ARTICLE 9.04 WATER QUALITY PROTECTION*

Division 1. Generally

Sec. 9.04.001 Title, purpose and scope

(a) Title. This article shall be commonly cited as the water quality protection ordinance.

(b) Introduction. Section 26.177 of the Texas Water Code provides an opportunity for municipalities to regulate water protection, water pollution, and pollution abatement.

(c) Purpose. This article provides standards and procedures for municipal determination of the non-point source pollution control management policies which govern the planning, design, construction, operation and maintenance of drainage, erosion, and water quality facilities within the city limits and the city's extraterritorial jurisdiction (ETJ). This article sets forth the minimum requirements necessary to provide and maintain a safe, efficient and effective non-point source pollution control system and to establish the various public and private responsibilities for the provision thereof. Further, it is the purpose of this article to:

(1) Protect human life, health and property;

(2) Preserve the natural beauty and aesthetics of the community;

(3) Prevent degradation and pollution of groundwater resources;

(4) Protect the integrity of local ecological systems such as Blue Hole, the Blanco River and Cypress Creek;

(5) Minimize the expenditure of public money for building and maintaining non-point source pollution control projects and cleaning sediments out of storm drains, streets, sidewalks and watercourses;

(6) Help maintain a stable tax base and preserve land values;

(7) Control and manage the quality of stormwater runoff, [and] the sediment load in that runoff, from points and surfaces within subdivisions;

(8) Utilize best management practices (BMP) for development which prevents erosion and sediment damage and which reduces the pollutant loading to streams, ponds and other watercourses; and

(9) Prevent losses of endangered species and habitat of endangered species.

(d) Jurisdiction. This article applies to all property within the city limits and the city's ETJ.

(e) Development.

(1) The planning area-land use map of the city comprehensive plan acknowledges the existing land use patterns of the city, and delineates compatible extensions of these patterns. It is a long-range, general guide for future growth, classified by seven broad categories (planning areas). The comprehensive plan states the city center should be the most densely developed planning area. Urban sprawl and high

intensity land uses outward from the city center should be resisted. Through the designation of a high intensity planning area (HIPA), the city council finds it reasonable and prudent to encourage growth within the city center and discourage heavy development in the ETJ.

(2) This article applies to development when considered as a whole, even if comprised of more than one lot. These regulations may not be circumvented by aggregating lots, when in fact the lots share a common development scheme.

(f) Mandate.

(1) Any person proposing the development of real property within the city limits or the city's ETJ is subject to the provisions of this article.

(2) Requirements of this article shall be addressed in applications for subdivision plats, site development permits, rezoning, Wimberley Planned Development Districts (WPPDs), conditional use permits, development agreements, and building permits.

(3) It shall be an offense for any person to develop or improve real property in violation of this article.

(4) It shall be an offense for any person to violate the prohibitions set forth in division 2 of this article (public pollution prevention controls).

(g) Definitions and rules of construction. Words and phrases used in this article shall have the meanings set forth in section 9.04.002 of this article. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense, words in the plural number shall include the singular number (and vice versa), and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

(Ordinance 2011-005, sec. 156.001, adopted 3/3/11)

Sec. 9.04.002 Definitions

Agricultural activities. Pasturing of livestock or use of the land for planting, growing, cultivating, and harvesting crops for human use or animal consumption. Such activities include nursery farms and orchards.

Agricultural stormwater runoff. Any stormwater runoff from orchards, cultivated crops, pastures, range land, and other non-point source agricultural activities, but not discharges from concentrated animal feeding operations as defined in 40 CFR section 122.23 or discharges from concentrated aquatic animal production facilities as defined in 40 CFR section 122.24.

Applicant. The applicant shall be the owner of the property subject to this article, acting in person or by and through the owner's authorized representative. Documentation, in a form acceptable to the city, evidencing ownership of the property and the authority of the authorized agent must be submitted along with the application. For example, written power of attorney or a letter of agency will be sufficient to prove agency. A deed or tax letter will be adequate to establish ownership of the property.

Application. A written request for an approval required by this article.

Background pollutant load. The amount of pollution in stormwater runoff that is discharged from a site before development. The method used for calculating background pollutant load is to be found in the TCEQ Edwards Aquifer Rules – Technical Guidance on Best Management Practices, RG-348 (Manual) (or the technical standards

section of this article).

Best management practice (BMP). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the non-point source pollution of waters in the state. The two basic types of BMPs for purposes of this article are “structural BMPs” (which include engineered and constructed systems that are designed to provide for water quantity and/or water quality control of stormwater runoff) and “non-structural BMPs” (which include institutional and pollution-prevention type practices designed to prevent pollutants from entering stormwater runoff or to reduce the volume of stormwater requiring management). This term expressly includes both structural and non-structural BMPs.

Board of adjustment. This term is the same as defined and applied in the zoning ordinance for the city.

City engineer. The engineer for the City of Wimberley.

City limits. The incorporated municipal boundaries of the City of Wimberley.

Cluster development: A confined area of housing or commercial development that is separated from other development areas by undeveloped land.

Common plan of development: A construction activity that is completed in one or more of the following ways: separate stages, separate phases, and in combination with other construction activities. A common plan of development is identified by the documentation for the construction project that identifies the scope of the project and may include plats, construction plans, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities.

Contributing zone. The area or watershed where runoff from precipitation flows downgradient to the recharge zone of the Edwards Aquifer or Trinity Aquifer.

Critical environmental features (CEFs). These are infiltration features and include caves, solution cavities, fractures, sinkholes, and other karst surface features as defined by TCEQ.

CYPRESS CREEK TECHNICAL RESOURCE GUIDE. Guide developed by the Cypress Creek project that outlines low impact development and alternate standards techniques to encourage low impervious cover development and provide guidance for developments less than 5 acres in area that are exempt from the TCEQ Edwards Aquifer Protection Rules.

Design storm event. The design storm event for water quality is defined in the TCEQ Edwards Aquifer Technical Guidance, RG-348.

Develop. To engage in the development of land.

Developer. An individual engaged in the development of land.

Development. All land modification and construction activity, including the construction of buildings, roads, paved storage areas, parking lots and other improvements. “Development” also includes any land disturbing construction activities or human-made change of the land surface, including clearing of vegetative cover, grubbing, excavating, filling, installing streets and utilities and grading, mining, and dredging, and the deposit of refuse, waste or fill whether or not a site development permit or building permit are required. Development includes but is not limited to commercial, industrial, and subdivision projects. The following activities are excluded from the definition: care and maintenance of lawns, gardens, and trees; minimal clearing (maximum 10 feet wide) for surveying and testing.

Discharge. Any addition or introduction of any pollutant, stormwater, or any other substance in a harmful quantity into a stormwater drainage system or into waters in the state.

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

Discharge (hydraulics). The rate of fluid flow, expressed as the volume of fluid passing a point per unit time, commonly expressed as cubic feet per second.

Domestic sewage. Human excrement, gray water from home clothes washing, bathing, showers, dishwashing, and food preparation, other wastewater from household and residential drains, and waterborne waste normally discharged from the sanitary conveniences of apartment houses, hotels, office buildings, factories, institutions and other dwellings, but excluding industrial waste.

Drainage area. The horizontal projection of the area contributing runoff to a single control or design point.

EDWARDS AQUIFER PROTECTION PROGRAM. Program administered by the TCEQ to protect the Edwards Aquifer that is a drinking water source for San Antonio and surrounding central Texas communities.

EPA. The federal Environmental Protection Agency, or a successor agency.

Erosion. The detachment and movement of soil, sediment, or rock fragments by wind, water, ice or gravity.

ETJ. The extraterritorial jurisdiction of the city.

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

Fertilizer. A solid or non-solid substance or compound that contains an essential plant nutrient element in a form available to plants that is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of one or more fertilizers. The term does not include the excreta of an animal, plant remains, or a mixture of those substances, for which no claim of essential plant nutrients is made.

Fill. The man-made deposition and compaction of material to effect a rise in elevation.

Flood. A general and temporary condition of partial or complete inundation of normally dry land areas from (i) the overflow of inland or tidal waters, or (ii) the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain. For the purposes of water quality buffer zones, this term shall mean either of one or the other following definitions:

(1) A FEMA studied floodplain identified on the FIRM (flood insurance rate maps) as zone AE or equivalent; or

(2) A studied floodplain as provided through engineering data prepared and certified by a professional engineer.

Grade. The vertical location or elevation of a surface, or the degree of rise or descent of a slope.

Harmful quantity. The amount of any substance that will cause pollution of water in the state.

Hazardous household waste (HHW). Any material generated by or in a household (including single and multiple residences, hotels, motels, bunk houses, ranger stations, camp grounds, picnic grounds, and day use recreational areas) which, except for the exclusion provided in 40 CFR section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR part 261.

Hazardous substance. Any substance listed in table 302.4 of 40 CFR part 302.

Hazardous waste. Any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR part 261.

Herbicide. A substance or mixture of substances used to destroy a plant or to inhibit plant growth.

High intensity planning area (HIPA). That area of higher density development within the city limits as defined in the city comprehensive plan and the current zoning ordinance as Planning Areas III through VI. Planning Areas I, II and VII along with the city's ETJ are not included in the HIPA.

Impervious cover. Impermeable development covering the natural land surface that inhibits infiltration. The term expressly excludes storage tanks for rainwater harvesting systems, or the structure covering specifically the rainwater collection tanks.

Industrial waste. Any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

Infiltration. The passage or movement of water into the subsurface of the natural land.

Land user. Any person operating, leasing, renting, or having made other arrangements with the landowner by which the landowner authorizes use of his or her land.

Licensed professional engineer/geoscientist. A person who possesses an active license and is registered by the state board of registration for professional engineers/geoscientists in the state. The term also includes a professional engineer (PE).

Limited plan review. A level of city review of development site plans that is less detailed than standard review procedures and consisting of a geometric review of proposed impervious cover overlaid on stream buffer zones and CEF setbacks with no requirement in the review process to demonstrate achievement of otherwise applicable performance standards.

Livestock containment area. An area such as a corral, barn or pen used to contain livestock for the purpose of management and providing care.

Local governmental agencies. Any department or agency related to the subdivision of the state in the form of the county or municipality.

Natural state. The condition of the land existing prior to any development.

Notice of intent (NOI). The notice of intent that is required by either the site development permit or building permit.

Non-point source (NPS) pollution. Pollution that is caused by or attributable to diffuse sources. Such pollution results in the human-made or human-induced alteration of the chemical, physical, biological, or radiological integrity of water. Typically, NPS pollution results from land runoff, precipitation, atmospheric disposition, or percolation.

Non-point source pollution control plan. The drawings and documents submitted by an applicant seeking plan or permit approval under this article. Such a plan consists of a system of vegetative, structural and other measures to control the increased rate and volume of surface runoff and reduce pollutants in the runoff caused by human changes to the land.

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

Operator. The person or persons who, either individually or taken together, have day-to-day operational control over a facility and activities at the facility sufficient to attain compliance with the requirements of this article.

Owner. The person who owns a facility or part of a facility subject to the requirements of this article.

Person. Any individual, association, firm, corporation, governmental agency, political subdivision, or legal entity of any kind.

Pesticide. A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, as these terms are defined in Texas Agriculture Code section 76.001.

Petroleum storage tank (PST). Any one or combination of above-ground or underground storage tanks that contain oil, petroleum products or petroleum substances, and any connecting underground pipes.

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

Pollutant. Eroded or displaced sediment, soil, silt or sand resulting from development; dredged spoil; solid waste; sewage; garbage; chemical waste; biological materials; any other substance or material or thing not naturally found in waters in the state; radioactive materials; abandoned or discarded appliances or equipment; and industrial, municipal, and agricultural waste which is or may be discharged into waters in the state. This term shall be limited to those substances listed herein, or monitored or regulated by the TCEQ or EPA.

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

Recharge zone. That area where the stratigraphic units constituting the Edwards Aquifer and Trinity Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer and Trinity Aquifer where caves, sinkholes, faults, fractures or other permeable features create a potential for recharge of surface waters into the Edwards Aquifer and Trinity Aquifer.

REDEVELOPMENT. Any building, renovation, replat of property, revisions, remodel, and reconstruction of existing development.

Release. Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into a stormwater drainage system or into waters in the state.

Residence. Any building, or portion thereof, which is designed for or used as living quarters for one or more families including related outbuildings, garages, storage buildings, greenhouses, etc.

Riparian corridor. The ecological areas within and adjacent to a floodplain that do or can support the following plant species: Pecan, American Elm, Arizona Walnut, Bald Cypress, Black Walnut, Bur Oak, Cedar Elm, Little Walnut, Green Ash, Texas Sugarberry, American Sycamore, Eastern Cottonwood, Black Willow, and Live Oak.

Rubbish. Nonputrescible solid waste, excluding ashes, that consists of:

(1) Combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, asphalt, yard trimmings, leaves, and similar materials; and

(2) Noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture,

and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

Runoff. That portion of precipitation or precipitation drainage that flows by force of gravity across the ground surface as sheet flow or in a stormwater drainage system towards water in the state.

Septic tank waste. Any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

Sewer (or sanitary sewer). The system of pipes, conduits, and other conveyances which carry domestic sewage and/or industrial waste from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant and which are intended to exclude stormwater, surface water, and groundwater.

Site development plan – Detailed engineered drawings and accompanying text clearly describing the site development improvements.

Site development permit. The record of approval of the site development plan issued to and applicant .

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

Spring. A point or zone of natural groundwater discharge, whether constant or intermittent, having measurable flow, or a pool, and characterized by the presence of a mesic plant community adapted to the moist conditions of the site.

Start of construction. The first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.

State. The State of Texas.

Steep slope. Defined as a 400% grade, as defined for the purposes of setbacks.

Stormwater drainage system. A conveyance or system of conveyances including roads with drainage systems, catch basins, curbs, gutters, ditches, man-made channels, or storm drains designed or used for collecting or conveying stormwater.

Stormwater pollution prevention plan (SWPPP). A plan required by either the TPDES construction site general permit or the TPDES industrial general permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity.

Streams. Perennial and intermittent watercourses identified through site inspection and USGS maps. Perennial streams are those which are depicted on a USGS map with a solid blue line. Intermittent streams are those which are depicted on a USGS map with a dotted blue line.

Subdivision. A division, or re-division, of any tract of land situated within the city's jurisdiction into two or more parts, lots or sites, for the purpose, whether immediate or in the future, of sale, division of ownership or building development. "Subdivision" includes re-subdivisions of land or lots which are part of previously recorded subdivisions.

TCEQ. The Texas Commission on Environmental Q!uality or its predecessor or successor agencies as defined by law.

TPDES general permit for construction stormwater discharges. The Construction General Permit No. TXR150000 issued by TCEQ on March 5, 2003 and any subsequent modifications or amendments thereto.

TPDES general permit for industrial stormwater discharges. The Industrial General Permit No. TYR050000 issued by TCEQ on August 20, 2001 and any subsequent modifications or amendments thereto.

TPDES permit. A permit issued by TCEQ pursuant to authority granted under 33 USC section 1342(b) that authorizes the discharge of pollutants into waters of the United States, whether the permit is applicable to an individual, group, or general area-wide basis.

Transferable development intensity (TDI). Authorization to exceed the uniform intensity levels otherwise imposed under this article on a less environmentally sensitive tract of land resulting from voluntary relinquishment of

development rights otherwise allowed under this article on a more environmentally sensitive tract of land (e.g., through dedicated conservation easement). A TDI can also result from the removal of existing impervious cover within an existing development with water quality protection measures not otherwise required by this article.

Waiver. A grant of relief to a person from the requirements of this article when specific enforcement would result in unjustifiable or unnecessary hardship due to out-of-the-ordinary or extenuating circumstances.

Water in the state (or water). Any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, or canals inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are inside the jurisdiction of the state.

Water quality buffer zone (WQBZ). Natural riparian areas along waterways and critical environmental features that reduce overland flow velocities and filter pollutants.

Water quality controls. An engineered and constructed device or system designed to protect water from pollution, control the rate and flows of stormwater runoff, and/or minimize erosion and sediment deposits from stormwater runoff.

Watershed. The total area contributing runoff to a stream or drainage system.

Wetland. An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions and conforms to the U.S. Army Corps of Engineers' definition. Wetlands generally include swamps, marshes, bogs, and similar areas.

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

(Ordinance 2011-005, sec. 156.010, adopted 3/3/11)

Secs. 9.04.003–9.04.030 Reserved

Division 2. Public Pollution Prevention Controls

Sec. 9.04.031 Prohibitions

Per the city comprehensive plan, it is the intent of the following prohibitions to eliminate sources of pollution affecting watersheds and aquifers.

(1) General prohibitions.

(A) No person shall discharge, or cause, suffer or allow the discharge, of any wastes, substances or other materials into or adjacent to any water in the state which causes or will cause pollution of any water in the state, except where otherwise exempt or allowed through permit by the TCEQ.

(B) No person shall introduce or cause to be introduced into a stormwater drainage system any pollutants or other discharge that is not composed entirely of stormwater, except where otherwise exempt or allowed through permit by the TCEQ.

(2) Specific prohibitions.

(A) No person shall introduce or cause to be introduced into a stormwater drainage system any discharge that causes or contributes to causing a violation of a water quality standard established by law.

(B) No person shall introduce, discharge, or cause, suffer or allow a release of any quantity of the following substances into a stormwater drainage system:

(i) Motor oil, antifreeze, or any other motor fluid;

(ii) Industrial waste;

(iii) Asphalt;

(iv) Hazardous waste, including hazardous household waste;

(v) Domestic sewage, septic tank waste, grease trap waste, or grit trap waste;

(vi) Garbage, rubbish or yard waste beyond that yard waste that typically washes off a yard during a rain event;

(vii) Wastewater from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance operation at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than two such vehicles;

(viii) Wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;

(ix) Wastewater from commercial floor, rug, or carpet cleaning;

(x) Wastewater from the washdown or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance as defined by EPA or TCEQ; or any wastewater from the washdown or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;

(xi) Effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;

(xii) Ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;

(xiii) Runoff or washdown water from any animal pen, kennel, or fowl or livestock containment area;

(xiv) Filter backwash from a swimming pool, or fountain, or spa;

(xv) Swimming pool water containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;

(xvi) Discharge from water line disinfection by superchlorination or other means if it contains any harmful quantity of chlorine or any other chemical used in line disinfection;

(xvii) Fire protection water containing oil or hazardous substances or materials (except for discharges or flows from firefighting activities by a locally accredited fire department);

(xviii) Water from a water curtain in a spray room used for painting vehicles or equipment;

(xix) Contaminated runoff from a vehicle wrecking yard;

(xx) A substance or material that will damage, block, or clog the stormwater drainage system;

(xxi) Release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by a leaking PST, or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge satisfies all of the following criteria:

a. The discharge complies with all state and federal standards and requirements;

b. The discharge does not contain a harmful quantity of any pollutant;

c. The discharge does not contain more than 50 parts per billion of benzene; 500 parts per billion combined total quantities of benzene, toluene, ethylbenzene, and xylene (BTEX); or 15 mg/l of total petroleum hydrocarbons (TPH).

(C) No person shall introduce into a stormwater drainage system any quantity of sediment, silt, dirt, soil, sand or other material associated with clearing, grading, excavation or other development activities, or associated with landfilling or other placement or disposal of soil, rock, sand or other earth materials, in excess of what could be retained on-site or captured by employing sediment and erosion control measures to the minimum extent required by this article.

(D) No person shall connect a line conveying sanitary sewage, whether domestic or industrial, to a stormwater drainage system, nor allow such a connection to continue if discovered.

(E) No person shall cause or allow any pavement wash water from a gasoline service station, constructed after the effective date of this article, to be discharged into a stormwater drainage system unless such wash water has first passed through a grease, oil, and sand interceptor which is properly functioning and maintained.

(F) Pesticide, herbicide and fertilizer regulation.

(i) Any license, permit, registration, certification, or evidence of financial responsibility required by state or federal law for sale, distribution, application, manufacture, transportation, storage, or disposal of a pesticide, herbicide or fertilizer must be presented to an authorized city enforcement officer for examination upon request.

(ii) No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation.

(iii) No person shall use or cause to be used any pesticide, herbicide, or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter a stormwater drainage system or waters in the state.

(iv) No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter a stormwater drainage system or waters in the state.

(G) Used oil regulation.

(i) No person shall discharge used oil into a stormwater drainage system or a sewer, drainage system,

septic tank, surface water, groundwater, or watercourse.

(ii) No person shall knowingly mix or commingle used oil with solid waste that is to be disposed of in a landfill or knowingly directly dispose of used oil on land or in a landfill.

(iii) The application of used oil shall be allowed for the uses of used oil that are defined in 40 CFR 279.1.

(iv) All businesses engaged in the changing of motor oil for the public, all municipal waste landfills, and all fire stations may serve as public used oil collection centers as provided by state law.

(v) A retail establishment which sells motor oil in containers directly to the public for use off-premises shall post in a prominent place a sign informing the public that improper disposal of used oil is prohibited by law. The sign shall prominently display the toll-free telephone number of the state used oil information center.

(Ordinance 2011-005, sec. 156.002, adopted 3/3/11)

Secs. 9.04.032 Permit Determination

(a) **Exemptions**. The following are exempt from the provisions of this ordinance:
(1) Development or redevelopment that adds less than 5,000 square feet of new impervious cover
(2) Development of a single-family residence on an existing platted lot
(3) Development of a single-family residence that creates more than 5,000 square feet of new impervious cover and provides erosion and sediment control during construction and is in compliance with the water quality buffer zone requirements found in 9.04.063.

(4) Agricultural activities

(b) **Alternate Standards Compliance**. Development that meets the following criteria need not comply with Section 9.04.061(a) (provide structural or nonstructural BMPs)
(1) Not part of a common plan of development and the project impervious cover is less than 15% and the cluster development sections (individual drainage areas) have impervious cover less than 20 percent,
(2) The street and drainage network is designed to include the use of open roadway sections (no curb and gutter), ribbon curb, drainage channels and the maintenance of sheet flow and
(3) Impervious cover credits described in the Cypress Creek Technical Resource Guide may be used to gain compliance with this section.

Sections 9.04.033-9.04.060 Reserved

Division 3. Development Pollution Controls

Sec. 9.04.061 Performance standards for development

(a) All new subdivision development or new commercial development that adds more than 5,000 square feet of new impervious cover shall achieve the pollutant removal standards detailed in this section through the design and implementation of structural and nonstructural BMPs and water quality controls. These standards shall apply to an entire project for which a unified development scheme is intended by the applicant, without regard to whether the project is comprised of more than one lot. These regulations cannot be avoided by dividing a single project into several small lots. These regulations shall not apply to the development of a single-family residence on an existing platted lot.

(b) The TCEQ Edwards Aquifer Rules – Technical Guidance on Best Management Practices, RG-348 (Manual), as amendedshall be used to guide efforts to achieve the performance standards for development set forth in this article. The Manual describes in detail the technical criteria and procedures to be used to comply with provisions of this article. It neither replaces the need for engineering judgment nor precludes the use of any information relevant to the accomplishment of the purposes of this article. If approved by the city engineer and/or the TCEQ, other generally accepted, or innovative and effective, engineering designs, practices and procedures may be used in conjunction with, or instead of, those prescribed by the Manual.

(1) Performance standards :

(A) 5 acres or less and not part of a common plan of development (exempt from TCEQ Edwards Rules) and impervious cover is 15 percent or greater: The applicant must provide technical demonstration that the water quality volume is retained on site for not less than 24 hours through the use of conventional and low impact development techniques found in the TCEQ Edwards Aquifer Rules – Technical Guidance on Best Management Practices, RG-348 or the Cypress Creek Technical Resource Guide .

(B) Greater than 5 acres: Technical demonstration of pollutant load removal is required by obtaining Contributing Zone Plan approval from TCEQ unless the project is exempt from the TCEQ requirements due to proposed impervious cover levels less than TCEQ thresholds for permitting. If exempt from TCEQ Edwards CZP approval, then, the project shall comply with the Cypress Creek Technical Resource Guide and obtain City approval prior to commencing construction.

(1) Alternate Standards – Development that is exempt from the TCEQ Edwards Contributing Zone Plan requirements and meets the following criteria need not provide water quality volume as noted in subsection 9.04.061(b)(1)(A):

(a) The gross impervious cover is 15 percent or less and the cluster development sections have 20 percent or less gross impervious cover.

(b) Street and drainage network is designed to include the use of open roadway sections, ribbon curb, drainage swales, maintenance of sheet flow and water quality buffer zones.

(Ordinance 2011-005, sec. 156.003, adopted 3/3/11)

Sec. 9.04.062 Impervious cover

Per the city comprehensive plan, it is the intent of this section to preserve and protect the quality of watersheds and limit the amount of impervious cover in development. Recognizing there is an established correlation between increasing impervious cover and the impairment of water quality and increased erosion, the following limitations on impervious cover are set forth:

(1) Maximum limits. Maximum limits on impervious cover are established as follows on developments occurring after the effective date of this article:

(A) For areas within the recharge and contributing zones of the Edwards Aquifer or Trinity Aquifer in the ETJ, the maximum impervious cover limit is 30%.

(B) For areas within the city limits, impervious cover limits for tracts are established in the city's zoning ordinance according to the particular zoning district the tract is designated.

(2) Impervious cover limit calculations. Impervious cover limits in this section are expressed as a percentage of the gross site area of the subject tract. For purposes of calculation of impervious cover limits, the gross site area includes water quality buffer zone (WQBZ) areas and critical environmental features (CEF) setback areas.

(3) Items considered impervious cover. The following shall be considered as impervious cover, unless modified through the use of incentives (rainwater collection, porous pavement, etc.):

(A) Roads, pavements, and driveways;

(B) Parking areas;

(C) Buildings;

(D) Pedestrian walkways and sidewalks;

(E) Concrete, asphalt, and masonry surfaced areas, and stone surfaced areas;

(F) Swimming pool water surface area;

(G) Densely compacted natural soils or fills which result in a coefficient of permeability less than 1×10^{-6} cm/sec;

(H) All existing man-made impervious surfaces prior to development;

(I) Water quality and stormwater detention basins lined with impermeable materials;

(J) Stormwater drainage conveyance structures lined with impermeable materials.

(4) Items not considered impervious cover.

(A) Existing roads adjacent to the development and not constructed as part of the development at an earlier phase;

(B) Rock outcrops;

(C) Landscaped areas and areas remaining in their natural state;

(D) Water quality controls and stormwater detention basins not lined with impermeable materials;

(E) Stormwater drainage conveyance structures not lined with impermeable materials;

(F) Interlocking or "permeable" pavers; and

(G) Functioning rainwater harvesting systems, as defined below.

(5) Reduction incentives.

(A) As an incentive to reduce impervious cover, all developments with less than 15% impervious cover

that are exempt from the TCEQ Edwards Aquifer Protection Program rules are not required to provide technical demonstration for removal of pollutants, but must incorporate water quality control measures to comply with the provisions found in the Cypress Creek Technical Resource Guide. Development eligible for these Alternate Standards must meet the following requirements:

- The gross development impervious cover is 15 percent or less, and

- The street and drainage network is designed to include the use of open roadway sections, ribbon curb, grassy channels, and maximize sheet flow.

(6) Rainwater harvesting incentives.

(A) Rainwater harvesting consists of a series of components designed to capture, store and reuse rainwater. A rainwater harvesting system consists of six basic components including:

(i) Catchment area/roof, which is the surface on which the rain falls;

(ii) Gutters and downspouts, which transport the water from the catchment area to storage;

(iii) Leaf screens and roof washers, which are used to filter out debris;

(iv) Cisterns or storage tanks where collected rainfall is stored;

(v) Conveyance, which is the method of delivering the water either by gravity or pump; and

(vi) Water treatment, which includes filters and equipment that are used to settle, filter, and disinfect the water if it is to be used for drinking water.

(B) A rainwater harvesting system approved under this article shall comply with the following minimum requirements:

(i) The entire system, including rainwater collection, conveyance and storage, shall be isolated from the site stormwater system.

(ii) The collected rainwater shall be used for on-site irrigation, residential potable water use, or other purposes as approved by the city.

(iii) The system shall comply with the pollution control performance standards of section 9.04.061(a) and (b).

(iv) The on-site irrigation system shall be designed in accordance with standard irrigation practices considering such factors as soil type, slope, and vegetative uptake rates.

(C) Rainwater collection and containment structures functioning as a rainwater harvesting system are not considered impervious cover. Such structures and/or improvements can be used to obtain credit towards any impervious cover requirement set forth in this article. Structures and/or improvements (e.g., building roofs, patios, awnings, etc.) from which stormwater is harvested are considered impervious cover.

(D) In order to qualify to receive credit for a rainwater harvesting system, the system must be designed to exceed normal draw (i.e., no credit will be given if the tank does not fall below 85% full at any time

during a calendar year). Credit is just for the tank cover. In order to qualify, the applicant must demonstrate where water is going. (e.g., how it will be drawn down, use as non-potable source rainwater, or irrigation).

(E) Credits can zero-out impervious cover for purposes of calculating runoff treatment for the captured area. Applicants may also get up to 10 percentage points credit toward additional cover. The calculation procedures are found in the Cypress Creek Technical Resource Guide.

(7) Transferable development intensity (TDI) incentive.

(A) Transfer of development intensity. An applicant who complies with a provision of this subsection qualifies for the TDI:

(i) For each three (3) acres of land that an applicant leaves undeveloped and undisturbed in an area zoned by the city for nonresidential use, and does not include impervious calculations elsewhere, the applicant may transfer up to one (1) acre of impervious cover, but in no case shall the maximum impervious cover limit be increased by more than ten (10) percentage points;

(ii) For each six (6) acres of land that an applicant leaves undeveloped and undisturbed in an area zoned by the city for residential use and does not include impervious calculations elsewhere, the applicant may transfer up to one (1) acre of impervious cover, but in no case shall the maximum impervious cover limit be increased by more than ten (10) percentage points; or

(iii) For each six (6) acres of land that an applicant leaves undeveloped and undisturbed in the ETJ of the city and does not include its impervious calculations elsewhere, the applicant may transfer up to one (1) acre of impervious cover, but in no case shall the maximum impervious cover limit be increased by more than ten (10) percentage points.

(B) Requirements. An applicant who qualifies for a TDI must comply with the following requirements to effectuate the transfer:

(i) The transferring tract and the receiving tract must be located within the city limits or the city's ETJ;

(ii) The transferring tract does not include a WQBZ or CEF;

(iii) The receiving tract must comply with the water quality control standards of this article;

(iv) The transferring and the receiving tracts must be concurrently platted and must transfer development intensity at that time;

(v) The TDI must be noted on the plats of the transferring and receiving tracts; and

(vi) A restrictive covenant must be filed in the deed records, approved by the city, that runs with the transferring tract and describes the TDI.

(8) Restrictions on siting of impervious cover.

(A) Impervious cover shall not be constructed downstream of water quality controls except for specific instances reviewed and approved by the City engineer.

(B) Impervious cover shall not be constructed within WQBZs except as allowed by this Ordinance.

(C) Impervious cover shall not be constructed within critical environmental feature setback areas.

(D) Impervious cover shall not be constructed within the areas designated for on-site irrigation of treated wastewater effluent disposal and/or captured stormwater.

(Ordinance 2011-005, sec. 156.004, adopted 3/3/11)

Sec. 9.04.063 Water quality setbacks

(a) Water quality buffer zones (WQBZ) required. As the location of development activities can have significant impacts on water quality, water quality buffer zones (WQBZ) shall be established along streams at the time of platting (creation of newly subdivided lots or site plans). This subsection does not apply to legally platted lots that existed as of the effective date of this ordinance.

(b) Dimensions for WQBZ.

(1) Option 1 - A WQBZ shall be established along streams with the specified contributing drainage area as follows. The dimensions of the WQBZ are shown below:

(a) Greater than 5 acres and up to 40 acres but excluding roadside swales. The WQBZ shall extend a minimum of 25 feet from either side of the centerline of the waterway (total of 50 feet of buffer zone). This buffer zone category will not apply within the City Limits.

(b) Greater than 40 acres and up to 128 acres. The WQBZ shall extend a minimum of 50 feet from either side of the centerline of the waterway (total of 100 feet of buffer zone).

(c) Greater than 128 acres and up to 320 acres. The WQBZ shall extend a minimum of 100 feet from either side of the centerline of the waterway (total of 200 feet of buffer zone).

(d) Greater than 320 acres and up to 6400 acre. The WQBZ shall extend a minimum of 200 feet from either side of the centerline of the waterway (total of 400 feet of buffer zone).

(e) Greater than 640 acres. The WQBZ shall extend a minimum of 300 feet from either side of the centerline of the waterway (total of 600 feet of buffer zone).

OPTION 2 – Floodplain Buffer Zone

For creeks or rivers draining less than 40 square miles but more than five (5) acres, excluding roadside swales, the WQBZ shall extend a minimum of 25 feet from the 100-year floodplain boundary paralleling each side of the creek or river. The 100-year floodplain shall be based on modeling approaches as approved by the City Engineer. For creeks or rivers draining more than 40 square miles, the WQBZ shall be considered equal to the 100-year floodplain as designated by the Federal Emergency Management Agency (FEMA) or by an engineered floodplain study approved by the City Engineer.

(c) Special instructions regarding WQBZs.

(1) At the sole discretion of the city and based on special circumstances, minimum distances from the stream centerline may be adjusted if there are equivalent protection measures proposed that are found acceptable by the city engineer.

(2) Along steep slopes, as defined, the width of the WQBZ shall be 25 feet beyond the edge of the defined steep slope.

(3) Except as specifically provided for in this article, all development activities, including temporary construction activities, and landscaping activities, are prohibited in the WQBZ of a stream, without the express written approval of the city engineer, who must be provided evidence of equivalent protection.

(d) Allowable development in WQBZ. The following development activities within a WQBZ may be allowed at the sole discretion of the city with the corresponding conditions:

(1) Critical utility crossings if the number of crossings of the WQBZ is limited to the maximum feasible extent;

(2) Critical roadway crossings if the number of crossings of the WQBZ is limited to the maximum feasible extent;

(3) Critical transportation crossings if the number of crossings of the WQBZ is limited to the maximum feasible extent;

(4) Hike and bike trails if provided for in an approved development plan;

(5) Maintenance and restoration of native, non-invasive vegetation;

(6) Water quality control monitoring devices;

(7) Removal of trash, debris, and pollutants;

(8) Fences that do not obstruct flood flows;

(9) Public and private parks and open space, if human activities are limited to hiking, jogging, or walking trails, and excluding stables, corrals and other forms of animal housing;

(10) Typical private drives (acceptable to the city) to allow access to property not otherwise accessible; and/or

(11) The construction and use of regional stormwater detention basins for the express purpose of floodplain management. The embankment shall occupy a narrow footprint and no excavation takes place in the flood storage pool. Limited vegetation clearing and minor grading is allowed to construct the embankment and outlet works..

(e) Limitations on allowed activities in WQBZ. Any development within a WQBZ allowed under subsection (d) of this section shall be designed and/or conducted in a manner which limits the alteration and pollution of the natural riparian corridor to the maximum extent feasible. In no case shall any wastewater line be located less than 100 feet from the centerline of a stream unless the applicant has demonstrated that installation of the wastewater line outside of this zone is physically prohibitive or environmentally

unsound. Any wastewater lines located in a WQBZ shall meet design standards and construction specifications to ensure zero leakage.

(f) Requirements for discharges in WQBZ. All water quality control discharges and stormwater discharges shall not be directly connected to the WQBZ. Instead, concentrated runoff shall be converted to diffused overland sheet flow. .

(Ordinance 2011-005, sec. 156.005, adopted 3/3/11)

Sec. 9.04.064 Critical environmental feature (CEF) protection

As critical environmental features (CEF) are micro-geologic features that can become direct entry points where pollutants are introduced into the aquifer, the following setbacks from CEFs are as set forth in this article to minimize the risk of groundwater pollution:

(1) Minimum setback. A minimum setback area with a radius of one hundred (100) feet is established around the outside periphery of all CEFs.

(2) Restrictions.

(A) No development activities are allowed within the setback area.

(B) No untreated stormwater runoff from developed land shall be allowed to flow over CEFs.

(3) Hilltop CEFs. For CEFs which are discovered to lie in an area which does not receive stormwater runoff (e.g., situated at the top of a hill), the setback area is 25 feet to prevent inadvertent pollution of the CEF unless otherwise restricted by this code.

(Ordinance 2011-005, sec. 156.006, adopted 3/3/11)

Sec. 9.04.065 Erosive flow controls

Per the city comprehensive plan, it is the intent of this section to minimize the effects of rainwater runoff on property development and environmental degradation. This section encourages using structural and non-structural stormwater drainage systems to preserve the natural features of the area and to assist with the replenishment of the area's water supply. As stormwater discharges (hydraulics) from development pose a significant threat to water quality, the following sediment and erosion control regulations are set forth for development:

(1) Erosion control requirement. When development occurs on a property, all disturbed land areas shall have erosion and sediment control measures established prior to any work being performed on the property. This section applies whether or not a site development permit or building permit is required. Such measures shall be designed so as to eliminate the possible transport of silt, earth, topsoil, rubbish, yard waste etc., by water runoff from the subject property to an adjacent property, stream, or onto city streets, drainage easements, and drainage facilities, following any land disturbing activity.

(2) Erosion control plan.

(A) In those cases where a building permit or site development permit is required, including but not limited to development within the boundaries of a Protected Water [Protected Waterway] overlay district, in order to clearly identify all erosion and sediment control measures to be installed and maintained throughout the duration of the project, a detailed erosion control plan shall be required prior to the issuance of the site development permit or the building permit. Such plans shall be prepared in accordance with the requirements set forth in the TCEQ Stormwater Pollution Prevention Plan (SWPPP) guidance.

(B) Each developer shall implement and maintain the erosion control measures shown on its approved erosion control plan in order to minimize the erosion and the transport of silt, earth, topsoil, etc., by water runoff or development activities, beyond the limits of the developer's site onto city streets, drainage easements, drainage facilities, storm drains or other city property prior to beginning any land disturbing activity. Sediment basins are required for drainage areas serving at least 10 acres and are sized to capture the runoff from the 2-year 24-hour storm (8,000 cubic feet per acre). The runoff shall be detained a minimum of 48 hours and it is desirable to use techniques that draw water off the top of the water surface. Sediment basins cannot be installed in drainage areas greater than 40 acres and are not allowed in the WQBZ.

(C) It shall be an offense for a developer performing work on a project to violate any of the requirements of this article, including, but not limited to, the following:

(i) Conducting development activity without an approved erosion control plan, when required, for the location where the violation occurred.

(ii) Failing to install erosion control devices or to maintain erosion control devices throughout the duration of development activities, in compliance with the approved erosion control plan for the location where the violation occurred.

(iii) Failing to remove off-site sedimentation that is a direct result of development activities where such off-site sedimentation results from the failure to implement or maintain erosion control devices as specified in an approved erosion control plan for the location where the violation occurred.

(iv) Allowing sediment-laden water resulting from below-ground installations to flow from a site without being treated through an erosion control device.

(v) Failing to repair damage to existing erosion control devices, including replacement of existing grass or sod.

(vi) Written notice of violation shall be given to the developer or his job site representative as identified in the erosion control plan for a site. Such notice shall identify the nature of the alleged violation and the action required to obtain compliance with the intent of the approved erosion control plan.

(3) Construction stormwater general permit. Prior to the commencement of development activity, including clearing, grading, and excavation activities, that result in the disturbance of 1 or more acres of total land area, or that are part of a common plan of development or sale within which 1 or more acres of total land area are disturbed, the developer is required to obtain the construction stormwater general permits, as may be required by TCEQ, and shall submit for review to the city a signed copy of its required notice of intent (NOI) along with a copy of the required stormwater pollution prevention plan (SWPPP).

(A) A copy of any NOI that is required shall be submitted to the city in conjunction with any application for a building permit, subdivision plat approval, site development plan approval, and any other city approval necessary to commence or continue construction at the site.

(B) The city shall require any developer who is required to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the city for review. Such submittal and review of the SWPPP shall be required by the city prior to commencement of or during construction activities at the site.

(C) Upon the city's review of the SWPPP and any site inspection that the city may conduct, the city may deny approval of any building permit, subdivision plat, site development plan, or any other city approval necessary to commence or continue, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the construction general permit, or any additional requirement imposed by or under this article. Also, if at any time the city determines that the SWPPP is not being fully implemented, the city may similarly deny approval of any building permit, site development permit, subdivision plat, site development plan or any other city approval necessary to commence or continue development, or to assume occupancy, at the site.

(4) Drainage patterns. Drainage patterns shall be designed to the maximum extent practical to prevent erosion, maintain the recharge of local seeps and springs, and attenuate the harm of contaminants collected and transported by stormwater. All discharge points from stormwater retention and detention ponds or other accumulation areas shall provide for energy dissipation prior to exiting the site. Overland sheet flow and natural drainage features and patterns shall be maintained, rather than concentrating flows in storm sewers and drainage ditches. Stormwater drainage facilities shall be sized to maintain flood flow velocities as outlined in the Hays County Drainage Criteria Manual (DCM) or other guidance approved by the City Engineer. .

(5) Stormwater discharge into waterway. For site designs that provide for discharge of stormwater into a waterway, adequate retention and/or detention shall be incorporated into the site design to manage post-development peak runoff rates to be equal to or less than existing runoff rates for the 2-year, 10-year, 25-year, and 100 year storms or demonstrate no negative impact to downstream property owners per the Hays County DCM or other guidance approved by the City Engineer.

(6) Cut and fill stabilization. A cut or fill with a finished grade steeper than 33% shall be stabilized with a permanent structure.

(7) Roof runoff. All roof runoff from nonresidential buildings shall have downspouts disconnected from the site stormwater drainage system. Special circumstances may be reviewed and approved by the city without a waiver to this requirement.

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(Ordinance 2011-005, sec. 156.007, adopted 3/3/11)

Sec. 9.04.066 Landscaping controls

(a) A developer shall to the maximum extent practical:

(1) Landscape shall be preserved in its natural state;

(2) Xeriscape and low maintenance vegetation shall be included in all development .

(3) The use of herbicides, pesticides and fertilizers shall be minimized.

(b) (1) An applicant for a site development permit shall submit a pesticide and fertilizer management plan providing information regarding proper use, storage, and disposal of pesticides and fertilizers. The plan shall indicate likely pesticides and fertilizers to be used. The plan shall include two lists of pesticides and fertilizers:

(A) Those which, due to their chemical characteristics, potentially contribute significantly to water quality degradation;

(B) Those which, due to their chemical characteristics, potentially would result in minimal water quality degradation.

(2) City approval of the pesticide and fertilizer plan is required prior to issuance of a site development permit.

(c) An applicant for a site development permit shall submit an integrated pest management (IPM) plan. City approval of the integrated pest management plan is required prior to issuance of a site development permit.

(Ordinance 2011-005, sec. 156.008, adopted 3/3/11)

Sec. 9.04.067 Water quality controls (WQC) Maintenance

(a) An applicant for a site development permit shall submit a WQC maintenance plan describing the specific measures proposed for operating, monitoring, and maintaining each water quality control proposed for a development project as required by this article. The measures described in the WQC maintenance plan shall be consistent with the guidelines set forth in the Manual. City approval of the WQC maintenance plan is required prior to issuance of a site development permit.

(b) Upon city approval of the WQC maintenance plan, the project applicant shall record in the county deed records and on any recorded plat(s) for the development a notation stating that the property is subject to a water quality control maintenance plan on file at the city's administrative offices. Upon transferring title to the property, or any subdivided portion thereof, the applicant shall establish a deed restriction stating that the property is subject to a water quality control maintenance plan on file at the city's administrative offices.

(c) All applicants shall operate, monitor, and maintain each water quality control required by this article in accordance with the WQC maintenance plan and the requirements of this article.

(d) (1) The WQC maintenance plan may provide for transfer of responsibility for WQC operation and maintenance activities to:

(A) A groundwater district, a municipal utility district, a public utility district, or any other special district created under state law;

(B) A homeowners' or property owners' association;

(C) A natural resources conservation or other environmental interest group; or

(D) Any similar third party entity.

(2) Transfer of responsibility to any such entity requires the advance written consent of the city. Any entity assuming responsibility for WQC operation and maintenance shall also assume responsibility for the financial assurance as may be required by the city council.

(e) Structural water quality controls (WQCs) shall be sized for the entire contributing drainage area for the following types of developments:

(1) New multi-family residential development, new nonresidential development, and new subdivision development.

(2) Redeveloped multi-family residential development, redeveloped nonresidential development, and all redeveloped subdivision development that increases total impervious cover to a level greater than the impervious cover limits described in section 9.04.062.

(3) New single-family residential development which is not part of a subdivision development if such development has impervious cover greater than the impervious cover limits described in section 9.04.062.

(g) To provide necessary access for maintenance and monitoring, water quality controls shall be located within an area dedicated to the public by easement, deed restriction, or recorded plat notation. The dedicatory instrument shall note that water quality restrictions exist on the property and that any alternative use or alteration of the property must be approved in writing by the city.

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(Ordinance 2011-005, sec. 156.009, adopted 3/3/11)

Secs. 9.04.068–9.04.100 Reserved

Division 4. Administration and Enforcement

Sec. 9.04.101 Waivers

(a) Presumption. There shall be a presumption against waivers. However, if the applicant requests a waiver in writing, the board of adjustment may authorize a waiver from these regulations when, in its opinion, undue hardship will result from requiring strict compliance.

(b) Identification. All waivers requested for a project must be identified during the platting and/or site plan approval process (as may be applicable).

(c) Conditions. In granting a waiver, the board of adjustment shall prescribe upon the applicant only conditions that it deems necessary to or desirable in the public interest.

(d) Considerations. In making the findings required below, the board of adjustment shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside or work in the proposed development, and the probable effect of such waiver on the public health, safety, convenience and welfare in the vicinity.

(e) Findings. No waiver shall be granted unless the board of adjustment finds that all of the following

provisions are met, and the burden shall be on the developer to show that these provisions are satisfied:

(1) That there are special circumstances or conditions affecting the land involved, such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of this land;

(2) That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant;

(3) That the granting of the waiver will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and

(4) That the granting of the waiver will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this article.

(f) Pecuniary hardship. Pecuniary hardship to the applicant, property owner or developer, standing alone, shall not be deemed sufficient to constitute undue hardship.

(g) Minimum departure. When the board of adjustment determines that a waiver is warranted, the waiver permitted shall be the minimum departure from the terms of this article necessary to avoid such deprivation of privileges enjoyed by such other property to facilitate a reasonable use, and which will not create significant probabilities of harmful environmental consequences.

(h) Adequate basis: Option 1. It may be determined by the board of adjustment to be an adequate basis for granting a waiver that doing so will enable the applicant to create additional open space, preserve trees, maintain critical environmental features, ensure more wildlife preservation, or bring nonconforming structures (including but not limited to signs) into compliance with current regulations. The Applicant shall submit a mitigation plan demonstrating how the proposed plan compensates for the waiver(s) being granted. Examples of potential mitigation include, but are not limited to, the Applicant's use of rainwater harvesting, vegetative filter strips and other non-structural BMPs as well as agreement to further limit impervious cover below what is required by this Ordinance. This section is designed to achieve a more favorable outcome for the general public than would be possible complying with the strict mandates of this article.

(i) Adequate basis: Option 2. It may be determined by the board of adjustment to be an adequate basis for granting a waiver that the applicant provides the city with a proposal pursuant to which the applicant presents a site exceeding the standard impervious cover rates with a mitigation plan that compensates for the additional impervious cover. Examples of potential mitigation include, but are not limited to, the applicant's acquisition of TDIs to offset the additional impervious cover.

(Ordinance 2011-005, sec. 156.011, adopted 3/3/11)

Sec. 9.04.102 Enforcement; penalties

(a) Civil and criminal penalties apply. The city shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any person violating any provision of this article is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this article is hereby declared to be a nuisance.

(b) Criminal prosecution. Any person violating any provision of this article shall, upon conviction, be fined a sum in accordance with the general penalty provided in section 1.01.009 of this code. Each day that a provision of this article is violated shall constitute a separate offense. An offense under this article is a misdemeanor.

(c) Civil remedies. Nothing in this article shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this article and to seek remedies as allowed by law, including but not limited to the following:

(1) Injunctive relief to prevent specific conduct that violates this article or to require specific conduct that is necessary for compliance with this article;

(2) A civil penalty up to one thousand dollars ($1,000.00) a day when it is shown that the defendant was actually notified of the provisions of this article and after receiving notice committed acts in violation of this article or failed to take action necessary for compliance with this article; and

(3) Other available relief.

(d) Administrative action.

(1) Stop work orders. When an appropriate authorized official of the city determines that there has been noncompliance with any material term, condition, requirement or agreement under this article, the person obtaining such approved plan shall be ordered by the city in writing to cease and desist from further development or construction material to the alleged noncompliance until corrected by compliance.

(2) Withholding authorizations. The city may refuse to grant development, construction, or occupancy approvals for improvements for a property that does not fully and completely comply with all terms and conditions of this article. Without limiting the type or number of approvals the city may withhold, the city is specifically authorized to refuse to grant site development permits, building permits, utility connections, and certificates of occupancy.

(Ordinance 2011-005, sec. 156.012, adopted 3/3/11; Ordinance adopting 2018 Code)