

CITY OF THE COLONY, TEXAS

ORDINANCE NO. 2010-1876

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, AMENDING THE CODE OF ORDINANCES, BY ADDING A NEW CHAPTER 20, ARTICLES I THROUGH V, SECTIONS 20-1 TO 20-25, ENTITLED "STORM WATER POLLUTION PREVENTION," ESTABLISHING METHODS FOR CONTROLLING THE INTRODUCTION OF POLLUTANTS INTO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM IN ORDER TO COMPLY WITH NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT PROCESS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) FOR EACH AND EVERY OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE OF AUGUST 1, 2011.

WHEREAS, the U.S. Environmental Protection Agency ("EPA") issued regulations in 1999 to protect storm water quality in small cities and urbanized areas. In Texas, the Texas Commission on Environmental Quality ("TCEQ") was delegated the responsibility for implementing the regulations, commonly called the Phase II Storm Water Program. The City of The Colony is one of several hundred cities, counties, and other public entities required to develop a program to protect storm water quality under the Phase II regulations; and

WHEREAS, the State of Texas ("State") required the City of The Colony, Texas ("City") to obtain a permit with TCEQ for the discharge of storm water from within the City; and

WHEREAS, the City has prepared and adopted a Storm Water Management Program ("SWMP") that was approved by the TCEQ and the City was issued a General Permit Number TXR040077, effective November 11, 2008. As part of this approved SWMP, the City is required to adopt the Best Management Practices ("BMPs") to assist in improving storm water quality; and

WHEREAS, as part of the BMPs, the City is required to implement and adopt an ordinance for storm water Erosion Control, Post-Construction Pollution Control and Illicit Discharge and Connection Control in compliance with the National Pollutant Discharge Elimination System ("NPDES") Phase II regulations and the Texas Pollutant Discharge Elimination System ("TPDES") regulations.

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

SECTION 1. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. That the Code of Ordinances of the City of The Colony, Texas be, and the same is, hereby amended by adding a new Chapter 20, Articles I through V, Sections 20-1 to 20-25, entitled "Storm Water Pollution Prevention," which shall read as follows:

"CHAPTER 20.

STORM WATER POLLUTION PREVENTION

ARTICLE I. IN GENERAL

Sec. 20-1. Purpose.

The purpose of this Storm Water Pollution Prevention Ordinance is to provide for the health, safety, and general welfare of the citizens of the City 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 ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the NPDES permit process. The objectives of this ordinance are: (1) to set forth performance standards which all erosion and post-construction pollution controls shall, at a minimum, meet; (2) to regulate the contribution of pollutants to the MS4 by non-storm water discharges by any user; (3) to prohibit Illicit Connections and Discharges to the MS4; and (4) to establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

Sec. 20-2. Definitions.

When used in this ordinance, the following words and terms shall have the meaning set forth in this Section, unless other provisions of this ordinance specifically indicate otherwise.

- (1) *Accelerated Soil Erosion* shall mean [or means] the increased movement of soils that occurs as a result of human activities and development.
- (2) *Authorized Public Agency* shall mean State, local or county agency designated for the purpose of enforcing soil erosion control or TPDES MS4 permit requirements with regard to activities within the City of The Colony.
- (3) *Best Management Practice (BMP)* shall mean schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (4) *Buffer* shall mean 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.

- (5) *Buffer Widths* shall mean viewed aerially, the stream buffer width is measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.
- (6) *Built-Upon Area (BUA)* shall mean that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck or the water area of a swimming pool or water quality feature or other allowable uses.
- (7) *Calendar Day* shall mean the twenty-four (24) hour day as denoted on the calendar.
- (8) *Certificate of Compliance* shall mean a certificate issued by the city indicating a site complies with the requirements of this ordinance as of a specific date.
- (9) *Certificate of Non-Compliance* shall mean a certificate issued by the city indicating a site does not comply with this ordinance as of a specific date. The certificate also advises that legal action may be taken against the property owner. The certificate may be filed in the Real Property Records of Denton County, Texas.
- (10) *Channel* shall mean the portion of a natural stream which conveys normal flows of water, or a ditch or channel excavated for the flow of water.
- (11) *City* shall mean the City of The Colony, Texas.
- (12) *Clean Water Act* shall mean the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- (13) *Commercial Use* shall mean all land uses except for one-family and two-family detached dwellings and appurtenant structures. The use of property in connection with or for the purchase, sale, display, or exchange of goods, merchandise, or personal services, as well as the maintenance or operation of businesses or recreational or amusement enterprises
- (14) *Common Plan of Development* shall mean 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.
- (15) *Construction Activity* shall mean activities subject to NPDES/TPDES Construction Permits. NPDES/TPDES Storm Water permit coverage is required for construction

projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

- (16) *Construction General Permit (CGP)* shall mean the TPDES Construction General Permit (TXR150000) administered by the Texas Commission on Environmental Quality.
- (17) *Design Standard (or engineering design standard)* shall mean a specification that prescribes the type of design, location, mode of construction, mode of operation, or other engineering detail for soil erosion or storm water control facilities.
- (18) *Design Storm* shall mean a rainfall event that has a specific statistical probability of occurring in any given year. For example, a two (2) year design storm is a storm with a fifty percent (50%) chance of occurring during the year. Design storm figures are used to calculate the runoff volume and peak discharge rate through a detention or retention basin or other storm water management facility.
- (19) *Detention Basin* shall mean a structure or facility, natural or artificial (man-made), which stores storm water on a temporary basis and releases it at a controlled rate. A detention basin may drain completely after a storm event, or it may be a body of water with a fixed minimum and maximum water elevation between runoff events.
- (20) *Development* shall mean new development created by the addition of built-upon area to land void of built-upon area as of the effective date of this ordinance.
- (21) *Director* shall mean the City of The Colony Director of Engineering or his or her authorized representative.
- (22) *Discharge* shall mean the introduction or addition of any pollutant, storm water or other substance into the MS4, or to allow, permit or suffer any such introduction or addition.
- (23) *Discharge Rate* shall mean the rate of flow of water through an outlet structure at a given point and time, measured in units such as cubic feet per second (cfs) or gallons per minute (gpm).
- (24) *Disturbance* shall mean any use of the land by any person or entity which results in a change in the ground cover or topography of the land.
- (25) *Drainage* shall mean the interception and removal of groundwater or surface water by natural or artificial means.
- (26) *Drainage Area* shall mean that area of land that drains to a common point on a project site.
- (27) *Downstream* shall mean lands and waters which receive storm water runoff and other surface water flows from a designated site. Downstream lands and waters are down

gradient from the designated site.

- (28) *Drainage System* shall mean all facilities, channels, and areas which serve to convey, filter, store, and/or receive storm water, either on a temporary or permanent basis.
- (29) *Engineering Design Manual* shall mean the Engineering Design Manual for the City of The Colony approved for use for the proper implementation of the design requirements for the City. All references herein to the Engineering Design Manual are to the latest published edition or revision.
- (30) *Enforcing Agency* shall mean a public agency designated to enforce permit requirements. For the purpose of this ordinance, the enforcing agency is The City of The Colony.
- (31) *Earth Change* shall mean an area of land subjected to erosion due to the removal of vegetative cover and/or earthmoving activities, including grading and filling. It is a human-made change in the ground cover or topography of land, including cut and fill activities, which may result in or contribute to soil erosion or sedimentation of the waters of the state. The term "earth change", as used in this ordinance, shall not apply to the practice of plowing and tilling soil for the purpose of crop production.
- (32) *Environmentally Sensitive Sites* shall mean any site with one (1) or more of the following characteristics:
 - (a) Sites where driveways have been planned with a slope greater than ten percent (10%) (10 feet horizontal to 1 foot vertical).
 - (b) Sites with heavy clay soils (commonly termed hardpan clay), and soils classified in hydrologic Group D in the Denton County Soil Survey, published by the Soil Conservation Service, U.S. Department of Agriculture.
 - (c) Sites which may cause sedimentation or flooding onto adjacent land areas if earth changes occur.
 - (d) Sites located within one-hundred (100) feet of a protected wetland or from the 537 flood elevation of Lake Lewisville.
 - (e) Other sites identified by local units of government as having a high potential for environmental degradation and flooding as a result of soil erosion or storm water runoff on-site or off-site.
- (33) *Erosion* - See "soil erosion" definition.
- (34) *Excess Runoff* shall mean surface runoff that cannot be accommodated satisfactorily by the natural or constructed drainage systems.

- (35) *Extended Detention Basin* shall mean detention basin designed to detain storm water for an extended period of time to allow for settling of suspended solids and particulates, typically achieved by holding storm water for twenty-four (24) hours or more.
- (36) *Fill Material* shall mean soil, sand, gravel, clay, or any other non-polluting material which displaces soil or water or reduces water retention potential in a lake, pond, stream, or wetland.
- (37) *Flood* shall mean an overflow of surface water onto lands not normally covered by water. Floods have these essential characteristics:
- (a) The inundation of land is temporary and results from unusually heavy precipitation.
 - (b) The land is inundated by overflow for a lake, pond, stream, and/or wetland, or is flooded by natural runoff.
- (38) *Floodplain* shall mean the area of land adjoining a lake or stream which is inundated when the flow exceeds the capacity of the normal channel. For mapping purposes, floodplains are designated according to the frequency of the flood event, such as the one-hundred (100) year floodplain or five-hundred (500) year floodplain.
- (39) *Grading* shall mean any stripping, clearing, stumping, excavating, filling, stockpiling, or any combination thereof, includes the land in its excavated or filled condition.
- (40) *Hazardous Materials* shall mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (41) *Illicit Discharge* unless otherwise allowed, shall mean any direct or indirect non-storm water discharge that enters or threatens to enter the storm drain system.
- (42) *Illicit Connection* shall mean any connection, drain or conveyance, whether on the surface or subsurface, which allows an unauthorized discharge to enter the storm drain system including, but not limited to, any conveyances which allow any non-storm water discharge including sewage, processed wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an Authorized Public Agency.
- (43) *Impervious Area* shall mean impermeable surfaces such as buildings, paved driveways, parking areas, or roads which prevent the infiltration of water into the soil.

- (44) *Industrial Activity* shall mean activities subject to NPDES/TPDES Industrial Permits.
- (45) *Industrial Use* shall mean any manufacturing, fabrication, assembly, printing, or improvement of articles or merchandise; warehousing, wholesaling, or storage of goods, vehicles, or materials; research and medical laboratories; mining and activities related to mineral extraction and processing; and other business enterprises not classified as commercial.
- (46) *Infiltration* shall mean the downward movement or seepage of water from the surface to the subsoil and/or groundwater. The infiltration rate is expressed in terms of inches per hour.
- (47) *Infiltration Facility* shall mean a structure or area which allows storm water runoff to gradually seep into the ground, e.g. french drains, seepage pits, infiltration basin, dry well, or perforated pipe.
- (48) *Lake* shall mean an inland body of water, fresh or saline, of substantial size (considered to be larger than a pond) and occupying a depression in the Earth's surface. Lakes are too deep to allow vegetation to take root completely across the surface of the water. The term may include a widened stretch of river, or a reservoir behind a dam.
- (49) *Land Use* shall mean a use of land which may result in an earth change, including but not limited to subdivision, residential, commercial, industrial, recreational, agricultural practices, or other development, private and public highway, road and stream construction, and drainage.
- (50) *Landscaping* shall mean mowing, seeding, sodding, and other landscaping activities which are not an earth change.
- (51) *Larger Common Plan of Development or Sale* shall mean any contiguous area where multiple separate and distinct construction or land disturbing activities will occur under one 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 demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.
- (52) *Maintenance Agreement* shall mean a binding agreement between the landowner and the City of The Colony which sets forth the location and design of best management practices, as well as the terms and requirements for storm water and erosion control facility maintenance recorded with the County Register of Deeds.
- (53) *Material* shall mean soil, sand, gravel, clay, or any other organic or inorganic material which is not municipal refuse.
- (54) *Municipal Separate Storm Sewer System (MS4)* shall mean a conveyance or system of

conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, that is:

- (a) Owned or operated by a:
 - (1) Federal, state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over storm water, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges into waters of the state; or
 - (2) Privately owned storm water utility, hospital, university, or college having jurisdiction over storm water that discharges into waters of the state.
 - (b) Designed or used for collecting or conveying storm water; and
 - (c) Not a combined sewer; and
 - (d) Not part of a publicly owned treatment works (POTW) as defined by 40 CFR 122.2. EPA ADMINISTERED PERMIT PROGRAMS: Definitions.
- (55) *National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit* shall mean a Permit issued by the United States Environmental Protection Agency (USEPA) (or by a State under authority delegated pursuant to 33 USC §1342 (b) that authorizes the discharge of storm water to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- (56) *Notice of Intent (NOI)* shall mean a notice of intent form that is required by the TCEQ or EPA from an applicant requesting coverage under the terms of a general permit.
- (57) *Notice of Termination (NOT)* shall mean a notice of termination form that is required by the TCEQ or EPA from a permittee authorized under a general permit who is requesting termination of coverage under the permit.
- (58) *Non-Erosive Velocity* shall mean a rate of flow of storm water runoff, measured in feet per second, which does not erode soils. Non-erosive velocities vary for individual sites, taking into account topography, soil type, and runoff rates; and should be determined per the Engineering Design Manual.
- (59) *Non-Point Source (NPS) Pollution* shall mean forms of pollution caused by sediment, nutrients, organic and toxic substances originating from land use activities and carried to lakes and streams by non-permitted surface runoff.
- (60) *Non-Storm Water Discharge* shall mean any discharge to the storm drain system that is

not composed entirely of storm water.

- (61) *Normal Maintenance* shall mean landscaping, repairs, road leveling, minor excavation or filling at a developed site, or other activities determined by the Director to be exempt from permit requirements, provided that such activities do not violate standards in this ordinance.
- (62) *Off-site Facility* shall mean storm water management or erosion control facility which is located partially or completely off of the development site.
- (63) *Ordinary High Water Mark* shall mean the line between upland and bottomland which persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil and the vegetation. On an inland lake which has a level established by law, it means the high established level. Where water returns to its natural level as the result of the permanent removal or abandonment of a dam, it means the natural ordinary high water mark.
- (64) *Owner* shall mean 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. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership 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, such as a management entity.
- (65) *Operator* shall mean those parties with responsibility for operation of equipment, or operations at a site or facility. Where applicable, "Operator" shall also include meaning defined by an applicable TPDES or NPDES permit.
- (66) *Outfall* shall mean a point source at the point where a municipal separate storm sewer discharges to waters of the United States (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.
- (67) *Outlet* shall mean a stream or facility receiving the flow from a basin, drain, or other storm water management facility.
- (68) *Peak Rate of Discharge (peak flow)* shall mean the maximum calculated rate of storm water flow at a given point in a channel, watercourse, or conduit resulting from a predetermined frequency storm or flood, typically measured in cubic feet per second

(cfs).

- (69) *Permanent Measures* shall mean installations designed to control soil erosion after a project is completed.
- (70) *Permit* shall mean a Storm Water Control Permit issued by the City of The Colony.
- (71) *Person* shall mean any individual, firm, partnership, association, public or private corporation, company, organization or legal entity of any kind, including governmental agencies.
- (72) *Pollutant* shall mean anything which causes or contributes to pollution. Pollutants may include, but are not limited to:
- (a) paints, varnishes, and solvents
 - (b) oil and other automotive fluids
 - (c) non-hazardous liquid and solid wastes and yard wastes
 - (d) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations that may cause or contribute to pollution
 - (e) floatables
 - (f) pesticides, herbicides, and fertilizers
 - (g) hazardous substances and wastes
 - (h) sewage, fecal coliform, E. coli, and pathogens
 - (i) dissolved and particulate metals
 - (j) animal wastes
 - (k) wastes and residues that result from constructing a building or structure
 - (l) noxious or offensive matter of any kind
- (73) *Pollution* shall mean degradation of water quality, preventing the use of water for some specific purpose, caused by a natural or human-made substance.
- (74) *Pond* shall mean a permanent or temporary body of open water which is smaller than a lake.
- (75) *Premises* shall mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (76) *Protected Wetland* shall mean a wetland which meets one (1) or more of the following criteria:
- (a) a wetland which is within five-hundred (500) feet of a lake or stream
 - (b) a wetland which is five (5) or more acres in size
 - (c) a wetland subject to regulation by a township, village, city, county, TCEQ, EPA, or USACE.

- (77) *Publicly Owned Treatment Works (POTW)* shall mean publicly owned water or wastewater treatment facilities.
- (78) *Receiving Body of Water* shall mean any lake, pond, stream, wetland, or groundwater into which storm water runoff is directed.
- (79) *Redevelopment* shall mean rebuilding activities on land containing built-upon area as of the effective date of this ordinance.
- (80) *Regional Detention Basin* shall mean a basin to detain water flow from multiple development sites or a small watershed.
- (81) *Retention Basin* shall mean a wet or dry storm water holding area, either natural or manmade, that does not have an outlet to adjoining watercourses or wetlands other than an emergency spillway.
- (82) *Runoff* shall mean storm water runoff.
- (83) *Sediment* shall mean a mineral or organic solid particulate matter that has been removed from its site of origin by (a) soil erosion; (b) suspension in water; and/or (c) wind or water transport.
- (84) *Sedimentation* shall mean the process or action of depositing sediment.
- (85) *Site* shall mean any tract, lot, or parcel of land or combination of tracts, lots or parcels of land, including land proposed for development.
- (86) *Soil Erosion* shall mean the wearing away of land by the action of wind, water, gravity or a combination thereof.
- (87) *Soil Erosion Control Plan* shall mean maps and written information for a proposed land use or earth change which describe the way in which soil erosion and storm water runoff will be controlled, during and after completion of construction.
- (88) *Soil Erosion Control Facilities and Measures* shall mean any structure, facility, barrier, berm, vegetative cover, basin, or other measure which serves to control soil erosion in accordance with the provisions of this ordinance.
- (89) *Stop-Work Order* shall mean a notice issued by the Director to the permittee to require the permittee to cease grading or development activities.
- (90) *Storage Facility* shall mean a basin, structure, or area, either natural or manmade, which is capable of holding storm water for the purpose of reducing the rate of discharge from the site.

- (91) *Storm Drain* shall mean a conduit, pipe, natural channel or human-made structure which serves to transport storm water runoff.
- (92) *Storm Drainage System* shall mean publicly owned facilities by which storm water is collected and/or conveyed, including but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- (93) *Storm Frequency* shall mean the average period of time during which a storm of a given duration and intensity can be expected to be equaled or exceeded.
- (94) *Storm Water* shall mean any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (95) *Storm Water Control Facilities and Measures* shall mean any facility, structure, channel, area, or vegetative cover, or measure which serves to control storm water runoff in accordance with the purposes and standards of these regulations.
- (96) *Storm Water Control Permit* shall mean a permit issued by the City of the Colony required for all development and redevelopment unless exempt pursuant to this ordinance, which demonstrates compliance with this ordinance.
- (97) *Storm Water Pollution Prevention Plan (SWPPP or SWP3)* shall mean a document which describes the Best Management Practices (BMP) and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.
- (98) *Storm Water Runoff* shall mean rainfall runoff, snow melt runoff, and surface runoff and drainage.
- (99) *Stream* shall mean a river, stream, or creek which may or may not be serving as a drain which has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water.
- (100) *Stream Bank* shall mean the usual boundaries, not the flood boundaries, of a stream channel.
- (101) *Stripping* shall mean any activity which removes or significantly disturbs the vegetative surface cover, including clearing and grubbing operations.
- (102) *Swale* shall mean low-lying grassed area with gradual slopes which transports storm water, either on-site or off-site.

- (103) *Temporary Measures* shall mean installations designed to control soil erosion during construction or until soils in the contributing drainage area are stabilized.
- (104) *Texas Pollution Discharge Elimination System (TPDES) Storm Water Discharge Permit* shall mean a Permit issued by the Texas Commission on Environmental Quality (TCEQ) that authorizes the discharge of storm water to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- (105) *Top of Bank* shall mean the landward edge of the stream channel during high water or bank full conditions at the point where the water begins to overflow onto the floodplain.
- (106) *Total Suspended Solids (TSS)* shall mean total suspended solid matter in water which includes particles collected on a filter with a pore size of 2 microns as measured by Standard Method 2540-D, which is commonly expressed as a concentration in terms of milligrams per liter (mg/l) or parts per million (ppm).
- (107) *Vegetative Cover* shall mean grasses, shrubs, trees, and other vegetation which holds and stabilizes soils.
- (108) *Wastewater* shall mean any water or other liquid, other than uncontaminated storm water, discharged from a facility.
- (109) *Waters of the United States* shall mean any waterway in the United States including rivers, lakes, ponds, streams, seas, and canals as defined by the U.S. Army Corps of Engineers.
- (110) *Water Quality Standards* shall mean minimum standards established by the Texas Commission of Environmental Quality for water quality protection.
- (111) *Watercourse* shall mean any natural or human-made waterway, drainage way, drain, river, stream, diversion, ditch, gully, swale, or ravine having banks, a bed, and a definite direction or course, either continuously or intermittently flowing.
- (112) *Watershed* shall mean a land area, also known as a drainage area, which collects precipitation and contributes runoff to a receiving body of water or point along a watercourse.
- (113) *Wetland* shall mean land characterized by the presence of water at a frequency and duration sufficient to support and that under normal circumstances does support wetland vegetation or aquatic life and is commonly referred to as a bog, swamp, or marsh. A wetland will contain predominance, not just an occurrence, of wetland vegetation, aquatic life, or hydric soil.
- (114) *Wetland Vegetation* shall mean plants, including but not limited to trees, shrubs, and herbaceous plants, that exhibit adaptations to allow, under normal conditions,

germination or propagation and to allow growth with at least their root systems in water or saturated hydric soil.

- (115) *Working Day* shall mean any day other than a holiday on which the city is scheduled to conduct business (generally, Monday through Saturday).

Sec. 20-3. Requirements.

(a) *Applicability and jurisdiction.* The requirements of this ordinance shall apply to all discharges entering the storm drain system within the corporate limits or in the extraterritorial jurisdiction of the City of The Colony.

(b) *Interpretation.*

- (1) *Meaning and Intent.* All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 20-1, Purpose and Section 20-2, Definitions. If a different or more specific meaning is given for a term defined elsewhere in the Code of Ordinances for the City of The Colony, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
- (2) *Interpretation Authority.* The Director has authority to interpret this ordinance. Any person may request an interpretation by submitting a written request to the Director who shall respond in writing within thirty (30) days. The Director shall keep on file a record of all written interpretations of this ordinance.
- (3) *References to Statutes, Regulations, and Documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual, or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
- (4) *Computation of Time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City of The Colony, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the City of The Colony unless specified otherwise. References to days are calendar days unless otherwise stated.
- (5) *Delegation of Authority.* Any act authorized by this ordinance is to be carried out by the Director or his/her designee.
- (6) *Usage.*
 - (a) *Mandatory and Discretionary Terms.* The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to

comply with the particular provision. The words “may” and “should” are permissive in nature.

- (b) *Conjunctions.* Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions or events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.
 - (c) *Tense, Plurals, and Gender.* Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.
- (7) *Measurement and Computation.* Disturbed area refers to the amount of horizontal land area contained inside the limits of the land disturbance. Lot area refers to the amount of horizontal land area contained inside the limits of the lot lines of a lot or site.

(c) *Design Criteria.*

- (1) *Reference to Engineering Design Manual.* The Director shall establish criteria, and information, including technical specifications and standards that will be used as the basis for decisions about Storm Water Control Permits and about the design, implementation and performance of structural and non-structural storm water BMPs.

The Director shall maintain a list of acceptable storm water treatment practices, including the specific design criteria for each storm water practice. Storm water treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of this ordinance and the Federal Phase II Storm Water Rules. Failure to construct storm water treatment practices in accordance with these criteria may subject the violator to penalties as described in Section 20-25 of this ordinance.

- (2) *Relationship to Other Laws and Regulations.* If the specifications or guidelines are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Engineering Design Manual.
- (3) *Changes to Standards and Specifications.* Standards, specifications, guidelines, policies, criteria, or other information in the Engineering Design Manual in effect at the time of acceptance of a complete application shall control and shall be

utilized in reviewing the application and in implementing this ordinance with regard to the application.

- (4) *Amendments to Engineering Design Manual.* The Engineering Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, changes in applicable regulatory requirements, or local monitoring or maintenance experience.
- (d) *Relationship to other laws, regulations, and private agreements.*
- (1) *Conflict of laws.* This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.
 - (2) *Private agreements.* This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the City of The Colony be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.
- (e) *Severability.* If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.
- (f) *Effective date and transitional provisions.*
- (1) *Effective Date.* This ordinance shall take effect on August 1, 2011.
 - (2) *Final Approvals, Complete Application.* All development and redevelopment projects for which complete and full applications were submitted to the City of The Colony prior to the effective date of this ordinance shall be exempt from complying with the Storm Water Quality Permit application provisions of this ordinance. Illicit discharges are not exempt from complying with this ordinance, after the effective date.

- (3) *Violations Continue.* Any violation of the provisions of this ordinance existing as of the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement unless the use, development, construction, or other activity complies with the provisions of this ordinance.

Sec. 20-4. Administration and Procedures.

(a) *Review and decision making entities.*

- (1) *Designation.* The Director shall be designated by the City of The Colony for the purpose of administering and enforcing this ordinance.
- (2) *Powers and Duties.* In addition to the powers and duties that may be conferred by other provisions of the City of The Colony ordinances and other laws, the Director shall have the following powers and duties under this ordinance:
 - (A) To review and approve or disapprove applications submitted pursuant to this ordinance.
 - (B) To make determinations and render interpretations of this ordinance.
 - (C) To establish application requirements and schedules for submittal and review of applications and appeals.
 - (D) To enforce this ordinance in accordance with its enforcement provisions.
 - (E) To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance.
 - (F) To designate appropriate other person(s) who shall carry out the powers and duties of the Director.
 - (G) To take any other action necessary to administer the provisions of this ordinance.

(b) *Permit applications required.*

- (1) *Must Apply for Permit.* A permit may only be issued subsequent to a properly submitted, reviewed and approved permit application, pursuant to this ordinance.
- (2) *Authority to File Applications.* All applications required pursuant to this ordinance shall be submitted to the Director by the land owner or the land owner's duly authorized agent or anyone having interest in the property by reason of a

written contract with the owner.

- (3) *Establishment of Application Contents, Forms.*
 - (A) *Application Contents and Form.* The Director shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time.
- (4) *Submittal of Complete Application.* Applications shall be submitted to the Director pursuant to the application submittal schedule in the form established by the Director, along with the appropriate fee established pursuant to subsection (f) of this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Director finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the review schedule established below.

- (5) *Sequential Applications.* On projects which are so large or complex that a plan encompassing all phases of the project cannot reasonably be prepared prior to initial ground breaking, application for a permit on successive major incremental permit applications may be allowed. Requests for sequential permit applications shall be approved by the Director prior to submittal of a permit application. Approval of sequential applications shall take place in two (2) phases. First, the overall conceptual plan for the entire development shall be submitted for review and approval. Second, detailed plans for sections of the total project may be submitted for review and approval. All permits processed and issued for phases of a project shall be clearly defined as to the nature and extent of work covered. Each phase of the project must be reviewed and permitted prior to construction.
- (6) *Review.* Within fifteen (15) working days after a complete application is submitted, the Director shall review the application and determine whether the application complies with the standards of this ordinance. On projects which will require a Floodplain Development Permit, the review time will be extended to twenty-eight (28) days. The following guidelines will be considered:
 - (A) *Approval.* If the Director finds that the application complies with the standards of this ordinance, the Director shall approve the application and issue a permit to the applicant. The Director may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included in the permit as part of the approval.

- (B) *Failure to Comply.* If the Director finds that the application fails to comply with the standards of this ordinance, the Director shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.
 - (C) *Revision and Subsequent Review.* A complete revised application shall be reviewed by the Director within fifteen (15) working days after its re-submittal and shall be approved, approved with conditions or disapproved. If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.
- (c) *Revoking a permit.* Any permit issued by the Director under this ordinance may be revoked or suspended, after notice, for any of the following causes:
- (1) A violation of a condition of the permit.
 - (2) Obtaining a permit by misrepresentation or failure to fully disclose relevant facts in the Storm Water Control Permit application, Soil Erosion Control Plan, or Storm Water Pollution Prevention Plan (SWPPP).
 - (3) A change in a condition that requires a temporary or permanent change in the activity.
 - (4) Inadequate inspection and/or maintenance of the required BMPs as outlined in the Soil Erosion Control Plan, SWPPP or Storm Water Control Permit.
 - (5) The documentation required in the Soil Erosion Control Plan and/or SWPPP is not updated by the Contractors Designated Site Representative, as required.
 - (6) If an individual other than the Contractor's Designated Site Representative is found to be documenting site inspection and maintenance activities without appropriate authority as designated by the SWPPP.
- (d) *Permit Expiration.* Storm Water Control permits shall expire automatically twelve (12) months from issuance. There shall be a thirty (30) day grace period for renewal before it is a violation of this ordinance. Permit coverage under the TPDES Construction General Permit (CGP) shall terminate as specified in the TPDES CGP. Failure to renew the permit without established vegetation, completing construction per the approved plans or operating a post-development BMP is a violation of this ordinance.
- (e) *Permit renewal.* Permit renewal requirements, and conditions of renewal are as follows:
- (1) The Storm Water Control permit shall be renewed annually and certified by a

Texas licensed Professional Engineer.

- (2) The owner/developer shall submit a Storm Water Control permit renewal packet within thirty (30) days of expiration of the permit. The renewal packet shall include:
 - (A) A completed renewal form;
 - (B) A completed certificate of proper operation;
 - (C) A record drawing certification by a professional engineer; and
 - (D) Applicable permit renewal fees.
- (3) The city shall conduct, at its discretion, an inspection of the structural storm water quality control and reviews of non-structural controls prior to approval of the renewal request. Inspection and review results shall be used as part of the evaluation process for the renewal request.
- (f) *Permit fees.* The City Council shall establish permit and inspection fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time. These fees will be available on the City's approved yearly fee schedule.

Fees shall be paid by cash, cashier's check, money order, or personal check. If the check is returned for insufficient funds the permit issued becomes invalid. Fees shall be paid at the time the Permit is delivered to the permittee unless the Director has made other arrangements. The permit fees are set forth in the fee schedule as established by resolution or ordinance of the city council.

- (g) *Record Drawings and Final Approval.* The applicant shall certify that the completed project is in accordance with the approved permit, plans and designs, and shall submit actual record drawings for all facilities or practices after final construction is completed. Failure to provide approved record drawings within thirty (30) days of the completion of the project may result in assessment of penalties as specified in Section 20-25, Violations and Enforcement. At the discretion of the Director, performance securities or bonds may be required for storm water management facilities or practices until as-built plans are approved.

Record drawings shall show the final design specifications for all permitted facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the plans shall certify, under seal, that the record facilities, controls, and devices are in compliance with the approved plans and designs and with the requirements of this ordinance.

Record drawings and a final inspection and approval by the Director are required before a project is determined to be in compliance with this ordinance. At the discretion of the Director, certificates of occupancy may be withheld pending receipt of record drawings and the completion of a final inspection and approval of a project.

- (h) *Approvals.* Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, State, and federal authorities.
- (i) *Appeals.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance may file an appeal to the Director first. The Director will have two (2) weeks to review and render a decision. If the aggrieved person is not satisfied with the Director's decision, order, requirement or determination, they may file an appeal to the City Manager within thirty (30) days. The City Manager will have two (2) weeks to review and render a decision. If the aggrieved person is not satisfied with the City Manager's decision, order, requirement or determination, they may file an appeal to the City Council within thirty (30) days.
- (j) *Variances.* The City Council of the City of The Colony may consider a request for a variance from the requirements of this ordinance. The decision of the City Council on a request for variance shall be final. A variance will be considered to the provisions of this ordinance if strict adherence to requirements will result in unnecessary hardship and not fulfill the intent of this ordinance. The owner shall submit a written request for a variance to the City of The Colony. The request shall state the specific variances sought and reasons for requesting the variance. In considering a variance, The City Council shall consider whether or not evidence presented in each case is sufficient to show the following:
 - (1) The granting of the variance will not be detrimental to the public safety, health, or welfare or injurious to the other property;
 - (2) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property;
 - (3) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere convenience, if the strict compliance with the subdivision ordinance is required;
 - (4) The special or peculiar conditions upon which the request is based did not result from or were not created by the act or omission of the owner or any prior owner, subsequent to the date of creation of the requirement from which the variance is sought.

(k) *Statutory Exceptions.* The Director may grant exceptions from the buffer requirements of this ordinance as well as the deed restrictions and protective covenant requirements as follows:

- (1) Unnecessary hardships would result from strict application of the ordinance;
- (2) The hardships result from conditions that are peculiar to the property, such as location, size, or topography of the property;
- (3) The hardships did not result from actions taken by the petitioner; and
- (4) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for the exception.

Sec. 20-5. Ultimate Responsibility.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

Sec. 20-6. Monitoring of Discharges.

(a) *Compliance inspection and monitoring.*

- (1) The Director shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Director.
- (2) Facility operators shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a NPDES or TPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law, and this ordinance.
- (3) The Director shall have the right to set up on any facility such devices as are necessary in the opinion of the enforcing agency to conduct monitoring and/or sampling of the facility's storm water discharge.
- (4) The Director has the right to require the discharger to install monitoring

equipment as necessary. 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 facility operator at the written or oral request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the discharger.
- (6) Unreasonable delays in allowing the Director access to a facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES or TPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the enforcing agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (7) If the Director 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 ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the enforcing agency may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 20-7. Requirement to eliminate unauthorized discharges.

The Director may require by written notice that a person responsible for an unauthorized discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future unauthorized discharges.

ARTICLE II. CONSTRUCTION AND EROSION CONTROL

Sec. 20-8. Storm water control permit required.

- (a) *General requirements.* It is the duty and responsibility of all persons, firms, or corporations performing development projects in the City to obtain a Storm Water Control Permit prior to construction of the project. Prior to submission of the permit application, the person(s), firm(s), or corporation(s) shall design and implement erosion control measures that will assist in meeting at a minimum the objectives and performance standards listed below.
 - (1) To prevent accelerated soil erosion and to control storm water runoff resulting from earth changes proposed within the City of The Colony, both during and after

construction.

- (2) To assure that property owners control the volume and rate of storm water runoff originating from their property so that surface water and groundwater quality is protected, soil erosion minimized, and flooding potential reduced.
- (3) To preserve and use the natural drainage system for receiving and conveying storm water runoff and to minimize the need to construct enclosed below-grade storm drain systems.
- (4) To preserve natural infiltration and the recharge of groundwater and to maintain subsurface flows which replenish lakes, streams, and wetlands.
- (5) To preserve the natural beauty and aesthetics of the community.
- (6) To restrict storm water runoff entering and leaving development sites to non-erosive velocities by requiring temporary and permanent soil erosion control measures.
- (7) To assure that soil erosion control and storm water runoff control systems are incorporated into site planning at an early stage in the planning and design process.
- (8) To prevent unnecessary stripping of vegetation and loss of soils, especially adjacent to lakes, streams, watercourses, and wetlands.
- (9) To prevent construction activity that may cause mass movement, slumping, or erosion of land surfaces.
- (10) To eliminate the need for increased maintenance and repairs to roads, embankments, ditches, streams, lakes, wetlands, and storm water control facilities which are the result of inadequate soil erosion and storm water runoff control.
- (11) To reduce long-term expenses and remedial projects which are caused by uncontrolled storm water runoff and soil erosion.
- (12) To encourage the design and construction of storm water control systems which serve multiple purposes, including but not limited to flood prevention, water quality protection, wildlife habitat preservation, education, recreation, and wetlands protection.
- (13) To reduce the detrimental impacts of storm water flows on downstream communities.
- (14) To allow for off-site storm water control facilities and measures if proposals meet

the requirements of these regulations.

- (15) To assure that all storm water control facilities will be properly designed, constructed, and maintained.
 - (16) To provide for restoration of sites to reduce the negative environmental impacts of construction activity.
 - (17) To provide for enforcement of this ordinance and penalties for violations.
- (b) *Regulated earth changes.* Earth changes requiring a Storm Water Control Permit include the following:
- (1) Earth changes which disturb one (1) or more acres of land, or are within five-hundred (500) feet of a lake or stream, except for normal maintenance:
 - (A) Transportation facilities, including public and private streets, access roads, highways, railroads, airports, common carrier pipelines, and mass transit facilities, except normal maintenance procedures such as earth or gravel road leveling and minor repairs or alterations to right-of-ways not affecting a lake or stream.
 - (B) Mobile home park developments, multiple-family residential developments, and site preparation for a single-family residence or development.
 - (C) Site condominium developments or condominiums as defined by Appendix B, Subdivision Ordinance of City Ordinances.
 - (D) Public buildings and service facilities, including but not limited to government buildings and facilities, schools, vehicle maintenance facilities.
 - (E) Recreational facilities, including but not limited to parks, golf courses, beaches above the ordinary high water mark, and campgrounds or trails, including public or private facilities.
 - (F) Utilities, including but not limited to underground pipelines or cables, except pole installation, service lines and other earth changes of a minor nature, and emergency repairs.
 - (G) Oil, gas, and mineral wells, and access roads to well production sites shall be subject to permit requirements.

- (H) Non-agricultural water impoundments and waterway construction or improvements.
 - (I) Earth changes on agricultural lands, including road construction and building construction, but not including plowing and tilling of soil for the purpose of crop production.
- (2) All projects that require a grading permit.
 - (3) Earth changes for environmentally-sensitive residential sites.
 - (4) Industrial or commercial use development sites, regardless of size, location, or environmental sensitivity.
 - (5) All subdivision developments as defined by Appendix B, Subdivision Ordinance of City Ordinances, as amended, regardless of size, location, or environmental sensitivity.
- (c) *Storm water control permit application submittal.*
- (1) All applications for a Storm Water Control Permit shall include four (4) copies of the proposed Soil Erosion Control Plan unless more copies are requested by the City Engineer. Copies of the permit application form shall be made available by the City Engineer.
 - (2) Applications for a permit shall be made prior to the start of any earth change including construction of access roads, driveways, tree and shrub removal, or grading. Permit approval shall be given prior to the initiation of any work activity. Any unauthorized work shall be considered a violation of these procedures regardless of any later actions taken toward compliance. Soil test borings, vegetative cutting for land surveys, percolation tests, and normal maintenance shall not be considered a start of work under these regulations.
 - (3) The application review period begins upon receipt of a completed application, including applicable fees.
- (d) *Penalties for initiating earth change activities without a permit.* Any earth change activities without a valid permit or in violation of a permit or permit conditions shall be considered a violation of this ordinance and subject to fines and other penalties as provided in this ordinance.

Sec. 20-9. Soil erosion control plan.

A Soil Erosion Control Plan shall be prepared for any earth change subject to permit requirements. The plan shall be designed to effectively reduce accelerated soil erosion and sedimentation during construction and after construction is completed.

(A) *Residential development site plans for earth changes.* A residential site plan shall show the following:

- (1) Location of the site.
- (2) Site characteristics, such as location of lake, stream, wetlands or existing buildings.
- (3) Proposed earth change activity.
- (4) Erosion control measures proposed.
- (5) BMPs to be utilized.

If there are development limitations in regards to the existing site characteristics, the Director may require that a residential site plan be prepared by one of the following licensed professionals: civil engineer, land surveyor, architect, and/or landscape architect.

(b) *Other land uses, soil erosion control plans for earth changes.* The submitted Soil Erosion Control Plans shall show the following:

- (1) A map or maps at a scale of not more than two-hundred (200) feet to the inch or as otherwise determined by the Director, including a legal description and site location sketch which includes the proximity of any proposed earth change to lakes or streams or both; predominant land features; and contour intervals or slope description, with proposed temporary and permanent erosion control facilities and measures identified.
- (2) A soils survey or written description of the soil types of the exposed land area contemplated for the earth change.
- (3) A description and the location of the physical limits of each proposed earth change.
- (4) Location of all lakes, streams, waters of the United States and protected wetlands partially or completely contained within the boundaries of the site or within one hundred (100) feet of the site boundary.
- (5) A description and the location of all existing and proposed on-site storm water management facilities and measures.
- (6) The timing and sequence of each proposed earth change.

- (7) A description and the location of all proposed temporary soil erosion control facilities and measures.
 - (8) A description and the location of all proposed permanent soil erosion control facilities and measures.
 - (9) Storm Water runoff calculations.
 - (10) A program for the continued maintenance of all permanent soil erosion and storm water runoff control facilities and measures.
 - (11) Other information which the Director requires to review the impact of the proposed earth change in relationship to the standards and requirements of this ordinance.
 - (12) BMPs to be utilized.
 - (13) Proposed temporary and permanent erosion control facilities and measures shall be designed in accordance with the City's Engineering Design Manual and Standard Details and/or North Central Texas Council of Government Standard Details.
- (c) *Subdivision site plan for earth changes.* Applicants for subdivision plat approval shall submit the same information above and shall submit additional information including but not limited to the following:
- (1) Off-site watershed boundaries;
 - (2) Existing and proposed easements; and
 - (3) Proposed drainage system including water movement onto and out of the proposed plat or site plan.

Sec. 20-10. General standards for approval of soil erosion control plans.

- (a) *Planning requirements for site development during construction.*
- (1) *Development of a site five (5) acres or more:* A NPDES or TPDES Storm Water Pollution Prevention Plan is currently required by EPA or TCEQ for all construction projects where five (5) or more acres will be disturbed during development. Developments of sites that disturb five (5) acres or more within the City of The Colony's jurisdiction shall prepare a NPDES or TPDES Storm Water Pollution Prevention Plan that satisfies EPA or TCEQ regulations and the NPDES or TPDES Construction General Permit and shall include at a minimum the items listed below.

- (A) A copy of the NPDES or TPDES Storm Water Pollution Prevention Plan shall be provided to the Director.
 - (B) A copy of the Soil Erosion Control Plan prepared by the Design Engineer in accordance with Section 20-9 shall be provided to the Director.
 - (C) A copy of any Notice of Intent (“NOI”) provided to EPA or TCEQ shall be provided to the Director prior to the start of construction activities.
 - (D) A copy of the TCEQ Construction Site Notice shall be provided to the Director prior to the start of construction activities.
 - (E) The Director may require corrections of any deficiencies in the NPDES or TPDES Storm Water Pollution Prevention Plan, and may require additional measures in order to meet requirements.
 - (F) A copy of any Notice of Change (NOC) submitted to EPA or TCEQ shall be provided to the Director.
 - (G) A copy of any Notice of Termination (“NOT”) submitted to EPA or TCEQ shall be provided to the Director after construction activities are completed.
- (2) *Development sites more than one (1) acre and less than five (5) acres.* For development sites that are more than one (1) acre in size but less than five (5) acres in size, the same requirements apply as listed above for five (5) acre sites except that an NOI is not required and does not need to be submitted. If TCEQ requires an NOI for such sites, submittal of the NOI to the Director is required.
- (3) *Development sites less than one (1) acre and more than one-quarter (1/4) acre.*
- (A) A Soil Erosion Control Plan prepared in accordance with Section 20-9 is required for a commercial construction, industrial construction, multi-family residential construction, and development of a residential subdivision within the City of The Colony’s jurisdiction area if less than one (1) acre but more than one-quarter (1/4) acre will be developed. The area of the development will be based upon the platted lot area or, if not platted, upon the area of the tract owned by the developer, including all contiguous property owned by the same person. Disturbance of a partial area of a tract is not a condition that will cause a change of the category in development size.
 - (B) Submission of a site specific Soil Erosion Control Plan is not required for a single-lot, single-family residential construction, unless it is part of a

larger development that requires a NPDES or TPDES permit.

- (C) The Soil Erosion Control Plan shall include any measures as required to comply with pollution control measures. A Soil Erosion Control Plan shall be submitted to the Director for review before issuance of a building permit or approval to being developed.
 - (D) Implementation of the pollution control measures detailed in the plan is required. (Inspection of the status of the pollution control measures will be performed by City personnel during normal construction inspections and at other times when construction activities may be conducted.)
 - (E) The Director will not accept any improvements until the Director is satisfied that all temporary and permanent measures specified by the plan are complete, unless the responsible party has entered into a maintenance agreement with the City.
 - (F) A Soil Erosion Control Plan is not required when a portion of a previously developed tract of land is redeveloped, unless the redevelopment will result in the conversion of more than one-quarter (1/4) acre from a porous surface to an impervious surface.
- (4) Development of sites one-quarter (1/4) acre or less and single-lot, single-family residential construction which are not part of an overall larger development will not require a site specific Soil Erosion Control Plan and Construction Site Notice for the development sites which are one-quarter (1/4) acre in size or less, or not for single-lot, single-family residential construction.
- (A) In order to obtain a building permit, a responsible party shall provide a written acknowledgement that the responsible party is aware of the pollution control measures of the City of The Colony and that the responsible party will comply with these measures during the development of the property.
 - (B) In order to obtain a certificate of occupancy, a responsible party must certify that all necessary temporary or permanent pollution control measures specified in approved plans are in place. If adequate pollution control measures are not in place, the building official is authorized to withhold the certificate of occupancy.
- (5) For the purposes of this section, the entire plat or site will be considered to be the area being disturbed unless the site plan specifically designates which areas will be disturbed and which areas will not be disturbed. The responsible party shall take appropriate measures to ensure no construction related activities disturb any area that is not designated as disturbed on the plat or site plan.

(b) *Standards for approval.*

- (1) The Director shall approve or disapprove soil erosion control permit applications and plans in accordance with published guidelines.
- (2) All earth changes subject to review under the requirements of this ordinance shall be designed, constructed, and maintained to provide for the detention of flood waters and to protect water quality.
- (3) Measures required for soil erosion control shall take into consideration natural features, proximity of the site to lakes, streams, and protected wetlands, extent of impervious surfaces, potential for soil erosion and flooding, and the size of the site.
- (4) Stabilize any disturbed areas as soon as possible.
- (5) Storm water conveyance, storage, and infiltration facilities shall be designed to provide for non-erosive velocities of storm water runoff.
- (6) When storm drain inlets shall be protected, a perimeter filtration device shall be used in accordance with the Engineering Design Manual.
 - (A) Inlet protection barriers shall be installed around all inlets until the area immediately surrounding the inlet is paved or stabilized.
 - (B) Downstream flood analysis must be performed if inlets have barriers on slope or at sags.
- (7) Reduce the concentration of storm water runoff and promote sheet flow to greatest extent possible.
- (8) All discharges resulting from below ground installations shall be passed through city approved erosion control device(s) or removed from the site and properly disposed of.
- (9) Chemicals, paints, solvents, fertilizers, and other toxic materials must be stored in waterproof containers. Except during applications, the contents must be kept in trucks or in storage facilities. Runoff containing such materials shall be collected, removed from the site, and disposed of at an approved solid waste or chemical disposal facility.
- (10) Revegetate all disturbed areas with a rapid, vigorous growth of long-term vegetation composed of a mixture of grasses, native vegetation, plants and trees.

- (11) Alterations to natural drainage patterns shall not create downstream flooding or sedimentation.
- (12) Provide dust control at whatever frequency is required.
- (13) Waste disposal must be accompanied in a manner so that no solid wastes, including building materials, hazardous substances, oil, or packaging leave the site and to the maximum extent practicable, enter the City's municipal separate storm sewer system, the City's streets, or the navigable waters of the United States, except for disposal at an appropriate approved solid waste management facility in conformance with the Texas Solid Waste Disposal Act. Building materials include but are not limited to, uncovered stockpiles of soil, sand, dry cement, lumber, bricks, or other products used in construction.
- (14) The prime contractor, who was issued the building permit, is responsible for the conduct of all subcontractors with regards to disposal of wastes generated by the construction activities at the site.
- (15) The owner and/or operator of a concrete truck will not be allowed to wash out or discharge surplus concrete or drum wash water at a construction site, unless the surplus concrete or drum wash water in concrete trucks is discharged at an approved facility on the construction site that will retain all concrete wash waters or leachates, including any wash waters or leachates mixed with storm water. Concrete wash waters and leachates shall not be allowed to enter the municipal separate storm sewer system, City streets, the waters of the United States, or ground waters.
- (16) Soil Erosion Control Plans should be phased to accommodate for changes in drainage patterns that occur during development.
 - (A) Silt fences or other approved BMPs should be utilized, where necessary, to retain the sediments from disturbed areas within the site and decrease the velocity of sheet flows.
 - (B) Straw bales, filter socks or other approved BMPs should be utilized, where necessary, to retain sediments from disturbed areas within the site and decrease the velocity of sheet flows. Straw bales or filter socks are particularly useful in paved areas where silt fences cannot be erected.
 - (C) Vegetative buffer strips or other approved BMPs of appropriate size should be maintained where necessary and practical, to aid in reducing the velocity of storm water and in trapping sediments in the storm water leaving the site. A vegetative buffer will usually suffice as a structural control until final stabilization is accomplished.

- (17) Reduce the silt leaving a construction site on the wheels of construction vehicles by providing vehicle washing areas and/or established construction entrances and exits.
 - (A) Stabilized construction entrances shall be designated to reduce the amount of soil tracked off the construction site by vehicles leaving the site. A stabilized construction entrance should be utilized, if necessary, to control tracking.
 - (B) The responsible party shall ensure that vehicles entering and leaving the construction site use the stabilized construction entrance.
 - (C) The owner and/or operator of a vehicle entering or leaving a construction site may not track soil off the construction site.
- (18) For construction activities in waterways, the following additional requirements must be met:
 - (A) At the end of each working day the Contractor shall remove all loose excavated material from the channel.
 - (B) No construction or fill materials can be stored within the limits of the channel.
 - (C) All equipment and materials storage and staging areas must have erosion controls.
 - (D) Rock berms or sand bag berms shall be used to entrap sediment.
 - (E) Flooding potential should be considered when locating the control measures.
- (19) The responsible party may adopt alternative procedures, such as regularly scheduled street cleaning in the immediate vicinity of the construction site, instead of adopting temporary structural controls for erosion, upon approval by the Director. If alternative procedures will be used, the responsible party shall include those provisions in its NPDES or TPDES Storm Water Pollution Prevention Plan, Soil Erosion Control Plan, or the plans submitted for a building permit, if a NPDES or TPDES Storm Water Pollution Prevention Plan or Soil Erosion Control Plan is not required.
- (20) When a proposed earth change is located in an area where a watershed plan has been approved by the City Council, the standards for storm water detention and retention volumes, discharge rates, and storm water facility locations specified in the approved Watershed Plan shall be deemed to meet the requirements of this

ordinance

- (21) Where applicable, compliance with the NPDES or TPDES Construction General Permit is required.

Sec. 20-11. Off-site storm water control.

- (a) *Waiver option.* In lieu of on-site storm water facilities and measures, the use of off-site storm water facilities and measures, together with on-site soil erosion control, may be proposed in the Storm Water Control Permit application. In such cases, the applicant shall request a waiver of the requirements for on-site storm water runoff control. The waiver request shall be submitted to the Director with a Storm Water Control Permit application and a Soil Erosion Control Plan, including information specified in Section 20-10. This waiver option does not allow for changes in the requirements for on-site soil erosion control.
- (b) *Shared off-site storm water control facilities.*
 - (1) Off-Site storm water control areas may be shared between two (2) or more property owners or developments, provided that maintenance agreements have been approved by the Director and easements have been obtained and recorded.
 - (2) Storm water management easements are required for all areas used for off-site storm water control unless an exception has been granted by the Director. Easements shall be recorded by the City with the County Register of Deeds prior to approval of the final development plan by the Director.
- (c) *Applicable standards.* General standards specified in Section 20-10 of this ordinance shall be used in reviewing proposed Soil Erosion Control Plan for off-site storm water facilities and measures.

Sec. 20-12. Maintenance for erosion control.

- (a) *Maintenance agreement requirements.*
 - (1) All soil erosion and storm water runoff control facilities and measures shall be maintained in accordance with permit conditions.
 - (2) The person(s) of the organization(s) responsible for maintenance shall be designated in the Soil Erosion Control Plan or the permit application submitted to the Director. Options include:
 - (A) The owner of the property;

- (B) Property owners association or other nonprofit organization provided that provisions for financing necessary maintenance are included in deed restrictions or other contractual agreements; or
 - (C) The Director, in accordance with provisions in the Clean Water Act.
- (3) Maintenance agreements shall specify responsibilities for financing maintenance and emergency repairs, including but not limited to the procedures specified in Section 20-14 of this ordinance.
- (4) The Director will make the final decision of what maintenance option is appropriate in a given situation. Natural features, proximity of site to lakes, streams, and protected wetlands, extent of impervious surfaces, size of the site and potential need for ongoing maintenance activities will be considered when making this decision.
- (5) If all permanent pollution control measures, other than the required stabilization, are complete, a responsible party may provide a maintenance agreement for the required stabilization. This agreement may allow the responsible party to receive acceptance of improvements by the City and allow the filing of the final plats.
- (6) The maintenance agreement shall be submitted with the engineer's certification of infrastructure completion. The Director will execute the agreement at the time of acceptance of the public improvement, subject to any terms and conditions set out in the agreement.
- (7) If a change in ownership occurs during the period when temporary measures are still in place, the maintenance agreements between the City and the responsible party, who entered into the agreements, will remain in force until:
 - (A) Such time as all permanent pollution control measures are in place and vegetation has been stabilized to a minimum of seventy percent (70%) of the coverage requirements as outlined in the City's Engineering Design Manual and Standard Details.
 - (B) A new responsible party has entered into an agreement with the City to assume the prior responsible party's responsibilities under the agreement with the City.
 - (C) A new owner acquires the tract with notice of the requirements of the maintenance agreements and agrees to assume the liabilities and responsibilities under the agreement of the responsible party, who entered into the agreement with the City, at which time the new owner becomes responsible for the maintenance of the portion of the site to which the new owner has title.

- (8) The original responsible party, who entered into the maintenance agreement with the City, remains responsible for the balance of the site under the terms of the original agreement for maintenance.
- (9) Once the responsible party has satisfied all terms and conditions of the maintenance agreement, including permanent stabilization, the responsible party shall notify the Director.
- (10) After inspection of the site by a City inspector, the Director will send the responsible party written confirmation that the responsible party has complied with the agreement and the agreement is terminated.
- (11) Where applicable, compliance with the requirements of the NPDES or TPDES Construction General Permit must continue to be met.

Sec. 20-13. Storm water management easements for erosion control.

(a) *Easement requirements.*

- (1) Storm water management easements shall be provided by the property owner if necessary for access of facility inspections and maintenance, or preservation of storm water runoff conveyance, infiltration, and detention areas and facilities, including flood routes for the one-hundred (100) year storm event. The purpose of the easement shall be specified in the maintenance agreement signed by the property owner.
- (2) Storm water management easements are required for all areas used for off-site storm water control, unless a waiver is granted by the Director.
- (3) Easements shall be recorded with the County Register of Deeds prior to issuance of a permit by the Director.

Sec. 20-14. Compliance assurances for erosion control.

(a) *Performance guarantees.*

- (1) Applicants proposing subdivision plats, road construction projects, building construction or other developments with total construction costs exceeding \$1,000,000.00 shall be required to post a cash escrow, letter of credit, or other acceptable form of performance security in an amount of five percent (5%) of the total construction cost.
- (2) Letter of credit, if used as a performance guarantee, shall extend for a minimum of one (1) year with the option of renewal. Letters of credit will be returned to the

applicant when the site is certified by the licensed professional who designed the site plan and the site is completely stabilized to meet requirements set forth by the Director.

(b) *Surety for permanent erosion control in new subdivision.*

- (1) The applicant shall provide a surety in the form of cash, certificate of deposit, surety bond, or irrevocable letter of credit acceptable to the City to insure that vegetative cover and other permanent erosion control measures reinstalled, maintained, and functioning properly up to a two (2) year period from the date of final acceptance of the dedicated streets and/or utilities by the City of The Colony. This surety shall be in the amount estimated by the Developer, which is one-hundred percent (100%) of the cost of constructing and maintaining the permanent erosion controls for a two (2) year period. However, such estimate is subject to review by the Director and may be rejected, and the surety bond accepted, if the Director deems the estimate not to be a reasonable approximation of the costs of construction and maintaining the erosion controls.
- (2) Should the vegetative cover die or become sparse or the erosion controls fail to be maintained or are not functioning during this two (2) year period, the City may notify the applicant in writing. The applicant has ten (10) days after being notified to begin correcting the problem(s). If no corrections are started, the City may make the necessary repairs by exercising the surety and billing the applicant. If at the end of the two (2) year period the vegetative cover is still not established or is sparse, or the erosion controls are not functioning, the City may exercise the surety and have the erosion controls installed and established.
- (3) The above procedure for ensuring that vegetation is established shall apply to all projects, whether or not the vegetation is the long-term maintenance responsibility of the City. Any vegetative cover which is planted and is a permanent part of the improvement project will not be accepted by the City until the growth has been established and maintained by the developer for a two (2) year period from the date of final acceptance of the subdivision.
- (4) After the two (2) year period has elapsed, the owner of the property shall be responsible for maintaining the erosion controls in good working order. If any future owner modifies or disturbs the erosion controls for the area, that owner must restore or replace the permanent erosion controls at the conclusion of the disturbing activity.

(c) *Construction certification by registered professional.* For any sites that required a Soil Erosion Control Plan, a certification letter shall be submitted after soil erosion and storm water runoff control facilities have been installed to affirm that construction has been completed in accordance with the approved Soil Erosion Control Plan. Unless otherwise approved by the Director, this certification letter can be prepared by a Texas licensed

civil engineer. Record drawings of the site work are required upon completion of the project.

ARTICLE III. POST-CONSTRUCTION STORM WATER CONTROL

Sec. 20-15. Storm water control permit required.

(a) *Purpose.* The purpose of these post construction controls is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-construction storm water runoff and non-point source pollution associated with new development and redevelopment. It has been determined that development and redevelopment alter the hydrologic response of local watersheds and increase storm water runoff rates and volumes, flooding, soil erosion, stream channel erosion, non-point source pollution, and sediment transport and deposition, as well as reduce groundwater recharge. These changes in storm water runoff contribute to increased quantities of waterborne pollutants and alterations in hydrology which may be harmful to public health and safety as well as to the natural environment. These effects can be managed and minimized by applying proper design and well planned controls to manage storm water runoff from development sites. This Article seeks to meet its general purpose through the following specific objectives and means:

- (1) Establishing decision-making processes for development that protects the integrity of watersheds and preserves the health of water resources;
- (2) Minimizing changes to the pre-development hydrologic response for new development and redevelopment in their post-construction state in accordance with the requirements of this ordinance for the applicable design storm in order to reduce flooding, stream bank erosion, and non-point and point source pollution, as well as to maintain the integrity of stream channels, aquatic habitats and healthy stream temperatures;
- (3) Establishing minimum post-construction storm water management standards and design criteria for the regulation and control of storm water runoff quantity and quality;
- (4) Establishing design and review criteria for the construction, function, and use of structural storm water Best Management Practices (BMPs) that may be used to meet the minimum post-development storm water management standards;
- (5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for storm water and preservation of green space, buffers and other conservation areas to the maximum extent practicable;
- (6) Establishing provisions for the long-term responsibility for and maintenance of

structural and nonstructural storm water BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose minimum risk to public safety; and

- (7) Establishing administrative procedures for the submission, review, approval and disapproval of storm water management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.

(b) *Regulated post-construction storm water control.* The requirements of this Article shall apply to all developments of the City of The Colony and redevelopments within the corporate limits or in the extraterritorial jurisdiction, unless one of the following exceptions applies to the development or redevelopment as of the effective date of this ordinance:

- (1) Preliminary subdivision plan application or in the case of minor subdivisions, construction plan for required improvements, submitted and accepted for review;
- (2) Zoning use application submitted and accepted for review for uses that do not require a building permit;
- (3) Valid building permit issued, so long as the permit remains valid, unexpired, and unrevoked; and/or
- (4) Common law vested right established (e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project).

(c) *Exceptions.*

- (1) Post-Construction Storm Water Control Permit Exceptions
 - (A) Development that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.
 - (B) Redevelopment or expansion that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.
 - (C) Redevelopment or expansion that results in no net increase in built-upon area and provides equal or greater storm water control that the previous development is exempt from the post construction storm water control permit requirements of this ordinance.
 - (D) Development and redevelopment that disturb less than one acre are not

exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

- (2) Activities exempt from permit requirements of Section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities).
- (d) *Storm water control permit application submittal.*
 - (1) *Concept Plan and Consultation Meeting.* Before a Storm Water Control Permit application is submitted, the Director or land owner or the land owner's duly authorized agent or anyone having interest in the property by reason of a written contract with the owner may request consultation(s) on a concept plan for the post-construction storm water management system to be utilized in the proposed development project. This consultation meeting(s) should take place at the time of the preliminary plan of the subdivision or other early step in the development process. The purpose of this meeting(s) is to discuss the post-construction storm water management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to storm water management designs before formal site design engineering is commenced. Local watershed plans and other relevant resource protection plans may be consulted in the discussion of the concept plan.

At the time of concept plan submittal, the following information should be included in the concept plan:

- (A) *Existing Conditions / Proposed Site Plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys; boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
- (B) *Natural Resources Inventory.* A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic system setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

(C) *Storm Water Management System Concept Plan.* A written or graphic concept plan of the proposed post-construction storm water management system including: preliminary selection and location of proposed structural storm water controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of all floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

(2) *Storm Water Control Permit Application.* The Storm Water Control Permit Application shall detail how post-construction storm water runoff will be controlled and managed and how the proposed project will meet the requirements of this Article, including Section 20-16, Standards for Post-Construction Storm Water Control. All such plans submitted with the application shall be prepared by a licensed Texas professional engineer. The engineer shall perform services only in their area of competence, and shall verify that the design of all storm water management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Engineering Design Manual, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Director. Incomplete submittals shall be treated pursuant to Section 20-4(b) of this ordinance.

(e) *Penalties for initiating development or redevelopment activities without a storm water control permit.* Any earth change activities subject to this ordinance without a valid permit or in violation of a permit or permit conditions shall be considered a violation of this ordinance and subject to fines and other penalties as provided in this ordinance.

Sec. 20-16. Standards for post-construction storm water control.

(a) *Development standards.*

(1) *Development Standards for Low Density Projects.* Any drainage area within a project is considered low density when said drainage area has less than thirty percent (30%) built-upon area. Such low-density projects shall comply with each of the following standards:

(A) *Vegetated Conveyances.* Storm water runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

- (B) *Stream Buffers.* All built-upon area shall be at a minimum of thirty (30) feet landward of all perennial and intermittent streams. Perennial streams shall have an 80-foot undisturbed buffer (total buffer both sides of stream) and intermittent streams shall have a 40-foot undisturbed buffer. Buffer widths shall be measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream. Allowable stream buffer uses include the following: road crossings, driveway crossings, greenway/hiking trails, bike trails, fences, utility line crossings, parallel or near parallel utility lines, flood control structures, stream and bank stabilization/restoration projects, grading and revegetation, storm water BMPs, temporary sediment and erosion control devices, animal trails, and activities permitted under Section 404 of the Clean Water Act.
- (2) *Development Standards for High Density Projects.* Any drainage area within a project is considered high density when said drainage area has greater than or equal to thirty percent (30%) built-upon area. Such high-density projects shall implement storm water treatment systems that comply with each of the following standards:
- (A) *Storm Water Quality Treatment Volume.* Storm water quality treatment systems shall treat the difference in the storm water runoff from the pre-development and post-development conditions for the 1-year, 24-hour storm.
- (B) *Storm Water Treatment System Design.* General engineering design criteria for all projects shall be in accordance with the City's Engineering Design Manual and Standard Details and shall also consider North Central Texas Council of Governments Integrated Storm Water Management Design Standards.
- (C) *Stream Buffers.* Perennial streams shall have a 120-foot undisturbed buffer (total buffer both sides of stream) and intermittent streams shall have a 60-foot undisturbed buffer. Buffer widths shall be measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream. Allowable stream buffer uses include the following: road crossings, driveway crossings, greenway/hiking trails, bike trails, fences, utility line crossings, parallel or near parallel utility lines, flood control structures, stream and bank stabilization/restoration projects, grading and revegetation, storm water BMPs, temporary sediment and erosion control devices, animal trails, and activities permitted under Section 404 of the Clean Water Act.
- (D) *Storm Water Volume Control.* Storm Water treatment systems shall be installed to control the difference in the storm water runoff from the pre-

development and post-development conditions for the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.

- (E) *Storm Water Peak Control.* For developments greater than or equal to 24% built-upon area, peak control shall be installed for the 10-yr and 25-yr, 6-hr storms. Controlling the 1-year, 24-hour volume achieves peak control for the 2-year, 6-hour storm. The emergency overflow and outlet works for any pond or wetland constructed as a storm water BMP shall be capable of safely passing a discharge with a minimum recurrence frequency as specified in the Engineering Design Manual. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.

(b) *Stream buffer delineation.*

- (1) *Determination of Streams to be Buffered.* The stream buffer requirements of this ordinance shall apply if a stream is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Streams that do not appear on either of the aforementioned maps shall not be subject to the aforementioned buffer requirements of this ordinance. Streams that appear on either of the aforementioned maps shall be subject to this ordinance unless one of the following applies.

- (A) Exemption when an on-site determination shows that streams are not present. When a landowner or other affected party believes that the USDA or USGS stream buffer delineation maps described in this Section inaccurately depict streams, he or she shall consult with the Director. Upon request, the Director shall make on-site determinations. Such determinations can also be made at the discretion of the Director in the absence of a request from a landowner or other concerned party. The buffer requirements of this ordinance shall apply based on these determinations. Surface waters that appear on the maps shall not be subject to this ordinance if an on-site determination by the Director shows that they fall into one of the following categories:

- (1) Ditches and manmade conveyances other than modified natural streams.
- (2) Manmade ponds and lakes that are not intersected by a buffered stream segment and that are located outside natural drainage ways.

- (B) Exemption when existing uses are present and ongoing. This ordinance shall not apply to portions of buffers where a use is existing and ongoing according to the following:
 - (1) A use shall be considered existing if it was present within the buffer as of the effective date of this ordinance. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the buffer that contains the footprint of the existing use is exempt from this ordinance. Activities necessary to maintain uses are allowed provided that no additional vegetation except that grazed or trampled by livestock and existing diffuse flow is maintained.
 - (2) At the time the existing use is proposed to be converted to another use, this ordinance shall apply. An existing use shall be considered converted to another use if any of the following applies:
 - (i) Impervious surface is added to the buffer in locations where it did not exist previously.
 - (ii) An agricultural operation within the buffer is converted to a non-agricultural use.
 - (iii) Vegetation within the buffer ceases to be maintained.
- (2) *Stream Buffer Identification.* The following buffer identifications are required:
 - (A) Streams and buffer boundaries must be clearly identified on all construction plans, including grading and clearing plans, erosion, drainage and sediment control plans and site plans.
 - (B) Outside buffer boundaries must be clearly marked on site prior to any land disturbing activities.
 - (C) The outside boundary of the buffer must be permanently marked at highway stream crossings.
 - (D) Streams and buffer boundaries must be specified on all surveys and record plats.
 - (E) Buffer boundaries as well as all buffer requirements must be specified on all surveys and record plats, on individual deeds and in property association documents for lands held in common.
- (c) *Lakes and ponds.* Lakes and ponds which intersect the stream channel shall have the

same buffers as the original stream measured from the top of the bank of the lake or pond.

(d) *Standards for control measures.*

(1) *Evaluation According to Contents of Engineering Design Manual.* All storm water control measures and storm water treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Director according to the policies, criteria, and information, including technical specifications, standards and the specific design criteria for each storm water best management practice contained in the City's Engineering Design Manual and should also consider North Central Texas Council of Governments Integrated Storm Water Management Design Standards. The Director shall determine whether these measures will be adequate to meet the requirements of this ordinance.

(2) *Determination of Adequacy; Presumptions and Alternatives.* Storm Water treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the Engineering Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Engineering Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance before it can be approved for use. The Director may require the applicant to provide such documentation, calculations, and examples as necessary for the Director to determine whether such an affirmative showing is made.

(e) *Deed recordation and indications on plat.* The approval of the Storm Water Control Permit shall require an enforceable restriction on property usage that runs with the land, such as plat, recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans. Streams and buffer boundaries must be specified on all surveys and record plats. The applicable operations and maintenance agreement pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the Denton County Register of Deeds Office upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the Denton County Register of Deeds Office so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles. A copy of the recorded maintenance agreement shall be provided to the Director within fourteen (14) days following receipt of the recorded document. A maintenance easement shall be recorded for every structural BMP to allow sufficient access for adequate maintenance. The specific recordation and deed restriction requirements as well as notes to be displayed on final plats and deeds shall be contained in the City Record File at City Hall.

Sec. 20-17. Maintenance of post-construction storm water controls.

(a) *General standards for maintenance.*

- (1) *Function of BMPs as Intended.* The owner of a structural BMP installed pursuant to this ordinance shall maintain and operate the BMP so as to preserve and continue its function in controlling storm water quality and quantity at the degree or amount of function for which the structural BMP was designed.
- (2) *Single Family Residential BMPs Accepted for Maintenance.* The City of The Colony shall accept maintenance responsibility following a warranty period of two (2) years from the date of as-built certification described in Section 20-14(c) of this ordinance, provided the BMP:
 - (A) Only serves a single family detached residential development or townhomes all of which have public street frontage;
 - (B) Is satisfactorily maintained during the two-year warranty period by the owner or designee;
 - (C) Meets all the requirements of this ordinance and the Engineering Design Manual; and
 - (D) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair or reconstruction.

The Director must receive an application for transfer of maintenance responsibilities for the structural BMP along with the Storm Water Control Permit application.

- (3) *Annual Maintenance Inspection and Report.* The person responsible for maintenance of any BMP installed pursuant to this ordinance above shall submit to the Director an inspection report from a qualified licensed Texas professional engineer performing services only in their area of competence. The inspection report shall contain all of the following:
 - (A) The name and address of the land owner;
 - (B) The recorded book and page number of the lot of each structural BMP;
 - (C) A statement that an inspection was made of all structural BMPs;
 - (D) The date the inspection was made;

- (E) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (F) The original signature and seal of the engineer.

All inspection reports shall be on forms supplied by the Director. An original inspection report shall be provided to the Director beginning one year from the date of record drawing certification and each year thereafter on or before the anniversary date of the record drawing certification.

(b) *Operation and maintenance agreement.*

- (1) *General.* At the time that as-built plans are provided to the Director as described in Section 20-14(c) and prior to final approval of a project for compliance with this ordinance, but in all cases prior to placing the BMPs in service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Failure to execute an operation and maintenance agreement within the time frame specified by the Director may result in assessment of penalties as specified in Section 20-25, Violations and Enforcement. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement. At the discretion of the Director and in addition to other actions available to the Director to enforce this ordinance, certificates of occupancy may be withheld pending receipt of an operation and maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct structural BMPs, and shall state the terms, conditions, and schedule of maintenance for structural BMPs. In addition, it shall grant to the City of The Colony a right of entry in the event that the Director has reason to believe it has become necessary to inspect, monitor, maintain, repair, reconstruct, or discontinue the use of structural BMPs; however, in no case shall the right of entry, of itself, confer an obligation on the City of The Colony to assume responsibility for structural BMPs.

Standard operation and maintenance agreements for BMPs shall be developed by the Director. The operation and maintenance agreement must be approved by the Director prior to plan approval, and it shall be referenced on the final plat and shall be recorded the City of The Colony with the Denton County Register of Deeds upon final plat approval.

- (2) *Special Requirement for Homeowners' and Other Associations.* For all structural BMPs required pursuant to this ordinance and that are to be or are owned and

maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all such maintenance provisions and responsible parties.

- (c) *Inspection program.* Inspections and inspection programs by the City of The Colony may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition and operational performance of BMPs.

If the owner or occupant of any property refuses to permit such inspection, the Director shall proceed to obtain an administrative search warrant. No person shall obstruct, hamper or interfere with the Director while carrying out his or her official duties.

- (d) *Performance security for installation and maintenance.* The City of The Colony will require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement for projects with a total construction value over \$1,000,000.00 prior to issuance of a permit.
- (e) *Records of installation and maintenance activities.* The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the Director.
- (f) *Maintenance easement.* Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate inspection, maintenance, reconstruction and repair by a maintenance easement. The executed easement shall be provided to the City of The Colony and its terms shall specify who may make use of the easement and for what purposes.
- (g) *Exemptions.* Any new development or redevelopment project that has or will have permit coverage under the Texas Pollutant Discharge Elimination System Industrial Storm Water Permit issued by the Texas Commission on Environmental Quality (TCEQ). In lieu of the Storm Water Control permit, the owner/developer/operator shall submit an Industrial Activity Certification (to be provided to the Director) and any one of the following:
 - (1) A copy of the application for an individual permit from the TCEQ or the EPA for Storm Water Discharges Associated with Industrial activity at the facility.
 - (2) A copy of the permit issued by the TCEQ or EPA for Storm Water Discharges Associated with Industrial Activity at the facility.

- (3) A statement of commitment to file an application for an individual permit from the TCEQ for Storm Water Discharges Associated with Industrial Activity at the facility.
- (4) A statement of commitment to file an NOI for coverage under a general permit for Storm Water Discharges Associated with Industrial Activity issued by the TCEQ.

ARTICLE IV. ILLICIT DISCHARGE AND CONNECTION CONTROL

Sec. 20-18. Discharge prohibitions.

- (a) *Prohibition of unauthorized discharges.* No person shall discharge or cause to be discharged into the MS4 or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

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

- (1) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources; landscape irrigation or lawn watering using potable water, groundwater, or surface water sources; diverted stream flows; rising ground water; uncontaminated groundwater infiltration to storm drains, uncontaminated pumped ground water, foundation and footing drains (not including active groundwater dewatering systems); water from crawl space pumps; uncontaminated air conditioning condensation; springs; non-commercial washing of vehicles; natural riparian habitat or wet-land flows, fire fighting activities; and any other water source not containing pollutants; a discharge or flow from cold water (or hot water with prior permission of the Director) used in street washing or cosmetic cleaning that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful substance.
- (2) Materials resulting from a spill where the discharge is necessary to prevent loss of life, personal injury or severe property damage provided that the party responsible for the spill takes all reasonable steps to minimize or prevent any adverse effects to human health or the environment.
- (3) Discharges specified in writing by the Director as being necessary to protect public health and safety.
- (4) Dye testing is an allowable discharge, but requires written notification to the Director prior to the time of the test.

- (5) The prohibition shall not apply to any non-storm water discharge permitted under a NPDES or TPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA or TCEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for the discharge to the storm drain system.
 - (6) Materials that are no longer contained in a pipe, tank or other container are considered to be threatened discharges unless they are actively being cleaned up.
 - (7) Other similar occasional incidental non-storm water discharges, unless the EPA or TCEQ develops permits or regulations addressing these discharges.
- (b) *Prohibition of illicit connections.*
- (1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
 - (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
 - (3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (c) *Nuisances.* It shall be unlawful for any person, firm or corporation which owns, possesses, is in custody of or exercises control of property to permit a public erosion nuisance to occur on said property. A public nuisance may consist of any of the following activities:
- (1) Where erosion of, or sediment from, one location causes an unsafe, bothersome, or unsightly condition on public property and public rights-of-way.
 - (2) An unsafe, bothersome or unsightly condition or burden includes silt, mud, or similar debris, originating on one property but being deposited onto a second off-site property, which is public property of a public right-of-way from which the city may have to remove or clean up the deposit due to liability, statutory, aesthetic, drainage or property damage concerns.
 - (3) Sedimentation in storm drains, drainage easements, streams, Lake Lewisville, and other watercourses caused by erosion.
 - (4) Sedimentation on public streets, sidewalks, alleys, easements and other rights-of-way caused by erosion and/or maintenance.

- (5) Improper management of Erosion Control Devices.
- (6) Not implementing approved Soil Erosion Control Plan and/or SWPPP in accordance with permit requirements.
- (7) A person knowingly engages in mobile commercial cosmetic cleaning without a valid permit issued by the Director.
- (8) A person knowingly operates or causes to be operated a mobile commercial cosmetic cleaning vehicle which is not registered with the Director.
- (9) A vehicle transporting cosmetic cleaning wash water or wastewater which is leaking or spilling from such vehicle is declared to be a nuisance.
- (10) Any premises upon which cosmetic cleaning wastewater has accumulated and which is emitting noxious or offensive odors, or which is creating an unsanitary condition, or which is injurious to the public health or the environment is hereby declared to be a nuisance.
- (11) Discharges from a swimming pool into a street, alley, watercourse, or any other storm drainage system operated and maintained by the city.
- (12) Operating a vehicle on the street that has dirty tires that pollute the street with residual sediments.
- (13) Oil, material, hazardous waste, hazardous materials, or other pollutants that leak or spill from an automobile or other vehicle while being serviced, driven or parked on a city street.

Sec. 20-19. Waste disposal prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or waters of the United States, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Wastes deposited in streets in proper waste receptacles for the purposes of collection are exempted from this prohibition.

Sec. 20-20. Discharges in violation of industrial or construction activity NPDES or TPDES storm water discharge permit.

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

Sec. 20-21. Unpermitted discharges prohibited.

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

Sec. 20-22. Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, fill, grass clippings, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within their property lines in order to protect against erosion and degradation of the watercourse originating or contributed from their property.

Sec. 20-23. Requirement to eliminate or secure approval for connections.

(a) *Written notice required.*

- (1) The Director may require by written notice that a person responsible for any connection to the storm drain system comply with the requirements of this Article to eliminate or secure approval for the connection by a specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this Article.
- (2) If, subsequent to eliminating a connection found to be in violation of this Article, the responsible person can demonstrate that discharges will no longer occur, said person may request the Director's approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

ARTICLE V. ENFORCEMENT

Sec. 20-24. Suspension of MS4 access.

- (a) *Suspension due to unauthorized discharges in emergency situations.* The Director may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with

a suspension order issued in an emergency, the Director may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

- (b) *Suspension due to the detection of unauthorized discharge.* Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an unauthorized discharge. The Director will notify a violator of the proposed termination of its MS4 access. The violator may petition the enforcing agency for reconsideration and a hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Director.

Sec. 20-25. Violations and enforcement.

(a) *General.*

- (1) *Authority to Enforce.* The provisions of this ordinance shall be enforced by the Director, his or her designee, or any authorized agent of the City of The Colony. Whenever this Section refers to the Director, it includes his or her designee as well as any authorized agent of the City of The Colony.
- (2) *Violation Unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.
- (3) *Each Day a Separate Offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (4) *Responsible Persons/Entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance, as well as any person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this Section. For the purposes of this article, responsible person(s) shall include but not be limited to:
- (A) *Person Maintaining Condition Resulting In or Constituting Violation.* Any person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails

to take appropriate action, so that a violation of this ordinance results or persists.

- (B) *Responsibility for Land or Use of Land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for storm water controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(b) *Inspections and investigations.*

- (1) *Authority to Inspect.* The Director shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the activity is being conducted in accordance with this ordinance and the approved Storm Water Management Plan, Engineering Design Manual and whether the measures required in the plan are effective. The Director shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of Director.

Facility operators shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of a NPDES or TPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

The Director shall have the right to set up on any facility that discharges to the MS4 such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's storm water discharge.

The Director has the right to require the discharger to install monitoring equipment as necessary. 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.

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 facility operator at

the written or oral request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the discharger.

Unreasonable delays in allowing the Director access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES or TPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

If the Director 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 ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

No person shall willfully resist, delay, or obstruct the Director while the Director is inspecting or attempting to inspect an activity under this ordinance.

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

- (2) *Notice of Violation and Order to Correct.* When the Director finds that any building, structure, or land is in violation of this ordinance, the Director shall notify in writing the responsible person/entity. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation occurred or is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. The notice shall, if required, specify a date by which the responsible person/entity must comply with this ordinance, and advise that the responsible person/entity is subject to remedies and/or penalties or that failure to correct the violation within the time specified will subject the responsible person/entity to remedies and/or penalties as described in this ordinance. In determining the measures required and the time for achieving compliance, the Director shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits. The Director may deliver the notice of violation and correction order personally, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Director may take appropriate action, as provided in this

ordinance to correct and abate the violation and to ensure compliance with this ordinance.

- (3) *Extension of Time.* A responsible person/entity who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Director a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the responsible person/entity requesting the extension, the Director may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The Director may grant thirty (30) day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the responsible person/entity violating this ordinance. The Director may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

- (4) *Penalties Assessed Concurrent with Notice of Violation.* Penalties may be assessed concurrently with a notice of violation for any of the following in which case the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt:
 - (A) Failure to submit a storm water management plan.
 - (B) Performing activities without an approved storm water management plan.
 - (C) Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
 - (D) A repeated violation for which a notice was previously given on the same project and to the same responsible person/entity responsible for the violation.
 - (E) Willful violation of this ordinance.
 - (F) Failure to install or maintain BMPs per the approved plan.
 - (G) Unauthorized discharges or illicit connections and/or discharges from a facility.

- (5) *Authority to Investigate.* The Director shall have the authority to conduct such investigation as it may reasonably deem necessary to carry out its duties as

prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting. No Person shall refuse entry or access to the Director who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Director while in the process of carrying out official duties. The Director shall also have the power to require written statements, or the filing of reports under oath as part of an investigation.

- (6) *Enforcement after Time to Correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the Director, the Director shall determine if the violation is corrected. If the violation is not corrected, the Director may act to impose one or more of the remedies and penalties authorized by this ordinance.
- (7) *Emergency Enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Director may order the immediate cessation of a violation. Any Person so ordered shall cease any violation immediately. The Director may seek immediate enforcement, without prior written notice, through any remedy or penalty specified in this ordinance.
- (8) *Notice of Violation.* Whenever the Director finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the Director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - (A) The performance of monitoring, analyses, and reporting;
 - (B) The elimination of illicit connections or discharges;
 - (C) That violating discharges, practices, or operations shall cease and desist;
 - (D) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
 - (E) Payment of a fine to cover administrative and remediation costs; and
 - (F) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is 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. Such notice shall be given by personal delivery or by mail to the last known address of the owner as shown in the records of the County Assessor. Such notice shall be effective upon the date of mailing or personal delivery.

- (c) *Appeal of notice of violation.* Any person receiving a Notice of Violation may file an appeal in accordance with Section 20-4 of this ordinance.
- (d) *Enforcement measures after appeal.* If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within five (5) days of the decision of the city upholding the decision of the Director, then representatives of Director shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Director or designated contractor to enter upon the premises for the purposes set forth above.
- (e) *Cost of abatement of the violation.* Within forty-five (45) 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 with the Director a written protest objecting to the amount of the assessment within fifteen (15) days. If the amount due is not paid within a timely manner as determined by the decision of the Director or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation. A copy of the resolution shall be turned over to the Denton County Tax Assessor (the "Assessor") so that the Assessor may enter the amounts of the assessment against the parcel as it appears on the current assessment roll, and the tax collector shall include the amount of the assessment on the bill for taxes levied against the parcel of land.
- (f) *Urgency abatement.* The Director is authorized to require immediate abatement of any violation of this Article that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the Director, the Director, or its designated contractor, is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the Director shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the Director, the City, or the City Council from seeking other and further relief authorized under this ordinance.
- (g) *Injunctive relief.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency 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.

- (h) *Compensatory action.* In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the Director may impose upon a violator alternative compensatory action, such as attendance at compliance workshops, creek cleanup, storm drain cleanup, etc.
- (i) *Violations deemed a public nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.
- (j) *Remedies and penalties.* The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.
 - (1) *Remedies.*
 - (A) *Withholding or Revoking Certificate of Occupancy.* The Director or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the storm water practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein. If a Certificate has been issued, the Director may revoke the Certificate.
 - (B) *Disapproval of Subsequent Permits and Development Approvals.* As long as a violation of this ordinance continues and remains uncorrected, the Director or other authorized agent may withhold, and the city may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.
 - (C) *Injunction, Abatements, etc.* The Director, with the written authorization of the City Manager may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in state law or at common law.

- (D) *Correction as Public Health Nuisance, Costs as Lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety, the Director, with the written authorization of the City Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- (E) *Stop Work Order.* The Director may issue a stop work order to the Person(s) violating this ordinance. The stop work order shall remain in effect until the Person has taken the remedial measures set forth in the notice of violation or has otherwise corrected the violation or violations described therein. The stop work order may be withdrawn or modified to enable the Person to take the necessary remedial measures to correct such violation or violations. Stop work orders may be issued if any of the following non compliant activities are identified.
- (1) If necessary to assure compliance with the permit requirements, standards, and other provisions of this ordinance, or to protect public health safety and welfare.
 - (2) If necessary in preventing or minimizing accelerated soil erosion, storm water runoff, or other condition posing imminent and substantial danger to public health, safety, welfare, or natural resources.
 - (3) If necessary to protect public safety or water resources, including lakes, streams, protected wetlands, and other receiving bodies of water.
 - (4) The responsible party shall have twenty-four (24) hours to bring his erosion control devices into compliance with the approved Soil Erosion Control Plan for the site where the violation occurred. Correction shall include sediment clean-up, erosion control device repair, and erosion control device maintenance. The twenty-four (24) hour cure period may be extended for inclement weather or other factors at the discretion of the City Engineer. At the end of the twenty-four (24) hour cure period, the city shall re-inspect the site. If at the time of such re-inspection, the erosion control devices at the site have not been brought into compliance with the approved Soil Erosion Control Plan, the city may issue a stop work order as previously described above and issue a citation for each violation of the city's erosion control requirements. To obtain a re-inspection for removal of the stop work order, a request for re-inspection must be submitted.
- (F) *Denial of Utility Connections.* The utility official shall not permit any user

to receive any service from the city water distribution or wastewater collection system unless, at the time of the application for service, the user is in compliance with this ordinance.

(k) *Restoration of areas affected by failure to comply.* By issuance of an order of restoration, the Director may require a Person(s) who engaged in a land development activity and failed to comply with this ordinance to restore the waters and land affected by such failure so as to minimize the detrimental effects of the resulting pollution. This authority is in addition to any other civil penalty or injunctive relief authorized under this ordinance.

(l) *City installation of soil erosion and storm water runoff control measures.*

Soil erosion control or storm water runoff control measures or facilities may be constructed or maintained by the city and/or a hired consultant or contractor, at the property owner's expense, if the necessary provisions for the correction of a violation are not successfully implemented within ten (10) calendar days after the notice of violation is mailed.

The city shall not expend more than \$500.00 for the cost of work, materials, or labor without prior notice to the property owner. If more than \$500.00 is to be expended under this Section, the work shall not begin until at least twenty (20) days after the notice of violation has been mailed.

All expenses incurred by the city to construct and maintain measures and facilities to bring the site into compliance shall be reimbursed by the property owner. The city shall have a lien for the expenses incurred. For single-family or multiple-family residential properties, the lien shall have priority over all liens and encumbrances filed or recorded after the date of such expenditure. For other types of property, the lien for such expenses shall be collected and treated in the same manner as provided for property tax liens.

A default in the payment of a civil fine or costs ordered under this ordinance or an installment of the fine or costs may be remedied by any means authorized under the direction of Director and City Council.

In the event that said statement has not been paid within such period, the city may file a statement within the Denton County Clerk of the expenses incurred to abate such condition on said premises, and the city shall have a privileged lien on any lot, tract or parcel of land for the delinquent amount from the date such payment is due. For any such expenditure and interest, suit may be instituted and recovery and foreclosure had in the name of the city and the statement is prima facie proof of the amount expended by the city for such work performed.

The Director or his designee shall file a statement of expenses incurred, giving the amount of such expenses, the date on which said work was done or improvements made,

with the county clerk; and the city shall have a privileged lien on such lots or real estate upon which said work was done or improvements made to secure the expenditures, which lien shall be second only to tax liens and liens for street improvements; and said amount shall bear ten percent (10%) interest from the date said statement was filed. Further, for any such expenditures and interests as aforesaid, suit may be instituted and recovery and foreclosure of said lien may be had in the name of the city; and the statement of expenses so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

(m) *Civil penalties.*

- (1) *Violations of Ordinance.* A violation of any of the provisions of this ordinance or rules or other orders adopted or issued pursuant to this ordinance may subject the violator to a civil penalty. A civil penalty may be assessed from the date the violation occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation except as provided in this ordinance in which case the penalty is assessed concurrently with a notice of violation. Refusal to accept the notice or failure to notify the Director of a change of address shall not relieve the violator's obligation to comply with this ordinance or to pay such a penalty.
- (2) *Amount of Penalty.* The maximum civil penalty for each violation of this ordinance is \$2,000.00. Each day of continuing violation shall constitute a separate violation. Failure to appear in response to a citation issued for a violation of this chapter is a separate violation of this ordinance. In determining the amount of the civil penalty, the Director shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this ordinance; whether the violation was committed willfully; whether the violator reported the violation to the Director; and the prior record of the violator in complying or failing to comply with this ordinance or any other post-construction ordinance or law. The Director is authorized to vary the amount of the per diem penalty based on relevant mitigating factors. Civil penalties collected pursuant to this ordinance shall be credited to the city's general fund as nontax revenue.
- (3) *Notice of Assessment of Civil Penalty.* The Director shall determine the amount of the civil penalty and shall notify the violator of the amount of the penalty and the reason for assessing the penalty. This notice of assessment of civil penalty shall be served to violator and shall direct the violator to either pay the assessment or file an appeal within thirty (30) days of receipt of the notice.
- (4) *Failure to Pay Civil Penalty Assessment.* If a violator does not pay a civil penalty assessed by the Director within thirty (30) days after it is due, or does not request

a hearing as provided in this ordinance, the Director shall request the initiation of a civil action to recover the amount of the assessment. The civil action shall be brought in Denton County District Court or in any other court of competent jurisdiction. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.

(5) *Appeal of Remedy or Penalty.* The issuance of an order of restoration and/or notice of assessment of a civil penalty by the Director shall entitle the responsible party or entity to an appeal before the city if such Person submits written demand for an appeal hearing within thirty (30) days of the receipt of an order of restoration and/or notice of assessment of a civil penalty. The appeal of an order of restoration and/or notice of assessment of a civil penalty shall be conducted as described in this ordinance.

(n) *Criminal penalties.* Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under Texas law.”

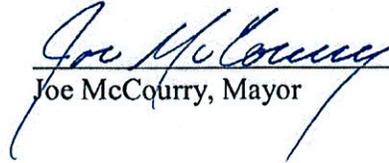
SECTION 3. If any section, article paragraph, sentence, clause, phrase or word in this ordinance, or application thereto any persons or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4. That all provisions of the Ordinances of the City of The Colony, Texas, in conflict with the provisions of this ordinance be, and the same are hereby amended, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 5. Any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of The Colony, Texas, shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense. Every day a violation occurs shall constitute a separate offense.

SECTION 6. This Ordinance shall become effective on the date provided and after publication in accordance with law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF THE COLONY, TEXAS, THIS THE 7th day of December, 2010.



Joe McCurry, Mayor

ATTEST:



Christie Wilson, City Secretary

APPROVED AS TO FORM:



Jeff Moore, City Attorney

