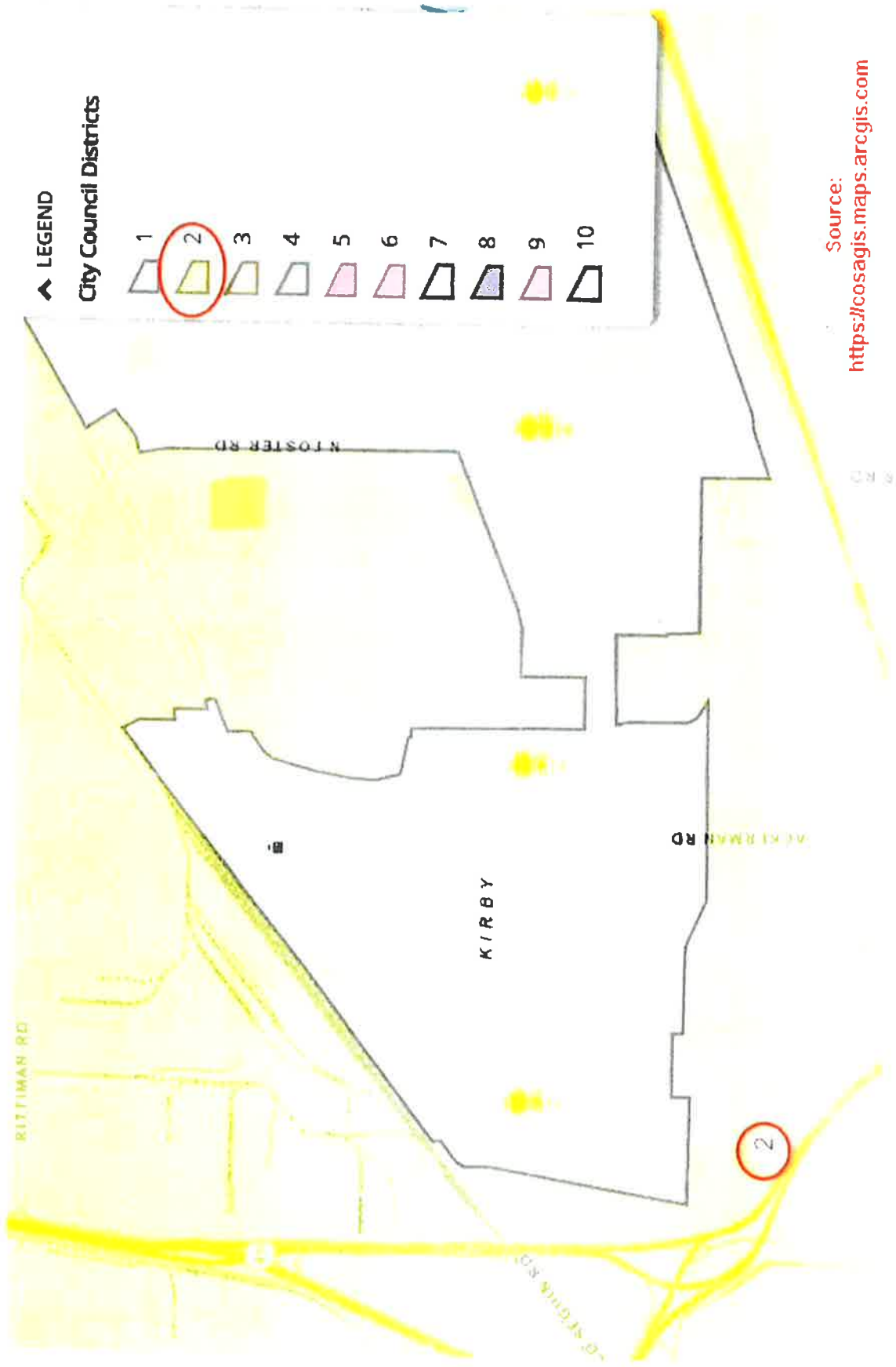
Mayor Aldrich requested this item. In October 2016, the City received a Boundary Adjustment from San Antonio. A request was made for TxDOT to relocate the city limit signage on FM 78 in both directions. TxDOT relocated the eastbound signage, but did not relocate the westbound signage because Kirby does not own that portion of FM 78. We own the land along FM 78. Mr. Picha will attend the meeting to explain in more details.



Old Seguin Rd

Buzz Aldrin Dr

Springfield Rd



Source:
<https://cosagis.maps.arcgis.com>

<input type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input checked="" type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**C I T Y O F K I R B Y
C I T Y C O U N C I L M E E T I N G
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 6. b.

6. Presentation

Presentation Of Life Saving Award, Chief Cardona

<input type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input checked="" type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**C I T Y O F K I R B Y
C I T Y C O U N C I L M E E T I N G
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 6. c.

6. Presentation

Presentation Of Retirement Recognition To Corporal Seth Scurlock, Chief Cardona

<input type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input checked="" type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 6. d.

6. Presentation

Presentation And Report On Water Loss Emergency, Mayor Aldrich, Chief Hilburn,
Chief Cardona

<input type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input checked="" type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 7. a.

7. Public Hearing

Crime Control And Prevention District Fiscal Year 2022-2023 Budget

<input type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input checked="" type="checkbox"/>	CONSIDERATION OF MINUTES
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**C I T Y O F K I R B Y
C I T Y C O U N C I L M E E T I N G
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 8. a.

8. Consideration Of And Action On Minutes

Budget Workshop Minutes – June 23, 2022

Regular Minutes – June 23, 2022

The minutes are attached for your review. If you see any changes, please send me an email no later than 5:00 P.M. on July 12, 2022, and the minutes will be revised.



Kimberly McGehee Aldrich, Mayor

Sylvia Apodaca
Christopher Garza
Janeshia Grider

Mike Martin
Susan Street
Debbie Walczyk

**CITY COUNCIL AGENDA
BUDGET WORKSHOP
THURSDAY, JUNE 23, 2022 – 6:00 P.M.
CITY HALL COUNCIL CHAMBER
112 BAUMAN, KIRBY, TX 78219**

1. Call Meeting to Order

Mayor Aldrich called the meeting to order at 6:00 P.M.

2. Invocation and Pledge of Allegiance to the Flag

Mayor Aldrich led the invocation and pledge of allegiance to the flag.

3. Mission Statement

“The City of Kirby is dedicated to delivering excellent municipal services to our community in a fiscally responsible manner.”

4. Roll Call

PRESENT

ABSENT

Mayor Aldrich
Council Member Apodaca
Council Member Garza
Mayor Pro-Tem Grider
Council Member Martin
Council Member Street
Council Member Walczyk

5. Citizen Participation

There were not any citizens signed up to participate.

6. Budget Workshop

a. Presentation And Discussion On City Of Kirby Funds

City Manager Vernon identified the different funds that were used in the budget. The funds are general fund, water fund, debt service fund, ARPA fund. City Manager Vernon answered questions from Council about the various funds and their function in the budget.

b. Presentation And Discussion On City Of Kirby Employee Pay

City Manager Vernon asked for direction for the July 7th special meeting regarding employee pay.

There was discussion about employee pay.

c. Discussion And Direction On City Of Kirby Fiscal Year 2022-2023 Budget

City Manager Vernon informed Council they will receive a draft budget for the July 7th special meeting. Discussion was about streets, supplies for streets, and new employee positions.

d. Presentation And Discussion On Budget Next Steps

City Manager Vernon identified the budget steps. Build the draft budget, July 25th tax information will be received from Bexar County Tax Assessor and the budget will be built off the current budget.

7. Adjournment

Meeting adjourned at 6:50 P.M.

Kimberly Aldrich, Mayor

ATTEST

Patty Cox, City Secretary, TRMC



Kimberly McGehee Aldrich, Mayor

Sylvia Apodaca
Christopher Garza
Janeshia Grider

Mike Martin
Susan Street
Debbie Walczyk

**CITY COUNCIL MINUTES
REGULAR MEETING
THURSDAY, JUNE 23, 2022 – 7:00 P.M.
CITY HALL COUNCIL CHAMBER
112 BAUMAN, KIRBY, TX 78219**

This meeting was held by videoconference call. The location where a quorum of the governmental body will be physically present is City Hall, City Council Chambers at 112 Bauman Street, Kirby, Texas 78219 and it is the intent to have a quorum present at that location and for the member of the governmental body presiding over the meeting to be physically present at that location. A member of the public may testify from a remote location by videoconference at:

1. Call Meeting to Order

Mayor Aldrich called the meeting to order at 7:00 P.M.

2. Invocation and Pledge of Allegiance to the Flag

Mayor Aldrich led the invocation and pledge of allegiance to the flag.

3. Mission Statement

"The City of Kirby is dedicated to delivering excellent municipal services to our community in a fiscally responsible manner."

4. Roll Call

PRESENT

ABSENT

Mayor Aldrich
Council Member Apodaca
Council Member Garza

Mayor Pro-Tem Grider
Council Member Martin
Council Member Street
Council Member Walczyk

5. Citizen Participation

1. Jack Miller – He spoke about the watermain repair on Ackerman Road and an employee working in the area. He mentioned an interaction between two residents at the last meeting. He encouraged Council to address rules of decorum.

6. Presentation

- a. Presentation And Discussion On City Limit Signage Located On FM78 – Dale Picha, Texas Department Of Transportation

This item was postponed.

- b. Presentation And Discussion On City Of Kirby Drainage Assessment Supplemental Report – Chris Martinez, Givler Engineering

Chris Martinez, Givler Engineering provided information on the Kirby Drainage Assessment Supplemental Report.

- c. Presentation And Discussion On Economic Development Proposals – Cory Mobley, Economic Development Committee Chairman

Cory Mobley, Economic Development Committee Chairman provided insight into the demographics of the City. He spoke about Retail Strategies and Retail Coach and provided pros and cons for each service. He answered questions from Council.

7. Consideration Of And Action On Minutes

- a. Regular Minutes – June 9, 2022

Council Member Martin moved to accept the Minutes of June 9, 2022; seconded by Council Member Garza. The motion carried with a 7-0 vote.

8. Public Hearing

- a. A Public Hearing On A Request For A Specific Use Permit To Allow The Property Located At CB: 5941A, BLK 2, LOT 12, Otherwise Known As 5235 Seguin Road, Kirby, TX 78219, Which Is Zoned Commercial, Office And Retail (C-2) To Be Used As Single Family Dwelling District (R-1) Property.

Mayor Aldrich opened the Public Hearing at 7:47 P.M.

1. Michael Loreda, applicant, spoke and expressed that they want the property to have residential use.

Mayor Aldrich closed the Public Hearing at 7:49 P.M.

- b. A Public Hearing On A Request For A Variance For Property Zoned Single Family Dwelling District (R-1), To Waive The Requirement Of Ordinance No. O-2015-762, Section 803.1.1, To Allow 3/8 Inch Sheathing Roofing Material Instead Of The Required 7/16 Inch Sheathing/Roofing Material Located At CB 5092C BLK 3 LOT 7, Otherwise Known As 4326 Hoeneke St., Kirby, TX 78219.

Mayor Aldrich opened the Public Hearing at 7:49 P.M.

There were no individuals to speak.

Mayor Aldrich closed the Public Hearing at 7:50 P.M.

9. Discussion And Possible Action

- a. Discussion And Possible Action On A Request For A Specific Use Permit To Allow The Property Located At CB: 5941A, BLK 2, LOT 12, Otherwise Known As 5235 Seguin Road, Kirby, TX 78219, Which Is Zoned Commercial, Office And Retail (C-2) To Be Used As Single Family Dwelling District (R-1) Property.

Council discussed the request for a Specific Use Permit to allow residential use. There was a brief discussion about spot zoning and Planning and Zoning Commission's recommendation to deny the request.

Council Member Martin moved to deny the request for a Specific Use Permit to allow the property located at CB: 5941A, BLK 2, LOT 12, otherwise known as 5235 Seguin Road, Kirby, TX 78219, which is Zoned Commercial, Office and Retail (C-2) to be used as Single Family Dwelling District (R-1) Property; seconded by Council Member Walczyk. The motion carried with a 7-0 vote.

AYES: 7

NAYES: 0

- b. Discussion And Possible Action On A Request For A Variance For Property Zoned Single Family Dwelling District (R-1), To Waive The Requirement Of Ordinance No. O-2015-762, Section 803.1.1, To Allow 3/8 Inch Sheathing Roofing Material Instead Of The Required 7/16 Inch Sheathing/Roofing Material Located At CB 5092C BLK 3 LOT 7, Otherwise Known As 4326 Hoeneke St., Kirby, TX 78219.
Council Discussed the request.

Council discussed this request to allow 3/8-inch sheathing roofing material instead of 7/16-inch sheathing/roofing material and Planning and Zoning Commission's recommendation to deny the request.

Council Member Walczyk moved to deny the request for a Variance for property zoned Single Family Dwelling District (R-1), to waive the requirement of Ordinance No. O-2015-762, Section 803.1.1, to allow 3/8 inch sheathing/roofing material instead of the required 7/16 inch sheathing/roofing material located at CB 5092C BLK 3 LOT 7, otherwise known As 4326 Hoeneke St., Kirby, TX 78219; seconded by Council Member Street. The motion carried with a 7-0 vote.

AYES: 7

NAYES: 0

- c. Discussion And Possible Action On Funding And Timeline For ADA Compliance At The Kirby Senior Center

Council discussed the needed repairs. Mayor Aldrich informed Council that City of Seguin has offered to help. Kirby will provide manpower and asphalt.

Council Member Garza moved to take care of the parking lot, funding, and provide a timeline for ADA compliance at the Kirby Senior Center; seconded by Council Member Street. The motion carried with a 7-0 vote.

AYES: 7

NAYES: 0

- d. Discussion And Possible Action On National League Of Cities (NLC) Service Line Warranty Program – Emilie Zalfini

City Manager Vernon informed Council Ms. Zalfini was not able to attend the meeting.

Council discussed the benefits of the program and their concerns. Marc Schnall, City Attorney, offered his thoughts on changes to the agreement.

Mayor Aldrich suggested bringing the agreement back with all the changes.

- e. Discussion And Possible Action On An Ordinance Of The City Of Kirby, Texas, Amending Chapter 54 Of The Code Of Ordinances In Regard To Illicit Discharge Restrictions Pursuant To U.S. Environmental Protection Agency Guidelines And

Adopted Texas Commission On Environmental Quality Standards, And Providing A Penalty Upon Conviction Of A Violation Of This Chapter In An Amount Not To Exceed \$500.00 Per Violation Per Day Unless The Violator Receives Actual Notice Of The Provisions Of This Ordinance In Which Case The Penalty Upon Conviction Is Not To Exceed \$1,000 Per Violation Per Day Or Not To Exceed \$5,000 Per Violation Per Day For Certain Violations Relative To Point Source Effluent Limitations Or The Discharge Of A Pollutant (Other Than From A Non-Point Source) Into A Sewer System, Including A Sanitary Or Storm Water Sewer System, Owned Or Controlled By The City, And Establishing An Effective Date. This Is The First Reading.

Abraham Galindo was available to answer questions.

After discussing the Ordinance, Council Member Street moved to accept the Ordinance of the City of Kirby, Texas, amending Chapter 54 of the Code of Ordinances in regard to illicit discharge restrictions pursuant to U.S. Environmental Protection Agency Guidelines and adopted Texas Commission on Environmental Quality Standards, and providing a penalty upon conviction of a violation of this chapter in an amount not to exceed \$500.00 per violation per day unless the violator receives actual notice of the provisions of this Ordinance in which case the penalty upon conviction is not to exceed \$1,000 per violation per day or not to exceed \$5,000 per violation per day for certain violations relative to point source effluent limitations or the discharge of a pollutant (other than from a non-point source) into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the city, and establishing an effective date; seconded by Mayor Pro-Tem Grider. The motion carried with a 7-0 vote.

AYES: 7

NAYES: 0

- f. Discussion And Possible Action On An Ordinance Of The City Of Kirby, Texas, Amending Chapter 55 Of The Code Of Ordinances In Regard To Post-Construction Commission On Environmental Quality; And Providing That The City May Seek Injunctive Relief To Restrain Violations Or To Compel Abatement Or Remediation Of Violations; Providing For A Civil Penalty Of Up To \$1,000 Per Day For A Violation Of This Chapter; Setting A Fee For Reviewing Proposed Storm Water Pollution Prevention Plans; And Providing For An Effective Date. This Is The First Reading.

City Manager Vernon said there would not be any action on this item tonight due to a change needed for the caption of the ordinance.

Mr. Galindo provided information on this ordinance.

- g. Discussion And Possible Action On Wellsite #3 Repairs And Final Costs

City Manager Vernon said there were final invoices that need to be paid. She identified the invoices from Givler Engineering, Inc. and Advance Water Well Technologies.

Council Member Street moved to approve the final costs for Wellsite #3; seconded by Council Member Martin. With all voting "aye" the motion carried.

AYES: 7

NAYES: 0

- h. Discussion And Possible Action On Appointment Of A Member To The Crime Control And Prevention District Board

The application submitted by James Bogardus was approved by the Crime Control and Prevention District Board.

Council Member Garza moved to appoint James Bogardus to the Crime Control and Prevention District Board; seconded by Council Member Walczyk. The motion carried with a 7-0 vote.

AYES: 7

NAYES: 0

- i. Discussion And Possible Action On Appointment Of A Member To The Planning And Zoning Commission

Roger Romens was available to answer questions.

Council Member Walczyk moved to appoint Roger Romens to the Planning and Zoning Commission; seconded by Council Member Garza. The motion carried with a 7-0 vote.

AYES: 7

NAYES: 0

- j. Discussion And Possible Action On Appointment Of Members To The Kirby Senior Center Corporation Board

Norma Hamby, Senior Center Director said Ruby Rodriguez and Michael Lawrence-Weden were accepted by the Kirby Senior Center Corporation Board.

Council Member Garza moved to appoint Ruby Rodriguez and Michael Lawrence-Weden to the Kirby Senior Center Corporation Board; seconded by Mayor Pro-Tem Grider. The motion carried with a 7-0 vote.

AYES: 7

NAYES: 0

- k. Discussion And Possible Action On Hosting A City Of Kirby Festival In 2023

Council Member Garza spoke about different festivals the City could host.

Council discussed a committee to organize the event and start with ten members and a new name for the event.

City Manager Vernon said a three-day event will need to have funds budgeted for staffing.

10. City Manager Announcements

a. Announcements On City Events And Items Of Community Interest.

City Manager Vernon shared that Officer Sullivan was featured in the paper as part of the Regional SWAT Team. Annual Fireworks in the Park July 3, 2022. City offices will be closed July 4th.

11. Request And Announcements

a. Requests By Mayor And Council Members For Items To Be Placed On Future City Council Agendas And Announcements On City Events/Community Interest

Council Member Street said she will continue to work on numbers for the budget for payroll. She said she is sponsoring along with Council Members Garza and Walczyk a back-to-school pool party on August 13, 7 P.M.– 10 P.M.

Council Member Garza congratulated the new members on the committees. Register your children for Free Kirby Baptist summer sports camp. Be careful during 4th of July and take care of your pets.

Mayor Pro-Tem Grider said she witnessed Council Member Martin represent Kirby in Commissioner's Court. Beautification and Recycle Committee had a street clean-up, Kirby Youth Outreach Event this Saturday class for youth June 25 12 to 1 P.M. free clinic. Be mindful of your pets and when you pop fireworks. Have a safe 4th of July.

Council Member Walczyk agreed with residents with PTSD, be mindful of pets walking on asphalt. Walk your pets in the grass and keep them hydrated.

Council Member Apodaca spoke about the Uvalde active shoot incident. She spoke about emergency plans and the need to have a relationship with Judson I.S.D. She provided contact information for Superintendent and Media info. Judson ISD has an emergency plan. Why aren't active shooter classes done. Janette Ball, Superintendent at Judson ISD. Free school supplies grades K-3 to 5th. Free breakfast and lunch at different schools.

Council Member Martin thanked everyone for attending the meeting and congratulated City Manager Vernon for the CDBG grant that was awarded. He thanked staff and urged everyone to stay hydrated.

Mayor Aldrich thanked Council Member Martin for attending Commissioners Court on behalf of the City of Kirby. She extended prayers for employee who was injured tonight. She thanked the Public Works Department. Kudos to the Fire Department and Police Department for

controlling traffic. She spoke about the relationship between Chief Cardona and Judson ISD. City Manager Vernon said they have been in contact. 4th July be safe. Take care of pets. Thank you.

12. Adjournment

Meeting adjourned at 9:51 P.M.

Kimberly Aldrich, Mayor

ATTEST

Patty Cox, City Secretary, TRMC

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 9. a.

9. Discussion And Possible Action

Discussion And Possible Action On National League Of Cities (NLC) Service Line
Warranty Program

Emilie Zalfini provided an updated marketing agreement and sample marketing materials.

MARKETING AGREEMENT

This MARKETING AGREEMENT ("**Agreement**") is entered into by and between the City of Kirby, Texas ("**City**"), and Utility Service Partners Private Label, Inc. d/b/a Service Line Warranties of America ("**Company**"), herein collectively referred to singularly as "**Party**" and collectively as the "**Parties**". This Agreement shall be effective on the last signature date set forth below ("**Effective Date**").

RECITALS:

WHEREAS, sewer and water line laterals between the mainlines and the connection on residential private property are owned by individual residential property owners residing in the City ("**Property Owner**"); and

WHEREAS, City desires to offer Property Owners the opportunity, but not the obligation, to purchase a service plan and other similar products set forth in Exhibit A or as otherwise agreed in writing from time-to-time by the Parties (each, a "**Product**" and collectively, the "**Products**"); and

WHEREAS, Company, a subsidiary of HomeServe USA Corp., is the administrator of the National League of Cities Service Line Warranty Program and has agreed to make the Products available to Property Owners subject to the terms and conditions contained herein; and

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Purpose.** City hereby grants to Company the right to offer and market the Products to Property Owners subject to the terms and conditions herein.
2. **City Obligations.** Grant of License. City hereby grants to Company a non-exclusive license ("**License**") to use City's branding ("**Marks**"), on marketing materials in accordance with Exhibit A to be sent to Property Owners from time to time, and to be used in advertising (including on the Company's website), all at Company's sole cost and expense and subject to City's prior review and approval, which will not be unreasonably conditioned, delayed, or withheld. Company's use of the Marks in accordance with this Agreement will not infringe any other party's rights. In the event that City extends a similar license to a competitor of Company during the Term and any Renewal Term of this Agreement, the City shall provide thirty (30) days' notice prior to such grant of license and Company may immediately terminate this Agreement.

3. **Term.** The term of this Agreement ("**Initial Term**") shall be for three (3) years from the Effective Date. The Agreement will automatically renew for additional one (1) year terms (each a "**Renewal Term**", and collectively with the Initial Term, the "**Term**") unless one of the Parties gives the other written notice at least ninety (90) days prior to end of the Initial Term or of a Renewal Term that the Party does not intend to renew this Agreement. In the event that Company is in material breach of this Agreement, the City may terminate this Agreement thirty (30) days after giving written notice to Company of such breach, if said breach is not cured during said thirty (30) day period. Company will be permitted to complete any marketing initiative initiated prior to termination of this Agreement after which time, neither Party will have any further obligations to the other and this Agreement will terminate.

4. **Consideration.** As consideration for such license, Company will pay to City a License Fee of as set forth in Exhibit A ("**License Fee**") during the Term of this Agreement. The first payment shall be due by January 30th of the year following the conclusion of the first year of the Term. Succeeding License Fee payments shall be made on an annual basis throughout the Term, due and payable on January 30th of the succeeding year. City agrees to provide a completed Form W-9 to Company in order to facilitate proper payment of the License Fee. City will have the right, at its sole expense, to conduct an audit, upon reasonable notice and during normal business hours, of Company's books and records pertaining to any fees due under this Agreement while this Agreement is in effect and for one (1) year after any termination of this Agreement.

5. **Confidentiality.** Each party will treat all non-public, confidential and trade secret information received from the other party as confidential, and such party shall not disclose or use such information in a manner contrary to the purposes of this Agreement. Notwithstanding the foregoing, the City shall not be liable for any disclosure of confidential information that is required to be disclosed under any applicable public records act or under court order. City shall provide notice to Company prior to any such disclosure.

6. **Code Change.** The Parties understand that the pricing of the Products and compensation provided for in this Agreement are based upon the currently applicable City, municipal or similar codes. In the event Company discovers a code change, Company shall have the ability to reassess the pricing of this Agreement.

7. **Indemnification.** Company hereby agrees to protect, indemnify, and hold the City, its elected officials, officers, employees and agents (collectively or individually, "**Indemnitee**") harmless from and against any and all third party claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, reasonable attorneys' fees and court costs (individually or collectively, "**Claim**"), which an Indemnitee may suffer or which may be sought against or are recovered or obtainable from an Indemnitee, as a result of or arising out of any breach of this Agreement by the Company, or any negligent or fraudulent act or omission of the Company or its officers, employees, contractors, subcontractors, or agents in the performance of services under the Products; provided that the applicable Indemnitee notifies Company of any such Claim within a time that does not prejudice the ability of Company to defend against such Claim. Any Indemnitee hereunder may participate in its, his, or her own defense, but will be responsible for

all costs incurred, including reasonable attorneys' fees, in connection with such participation in such defense.

8. **Notice.** Any notice required to be given hereunder shall be deemed to have been given when notice is (i) received by the Party to whom it is directed by personal service, (ii) sent by electronic mail (provided confirmation of receipt is provided by the receiving Party), or (iii) deposited as registered or certified mail, return receipt requested, with the United States Postal Service, addressed as follows:

To: City:
ATTN: Monique Vernon
City of Kirby
112 Bauman
Kirby, TX 78219
Email: mvernon@cityofkirby.org
Phone: (210) 661-3198

To: Company:
ATTN: Chief Sales Officer
Utility Service Partners Private Label, Inc.
4000 Town Center Boulevard, Suite 400
Canonsburg, PA 15317
Phone: (866) 974-4801

9. **Modifications or Amendments/Entire Agreement.** Except for the list of available Products under the Agreement, which may be amended from time to time by the Parties in writing and without signature, any and all of the representations and obligations of the Parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a Party unless in writing signed by that Party.

10. **Assignment.** Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party unless such assignment or delegation is to an affiliate or to an acquirer of all or substantially all of the assets of the transferor.

11. **Counterparts/Electronic Delivery; No Third Party Beneficiary.** This Agreement may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any Party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by email and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter. Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term, provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

12. **Choice of Law/Attorney Fees.** The Parties shall maintain compliance with all Applicable Laws with respect to its obligations under this Agreement. The governing law shall be the laws of the State of Texas, without regard to the choice of law principles of the forum state. THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THAT MAY EXIST TO HAVE A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON OR ARISING OUT OF, UNDER, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT.

13. **Incorporation of Recitals and Exhibits.** The above Recitals and Exhibit A attached hereto are incorporated by this reference and expressly made part of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written below.

CITY OF KIRBY

Name:

Title:

Date:

UTILITY SERVICE PARTNERS PRIVATE LABEL, INC.

Name: Michael Backus

Title: Chief Sales Officer

Date:

Exhibit A
NLC Service Line Warranty Program
City of Kirby
Term Sheet
June 27, 2022

- I. Initial Term. Three Years.
- II. License Fee. \$0.50 per Product for each month that a Product is in force for a Property Owner (and for which payment is received by Company), aggregated and paid annually, for:
 - A. Use of City logo and name on letterhead, advertising, signature line, and marketing materials.
- III. Products.
 - A. External water service line plan (initially, \$5.75 per month)
 - B. External sewer/septic line plan (initially, \$7.75 per month)
 - C. Interior plumbing and drainage plan (initially, \$9.99 per month)

Pricing does not include taxes. Company may adjust the foregoing Product fees; provided, that any such monthly fee adjustment shall not exceed \$0.50 in any 12-month period. If such adjustment shall exceed \$0.50, both Parties must agree in writing.
- IV. Scope of Coverage.
 - A. External water service line plan:
 - i. Covers Property Owner responsibility: From the meter to the external wall of the home.
 - ii. Covers thawing of frozen external water lines.
 - iii. Covers well service lines if applicable.
 - B. External sewer/septic line plan:
 - i. Covers Property Owner responsibility: From the external wall of the home to the sewer main.
 - ii. Covers septic lines if applicable.
 - C. Interior plumbing and drainage plan:
 - i. Covers water supply pipes and drainage pipes within the interior of the home.
- V. Marketing Campaigns. Company shall have the right to conduct up to three campaigns per year (each campaign consists of two mailings) and such other channels as may be mutually agreed. Initially, Company anticipates offering the interior plumbing and drainage plan Product via in-bound phone or web only.

Monique Vernon

From: Emilie Zalfini <Emilie.Zalfini@homeserveusa.com>
Sent: Monday, June 27, 2022 12:28 PM
To: Monique Vernon
Subject: RE: NLC Service Line Program - Marketing Agreement
Attachments: Letter Template.pdf

Hello again,

I went ahead and requested that change to the marketing agreement. That's a pretty standard request, so it won't be a problem. The reason we ask for indemnification has to do with the customer data if the City decided to provide a mailing list. Without that we will just go ahead and purchase one, which is fine. I've included our standard letter template. This template is flexible as far as the wording/messaging. We can change some of the language and the signature on the letter to be from us instead of from the City to make it a little more clear that it's coming from us, not the City. Page 2 is a lift note that we generally only include in the very first mailing. It is designed to be viewed as a message from the City just to sort of reinforce/explain the reason for the letters, but can also be adjusted or left out of the mailing. Do you think that would work?

I will get the updated agreement to you as soon as I have it. Please don't hesitate to reach out if you have any questions or need anything else!

Emilie Zalfini

Southern Region Water Director
[Water News and Updates](#)

4000 Town Center Blvd Suite 400
Canonsburg, PA 15317

T: 724-749-1060
M: 412-527-2511

Emilie.Zalfini@homeserveusa.com
www.servicelinepartner.com

**NLC Service Line
Warranty Program**

by
 **HomeServe**



From: Monique Vernon <MVernon@cityofkirby.org>
Sent: Monday, June 27, 2022 1:16 PM
To: Emilie Zalfini <Emilie.Zalfini@homeserveusa.com>
Subject: RE: NLC Service Line Program - Marketing Agreement

Caution: This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Hi Emilie,

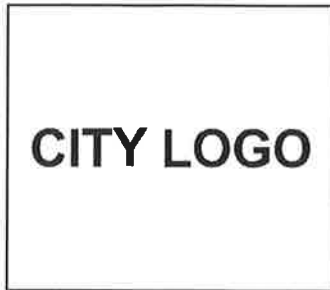
They postponed this item until July 14th. They want an updated agreement that corrects section 7 on indemnification. The City needs to be indemnified but we cannot indemnify you all. They also want a sample of the letter/marketing document that you will send residents. They want it to say endorsed by the City of Kirby with our logo but not appear that the letter/marketing materials are coming from the City of Kirby.

I am happy to discuss this if you need more clarification. I will need the information by July 8.

Partner b&w logo

PRSRT STD
U.S. POSTAGE
PAID
MAILED FROM
ZIP CODE 33310
PERMIT NO. 750





<<*City of City*>>

<<*State*>>

Dear <<City of City>> Homeowner;

The <<City of City>> has partnered with Service Line Warranties of America (SLWA), a provider of home emergency repair solutions to homeowners nationwide, to offer <<Product Name>> to <<City>> homeowners.

Many homeowners are not aware that they are responsible for certain repairs; for example, many Americans don't know that they are responsible to pay for repairs to water service and sewer/septic lines on their private property. Many homeowners are not prepared to handle the high costs of unexpected water service or sewer/septic line breakdowns.

Optional plans from SLWA can help protect you from the potentially expensive repair costs of water and sewer/septic lines inside and outside your home.

The enclosed information is provided to help you decide whether a plan from SLWA is right for you.

Please visit www.slwofa.com for frequently asked questions and links to additional information. You can also call SLWA toll-free at <<Phone>> for more information, to sign up for coverage, or to opt out of any future SLWA mailings.

<<The City of City>>

Code

CITY LOGO

Information for <<City Name>> Homeowners



<<MR. SAMPLE A SAMPLE_XX>>

<<MAIL_ADDRESS1_XXXXXXX>>

<<MAIL_ADDRESS2_XXXXXXX>>

<<MAIL_CITY_XX, ST ZIP>>



Please reply by:
<<Month X, XXXX>>

Dear <<Mr. Sample>>,

Many homeowners are not aware that repairs to the exterior water service or sewer/septic lines that run between your home and the public utility connection are the responsibility of the homeowner.

Water service and sewer/septic lines are subjected to changing soil conditions, ground shifting and corrosion—which may cause a breakdown without warning, leaving you responsible for the cost of repair or replacement. Replacement of these lines can be expensive—costing you thousands of dollars in unforeseen expenses.

<<The City of City>> has partnered with Service Line Warranties of America (SLWA) to help eligible homeowners be prepared and have the best possible service in the case of such an emergency. So you're invited to enroll in <<Product_Name_XXXXXXXXXX>> and <<Product_Name_XXXXXXXXXX>> from SLWA. Accept this *optional* coverage and you'll receive as many service calls as you need up to \$X,XXX per call for covered water service or well line repairs, and as many service calls as you need up to \$X,XXX per call for covered sewer/septic line repairs (30-day wait includes a money-back guarantee for both) and no deductible. You will also have access to a 24/7, 365-day-a-year emergency repair service hotline. Once you have made your service call, SLWA will take care of your covered repair, dispatching a qualified plumber to your home and paying the bill directly. Peace of mind starting for as little as \$X.XX per month. Your emergency is dealt with and your water service or sewer/septic line is back to normal.

In the event of an emergency, these plans can save you a significant amount of money and the time of finding a plumber, which can be difficult in the best of times. Having these plans also helps eliminate worry, as you can be sure of a professional job completed by local, licensed and insured plumbers. These are the only service line protection programs for homeowners fully supported by <<City Name>>.

Please take the time to read the information on the back of this letter. If you would like to sign up for a plan, simply complete and return the enclosed form or call toll-free 1-XXX-XXX-XXXX. We certainly hope that you never have an exterior water service or sewer/septic line emergency, but if you should ever have a problem, you'll be glad you're covered. These programs are managed by SLWA, and no public funds were used for the mailing of this letter.

For fastest processing, please visit www.slwofa.com.

Sincerely,

<<The City of City>>

Mailcode

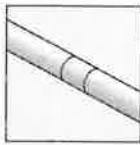
RX4262_Choice_Blue_Pack

RX

<<Disclosure>>

What would you do in an exterior line emergency?

The illustration shows where things may go wrong with your exterior lines and how much a licensed and insured plumber would typically charge customers who don't have coverage. How would you cope if it happened to you? With coverage, it's not something to worry about; you'll have no bill to pay for covered repairs up to the service call benefit amount.



Replace water service line (26–100 ft.)

\$2,585

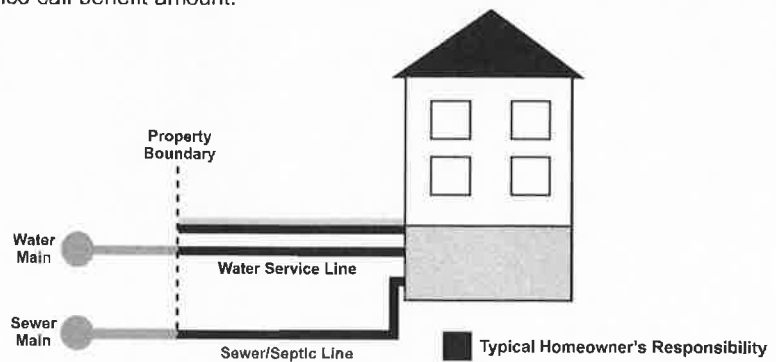
**Plan Members:
No Charge†**



Replace sewer/septic line (26–75 ft.)

\$3,389

**Plan Members:
No Charge†**



†National average repair costs within the SLWA network as of March 2018. No charge for covered repairs up to the service call benefit amount.

<<The water and sewer/septic lines beyond the <<property boundary>> may be an additional responsibility of the homeowner and are included in this coverage.>>
<<Septic tanks, leaching fields, pumps or grinders are not covered.>>

Take A Look At The Benefits You'll Receive

<<Product Name>>

<<Product Name>>

1. **Covered Repairs** – Guaranteed for one full year.



2. **24-Hour Emergency Repair Service Hotline** – Open 24 hours a day, 365 days a year.



3. **Our Promise to You** – Simply call SLWA toll-free at 1-XXX-XXX-XXXX any time, and your coverage can be canceled at your request.



Visit www.slwofa.com to protect your exterior lines
Or call toll-free 1-XXX-XXX-XXXX | Available: <<hours>>

Important Questions & Answers

What am I responsible for?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur.

Does my homeowners insurance cover this?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende.

Does this coverage include well lines?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende.

Who is eligible for coverage?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invendere dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende nitales doluptam, que mi, voluptat et aspiducilic temod ut que et ant. Cerspiuntus solleniam, omnihit as dolo maximi, a ipsamet res sunt odi conse cori as Explignate cupatam hilla eum con re quam faccumq.

What should I know about this coverage?

What's covered: Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestisre officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam.

Not covered: Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestisre officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo.

When can I make a service call?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur.

What is the cancellation policy?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende.

What is the term of my service agreement?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende.

What is E-Z Pay/Direct Pay?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur.

What quality of repair can I expect?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae.

Who is SLWA?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae laturestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. dellaccus voles eosltam.



Please reply by: <<X/X/XXXX>>

Please confirm your name and address below and make any changes if necessary.

```
<<Mr. Sample A Sample_xx>>  
<<Serv_Address1_xxxxxxx>>  
<<Serv_Address2_xxxxxxx>>  
<<Serv_City xx, ST Zip>>"
```



By providing my e-mail address, I request that I be notified when my current and future service agreements and any related documents are available at www.slwofa.com, and I acknowledge that I can access these documents. I can change my preferences or request paper copies online or by calling SLWA.

E-mail Address _____

[illegible]

1. Choose Your Protection Plan(s)

BEST VALUE

Exterior Water Service Line Coverage and Exterior Sewer/Septic Line Coverage <<Mailcode-xxxx>> <<Mailcode-xxxx>>	FIRST-YEAR SAVINGS OF XX% OFF when you select both plans		
	MONTHLY	QUARTERLY	ANNUALLY
	<input type="checkbox"/> \$\$\$ \$XX.XX	<input type="checkbox"/> \$\$\$ \$XX.XX	<input type="checkbox"/> \$\$\$ \$XXX.XX
	MONTHLY	QUARTERLY	ANNUALLY
Exterior Water Service Line Coverage <<Mailcode-xxxx>>	<input type="checkbox"/> \$X.XX	<input type="checkbox"/> \$XX.XX	<input type="checkbox"/> \$XX.XX
Exterior Sewer/Septic Line Coverage <<Mailcode-xxxx>>	<input type="checkbox"/> \$X.XX	<input type="checkbox"/> \$XX.XX	<input type="checkbox"/> \$XXX.XX

2. Choose Your Payment Method

- ☐
- E-Z Pay**
- (see back of letter)

I have enclosed a check, payable to SLWA, for my first payment for the plan(s) selected and understand that all future payments<<, plus any applicable taxes.>> will be debited from this account.

- ☐
- Credit/Debit Card**

I authorize SLWA to charge my first and all future payments<<, plus any applicable taxes,>> for the plan(s) selected to my credit/debit card.

☐ VISA ☐ MASTERCARD ☐ AMEX ☐ DISCOVER

Card Number

Exp. Date

- ☐
- One-Time Check or Money Order**

I have enclosed my check or money order, payable to SLWA, for my one-year payment for the plan(s) selected.

Yes, please sign me up for the protection plan(s) from SLWA I have selected. If I have chosen E-Z Pay or credit/debit card, I understand that, regardless of the payment frequency I select, my optional plan(s) is based on an annual contract and will be *automatically renewed annually* on the same payment terms I selected at the then-current renewal price (currently \$XX.XX per month if I select both plans). I have the option to cancel this contract(s) at any time without additional cost to me by calling 1-XXX-XXX-XXXX. I confirm that I am the homeowner and have read the information in this package, understand there are limitations and exclusions, and meet the eligibility requirements for coverage.

<<Prices include applicable state tax. Additional local tax may apply.>>

Signature (required)

CITY LOGO

Reminder: Please Reply by <<Month X, XXXX>>



<<MR. SAMPLE A SAMPLE_XX>>
<<MAIL_ADDRESS1_XXXXXXX>>
<<MAIL_ADDRESS2_XXXXXXX>>
<<MAIL_CITY_XX, ST ZIP>>



Dear <<Mr. Sample>>,

Many homeowners are not aware that repairs to the exterior water service or sewer/septic lines that run between your home and the public utility connection are the responsibility of the homeowner.

Water service and sewer/septic lines are subjected to changing soil conditions, ground shifting and corrosion—which may cause a breakdown without warning, leaving you responsible for the cost of repair or replacement. Replacement of these lines can be expensive—costing you thousands of dollars in unforeseen expenses.

<<The City of City>> has partnered with Service Line Warranties of America (SLWA) to help eligible homeowners be prepared and have the best possible service in the case of such an emergency. So you're invited to enroll in <<Product_Name_XXXXXXXXXXXX>> and <<Product_Name_XXXXXXXXXXXX>> from SLWA. Accept this *optional* coverage and you'll receive as many service calls as you need up to \$X,XXX per call for covered water service or well line repairs, and as many service calls as you need up to \$X,XXX per call for covered sewer/septic line repairs (30-day wait includes a money-back guarantee for both) and no deductible. You will also have access to a 24/7, 365-day-a-year emergency repair service hotline. Once you have made your service call, SLWA will take care of your covered repair, dispatching a qualified plumber to your home and paying the bill directly. Peace of mind starting for as little as \$X.XX per month. Your emergency is dealt with and your water service or sewer/septic line is back to normal.

In the event of an emergency, these plans can save you a significant amount of money and the time of finding a plumber, which can be difficult in the best of times. Having these plans also helps eliminate worry, as you can be sure of a professional job completed by local, licensed and insured plumbers. These are the only service line protection programs for homeowners fully supported by <<City Name>>.

Please take the time to read the information on the back of this letter. If you would like to sign up for a plan, simply complete and return the enclosed form or call toll-free 1-XXX-XXX-XXXX. We certainly hope that you never have an exterior water service or sewer/septic line emergency, but if you should ever have a problem, you'll be glad you're covered. These programs are managed by SLWA, and no public funds were used for the mailing of this letter.

For fastest processing, please visit www.slwofa.com.

Sincerely,

<<The City of City>>

Mailcode

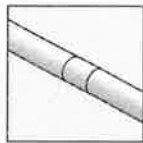
RX4262_Choice_Blue_Pack

RX

<<Disclosure>>

What would you do in an exterior line emergency?

The illustration shows where things may go wrong with your exterior lines and how much a licensed and insured plumber would typically charge customers who don't have coverage. How would you cope if it happened to you? With coverage, it's not something to worry about; you'll have no bill to pay for covered repairs up to the service call benefit amount.



Replace water service line (26–100 ft.)

\$2,585

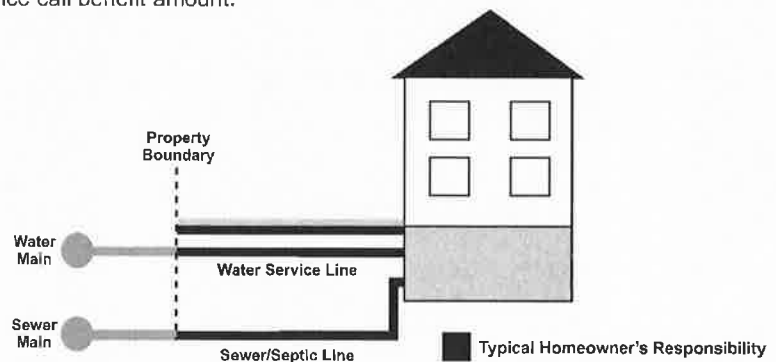
**Plan Members:
No Charge†**



Replace sewer/septic line (26–75 ft.)

\$3,389

**Plan Members:
No Charge†**



†National average repair costs within the SLWA network as of March 2018. No charge for covered repairs up to the service call benefit amount.

<<The water and sewer/septic lines beyond the <<property boundary>> may be an additional responsibility of the homeowner and are included in this coverage.>>
<<Septic tanks, leaching fields, pumps or grinders are not covered.>>

Take A Look At The Benefits You'll Receive

	<<Product Name>>	<<Product Name>>
1. Covered Repairs – Guaranteed for one full year.	✓	✓
2. 24-Hour Emergency Repair Service Hotline – Open 24 hours a day, 365 days a year.	✓	✓
3. Our Promise to You – Simply call SLWA toll-free at 1-XXX-XXX-XXXX any time, and your coverage can be canceled at your request.	✓	✓

Visit www.slwofa.com to protect your exterior lines
Or call toll-free 1-XXX-XXX-XXXX | Available: <<hours>>

Important Questions & Answers

What am I responsible for?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae.

Does my homeowners insurance cover this?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende.

Does this coverage include well lines?

Henis eatios aliquatur. Agnis voloria nienihil invende.

Who is eligible for coverage?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invendere dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende nitates doluptam, que mi, voluptat et aspiducilic temod ut que et ant. Cerspientus solleniam, omnihit as dolo maximi, a ipsamet res sunt odi conse cori as Explignate cuptatem hilla eum con re quam faccumq.

What should I know about this coverage?

What's covered: Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis isit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam.

Not covered: Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis isit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam nonsequo.

When can I make a service call?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur.

What is the cancellation policy?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende.

What is the term of my service agreement?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur. Agnis voloria nienihil invende.

What is E-Z Pay/Direct Pay?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. Henis eatios aliquatur.

What quality of repair can I expect?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae.

Who is SLWA?

Nisit officii sintotatus et aturest emolore, ipitas dem et is exero con pa net, aspel exceptae latrestis re dellaccus voles eosltam etur quam nonsequo volecus ea que omnis estius raest rem quidus, quia aut ea suntist. dellaccus voles eosltam.



Acceptance Form

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<<Mr. Sample A Sample_xx>>  
<<Serv_Address1_xxxxxxx>>  
<<Serv_Address2_xxxxxxx>>  
<<Serv_City_xx, ST Zip>>"
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E-mail Address _____

Phone #

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BEST VALUE

Exterior Water Service Line Coverage and Exterior Sewer/Septic Line Coverage <<Mailcode-xxxx>> <<Mailcode-xxxx>>	FIRST-YEAR SAVINGS OF XX% OFF when you select both plans		
	MONTHLY	QUARTERLY	ANNUALLY
	<input type="checkbox"/> \$\$\$. \$XX.XX	<input type="checkbox"/> \$\$\$. \$XX.XX	<input type="checkbox"/> \$\$\$. \$XXX.XX
	MONTHLY	QUARTERLY	ANNUALLY
Exterior Water Service Line Coverage <<Mailcode-xxxx>>	<input type="checkbox"/> \$X.XX	<input type="checkbox"/> \$XX.XX	<input type="checkbox"/> \$XX.XX
Exterior Sewer/Septic Line Coverage <<Mailcode-xxxx>>	<input type="checkbox"/> \$X.XX	<input type="checkbox"/> \$XX.XX	<input type="checkbox"/> \$XXX.XX

☐ **E-Z Pay** (see back of letter)

I have enclosed a check, payable to SLWA, for my first payment for the plan(s) selected and understand that all future payments<<, plus any applicable taxes,>> will be debited from this account.

☐ **Credit/Debit Card**

I authorize SLWA to charge my first and all future payments<<, plus any applicable taxes,>> for the plan(s) selected to my credit/debit card.

☐ VISA ☐ MASTERCARD ☐ AMEX ☐ DISCOVER

Card Number:

Exp. Date:

☐ **One-Time Check or Money Order**

I have enclosed my check or money order, payable to SLWA, for my one-year payment for the plan(s) selected.

Yes, please sign me up for the protection plan(s) from SLWA I have selected. If I have chosen E-Z Pay or credit/debit card, I understand that, regardless of the payment frequency I select, my optional plan(s) is based on an annual contract and will be *automatically renewed annually* on the same payment terms I selected at the then-current renewal price (currently \$XX.XX per month if I select both plans). I have the option to cancel this contract(s) at any time without additional cost to me by calling 1-XXX-XXX-XXXX. I confirm that I am the homeowner and have read the information in this package, understand there are limitations and exclusions, and meet the eligibility requirements for coverage.

<<Prices include applicable state tax. Additional local tax may apply.>>

Signature (required)

<input type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input checked="" type="checkbox"/>	WORKSHOP

**CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 9. b.

9. Discussion And Possible Action

Discussion And Possible Action On Crime Control And Prevention District Fiscal
Year 2022-2023 Budget.

The proposed budget approved by the Crime Control and Prevention District Board is included.

Crime Control District
2022-2023 Proposed Budget

EXHIBIT A

		2019-2020	2019-2020	2019-2020	2020-2021	2020-2021	2020-2021	2021-2022	2021-2022	2022-2023
		Adopted Budget	Final Budget	Actual	Adopted Budget	Final Budget	Actual	Adopted Budget	Amended Budget	Proposed Budget
	BEGINNING FUND BALANCE	67,860	94,783		53,918	92,349		53,994	109,031	43,641
	REVENUES/INCOME									
60-4015	Sales Tax	57,500	61,000	79,052	62,000	62,000	98,917	70,000	70,000	72,000
60-4705	Interest Income	15	15	86	25	25	86	25	25	25
60-4730	Donations	0	0	0	0	0	495	0	0	0
	Current Revenues	57,515	61,015	79,138	62,025	62,025	99,498	70,025	70,025	72,025
	EXPENDITURES									
60-500-0000	Salaries	3,000	3,000	1,444	3,000	3,000	1,591	3,000	3,000	3,000
60-500-0005	Overtime	0	0	0	0	0	0	0	0	0
60-500-0020	P/R Taxes	230	230	110	230	230	122	230	230	230
60-500-1000	Office Supplies	200	200	79	200	200	200	200	600	600
60-500-1003	Comm Service Programs	5,000	5,000	1,107	5,000	5,000	4,533	5,000	5,000	7,000
60-500-2200	Equipment Maintenance	200	200	0	200	200	0	200	200	200
60-500-2400	Software Maintenance	250	250	0	250	250	0	250	250	250
60-500-3100	Rent	100	100	35	100	100	50	100	100	100
60-500-3110	Publication	800	800	206	300	300	213	300	300	500
60-500-3330	Insurance & Bonds	1,000	1,000	130	1,000	1,000	390	1,000	1,000	1,000
60-500-3340	Legal Fees	1,100	1,100	280	1,100	1,100	0	1,100	1,100	1,100
60-500-3360	Auditor	2,000	2,000	1,600	2,000	2,000	1,800	2,000	2,000	2,200
60-500-3380	Internet & Email	0	0	0	0	0	0	0	0	0
60-500-3440	Election	3,300	3,300	0	0	0	0	0	0	0
60-500-4000	Police Officer Training Program	5,000	5,000	1,301	5,000	5,000	2,739	10,000	10,000	11,000
60-500-4005	Police Chief Operations	5,000	5,000	3,826	5,000	5,000	2,014	5,000	4,600	5,000
60-500-4010	K-9 Operations	5,000	5,000	4,650	5,000	5,000	5,000	0	5,000	0
	Total Miscellaneous	32,180	32,180	14,768	28,380	28,380	18,651	28,380	33,380	32,180
	CAPITAL OUTLAY									
60-500-5000	Police Vehicle	0	33,000	0	0	55,000	47,164	0	0	0
60-500-5001	Axon Tasers and Batteries	0	0	0	0	0	0	12,370	12,370	0
60-500-5002	Training Simulator	0	0	0	0	17,000	17,000	3,000	3,000	0
60-500-5003	Mobile Printers	0	0	0	0	0	0	9,500	9,500	0
60-500-5004	Tasers Cartridges	0	0	0	0	0	0	0	0	4,700
60-500-5005	Axon Bundle - Car video equip, camera, redaction software	0	0	0	0	0	0	0	54,785	0
60-500-5006	Axon License Bundle - 2 years	0	0	0	0	0	0	0	22,380	0
60-500-5007	Drug Terminator	0	0	0	0	0	0	0	0	6,000
60-500-5008	Vehicle Equipment	0	0	0	45,000	0	0	0	0	0
60-500-5009	Park Security Cameras	0	0	0	0	0	0	0	0	17,600
60-500-5010	Tasers	6,200	6,200	6,200	0	0	0	0	0	0
60-500-5011	Body Cameras	3,500	3,500	3,495	0	0	0	0	0	0
60-500-5012	Officer Equipments	27,000	27,000	26,999	0	0	0	0	0	0
	Total Capital Outlay	36,700	69,700	36,694	45,000	72,000	64,164	24,870	102,035	28,300
	Current Expenditures	68,880	101,880	51,462	73,380	100,380	82,815	53,250	135,415	60,480
	Current Revenues Over (under) Expenditures	-11,365	-40,865	27,676	-11,355	-38,355	16,683	16,775	-65,390	11,545
	ENDING FUND BALANCE	56,495	53,918		42,563	53,994	16,683	70,769	43,641	55,186

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY
CITY COUNCIL MEETING
AGENDA ITEM SUMMARY**

DATE: JULY 14, 2022

AGENDA ITEM: 9. c.

9. Discussion And Possible Action

Discussion And Possible Action On An Ordinance Of The City Of Kirby, Texas, Amending Chapter 54 Of The Code Of Ordinances In Regard To Illicit Discharge Restrictions Pursuant To U.S. Environmental Protection Agency Guidelines And Adopted Texas Commission On Environmental Quality Standards, And Providing A Penalty Upon Conviction Of A Violation Of This Chapter In An Amount Not To Exceed \$500.00 Per Violation Per Day Unless The Violator Receives Actual Notice Of The Provisions Of This Ordinance In Which Case The Penalty Upon Conviction Is Not To Exceed \$1,000 Per Violation Per Day Or Not To Exceed \$5,000 Per Violation Per Day For Certain Violations Relative To Point Source Effluent Limitations Or The Discharge Of A Pollutant (Other Than From A Non-Point Source) Into A Sewer System, Including A Sanitary Or Storm Water Sewer System, Owned Or Controlled By The City, And Establishing An Effective Date. This Is The Second Reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KIRBY, TEXAS, AMENDING CHAPTER 54 OF THE CODE OF ORDINANCES IN REGARD TO ILLICIT DISCHARGE RESTRICTIONS PURSUANT TO U.S. ENVIRONMENTAL PROTECTION AGENCY GUIDELINES AND ADOPTED TEXAS COMMISSION ON ENVIRONMENTAL QUALITY STANDARDS, AND PROVIDING A PENALTY UPON CONVICTION OF A VIOLATION OF THIS CHAPTER IN AN AMOUNT NOT TO EXCEED \$500.00 PER VIOLATION PER DAY UNLESS THE VIOLATOR RECEIVES ACTUAL NOTICE OF THE PROVISIONS OF THIS ORDINANCE IN WHICH CASE THE PENALTY UPON CONVICTION IS NOT TO EXCEED \$1,000 PER VIOLATION PER DAY OR NOT TO EXCEED \$5,000 PER VIOLATION PER DAY FOR CERTAIN VIOLATIONS RELATIVE TO POINT SOURCE EFFLUENT LIMITATIONS OR THE DISCHARGE OF A POLLUTANT (OTHER THAN FROM A NON-POINT SOURCE) INTO A SEWER SYSTEM, INCLUDING A SANITARY OR STORM WATER SEWER SYSTEM, OWNED OR CONTROLLED BY THE CITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Environmental Protection Agency of the United States (the "E.P.A.") mandated the regulation of stormwater discharge under the Clean Water Act (the "Act," 40 CFR 122.34), and,

WHEREAS, the E.P.A. authorizes the Texas Commission on Environmental Quality ("T.C.E.Q.") to adopt rules to carry out its powers and duties under the Act (Tex. Admin. Code, Title 30, Chapt. 281.25(b)(5), and,

WHEREAS, the Act, at the discretion of the T.C.E.Q., further requires cities and towns in the State of Texas to implement and enforce water management practices to ensure that stormwater pollution is minimized to the extent required by Federal Law through, inter alia, the Act, and,

WHEREAS, the consulting engineer engaged by the City of Kirby, Texas has recommended amendments to Chapter 54 of the Code of Ordinances of the City of Kirby to update restrictions and rules as to non-stormwater discharges in the City.

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

Section 1. Chapter 54 of the Code of Ordinances is hereby amended to read as follows:

§ 54.01 - GENERAL PROVISIONS.

- (A) *Purpose and intent.* The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the City of Kirby, Texas, as well as comply with the regulations mandated by both the United States Environmental Protection Agency ("E.P.A.") and the Texas Commission on Environmental Quality ("T.C.E.Q."), through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system ("MS4") in order to comply with requirements of the National Pollutant Discharge Elimination System ("NPDES") permit process. The objectives of this chapter are:

- (1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user.
- (2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system.
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.

(B) *Abbreviations*. The following abbreviations, when used in this chapter, shall have the designated meanings:

- BMP - Best Management Practices
- BTEX - Benzene, Toluene, Ethyl benzene, and Xylene
- HHW - Hazardous Household Waste
- Mg/l - Milligrams per liter
- MS4 - Municipal Separate Storm Sewer System
- NPDES - National Pollutant Discharge Elimination System
- ppb - Parts per billion
- PST - Petroleum Storage Tank SWPPP - Storm Water Pollution Prevention Plan
- TPH - Total Petroleum Hydrocarbon

(C) *Definitions*. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

AGRICULTURAL STORM WATER RUNOFF. Any storm water runoff from orchards, cultivated crops, pastures, range lands, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR Section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR Section 122.24.

BENCHMARKS. A benchmark pollutant value is a guidance level indicator that helps determine the effectiveness of chosen best management practices (BMPs). This type of monitoring differs from "compliance monitoring" in that exceedances of the indicator or benchmark level are not permit violations, but rather indicators that can help identify problems at the MS4 with exposed or unidentified pollutant sources; or control measures that are either not working correctly, whose effectiveness need to be re-considered, or that need to be supplemented with additional BMP(s).

BEST MANAGEMENT PRACTICES (BMP). Schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants ~~ion of waters of the United States~~. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

CITY. The City of Kirby, Texas.

COMMERCIAL. Pertaining to any business, trade, industry, or other activity engaged in for profit.

CITY MANAGER. The person appointed to the position of City Manager by the City Council, and authorized to act on behalf of the City and/or City Council or his/her designees such as the Building Official or City Engineer.

CLASSIFIED SEGMENT. A water body that is listed and described in Appendix A or Appendix C of the Texas Surface Water Quality Standards, at 30 Texas Administrative Code (TAC) § 307.10.

DISCHARGE. Means the drainage, release, or disposal of pollutants in storm water and other surface certain non-stormwater runoff from locations areas of where soil-disturbing activities (e.g., clearing, grading, excavating, stockpiling of fill material, and demolishing), construction materials, or equipment storage or maintenance operations (e.g., fill piles, borrow areas, concrete truck wash out, and fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located. Any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

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

DOMESTIC SEWAGE. Human excrement, gray water, other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings, apartments, businesses, office buildings, factories, and institutions, that is free from industrial waste.

EXTREMELY HAZARDOUS SUBSTANCE. Any substance listed in the Appendices to 40 CFR Part 355, Emergency Planning and Notification.

FACILITY. Any building, structure, installation, process, or activity from which there is or may be a discharge of a pollutant.

FIRE DEPARTMENT. The Fire Department of the City of Kirby, Texas or any duly authorized representative thereof.

GARBAGE. Putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

GRAY WATER. Liquid from home clothes washing, bathing, showers, dishwashing, or food preparation.

GROUNDWATER INFILTRATION. For the purposes of this chapter, groundwater that enters a municipal separate storm sewer system (including sewer service connections and foundation drains) through such means as defective pipes, pipe joints, connections, or manholes.

HAZARDOUS HOUSEHOLD WASTE (HHW). Any material generated in a household (including, without limitation, single and multiple residences, apartments, picnic grounds, and day use recreational areas) by a consumer which, except for the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

HAZARDOUS SUBSTANCE. Any substance listed in Table 302.4 of 40 CFR Part 302.

HAZARDOUS WASTE. Any substance identified or listed as a hazardous waste by the E.P.A. pursuant to 40 CFR Part 261.

HIGH PRIORITY FACILITIES. High priority facilities are facilities with a high potential to generate stormwater pollutants. These facilities must include, at a minimum, the MS4 operator's maintenance yards, hazardous waste facilities, fuel storage locations, and other facilities where chemicals or other materials have a high potential to be discharged in stormwater. Among the factors that must be considered when giving a facility a high priority ranking are: the amount of urban pollutants stored at the site, the identification of improperly stored materials, activities that must not be performed outside (for example, changing automotive fluids, vehicle washing), proximity to waterbodies, proximity to sensitive aquifer recharge features, poor housekeeping practices, and discharge of pollutant(s) of concern to impaired water(s).

HYPERCHLORINATED WATER. Water resulting from hyperchlorination of waterlines or vessels, with a chlorine concentration greater than 10 milligrams per liter (mg/L).

ILLCIT CONNECTION. Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

ILLCIT DISCHARGE. Any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except discharges pursuant to this general permit or a separate authorization and discharges resulting from emergency fire fighting activities.

INDICATOR POLLUTANT. An easily measured pollutant, that may or may not impact water quality that indicates the presence of other stormwater pollutants.

INDUSTRIAL WASTE. Any liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

MAXIMUM EXTENT PRACTICABLE (MEP). The technology-based discharge standard for municipal separate storm sewer systems (MS4s) to reduce pollutants in stormwater discharges that was established by the CWA § 402(p). A discussion of MEP as it applies to small MS4s is found in 40 CFR § 122.34.

MOTOR VEHICLE FLUIDS. Any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, or any other fluid used in a motor vehicle.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). The system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.

NPDES PERMIT. A permit issued by EPA (or by the State, most notably by but not limited to the T.C.E.Q. under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

NOTICE OF INTENT (NOI). The Notice of Intent that is required by either the industrial General Permit or the Construction General Permit.

OIL. Any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.

OUTFALL. A point source at the point where a small MS4 discharges to waters of the U.S. and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other waters of the U.S. and are used to convey waters of the U.S. For the purpose of this permit, sheet flow leaving a linear transportation system without channelization is not considered an outfall. Point sources such as curb cuts, traffic or right-of-way barriers with drainage slots that drain into open culverts, open swales or an adjacent property, or otherwise not actually discharging into waters of the U.S. are not considered an outfall.

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

PETROLEUM STORAGE TANK (PST). Any 1 or combination of aboveground or underground storage tanks that contain petroleum products and any connecting underground pipes.

POINT SOURCE. (from 40 CFR § 122.22) any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

POLLUTANT. Dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical waste; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; or industrial, municipal, and agricultural waste discharged into water.

The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

POLLUTANT(S) OF CONCERN. For the purpose of this chapter, includes biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids (TSS), turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from an MS4. (Definition from 40 CFR § 122.32(e)(3)).

RUBBISH. Nonputrescible solid waste, excluding ashes, that consist of (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

SANITARY SEWER (OR SEWER). The system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City sewage treatment plant (and to which storm water, surface water, and groundwater are not intentionally admitted).

SEPTIC TANK WASTE. Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

SERVICE STATION. Any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from stationary storage tanks.

SEWAGE (OR SANITARY SEWAGE). The domestic sewage and/or industrial waste that is discharged into the City sanitary sewer system and passes through the sanitary sewer system to the City sewage treatment plant for treatment.

SOLID WASTE. Any garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including, solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities.

STATE. The State of Texas.

STORM WATER. Storm water runoff, surface runoff and drainage, and snow and/or ice melt runoff.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP). A plan required by either the Construction General Permit or the Industrial General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharge associated with construction or industrial activity.

USED OIL (OR USED MOTOR OIL). Any oil that has been refined from crude oil or synthetic oil that, as a result of use, storage, or handling, has become unsuitable for its original purpose because of impurities or the loss of original properties but that may be suitable for further use and is recyclable in compliance with State and federal law.

WATER QUALITY STANDARD. The designation of a body or segment of surface water in the State for desirable uses and the narrative and numerical criteria deemed by the State to be necessary to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code.

WATERS OF THE UNITED STATES. All waters which are currently used, 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; 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 waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any waters within the federal definition of "waters of the United States" at 40 CFR § 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water Act.

YARD WASTE. Leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

§ 54.02 - GENERAL PROHIBITION.

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- (A) No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of storm water and other allowable discharges.
- (B) Allowable discharges include:
- (1) A discharge authorized by, and in full compliance with, a TPDES or NPDES permit or that is not required to be permitted; (other than the TPDES permit for discharges from the MS4);
 - (2) A discharge or flows resulting from emergency fire fighting activities by the Fire Department (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);
 - (3) A discharge or flow of fire protection water that does not contain oil or hazardous substances;
 - (4) Agricultural storm water runoff;
 - (5) A discharge or flow from water line flushing, but not including a discharge from water line disinfection by superchlorination or other means unless the total residual chlorine (TRC) has been reduced to less than 1.0 mg/l and it contains no harmful quantity of chlorine or any other chemical used in line disinfection;
 - (6) A discharge or flow from lawn watering, or landscape irrigation, or other irrigation utilizing potable water, groundwater, or surface water sources;
 - (7) A discharge or flow from a diverted stream or natural spring;
 - (8) A discharge or flow from uncontaminated pumped groundwater or rising groundwater;
 - (9) Uncontaminated groundwater infiltration (as defined as 40 C.F.R. § 35.2005(20)) to the MS4;
 - (10) Uncontaminated discharge or flow from a foundation drain, crawl space pump, footing drain, or sump pump;
 - (11) A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
 - (12) A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
 - (13) A discharge or flow from individual residential car washing;
 - (14) A discharge or flow from a riparian habitat or wetland;
 - (15) A discharge or flow from water used in street washing that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
 - (16) Storm water runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber or filter or any other source of pollutant;
 - (17) Swimming pool water that has been dechlorinated so that total residual chlorine (TRC) is less than 1.0 mg/l and that contains no harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning; and;
 - (18) Other similar occasional incidental non-stormwater discharges such as spray park water, unless the TCEQ develops permits or regulations addressing these discharges.
- (C) No affirmative defense shall be available under Subsection B of this section if the discharge or flow in question has been determined by the City Manager or his/her designee to be a source of a pollutant or pollutants to the waters of the United States or to the MS4, written notice of such

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determination has been provided to the discharger, and the discharge has occurred more than 15 days beyond such notice.

§ 54.03 - SPECIFIC PROHIBITIONS AND REQUIREMENTS.

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- (A) The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition in section 54.02.
- (B) No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the City to violate a water quality standard, the City's TPDES permit, or any state-issued discharge permit for discharges from its MS4.
- (C) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4:
 - (1) Any used motor oil, antifreeze, or any other motor vehicle fluid;
 - (2) Any industrial waste;
 - (3) Any hazardous waste, including hazardous household waste;
 - (4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
 - (5) Any garbage, rubbish, or yard waste;
 - (6) Any wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than 2 such vehicles;
 - (7) Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
 - (8) Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
 - (9) Any wastewater from commercial floor, rug, or carpet cleaning;
 - (10) Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
 - (11) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blow down from a boiler;
 - (12) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro-mulch material, or material from the cleaning of vehicles or equipment containing, or used in transporting or applying, such material;
 - (13) Any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;
 - (14) Any filter backwash from a swimming pool, fountain, or spa;
 - (15) Any swimming pool water containing total residual chlorine (TRC) of 1.0 mg/l or more or containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;

- (16) Any discharge from water line disinfection by superchlorination or other means if the total residual chlorine (TRC) is at 1.0 mg/l or more or if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;
- (17) Any fire protection water containing oil or hazardous substances or materials unless treatment adequate to remove pollutants occurs prior to discharge. (This prohibition does not apply to discharges or flow from fire fighting by the Fire Department.);
- (18) Any water from a water curtain in a spray room used for painting vehicles or equipment;
- (19) Any contaminated runoff from a vehicle salvage yard;
- (20) Any substance or material that will damage, block, or clog the MS4;
- (21) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge satisfies all of the following criteria:

(a) Compliance with all state and federal standards and requirements;

(b) No discharge containing a harmful quantity of any pollutant; and

(c) No discharge containing more than 50 parts per billion of benzene; 500 parts per billion combined total quantities of benzene, toluene, ethyl benzene, and xylene (BTEX); or 15 mg/l of total petroleum hydrocarbons (TPH).

- (22) Any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities, or associated with land filling or other placement or disposal of soil, rock, or other earth materials, in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable.
- (23) Any sanitary sewage, domestic or industrial.
- (24) Any pavement wash water from a service station to be discharged into the MS4 unless such wash water has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.
- (25) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.

(D) *Used oil regulation.*

- (1) No person shall discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course; knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill; or apply used oil to a road or land for dust suppression, weed abatement, or other similar use that introduces used oil into the environment.

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§ 54.04 - COMPLIANCE MONITORING.

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- (A) *Right of entry: Inspection and sampling.* The City Manager or his/her designee shall have the right to enter the premises of any person or entity discharging storm water to the municipal separate storm sewer system (MS4) or to waters of the United States to determine if the discharger is complying with all requirements of this chapter. Dischargers shall allow the City Manager or his/her designee ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Dischargers shall make available to the City Manager or his/her designee, upon request, any SWPPs, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, Notices of Intent, and any other records, reports, and other documents related to compliance with this chapter and with any state or federal discharge permit.

- (1) Where a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City Manager or his/her designee will be permitted to enter without delay for the purposes of performing his/her responsibilities.
 - (2) The City Manager or his/her designee shall have the right to set up on the discharger's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the discharger's operations.
 - (3) The City Manager or his/her designee may require any discharger to the MS4 or waters of the United States to conduct specified sampling, testing, analysis, and other monitoring of its storm water discharges, and may specify the frequency and parameters of any such required monitoring.
 - (4) The City Manager or his/her designee may require the discharger to install monitoring equipment as necessary at the discharger's expense. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.
 - (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the discharger at the written or verbal request of the City Manager or his/her designee and shall not be replaced. The costs of clearing such access shall be borne by the discharger.
 - (6) Delays in excess of 12 hours in allowing the City Manager or his/her designee access to the discharger's premises shall be a violation of this chapter.
- (B) *Illicit discharge detection plan.* The City will inspect the municipal separate storm sewer system (MS4) for illicit discharges. The inspections shall be based on a plan providing a map and schedule for inspections, listing appropriate techniques for detection, and including forms to be used to document inspection results.
- (C) *Search warrants.* If the City Manager or his/her designee has been refused access to any part of the premises from which storm water is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City Manager or his/her designee may seek issuance of a search warrant from any court of competent jurisdiction.

§ 54.05 - ENFORCEMENT.

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Notice of violation. Whenever the City Manager or his/her designee finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the City Manager or his/her designee may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of a fine to cover administrative and remediation costs; and/or

(6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

§ 54.06 - ENFORCEMENT MEASURES.

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If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the City shall be entitled (but are not obligated) to enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City, the City Manager or his/her designee, the City Engineer and/or any contractor designated by the City, the City Manager or his/her designee and/or the City Engineer to enter upon the premises for the purposes set forth above.

§ 54.07 - COST OF ABATEMENT OF THE VIOLATION.

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Within 10 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid within a timely manner as determined by the decision of the City Manager or his/her designee, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. The City may file an affidavit asserting said lien in the Real Property or Official Records of Bexar County.

Any person violating any of the provisions of this article shall become liable to the City by reason of such violation. The assessment shall be paid within 60 days of the date of notification unless the party liable makes written arrangements with the City, binding on the party liable, on terms acceptable to the City Manager or his/her designee.

§ 54.08 - INJUNCTIVE RELIEF.

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It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the City may petition for a temporary restraining order, a temporary injunction, and/or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 54.09 - VIOLATIONS DEEMED A PUBLIC NUISANCE.

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

§ 54.99 - CIVIL PENALTIES.

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Any person that has violated or continues to violate this chapter shall be liable to prosecution to the fullest extent of the law, and shall be subject to a civil penalty in an amount not to exceed \$500.00 per violation per day. Each day that a violation occurs shall be a separate violation. The City may recover all attorneys' fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

If the City proves that the person that has violated or continues to violate this chapter (a) was actually notified of the provisions of this chapter and (b) after receiving notice of the provisions of this chapter committed acts in violation of this chapter or failed to take action necessary for compliance with this chapter, then such person shall be liable to prosecution to the fullest extent of the law and shall be subject to a civil penalty not to exceed \$1,000.00 per day for a violation of this chapter except that a civil penalty may not exceed \$5,000 per day for a violation of this chapter relating to point source effluent limitations or the discharge of a pollutant (other than from a non-point source) into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the City. Each day that a violation occurs shall be a separate offense.

Section 2. This Ordinance shall be in full force and effect upon passage and adoption on second reading. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Passed on first reading on the 23rd day of June, 2022.

Passed and adopted on second reading on the 14th day of July, 2022.

KIMBERLY MCGEHEE ALDRICH, Mayor

ATTEST:

Patty Cox, City Secretary

<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY
CITY COUNCIL MEETING
AGENDA ITEM SUMMARY**

DATE: JULY 14, 2022

AGENDA ITEM: 9. d.

9. Discussion And Possible Action

Discussion And Possible Action On An Ordinance Of The City Of Kirby, Texas, Amending Chapter 55 Of The Code Of Ordinances In Regard To Construction Storm Water Management Practices As Required By The United States Environmental Protection Agency And The Texas Commission On Environmental Quality; And Providing That The City May Seek Injunctive Relief To Restrain Violations Or To Compel Abatement Or Remediation Of Violations; Providing For A Civil Penalty Of Up To \$1,000 Per Day For A Violation Of This Chapter; Setting A Fee For Reviewing Proposed Storm Water Pollution Prevention Plans; And Providing For An Effective Date. This Is The First Reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KIRBY, TEXAS, AMENDING CHAPTER 55 OF THE CODE OF ORDINANCES IN REGARD TO CONSTRUCTION STORM WATER MANAGEMENT PRACTICES AS REQUIRED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; AND PROVIDING THAT THE CITY MAY SEEK INJUNCTIVE RELIEF TO RESTRAIN VIOLATIONS OR TO COMPEL ABATEMENT OR REMEDIATION OF VIOLATIONS; PROVIDING FOR A CIVIL PENALTY OF UP TO \$1,000 PER DAY FOR A VIOLATION OF THIS CHAPTER; SETTING A FEE FOR REVIEWING PROPOSED STORM WATER POLLUTION PREVENTION PLANS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Environmental Protection Agency of the United States (the "E.P.A.") mandated the regulation of storm water discharge under the Clean Water Act (the "Act," 40 CFR 122.34); and

WHEREAS, the E.P.A. authorizes the Texas Commission on Environmental Quality ("T.C.E.Q.") to adopt rules to carry out its powers and duties under the Act (Tex. Admin. Code, Title 30, Chapt. 281.25(b)(5); and

WHEREAS, the Act, at the discretion of the T.C.E.Q., further requires cities and towns in the State of Texas to implement and enforce water management practices to ensure that storm water pollution is minimized to the extent required by Federal Law through, inter alia, the Act; and

WHEREAS, the consulting engineer engaged by the City of Kirby has recommended amendments to Chapter 55 of the Code of Ordinances of the City of Kirby to update regulations and rules as to post-construction storm water management and related matters.

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

Section 1. Chapter 55 of the Code of Ordinances of the City of Kirby is hereby amended to read as follows:

§ 55.01 - GENERAL PROVISIONS.

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(A) Introduction/purpose/intent.

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- (1) During the construction process, soil may become vulnerable to erosion by wind and water. Eroded soil may have chemical and/or biological properties that reduce water quality in streams and lakes, thereby threatening drinking water resources and wildlife habitats. Eroded soil may also cause maintenance problems by settling out (sedimentation) in storm sewers, ditches, creeks, and other parts of the storm system, which then require maintenance and repair. The provisions and requirements contained in this chapter shall operate in conjunction with and in addition to the city's

previously existing building code, building permitting, and building code enforcement procedures.

- (2) The purpose of this chapter is to safeguard persons, protect property, and prevent damage to the environment in the city. This chapter will also promote the public health, safety and general welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other construction activity that disturbs or breaks the topsoil or results in the movement of earth on land in the city.

(B) The objectives of this chapter are:

- (1) To regulate the construction process to reduce erosion by wind and water during construction.
- (2) To reduce the degradation of water quality and the siltation of aquatic habitats for fish and other desirable species.
- (3) To reduce the necessity for repair of storm sewers and ditches and the dredging of lakes as a result of soil erosion resulting from construction activities.

Sec. 55.02 - DEFINITIONS.

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APPLICANT means a property owner or agent of a property owner who has filed a storm water management plan.

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ARID AREAS means areas with an average annual rainfall of 0 to 10 inches.

BEST MANAGEMENT PRACTICES (BMP) means ~~all generally accepted methods and techniques to prevent or reduce discharge of pollutants, including schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices~~ to prevent or reduce the discharge of pollutants. BMPs also include treatment requirements, operating procedures and practices to control runoff, spill or leaks, waste disposal, or drainage from raw material storage.

BUFFER means a natural or vegetated area through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.

CATCH BASINS means storm drain inlets and curb inlets to the storm drain system. Catch basins typically include a grate or curb inlet that may accumulate sediment, debris, and other pollutants.

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CITY means the City of Kirby, Texas, or the city council of Kirby, Texas.

CITY MANAGER means the person appointed to the position of City Manager by the City Council, of the City of Kirby, Texas or his/her duly authorized representative and authorized to act on behalf of the City and/or City Council or his/her designees such as the Building Official or City Engineer.

COMMENCEMENT OF CONSTRUCTION means the initial disturbance of soils associated with clearing, demolition, grading, excavating, filling, stockpiling, erection of forms, or any other construction-related activity. The term "commencement of construction" is also referred to as "start of construction."

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

CONSTRUCTION ACTIVITY includes soil disturbance activities, including clearing, grading, excavating, construction-related activity (e.g., stockpiling of fill material, demolition), and construction support activity. This does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

CONSTRUCTION SUPPORT ACTIVITY a construction-related activity that specifically supports construction activity, which can involve earth disturbance or pollutant-generating activities of its own, and can include, but are not limited to, activities associated with concrete or asphalt batch plants, rock crushers, equipment staging or storage areas, chemical storage areas, material storage areas, material borrow areas, and excavated material disposal areas. Construction support activity must only directly support the construction activity authorized under this general permit.

CONTROL MEASURE any BMP or other method used to prevent or reduce the discharge of pollutants to water in the state.

CONVEYANCE means curbs, gutters, manmade channels and ditches, drains, pipes, and other constructed features designed or used for drainage, flood control, or the transport of storm water runoff.

DEVELOPMENT means the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance; or any change in use, or alteration or extension of the use, of land.

DEWATERING means the act of draining rainwater or groundwater from building foundations, vaults, and trenches.

DISCHARGE means the drainage, release, or disposal of pollutants in storm water and other surface certain non-stormwater runoff from locations areas of where soil-disturbing activities (e.g., clearing, grading, excavating, stockpiling of fill material, and demolishing), construction materials, or equipment storage or maintenance operations (e.g., fill piles, borrow areas, concrete truck wash out, and fueling), or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located. The term "discharge"

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also includes the drainage, release, or disposal of industrial storm water directly related to the construction process.

DISTURBANCE means any activity, including, but not limited to, excavation, clearing, and grading, which disturbs the natural or improved vegetative ground cover or topography of the land by any person, entity and applicable city projects. Land disturbing activity does not include any vegetative cutting and mulching. All installations and maintenance of franchise utilities such as telephone, gas, electric, etc., shall be considered land disturbing activities.

DRAINAGE EASEMENT means a legal right granted by a landowner to a grantee allowing the use of private land for storm water management purposes.

DROUGHT means a period of dry weather, usually lengthy, that is injurious to crops, as determined by city officials in accordance with established standards.

DROUGHT-STRICKEN AREA means an area in which the National Oceanic and Atmospheric Administration's U.S. Seasonal Drought Outlook indicates for the period during which the construction will occur that any of the following conditions are likely: (1) "Drought to persist or intensify", (2) "Drought ongoing, some improvement", (3) "Drought likely to improve, impacts ease", or (4) "Drought development likely". See http://www.cpc.ncep.noaa.gov/products/expert_assessment/seasonal_drought.html.

EFFLUENT LIMITATIONS GUIDELINE (ELG) Defined in 40 Code of Federal Regulations (CFR) § 122.2 as a regulation published by the Administrator under § 304(b) of the Clean Water Act (CWA) to adopt or revise effluent limitations.

ENVIRONMENTALLY SENSITIVE AREAS mean the areas designated by the City Manager that need special protection because of the landscape, wetland, riparian, wildlife, or historical value.

EROSION CONTROL means a structure or measure that limits erosion.

FACILITY or ACTIVITY means a construction site or construction support activity that is regulated under TCEQ TPDES General Permit Number TXR150000 relating to storm water discharges associated with construction activities, including all contiguous land and fixtures (e.g., ponds and materials stockpiles), structures, or appurtenances used at a construction site or industrial site described by this Chapter and/or the TCEQ general construction permit.

FINAL STABILIZATION means:

- (1) The status of a construction site when all soil disturbing activities at the site have been completed and the disturbed soil has been covered with:
 - (a) A uniform (i.e., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70 percent of the native background vegetative cover on all unpaved areas;
 - (b) Areas not covered by ~~P~~permanent structures such as buildings; and/or
 - (c) Equivalent ~~P~~permanent stabilization measures such as pavement, riprap, or gabions, or geotextiles have been employed.
- (2) For individual lots in a residential construction site, final stabilization may be achieved only by either the homebuilder completing final stabilization as specified in subsection (1) of this definition; or:
- (3) The homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization. If temporary stabilization

is not feasible, then the homebuilder may fulfill this requirement by retaining perimeter controls or BMPs, and informing the homeowner of the need for removal of temporary controls and the establishment of final stabilization. Fulfillment of this requirement must be documented in the homebuilder's stormwater pollution prevention plan (SWP3)

- (4) (3) For construction activities on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use.
- (5) (4) For construction activities on land that was not previously used for agricultural activities, such as buffer strips immediately adjacent to surface water and areas that are not being returned to their preconstruction agricultural use, must meet the final stabilization condition—final stabilization can be achieved only by meeting the conditions of subsection (1) of this definition.
- (6) (5) For the event of drought in arid, semi-arid, and drought-stricken areas only, final stabilization can be achieved only when all soil disturbing activities at the site have been completed and both of the following criteria have been met:
- (a) Temporary erosion control measures (e.g., degradable rolled erosion control products—mats) are selected, designed, and installed with an appropriate seed base to provide erosion control for at least 3 years without active maintenance by the operator; and
- (b) The temporary erosion control measures are selected, designed, and installed to achieve 70 percent of the native vegetative coverage within 3 years.

GENERAL PERMIT means TPDES General Permit No. TXR150000 for the discharge of wastes which provides a means for construction sites and other sources of soil disturbance to lawfully discharge storm water to surface water in the state in compliance with section 402 of the Clean Water Act and chapter 26 of the Texas Water Code. The provisions of the general permit are promulgated and enforced by the TCEQ.

GRADING means shaping, excavating or filling of clay, sand, rock and/or other types of soil material.

HYPERCHLORINATION OF WATERLINES means the treatment of potable water lines or tanks with chlorine for disinfection purposes, typically following repair or partial replacement of the waterline or tank, and subsequently flushing the contents.

IMPAIRED WATER means a surface water body that is identified as impaired on the latest approved CWA §303(d) List or waters with an EPA-approved or established total maximum daily load (TMDL) that are found on the latest EPA approved *Texas Integrated Report of Surface Water Quality for CWA Sections 305(b) and 303(d)*, which lists the category 4 and 5 water bodies.

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IMPERVIOUS COVER means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INFEASIBLE means not technologically possible, or not economically practicable and achievable in light of best industry practices. (40 CFR §450.11(b)).

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LARGER COMMON PLAN OF DEVELOPMENT OR SALE means any contiguous area where multiple separate and distinct construction or land disturbing activities will occur under 1 plan. A plan is any announcement or piece of documentation (including, but not limited to, public notice or hearing, drawing, permit application, zoning request, or site design) or physical

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demarcation (including, but not limited to, boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

LARGE CONSTRUCTION ACTIVITY means construction activities including clearing, grading, and excavating that result in land disturbance measuring 5 acres of land or more. The term "large construction activity" also includes the disturbance of less than 5 acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb areas measuring 5 acres of land or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing rights-of-way, and similar maintenance activities).

LINEAR PROJECT includes the construction of roads, bridges, conduits, substructures, pipelines, sewer lines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities in a long, narrow area.

MINIMIZE means to reduce or eliminate to the extent achievable using stormwater controls that are technologically available and economically practicable and achievable in light of best industry practices.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) means a separate storm sewer system owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over the disposal of sewage, industrial wastes, storm water, and/or other wastes, including special districts under state law such as a sewer district, flood control or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, that discharges to surface water in the state.

NEW DEVELOPMENT means any development that converts any land from an unimproved to an improved state.

NON-POINT SOURCE (NPS) POLLUTION means forms of pollution caused by sediment, nutrients, organic and toxic substances originating from land use activities and carried to lakes and streams by surface runoff.

NON-STRUCTURAL BMP means preventative actions that involve management and source controls such as: policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; education programs for developers and the public about project designs that minimize water quality impacts; and measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas.

NOTICE OF CHANGE (NOC) means written notification to the executive director of the TCEQ which is also to be copied to the city manager, city building official, or city engineer from a discharger authorized under TPDES general permit TXR150000, providing changes to information that was previously provided to the agency in a notice of intent form.

NOTICE OF INTENT (NOI) means a written submission to the executive director of the TCEQ which is also to be copied to the city manager, city building official, city engineer, or his designee from an applicant requesting coverage under TPDES general permit TXR150000.

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NOTICE OF TERMINATION (NOT) means a written submission to the executive director of the TCEQ which is also to be copied to the city manager, city building official, city engineer, or his designee from a discharger authorized under a TPDES general permit TXR150000 requesting termination of coverage.

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

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

Secondary operators must either prepare their own SWP3 or participate in a shared SWP3 that covers the areas of the construction site where they have control over the plans and specifications.

If there is not a primary operator at the construction site, then the secondary operator is defined as the primary operator and must comply with the requirements for primary operators. A secondary operator is also defined as a primary operator and must comply with the permit requirements for primary operators if there are no other operators at the construction site.

OUTFALL means a point source where storm water runoff associated with construction activity discharges to surface water in the state and does not include open conveyances connecting 2 municipal separate storm sewers, or pipes, tunnels, or other conveyances that connect segments of the same stream or other water of the United States and are used to convey waters of the United States.

OWNER means the legal or beneficial owner of land, including, but not limited to, a fee owner, mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition.

PERIMETER CONTROL means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

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PERMIT means a site development permit issued by the City of Kirby, Texas for construction or the alteration of ground.

PERMITTEE means an operator authorized under this Code to commence construction that involves disturbing the soil. The authorization may be gained by applying for a building permit and submitting a NOI.

PERSON(S) means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or the legal representatives, agents, or assigns thereof.

PHASING means clearing a parcel of land in separate, distinct steps, with the stabilization of each phase completed before the clearing of the next.

POINT SOURCE (from 40 CFR § 122.2) means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, vessel or other floating craft from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

POLLUTANT means sediment, 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 any surface water in the state. The term "pollutant" does not include tail water, irrigation runoff, or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

POLLUTION (from V.T.C.A., Water Code § 26.001(14)) means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface water in the state 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 the public enjoyment of the water for any lawful or reasonable purpose.

PCSWQ means Post-Construction Storm Water Quality.

RAINFALL EROSIVITY FACTOR (R factor) the total annual erosive potential that is due to climatic effects, and is part of the Revised Universal Soil Loss Equation (RUSLE).

RECEIVING WATER A "Water of the United States" as defined in 40 CFR §122.2 into which the regulated stormwater discharges.

REDEVELOPMENT means alterations of a property that changed the "footprint" of a site or building in such a way that there is a disturbance of equal to or greater than one (1) acre of land. This term does not include such activities as exterior remodeling, routine maintenance activities, and linear utility installation, any construction, alteration or improvement where existing land is altered of previously developed land.

RESPONSIBLE PARTY means any person or legal entity, individual or corporate, including an owner, operator, contractor, or subcontractor, any or all of whom may be engaged in, consent to, or actually perform a construction project or construction activity.

REVIEW FEE means the cost charged to the applicant for the review of an application submittal, including a proposed SWP3. This fee will initially be \$200.00 plus \$100.00 per acre or portion of an acre of proposed disturbed area (e.g., the review fee for the proposed disturbance of 1 acre or less would be: \$200.00+\$100.00=\$300.00; for a 2-acre disturbance: \$200.00+\$200.00=\$400.00; for a 2½-acre disturbance: \$200.00+\$300.00=\$500.00; etc.). This fee may be increased or decreased by amendment to this chapter.

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SEDIMENT CONTROL means a structure or measure that prevents eroded sediment from leaving the site.

SEPARATE STORM SEWER SYSTEM (S4) means a conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains), designed or used for collecting or conveying storm water; that is not a combined sewer, and that is not part of a publicly owned treatment works (POTW).

SITE means a parcel of land or a contiguous combination thereof, where construction and/or grading work is performed as a single unified operation.

SITE DEVELOPMENT means any construction project that involves the disturbing of soil.

SMALL CONSTRUCTION ACTIVITY means construction activities, including clearing, grading, and excavating, that result in land disturbance measuring 1 acre or more and less than 5 acres. The term "small construction activity" also includes the disturbance of less than 1 acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb areas of land measuring 1 acre or more and less than 5 acres. The term "small construction activity" does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing rights-of-way, and similar maintenance activities).

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STABILIZATION means practices and measures that prevent exposed soil from eroding.

START OF CONSTRUCTION. See COMMENCEMENT OF CONSTRUCTION.

STATE means the State of Texas.

STEEP SLOPES are where a state, Tribe, local government, or industry technical manual (e.g. stormwater BMP manual) has defined what is to be considered a "steep slope", this chapter automatically adopts that definition. Where no such definition exists, steep slopes are automatically defined as those that are 15 percent or greater in grade.

STORM WATER, STORM WATER RUNOFF, OR RUNOFF means rainfall runoff, snow melt runoff, and surface runoff and drainage.

STORM WATER ASSOCIATED WITH CONSTRUCTION ACTIVITY means storm water runoff from a construction site where soil disturbance is of a size large enough to be regulated by this Chapter.

STORM WATER CONTROL GUIDELINES FOR CONSTRUCTION SITES means a manual containing all approved methods and design criteria for drainage and storm water control.

STORM WATER MANAGEMENT means the use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

STORM WATER POLLUTION PREVENTION PLAN (SWP3 or SW3P) means a set of plans prepared by or under the direction of a licensed professional engineer proposing specific best management practices, including erosion controls, sediment controls, and sequencing schedules for limiting the amount of sediment that is discharged to drainage easements, public rights-of-way, the storm drain system, waterways, and watercourses. Separate plans may be required to address conditions during and after construction.

STRUCTURAL BMP means any storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches.

STRUCTURAL CONTROL OR PRACTICE means a pollution prevention practice that requires the construction of a device, or the use of a device, to capture or to limit pollution in storm water runoff. Structural controls and practices may include, but are not limited to silt fences, earthen dikes, drainage swales, sediment traps, check dams, subsurface drains, storm drain inlet protection, outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins.

SURFACE WATER IN THE STATE means lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state (from the mean high-water mark (MHW) out 10.36 miles into the Gulf), and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems which are authorized by state or federal law, regulation, or permit, and which are created for the purpose of waste treatment are not considered to be water in the state.

TCEQ means the Texas Commission on Environmental Quality.

TEMPORARY STABILIZATION means a condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until permanent stabilization can be achieved or until further construction activities take place.

TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM means a program to issue authorizations to discharge pollutants into waters of the state if certain conditions are met.

TOTAL MAXIMUM DAILY LOAD (TMDL) means the total amount of a pollutant that a water body can assimilate and still meet the Texas Surface Water Quality Standards.

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TURBIDITY means a condition of water quality characterized by the presence of suspended solids and/or organic material.

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WATERCOURSE means any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water delineated by the city on its storm water map.

WATERS OF THE UNITED STATES (from 40 CFR, Part 122, § 2). Waters of the United States or waters of the U.S. means:

- (1) All waters which are currently used, 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, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - (a) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

- (b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
- (c) 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 (a) through (d) of this definition;
- (6) ~~(f)~~ the territorial sea; and
- (7) ~~(6)~~ Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

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. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

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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 the Environmental Protection Agency.

WATERWAY means a channel that directs surface runoff to a watercourse or to the public storm drain.

§ 55.03 - PERMITS; APPLICABILITY AND COVERAGE.

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Discharges eligible for authorization.

- (A) Storm water associated with construction activity discharges of storm water runoff from small and large construction activities may be authorized under this chapter.
- (B) *Discharges of storm water associated with construction support activities.* Examples of construction support activities include, but are not limited to, rock crushers, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas. Discharges of storm water runoff from construction support activities may be authorized under this general chapter, provided that the following conditions are met:
 - (1) The activities are located within the same city, located within 1 mile from the boundary of the permitted construction site, and directly support the construction activity;
 - (2) A Storm Water Pollution Prevention Plan is developed according to the provisions of this chapter which includes appropriate controls and measures to reduce erosion and discharge of pollutants in storm water runoff from the construction support activities;
 - (3) The activities are not a commercial operation, nor serve other unrelated construction projects; and

(4) ~~(3)~~ The construction support activities either do not operate beyond the completion date of the construction activity or are authorized under separate authorization. Separate authorization may include the TPDES Multi Sector General Permit, TXR050000 (related to storm water discharges associated with industrial activity), separate authorization under this chapter if applicable, coverage under an alternative chapter if available, or authorization under an individual water quality permit issued by the state.

(C) *Non-storm water discharges.* The following non-storm water discharges are not prohibited under this chapter:

- (1) Discharges from fire fighting activities (fire fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities);
- (2) Uncontaminated fire hydrant flushings (excluding discharges of hyper chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life), which include flushings from systems that utilize potable water, surface water, or ground water that does not contain additional pollutants (uncontaminated fire hydrant flushings do not include systems utilizing reclaimed wastewater as a source water);
- (3) Water from the routine external washing of vehicles, the external portion of buildings or structures, and pavement, where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local, state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, or dust;
- (4) Uncontaminated water used to control dust;
- (5) Potable water sources including waterline flushings (excluding discharges of hyper chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);
- (6) Uncontaminated air conditioning condensate;
- (7) Uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents; and
- (8) Lawn watering and similar irrigation drainage.

(D) *Other permitted discharges.* Any discharge authorized under a separate permit may be combined with discharges authorized by this chapter, provided those discharges comply with the associated permit.

§ 55.04 - PERMIT REQUIREMENTS.

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(A) No person shall be granted a site development permit for a project disturbing 1 acre of land or more without the approval of a Storm Water Pollution Prevention Plan (as described more fully in this chapter) by the City Engineer or the City Building Official or his or her or their duly authorized representative(s).

(B) No site development permit is required for the following activities:

- (1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
- (2) Existing nursery and agricultural operations conducted as a permitted main or accessory use.
- (3) Gardening that is associated with the maintenance and landscaping of existing facilities and that is unrelated to new construction.

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(C) Each NOI shall bear the name(s) ~~and addresses~~, and telephone numbers of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee.

(D) Each NOI shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with an approved Storm Water Pollution Prevention Plan.

(E) Each NOI shall include the TPDES CGP authorization number for existing authorizations under the construction general permit (CGP), where the operator submits an NOI to renew coverage within 90 days of the effective date of this general permit;

(F) the name (or other identifier), address, county, and latitude/longitude of the construction project or site;

(G) (E) For large construction activities, the applicant will be required to file with the city or its duly authorized representative a faithful performance bond, letter of credit, or other improvement security in an amount deemed sufficient by the City Manager or City Engineer or his or her or their duly authorized representative to cover all costs of improvements, landscaping, maintenance of improvements for such period as specified by the city, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site.

§ 55.05 - STORM WATER POLLUTION PREVENTION PLAN (SWP3).

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(A) General requirements.

- (1) Storm Water Pollution Prevention Plans must be prepared prior to submittal of an NOI, for the purpose of limiting pollutants in discharges from small and large construction activities that will reach MS4s and privately-owned Separate Storm Sewer Systems. The SWP3 must also identify ~~and address any~~ potential sources of pollution (including off-site material storage areas, overburden and stockpiles of dirt, borrow areas, equipment staging areas, vehicle repair areas, fueling areas, and ~~the like etc.~~) that have been determined to cause, have a reasonable potential to cause, or contribute to a violation of water quality standards or have been found to cause or contribute to the loss of a designated use of surface water in the state from discharges of stormwater from construction activities and construction support activities. Where potential sources of these pollutants are present at a construction site, the SWP3 must also contain a description of the management practices that will be used to prevent these pollutants from being discharged into surface water in the state or Waters of the U.S. are reasonably expected to affect the quality of construction site discharges.

The SWP3 must describe the implementation of practices that will be used to minimize, to the extent practicable, the discharge of construction related pollutants in storm water and certain non-storm water discharges. At a minimum, such measures must be designed, installed, implemented, and maintained to:

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(a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

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(b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater;

(c) Minimize the exposure of waste materials by closing waste container lids at the end of the work day. For waste containers that do not have lids, where the container itself is not sufficiently secure enough to prevent the discharge of pollutants absent a cover and could leak, the permittee must provide either a cover (e.g., a tarp, plastic sheeting, temporary roof) to minimize exposure of wastes to precipitation, or a similarly effective means designed to minimize the discharge of pollutants (e.g., secondary containment); and

(d) Minimize the discharge of pollutants from spills and leaks, and implement chemical spill and leak prevention and response procedures.

(2) SWP3s must utilize temporary and permanent BMPs, measures, and controls complying with the city's Technical Guidance Manual.

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(3) SWP3s require maps and/or drawings. The scale of the maps and drawings must be large enough to provide a clear understanding of the site and the project. Sheet sizes must not exceed 24 inches by 36 inches. Where the amount of information required to be included on the map would result in a single map being difficult to read and interpret, the operator shall develop a series of maps that collectively include the required information.

(4) SWP3s must list MS4s receiving discharges from the subject construction activity. The same MS4s must receive copies of the SWP3 and application submittal.

(5) *Shared SWP3 development.*

(a) For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site is encouraged. Operators of small and large construction activities must independently obtain authorization, but may work together to prepare and implement a single, comprehensive SWP3 for the entire construction site.

(b) The SWP3 must clearly list the name, and, for large construction activities, the permit authorization numbers, for each operator that participates in the shared SWP3. (or the date that the NOI was submitted to TCEQ by each operator that has not received an authorization number for coverage under the CGP). Until the city responds to receipt of the NOI with a permit authorization number, the SWP3 must specify the date that the NOI was submitted to the city by each operator. ~~Each~~ All operators participating in the shared plan must also sign the SWP3.

(c) The SWP3 must clearly indicate which operator is responsible for satisfying each shared requirement of the SWP3. If the responsibility for satisfying a requirement

is not described in the plan, then each permittee is entirely responsible for meeting the requirement within the boundaries of the construction site where it performs construction activities. The SWP3 must clearly describe responsibilities for meeting each requirement in shared or common areas.

- (d) Individual operators may develop separate SWP3s that apply only to their portion of the project, provided reference is made to the other operators working on the site. Where there is more than 1 SWP3 for a site, permittees must coordinate to ensure that BMPs and controls are consistent and do not negate or impair the effectiveness of other controls. Regardless of whether a single comprehensive SWP3 is developed or separate SWP3s are developed for each operator, it is the responsibility of each operator to ensure compliance with the terms and conditions of this chapter in the areas of the construction site where that operator has control over construction plans and specifications or day-to-day operations.

(6) Responsibilities of Operators

(a) Secondary Operators and Primary Operators with Control Over Construction Plans and Specifications

All secondary operators and primary operators with control over construction plans and specifications shall:

- 1.) ensure the project specifications allow or provide that adequate BMPs are developed to meet the requirements of Part III of this general permit;
- 2.) ensure that the SWP3 indicates the areas of the project where they have control over project specifications, including the ability to make modifications in specifications;
- 3.) ensure that all other operators affected by modifications in project specifications are notified in a timely manner so that those operators may modify their BMP s as necessary to remain compliant with the conditions of this general permit; and
- 4.) ensure that the SWP3 for portions of the project where they are operators indicates the name and site-specific TPDES authorization number(s) for operators with the day-to-day operational control over those activities necessary to ensure compliance with the SWP3 and other permit conditions. If a primary operator has not been authorized or has abandoned the site, the secondary operator is considered to be the responsible party and must obtain authorization as a primary operator under the permit, until the authority for day-to-day operational control is transferred to another primary operator. The new primary operator must update or develop a new SWP3 that will reflect the transfer of operational control and include any additional updates to the SWP3 to meet requirements of the permit.

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(7) Primary Operators with Day-to-Day Operational Control

Primary operators with day-to-day operational control of those activities at a project that are necessary to ensure compliance with an SWP3 and other permit conditions must ensure that the SWP3 accomplishes the following requirements:

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- (a) meets the requirements of this general permit for those portions of the project where they are operators;
- (b) identifies the parties responsible for implementation of BMPs described in the SWP3;

(c) indicates areas of the project where they have operational control over day-to-day activities; and

(d) the name and site-specific TPDES authorization number of the parties with control over project specifications, including the ability to make modifications in specifications for areas where they have operational control over day-to-day activities.

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(B) *Small and large construction activities.* For small and large construction activities, the SWP3 must include, at a minimum:

- (1) A site or project description, which includes the following information:
 - (a) The address and lot description of the site;
 - (b) A description of the nature of the construction activity;
 - (c) A list of potential pollutants and their sources;
 - (d) A description of the best management practices (BMPs) that will be used to minimize pollution in runoff;
 - (e) The intended schedule or sequence of activities that will disturb soils for major portions of the site; the schedule of sequence must provide dates for beginning and ending construction activities such as stripping and clearing, rough grading, installing utilities, constructing infrastructure, constructing buildings, final grading, landscaping, and installing erosion and sediment controls, including temporary and permanent measures;
 - (f) The total number of acres of the entire project property and the total number of acres where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas that are authorized under the permittee's NOI;
 - (g) Data describing the soil or the quality of any discharge from the site;
 - (h) Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of mineral and fertilizer, kind and quantity of mulching for both temporary and permanent vegetative control measures; and
 - (i) A maintenance plan for BMPs.
- (2) A general map showing the general location of the site (e.g. a portion of a city or county map);
- (3) A detailed topographic site map (or maps) indicating the following:
 - (a) North arrow;
 - (b) Identifying property lines;
 - (c) Easements;
 - (d) Designated points on the site where vehicles will exit onto paved roads (for instance, this applies to construction transition from unstable dirt areas to exterior paved roads); Access to the site;
 - (e) Existing site conditions;
 - (f) The areas and extent of proposed soil disturbance;
 - (g) Proposed project conditions;

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- (h) Conveyances and watercourses;
- (i) Drainage patterns and approximate slopes anticipated after major grading activities;
- (j) Locations of all planned or in-place structural controls and buffers;
- (k) Locations of temporary and permanent stabilization measures;
- (l) Locations of construction support activities, including off-site activities, that are authorized under the permittee's NOI, including material, waste, borrow, fill, equipment storage, asphalt plants, and concrete plants;
- (m) Surface waters (including wetlands) either at, adjacent to, or in close proximity to the site;
- (n) Locations where storm water discharges from the site directly to a surface water body or MS4; and
- (o) Vehicle wash areas.

§ 55.06 - MAINTENANCE AND INSPECTION OF CONTROLS.

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(A) *Maintenance of controls.*

- (1) All protective measures identified in the SWP3 must be maintained in effective operating condition. If, through inspections or other means, the permittee determines that BMPs are not operating effectively, then the permittee shall perform maintenance as necessary to maintain the continued effectiveness of storm water controls, and prior to the next rain event if feasible. If maintenance prior to the next anticipated storm event is impracticable, the reason shall be documented in the SWP3 and maintenance must be scheduled and accomplished as soon as practicable. Erosion and sediment controls that have been intentionally disabled, run over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.
- (2) If periodic inspections or other information indicates a control has been used incorrectly, is performing inadequately, or is damaged, then the operator must replace or modify the control as soon as practicable after making the discovery.
- (3) Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%. For perimeter controls such as silt fences, berms, and the like, the trapped sediment must be removed before it reaches 50% of the above-ground height.
- (4) If sediment escapes the site, accumulations must be removed at a frequency that minimizes off-site impacts, and prior to the next rain event, if feasible. If the permittee does not own or operate the off- site conveyance, then the permittee must work with the owner or operator of the property to remove the sediment.

(B) *Inspection of controls.*

- (1) Personnel provided by the permittee must inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system. Personnel conducting these

inspections must be knowledgeable of this chapter, any permit issued under it, and the TCEQ general construction permit, familiar with the construction activities at the site, and knowledgeable of the SWP3 for the site. Personnel conducting these inspections are not required to have signatory authority for inspection reports under 30 TAC §305.128.

(2) Requirements of Inspections.

- (a) Sediment and erosion control measures identified in the SWP3 must be inspected to ensure that they are operating correctly.
- (b) Identify locations on the construction site where new or modified stormwater controls are necessary.
- (c) Check for signs of visible erosion and sedimentation that can be attributed to the points of discharge where discharges leave the construction site or discharge into any surface water in the state flowing within or adjacent to the construction site.
- (d) Identify any incidents of noncompliance observed during the inspection.
- (e) Locations where vehicles enter or exit the site must be inspected for evidence of off-site sediment tracking.
- (f) If an inspection is performed when discharges from the construction site are occurring, identify all discharge points at the site, observe and document the visual quality of the discharge (i.e., color, odor, floating, settled, or suspended solids, foam, oil sheen, and other such indicators of pollutants in stormwater).
- (g) Complete any necessary maintenance needed, based on the results of the inspection and in accordance with the requirements listed in this chapter.

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(3) Inspection Frequencies.

- (a) Inspections must be conducted at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.
- (b) (2) Where sites have been finally or temporarily stabilized or where runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists), inspections must be conducted at least once every month until thawing conditions begin to occur. The SWP3 must also contain a record of the approximate beginning and ending dates of when frozen conditions occurred at the site, which resulted in inspections being conducted monthly, while those conditions persisted, instead of at the interval of once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.
- (c) (3) As an alternative to the above-described inspection schedule of once every 14 calendar days and within 24 hours of a storm event of 0.5 inches or greater, the SWP3 may be developed to require that these inspections will occur at least once every 7 calendar days. If this alternative schedule is developed, then the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection. The inspections may occur on either schedule provided that the SWP3 reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of 1 time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWP3 (e.g., end of "dry" season and beginning of "wet" season).

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- (4) In the event of flooding or other uncontrollable situations which prohibit access to the inspection sites, inspections must be conducted as soon as access is practicable.

(5) Inspection Reports.

- (5) The SWP3 must be modified based on the results of inspections, as necessary, to better control pollutants in runoff. Revisions to the SWP3 must be completed within 7 calendar days following the inspection. If existing BMPs are modified or if additional BMPs are necessary, an implementation schedule must be described in the SWP3 and wherever possible those changes implemented before the next storm event. If implementation before the next anticipated storm event is impracticable, these changes must be implemented as soon as practicable.

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- (6) A report summarizing the scope of the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWP3 must be made completed within 24-hours following the inspection and retained as part of the SWP3. The report must also include the date(s) of the inspection and major observations relating to the implementation of the SWP3. Major observations should include: the locations of discharges of sediment or other pollutants from the site; locations of BMPs that need to be maintained; locations of BMPs that failed to operate as designed or proved inadequate for a particular location; and locations where additional BMPs are needed.

- (7) Actions taken as a result of inspections must be described within, and retained as a part of, the SWP3. Reports must identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report must contain a certification that the facility or site is in compliance with the SWP3 and this permit. The report must be signed by the person and in the manner required by 30 TAC 305.128 (relating to Signatories to Reports). The names and qualifications of personnel making the inspections for the permittee may be documented once in the SWP3 rather than being included in each report.

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- (8) The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for all eligible non-stormwater components of the discharge, as listed in section 55.03 of this chapter.

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- (9) The SWP3 must include the information required in section 55.02 of this chapter.

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- (10) The SWP3 must include pollution prevention procedures that comply with section 55.02 of this chapter.

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§ 55.07 - REVIEW, APPROVAL, OBTAINING AUTHORIZATION TO DISCHARGE.

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- (A) *Submissions*. In order to apply for a permit for site development and to obtain an approval for a small or large construction activity, the applicant must complete or develop and submit the following application documents to the city for review:

- (1) Small construction activity (submit at least 15 calendar days prior to the date to commence work):

(a) NOI.

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(a)(b) Copies of any prior related permits.

- (b) ~~(e)~~ SWP3 meeting requirements for a small construction activity.
- (c) ~~(d)~~ Small construction site notice.
- (d) ~~(e)~~ Review fee.
- (2) Large construction activity (submit at least 30 calendar days prior to the date to commence work):
 - (a) NOI.
 - (b) Copies of any prior related permits.
 - (c) SWP3 meeting requirements for a large construction activity.
 - (d) Large construction site notice.
 - (e) Review fee.
- (B) *Review and approval.* The City Engineer or Building Official will review each submittal for a site development permit to determine its conformance with the provisions of this chapter. After receiving a complete submittal, the City Engineer or Building Official within 15 calendar days for a small construction activity and 30 calendar days for a large construction activity, shall, in writing:
 - (1) Approve the permit;
 - (2) Approve the permit subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
 - (3) Disapprove the permit, indicating the reason(s) for disapproval and the procedure for submitting a revised application or submission.
- (C) *Minor modifications.* Minor modifications to an approved SWP3 shall be documented by the permittee on a form provided by the city and shall be approved or disapproved by the City Engineer or Building Official, with such decision so indicated on the form, within 5 business days of receiving the completed form.
- (D) *Major modifications.* Major modifications to an approved SWP3 shall be processed and approved or disapproved in the same manner as for first-time submittals of this chapter, and may be authorized by the City Engineer and/or Building Official by written authorization to the permittee.
- (E) *Additional primary operators.* If an additional primary operator is added or changed after the initial NOI is submitted, the new primary operator must submit an NOI at least 10 calendar days prior to assuming operational control.
- (F) *Posting NOI.* All primary operators and permittees must post a copy of the signed NOI at the construction site in a location where it is readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction activities, and must maintain the NOI in that location until completion of the construction activity.

Two days prior to commencing construction activities, all primary operators must:

- (1) provide a copy of the signed NOI to the operator of any MS4 receiving the discharge and to any secondary construction operator, and
- (2) list in the SWP3 the names and addresses of all MS4 operators receiving a copy.

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(G) *Posting site notice.* All operators and permittees must post a site notice. The site notice must be located where it is safely and readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction, and must be maintained in that location until completion of the construction activity.

(H) *Secondary operators.* All secondary operators are regulated under this chapter, but are not required to submit an NOI, provided that another ~~the~~ primary operator(s) at the site has submitted an NOI, or is required to submit an NOI and the secondary operator has provided notification to the primary operator(s) of the need to obtain coverage (with records of notification available upon request). Any secondary operator notified under this provision may alternatively submit an NOI under this chapter as set forth above, may seek coverage under an alternative TPDES individual permit, or may seek coverage under an alternative TPDES general permit if available.

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~~(I) all secondary operators of large construction activities must post a copy of the signed and certified Secondary Operator construction site notice and provide a copy of the signed and certified site notice to the operator of any MS4 receiving the discharge at least two days prior to the commencement of construction activities. Posted site notices may have a redacted signature as long as there is an original signed and certified Secondary Operator construction site notice, with a viewable signature, located on-site and available for review by an applicable regulatory authority.~~

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~~(J) (I) Date of coverage.~~ Operators of construction activities are authorized and their construction activities are permitted after the required submittals are received by the city, reviewed by the city, and written notification, including a stamped SWP3 and city authorization number are issued by the city to the operator/permittee.

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~~(K) (J) Late NOIs.~~ Operators are not prohibited from submitting late NOIs or posting late notices to obtain authorization under this chapter. The city reserves the right to take appropriate enforcement actions for any unpermitted activities that may have occurred between the time construction commenced and authorization was obtained.

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~~(L) (K) Notice of change (NOC).~~

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(1) If relevant information provided in the NOI changes, the following items must be submitted:

(a) ~~For small construction activities—an NOC at least 10 calendar days prior to the change occurring; and~~

~~(a) (b) For large construction activities—an NOC at least 14.5 calendar days prior to the change occurring.~~

(2) When the required advance notice is not possible, the operator must submit an NOC within 145 days of discovery of the change. If the operator becomes aware that it failed to submit any relevant facts or submitted incorrect information in an NOI, the correct information must be provided to the City Manager, the City Engineer, or Building Official in an NOC within 14.45 days after discovery. The NOC shall be submitted on a form provided by the ~~executive director~~ City Manager, the City Engineer, or Building Official, or by letter if an NOC form is not available. A copy of the NOC must also be provided to the operator of any MS4 receiving the discharge, most notably the city. A list that includes the names and addresses of all MS4 operators receiving a copy of the NOC (or NOC letter) must be included in the SWP3.

(3) Information that may be included in an NOC includes, but is not limited to, the following: the description of the construction project, an increase in the number of

acres disturbed (for increases of 1 or more acres), and the operator name. A transfer of operational control from 1 operator to another, including a transfer of the ownership of a company, must be included in an NOC. Coverage under the CGP is not transferable from one operator to another or one company to another, and may not be included in an NOC. A transfer of ownership of a company includes changes to the structure of a company, such as changing from a partnership to a corporation or changing corporation types, so that the filing number (or charter number) that is on record with the Texas Secretary of State must be changed. An NOC is not required for notifying the city of a decrease in the number of acres disturbed. This information must be included in the storm water pollution prevention plan (SWP3) and retained on site.

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- (M) ~~(L)~~ *Signatory requirements.* Signatory requirement for NOI Forms, Notice of Termination (NOT) Forms, NOC Letters, and Construction Site Notices. NOI forms, NOT forms, NOC letters, and Construction Site Notices that require a signature must be signed according to 30 TAC § 305.44 (relating to Signatories for Applications).

§ 55.08 - INSPECTIONS BY CITY.

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- (A) *City inspections.* The City Engineer, the City Building Official, or his or her or their designated agent, shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Storm Water Pollution Prevention Plan as approved. Plans for grading, stripping, excavating, and filling work and an SWP3 bearing the stamp of city approval shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the City Engineer or the Building Official at least 3 working days before the following:
- (1) Start of construction
 - (2) Installation of sediment and erosion measures
 - (3) Completion of site clearing
 - (4) Completion of rough grading
 - (5) Completion of final grading
 - (6) Close of the construction season
 - (7) Completion of final landscaping
- (B) *Permittee inspections.* The permittee or his or her agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Storm Water Pollution Prevention Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the Storm Water Pollution Prevention Plan and the need for additional control measures. All inspections shall be documented on forms provided by the city and submitted to the City Engineer or the Building Official at the time interval specified in the approved permit.
- (C) *Entry permitted.* The City Manager, the City Council, the City Engineer, the Building Official, or their designated agents shall be permitted to enter the construction site or disturbed area as deemed necessary to make inspections to ensure the validity of the reports filed by the permittee.

- (D) *Refusal of access.* If the City Manager, City Engineer, Building Official, or his or her or their designee, has been refused access to any part of the premises from which storm water is discharged, and he or she is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City Manager may seek issuance of a search warrant from any court of competent jurisdiction.

§ 55.09 - LIMITATIONS ON PERMIT COVERAGE.

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- (A) *Post-construction discharges.* Discharges that occur after construction activities have been completed, and after the construction site and any supporting activity site have undergone final stabilization, are not eligible for coverage under a permit issued in accordance with this chapter. Discharges originating from permitted sites are not authorized under this chapter following the submission of the notice of termination (NOT) for the construction activity.
- (B) *Prohibition of non-storm water discharges.* Except as otherwise provided, only discharges that are composed entirely of storm water associated with construction activity may be authorized under this chapter.
- (C) *Compliance with water quality standards.* Discharges to surface water in the city that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses are not eligible for coverage under this chapter. The City Manager, Building Official, or City Engineer may require an application for a TPDES individual permit to authorize discharges to surface water in the state from any activity that is determined to cause a violation of water quality standards or is found to cause, or contribute to, the loss of a designated use. The City Manager, the City Engineer, or Building Official may also require an application for a TPDES individual permit considering factors described in this chapter.
- (D) *Discharges to water quality-impaired receiving waters.* New sources or new discharges of the constituents of concern to impaired waters are not authorized by a permit granted under this chapter unless otherwise allowable under 30 TAC Chapter 305 and applicable state law. Impaired waters are those that do not meet applicable water quality standards and are listed on the EPA approved Clean Water Act Section 303(d) list. Constituents of concern are those for which the water body is listed as impaired. Discharges of the constituents of concern to impaired water bodies for which there is a total maximum daily load (TMDL) are not eligible for a permit unless they are consistent with the approved TMDL. Permittees must incorporate the limitations, conditions, and requirements applicable to their discharges, including monitoring frequency and reporting required by Texas Commission on Environmental Quality (TCEQ) rules, into their storm water pollution prevention plan in order to be eligible for coverage under this chapter.
- (E) *Discharges to specific watersheds and water quality areas.* Discharges otherwise eligible for coverage cannot be authorized by this chapter where prohibited by 30 TAC Chapter 311 (relating to Watershed Protection) for water quality areas and watersheds.
- (F) *Protection of streams and watersheds by other governmental entities.* This chapter does not limit the authority or ability of federal, state, or other local governmental entities from

placing additional or more stringent requirements on construction activities or discharges from construction activities.

- (G) Oil and gas production and transportation. Storm water runoff from construction activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, are not under the authority of the city and are not eligible for coverage under this chapter. If discharges of storm water require authorization under federal NPDES regulations, authority for these discharges must be obtained from the EPA.
- (H) Storm water discharges from agricultural activities. Storm water discharges from agricultural activities that are not point source discharges of storm water are not subject to the requirements or restrictions of this chapter. Where properly zoned for such uses, these activities may include clearing and cultivating ground for crops, construction of fences to contain livestock, construction of stock ponds, and other similar agricultural activities.
- (I) Other. Nothing in this chapter is intended to negate any person's ability to assert the force majeure (act of God, war, strike, riot, or other catastrophe) defenses found in 30 TAC § 70.7.

§ 55.10 - CONCRETE BATCH PLANTS PROHIBITED.

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Concrete batch plants are prohibited in the city.

§ 55.11 - CONCRETE TRUCK WASH-OUT REQUIREMENTS.

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Wash-out of concrete trucks at construction sites is permitted provided that the following requirements are satisfied.

- (A) Land disposal of concrete truck wash-out water is permitted only from concrete trucks that are associated with off-site production facilities. Disposal of concrete truck wash-out water associated with on-site concrete production facilities is specifically prohibited within the city.
- (B) Direct discharge of concrete truck wash-out water to surface water in the state, including discharge to storm sewers, is prohibited.
- (C) Concrete truck wash-out water shall be discharged to areas at the construction site where structural controls have been established to prevent direct discharge to surface waters, or to areas that have a minimal slope that allow infiltration and filtering of wash-out water to prevent direct discharge to surface waters. Structural controls may consist of temporary berms, temporary shallow pits, temporary storage tanks with slow rate release, or other reasonable measures to prevent runoff from the construction site.
- (D) Wash-out of concrete trucks during rainfall events shall be minimized. The direct discharge of concrete truck wash-out water is prohibited at all times, and the operator shall insure that its best management practices are sufficient to prevent the discharge of concrete truck washout as the result of rain.
- (E) The discharge of wash-out water shall not cause or contribute to ground water contamination.

- (F) If a Storm Water Pollution Prevention Plan (SWP3) is required to be implemented, the SWP3 shall include concrete wash-out areas on the associated map.

§ 55.12 - DEADLINES FOR OBTAINING DISCHARGE AUTHORIZATION.

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(A) *Large construction activities.*

- (1) *New construction.* Discharges from sites where the commencement of construction occurs on or after the effective date of this chapter must be authorized, either according to this chapter or a separate permit issued by the city, prior to the commencement of those construction activities.
- (2) *Ongoing construction.* Operators of large construction activities operating prior to the effective date of this chapter, and continuing to operate after the effective date of a permit issued under this chapter, must submit an NOI or NOT to the City Manager, the City Engineer, or Building Official to renew authorization of any permit issued under any previous law, chapter or rule under which construction activity began within 90 days of this chapter. During this interim period, as a requirement of issuance of such permit under this chapter, the operator must continue to meet the conditions and requirements of any previous permit.

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(B) *Small construction activities.*

- (1) *New construction.* Discharges from sites where the commencement of construction occurs on or after the effective date of this chapter must be authorized under this chapter prior to the commencement of those construction activities.
- (2) *Ongoing construction.* Discharges from ongoing small construction activities that commenced prior to the effective date of this chapter, and that would not meet the conditions to qualify for termination of a permit issued under this chapter must meet the requirements to be authorized under this chapter within 90 days of the effective date of this chapter. During this interim period, as a requirement of a permit issued under this chapter, the operator must continue to meet the conditions and requirements of any previous permit issued by the city under which construction activities began.

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§ 55.13 - PERMIT EXPIRATION.

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- (A) *Initial term.* A permit issued under this chapter is issued for a term not to exceed 1 year. Unless otherwise specified in the permit issued, all active discharge authorizations expire 1 year from the date provided in the permit. The city, through the City Council or City Manager, may amend, revoke, or cancel a permit issued under this chapter at any time.
- (B) *Notice of intent to renew.* If the city officially provides, in writing, a notice of the intent to renew or amend a permit before the expiration date, the permit will remain in effect for existing, authorized discharges until the city takes final action on the permit. Upon issuance of a renewed or amended permit, permittees may be required to submit an NOI within 90 days following the effective date of the renewed or amended permit, unless that permit provides for an alternative method for obtaining authorization. A renewal or amended permit may not be for a period in excess of 6 months. The fee for issuance of a renewal or

amended permit shall be equal to one-half of the review fee for the permit being renewed or amended.

- (C) *New permit.* If the city does not propose to renew or amend a permit within 90 days before the expiration date, permittees shall apply for authorization under a new permit if activity requiring a permit will continue after expiration of the initial permit. If the NOI for a new permit is submitted before the expiration date, authorization under the expiring permit remains in effect until the issuance or denial of a new permit. No new NOIs will be accepted nor new authorizations honored under the original permit after the expiration date. If a new permit is requested, the permittee shall submit an application in accordance with § 55.07 and a new review fee must be paid.

§ 55.14 - RETENTION OF RECORDS.

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The permittee must retain the following records for a minimum period of 3 years from the date that an NOI is submitted as required by this chapter. For activities in which an NOI is not required, records shall be retained for a minimum period of 3 years from the date that the operator terminates coverage as provided under this chapter. Records include:

- (A) A copy of the SWP3;
- (B) All reports and actions required by this permit, including a copy of the construction site notice;
- (C) All data used to complete the NOI, if an NOI is required for coverage under this general permit; and
- (D) All records of submittal of forms submitted to the operator of any MS4 receiving the discharge and to the secondary operator of a large construction site, if applicable.

§ 55.15 - STANDARD PERMIT CONDITIONS.

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- (A) *Duty to comply.* The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued, and is grounds for enforcement action, for terminating, revoking and reissuance, or modification, or denying coverage under a permit issued under this chapter, or for requiring a discharger to apply for and obtain an individual permit under this chapter.
- (B) *Permit suspension or revocation.* Authorization under a permit issued under this chapter may be modified, suspended, or revoked and reissued, terminated or otherwise suspended for cause, based on rules located in TWC §23.086, 30 TAC §305.66 and 40 CFR §122.41(f). Filing a notice of planned changes or anticipated noncompliance by the permittee does not stay any permit condition imposed by this chapter. The permittee must furnish to the City Manager, the City Engineer, or Building Official, upon request and within a reasonable time, any information necessary for the City Manager, the City Engineer, or Building Official to determine whether cause exists for modifying, revoking and reissuing, terminating or otherwise suspending, or terminating authorization under any permit issued in compliance with this chapter. Additionally, the permittee must provide to the City

Manager, the City Engineer, or Building Official, upon request, copies of all records that the permittee is required to maintain as a condition of this chapter.

- (C) *Limit on defense.* It is not a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.
- (D) *Inspection and entry.* Inspection and entry by the city shall be allowed under Tex. Water Code Chapters 26-28, Tex. Health and Safety Code § 361.032-361.033 and 361.037, and 40 CFR § 122.41(i4).
- (E) *Water code penalties apply.* The discharger is subject to administrative, civil, and criminal penalties, as applicable, for violations including, but not limited to, the following:
 - (1) Negligently or knowingly violating the federal Clean Water Act (CWA) §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA § 402, or any requirement imposed in a pretreatment program approved under CWA § 402(a)(3) or 402(b)(8);
 - (2) Knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance; ~~and~~
 - (3) Knowingly violating CWA §303 and placing another person in imminent danger of death or serious bodily injury.
- (F) *Signing of reports.* All reports and other information requested by the City Manager, the City Engineer, or Building Official must be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).
- (G) *Authorization does not convey property or waive rights.* Authorization under this chapter does not convey property or water rights of any sort and does not grant any exclusive privilege.
- (H) *Additional provisions.* Nothing in this chapter shall be construed to allow storm water runoff from any construction and/or land-disturbing activity onto any other public or private property except as expressly provided by this chapter. Additionally, any permittee under this chapter is specifically required to complete internal final stabilization of the entirety of a permitted construction and/or land disturbance area prior to the city's acceptance of an NOT, or the issuance by the city of any certificate of occupancy.

§ 55.16 - FEES.

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- (A) *Review fee.* A review fee as defined by this chapter must be submitted along with the NOI.
- (B) *When fees are due.* Fees are due upon submission of the application documents, including the NOI. An application will not be declared administratively complete unless the associated fee has been paid in full.
- (C) *Fees of other entities.* Any fee assessed under the terms of the TCEQ general construction permit, or any other permit required by any other federal, state or local governmental entity or agency, is a separate fee, and it is the sole responsibility of the prospective permittee to satisfy any such fee requirement(s).

§ 55.17 - NOTICE OF VIOLATION.

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- (A) Whenever the City Building Official or his or her designee finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the city may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:
- (1) The performance of monitoring, analysis, and reporting;
 - (2) The elimination of construction site storm water runoff;
 - (3) That violating construction practices or operations shall cease and desist;
 - (4) The abatement or remediation of construction storm water runoff and the restoration of any affected property;
 - (5) Payment of a fine to cover administrative and remediation costs; and/or
 - (6) The implementation of construction storm water runoff BMPs.
- (B) If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor, and the expense thereof shall be charged to the violator.

§ 55.18 - APPEAL OF NOTICE OF VIOLATION.

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Any person receiving a Notice of Violation from the Building Official or his or her designee may appeal the determination to the City Manager by filing a Notice of Appeal with the City Secretary not later than 10 days after the date of the Notice of Violation. The City Manager shall conduct a hearing on the appeal within 30 days of the date of filing of the Notice of Appeal. Notice of the date, time, and place of such hearing will be sent by first class mail to the person submitting the Notice of Appeal not less than 7 days prior to the date of the hearing. The City Building Official and/or his or her designee and the person submitting the Notice of Appeal may present evidence at the hearing. The decision of the City Manager will be rendered at the close of the hearing or within 30 days thereafter. The decision of the City Manager shall be final.

§ 55.19 - ENFORCEMENT MEASURES.

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If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the City shall enter upon the subject construction site and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, partnership, corporation, agent or person in possession of any premises to refuse to allow the City Manager, the City Engineer and/or any contractor or employee designated by the City, the City Manager and/or the City Engineer to enter upon the premises for the purposes set forth above.

§ 55.20 - COST OF ABATEMENT OF VIOLATIONS.

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Within 10 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 5 days. If the amount due is not paid within a timely manner as determined by the decision of the City Manager, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this chapter shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments.

§ 55.21 - INJUNCTIVE RELIEF.

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It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the city may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 55.22 - VIOLATIONS DEEMED A PUBLIC NUISANCE.

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

§ 55.23 - ENFORCEMENT.

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- (A) *Stop work order; revocation of permit.* In the event that any person holding a site development permit pursuant to this chapter violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the City Manager or the City Council may suspend or revoke the site development permit.
- (B) *Violation and penalties.* No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this chapter. Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and each day during which any violation of any of the provisions of this chapter is committed, continued, or permitted, shall constitute a separate offense. Upon conviction of any such violation, such person, partnership, or corporation shall be punished by a fine of not more than \$500 for each offense. In addition to any other

penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this chapter shall be required to bear the expense of such restoration. Each day that a violation occurs shall be a separate offense.

§ 55.24 - PROSECUTION.

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Any person that has violated or continues to violate this chapter shall be liable to prosecution to the fullest extent of the law, and shall be subject to a fine or penalty of \$500 per violation per day. Each day that a violation occurs shall be a separate offense. The city may recover all attorneys' fees, court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

§ 55.99 - PENALTY.

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(A) *Civil penalty.* In an action against the owner of property or the owner's representative with control over the premises or property (including, without limitation, a site), the city may recover a civil penalty of up to \$1,000 per day for a violation of this chapter if the defendant was actually notified of the provisions of this chapter and thereafter committed acts in violation of this chapter or failed to take action necessary for compliance with this chapter. Each day that a violation occurs shall be a separate offense.

(B) *Remedies not exclusive.*

- (1) The remedies listed in this chapter 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.
- (2) If any section, subsection, phrase, sentence or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be stricken from the chapter, and such holding shall not affect the validity of the remaining portions thereof. The balance of the chapter shall be construed as 1 instrument and as if the offending portion had not been included.

Section 2. This Ordinance shall be in full force and effect upon passage and adoption on second reading. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Passed on first reading on the 14th day of July, 2022.

Passed and adopted on second reading on the 28th day of July, 2022.

KIMBERLY MCGEHEE ALDRICH, Mayor

ATTEST:

Patty Cox, City Secretary,

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<input checked="" type="checkbox"/>	DISCUSSION AND POSSIBLE ACTION ITEMS
<input type="checkbox"/>	SPECIAL CONSIDERATION
<input type="checkbox"/>	CONSENT AGENDA
<input type="checkbox"/>	PUBLIC HEARING
<input type="checkbox"/>	PRESENTATION
<input type="checkbox"/>	WORKSHOP

**CITY OF KIRBY
CITY COUNCIL MEETING
A G E N D A I T E M S U M M A R Y**

DATE: JULY 14, 2022

AGENDA ITEM: 9. e.

9. Discussion And Possible Action

Reports By Council Liaisons

1. Animal Advisory Committee – Council Member Walczyk
2. Beautification And Recycle Committee – Mayor Pro-Tem Grider
3. Building And Standards Commission – Council Member Martin
4. Crime Control And Prevention District – Council Member Garza
5. Economic Development Committee Council Member Apodaca
6. Planning And Zoning Commission – Mayor Aldrich
7. Senior Center Corporation Board – Council Member Street