

ORDINANCE NO. 2010- 6

**An ordinance amending Chapter 13 of the Victoria City Code to add Article V, “Prohibition of Pollution of the Municipal Separate Storm Sewer System (MS4)”, repealing conflicting ordinances, providing for severability, providing for codification and savings, providing for enforcement, providing a penalty not to exceed \$500 upon conviction and publication, and declaring an effective date.**

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

1.

Chapter 13 of the Victoria City Code is amended to add Article V, which will read as follows:

**ARTICLE V. PROHIBITION OF POLLUTION OF THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)**

**Sec. 13-201. General provisions.**

(a) This article sets forth uniform requirements for users of the City of Victoria's Municipal Separate Storm Sewer System (MS4), and enables the City to comply with and assure consistency with all applicable federal and state laws, including, but not limited to the Clean Water Act (33 U.S.C. 1251 et seq.). The objectives of this article are:

- (1) To prevent the introduction of pollutants into the MS4 and the waters of the United States through the City's MS4;
- (2) To protect personnel who may be affected by pollutants in the MS4 in the course of their employment and to protect the general public;
- (3) To enable the City to comply with its NPDES permit conditions and any other federal or state laws applicable to the MS4.

(b) This article applies to all water entering the MS4 generated on or flowing from any developed and undeveloped lands.

(c) This article authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires industrial user reporting.

(d) In this article the following rules of construction apply:

“*May*” is permissive or discretionary.

“*May not*” prohibits.

“*Must*” establishes a mandatory condition.

“*Shall*” is mandatory.

**Sec. 13-202. Definitions.**

As used in this Chapter 13:

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

*Business facility* means a location within the City of Victoria at which commercial, industrial, or professional activities are conducted and is subject to Section 21 of the City Code.

*Code enforcement official* means an employee designated by the City Manager to make application for warrants necessary to enforce any provision of the Code of Ordinances of the City of Victoria or other municipal ordinance duly promulgated.

*Discharge* means to blow, conduct, deposit, drain, dump, emit, empty, leak, place, pour, pump, release, run, seep, spill, throw, or cause or allow a substance or material to be blown, conducted, deposited, drained, dumped, emptied, emitted, entered, leaked, placed, poured, pumped, released, run, seeped, spilled or thrown into the MS4, including placement of a substance or material at a location where it will be blown or washed by a flow of water or another fluid into the MS4.

*Drain* means any connection to the MS4.

*Environmental Compliance Manager* means the person designated by the Director of Public Works to supervise the operation of the MS4, or a representative designated by the Environmental Compliance Manager.

*Municipal Separate Storm Sewer System (MS4)* means a system of conveyances (including storm drains, gutters, ditches, manmade channels, impoundments, roads with drainage systems, municipal streets, catch basins, curbs, storm sewer manholes, pumping or treatment facilities, private drains, and any other drainage devices) designed or used for collecting and conveying of storm water and surface water drainage to the City's outfalls and natural tributaries, which are not part of a Publicly Owned Treatment Works (POTW), as defined at 40 CFR 122.2, that is owned or operated by the City of Victoria or a utility organized by the City. The MS4 includes, but is not limited to, any other publicly or privately owned structures or improvements that drain into or connect with the system owned or operated by the City that is located within the incorporated

limits of the City or unless it is under the jurisdiction and control of any state agency that regulates water quality or water pollution.

*National Pollutant Discharge Elimination System (NPDES)* means the System under which the Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act. [The state of Texas assumed the authority to administer the National Pollutant Discharge Elimination System program in Texas on September 14, 1998.]

*Storm water* means any flow occurring during, following, or resulting from any form of natural precipitation.

*Watercourse* means a natural or artificial channel through which water flows.

*U.S.C.* means the United States Code.

### **Sec.13-203. Watercourse protection.**

Every person owning property through which a watercourse passes, or that person's lessee, shall keep and maintain all parts of the watercourse within that property reasonably free of trash, debris, 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 any existing privately owned structures within or adjacent to that watercourse, so that those 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, or remove that vegetation so 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 the property owner's property boundaries in order to protect against any erosion and degradation of the watercourse originating or contributed from their property.

### **Sec. 13-204. Prohibited discharges into the MS4.**

(a) No person may intentionally discharge into the Municipal Storm Sewer System grass clippings, leaf litter and animal wastes in massed quantities (e.g., dumping of bags of collected leaves and grass clippings in the system). It shall be a defense to prosecution that these wastes occurred naturally or from normal landscape maintenance (e.g., leaves falling from trees, grass clippings left on lawns). Intentionally sweeping or blowing grass clippings into the streets or gutters is prohibited.

(b) Swimming pool water shall not be a prohibited discharge, provided that the discharge has been tested using a method approved by the Director of Public Works or designee to assure that it will not contain a harmful level of chlorine or other pollutants when it reaches natural waterways such as creeks or rivers.

(c) Except as otherwise provided in subsections (a) and (b), no person may discharge the following into the Municipal Separate Storm Sewer System:

(1) An illicit discharge (e.g. a discharge of other than storm water), including artesian well water, cooling water (including contact and non-contact cooling water and treated and untreated cooling water), subsurface drainage, industrial wastewater;

[However the following discharges may be put into the municipal separate storm sewer system--a discharge under a valid national pollution discharge elimination system (NPDES) permit, a discharge resulting from fire fighting activities, a discharge resulting from washing an automobile at a residence or at a charitable car wash, a discharge of potable water or raw municipal ground water, a discharge of any surface waters (including water from diverted stream flows, uncontaminated rising ground water, water from foundation drains, crawl space pumps and footing drains, water from springs, and flows from riparian habitats and wetlands), a discharge resulting from flushing a water supply line or draining a municipal water storage facility, a discharge of street wash water, a nonpoint source discharge from agricultural activities (including return flows from irrigated agriculture), or condensate from cooling systems].

(2) An illegal discharge (e.g., a discharge of any substance that is prohibited from being discharged into the waters of the United States or the State of Texas, or a tributary to those waters, by any federal or state law);

(3) A direct discharge of a pesticide or fertilizer;

(4) A pollutant or wastewater, other than storm water or a discharge that is not classified as an illicit discharge in subsections (b) and (c)(1) of this section, that is prohibited from being discharged into the Publicly Owned Treatment Works (POTW) by section 13-111(a) of this chapter; or

(5) Solid wastes, including animal wastes (including an animal carcass, animal parts or scrap, excrement, grease of animal origin, offal, paunch manure and urine), ashes or clinkers, construction/demolition materials, dirt or other fill material, debris, floatable, garbage, heavy brush, household appliance, household hazardous waste (any hazardous waste from chemicals or other substances utilized for residential or housekeeping purposes, including, but not limited to, bleaches, drain cleaners, paint, paint thinners, and solvents), industrial or commercial wastes, medical wastes refuse, sewage, used motor vehicle fluids (including motor oils, anti-freeze and solutions containing anti-freeze, brake fluids, transmission fluids, and other lubricants that have been drained from or any excess materials remaining after servicing a vehicle or piece of equipment), yard waste (including grass clippings, weeds, leaves, mulch, trees and shrub limbs, or other plant material).

(d) Over spray and small amounts of runoff from irrigation of vegetation that pools in a gutter or on a road surface, but does not flow in a steady stream into any manhole or catch basin, is not considered an illicit discharge into the Municipal Separate Storm Sewage System.

- (e) A person may raise as a defense to prosecution for a violation of subsections (c) and (d) of this section that the illicit discharge was uncontaminated. An illicit discharge is considered uncontaminated if the quality of the water is equal to or better than the quality of the first natural body of water into which a portion of the Municipal Separate Storm Sewage System flows (receiving waters), including the Lone Tree Creek and Guadalupe River. The results of the last water quality test of the receiving waters published by the Environmental Compliance Manager with the City Secretary will constitute prima facie evidence of the quality of the receiving waters.
- (f) Nothing in this article prevents the placement of solid wastes scheduled for pickup at a location designated by the Director of Environmental Services or designee.
- (g) Runoff from any effort to remove graffiti from buildings or other structures is not considered an illicit discharge into the Municipal Separate Storm Sewage System.
- (h) Nothing in this section prohibits any activities relating to the construction, maintenance, or operation of the municipal separate storm sewage system.
- (i) Notwithstanding subsection (c) of this section, a person may discharge any substance or material specified, if at the time of discharge, the discharge of the substance or material was authorized by a valid permit from the Texas Commission on Environmental Quality (TCEQ) or United States Environmental Protection Agency (USEPA) and the discharge was in compliance with all requirements contained in the permit.

**Sec. 13-205. Removal of improper discharges from and repair of damage to MS4.**

- (a) Any person who discharges any substance or article into the MS4 in violation of Section 13-204 of this Article shall promptly remove the substance or article from the MS4, take all measures necessary to reduce or eliminate any harmful effects for any substance or article that cannot be removed, repair any damages caused to the MS4 by the substance or article, and compensate the City for any additional expenses it was caused to incur as a result of the illegal or illicit discharge.
- (b) If the person who discharged the substance or article into the MS4 fails to remove the substance or article within ten (10) days after receiving notice as provided in Section 342.006(b) of the Health and Safety Code, the Environmental Compliance Manager may have the substance or article removed from the MS4 and any damages to the MS4 repaired at the expense of the person who discharged the substance or article.
- (c) The Environmental Compliance Manager may remove any substance or article from the MS4 without notice to person who discharged the substance or article into the MS4, when directed to do so by the federal or state On Scene Coordinator, under the Act; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; the Oil Spill Prevention and Response Act; or Texas Oil and Hazardous Substances Spill Prevention and Control Act. The person who discharged the substance or article is liable for all costs incurred by the City as a result of the discharge.
- (d) A person is presumed to have discharged a substance or article into the MS4 if the substance or article contains any writing or other marking indicating that the person is the owner of the article or has had possession of the article. However, a person who manufactured or offered the item for sale to the public, which is marked with a trade name, is not presumed to have discharged the item if found in the MS4.
- (e) Notwithstanding any other provision of this article, the Environmental Compliance Manager may temporarily disconnect any connection with the MS4, in order to prevent the continuing discharge of oil, a hazardous substance, sewage, or any other substance that poses an imminent health or safety threat to the community into the MS4. The person who discharged the substance is liable for all costs incurred by the City under this subsection.

**Sec. 13-206. Prohibited connections with MS4.**

- (a) No person may construct, maintain, use, cause, allow to be constructed, maintained or used any drain from private property into a public street or any drain that connects with the MS4, unless the person has made application and received approval for utility/infrastructure construction plans; site plans and/or any required permit through the City of Victoria's Development Center and/or Environmental Compliance Manager.
- (b) Any person in apparent control of any property in the City, who is maintaining any connection, or causing or allowing any connection to be maintained that does not conform with the provisions of this section or any other applicable provision of the City's Code of Ordinances shall be deemed to be maintaining a prohibited connection and, upon notice in writing from the Environmental Compliance Manager or designee, must remove the prohibited connection or obtain the required permits and make any modifications necessary for the drain to conform to the requirements of this section and any other applicable provisions of the City's Code of Ordinances.
- (c) Upon receipt of written notice, the person in apparent control of any property in the City has ten (10) working days to request a meeting with the Environmental Compliance Manager. The purpose of the meeting will be to establish a schedule, setting out when the drain will be removed or made to conform to the provisions of this section. In no event may the schedule allow for a time period greater than six (6) months to remove the drain or bring the drain into conformance with this section.
- (d) The Environmental Compliance Manager is authorized to execute schedules in writing.
- (e) A violation of the schedule constitutes a violation of this article, and each day beyond the scheduled time of removal or repair constitutes a separate violation of this article.
- (f) For purposes of this article, any person, in whose name a water meter connection is registered for servicing the private property, is presumed to be the person in apparent control of the property. Proof that the property in question has a water

meter connection registered in the name of the defendant named in a criminal complaint filed under this article constitutes prima facie evidence to support the presumption that the person in whose name such water connection is registered is the person who permitted or allowed a prohibited connection under this section.

(g) It is a defense to prosecution under this article that the person in apparent control of the property in the City, who is charged with constructing or maintaining a prohibited connection received prior written approval for the drain or the connection to the MS4 from the Environmental Compliance Manager or that the drain and the method of construction of such drain was consistent with other provisions of the City's Code of Ordinances in effect prior to the issuance of a notice of such violation of this ordinance.

(h) In the event a person in apparent control of any property in the City, upon receipt of the notice requirement set out in section 13-205(b), fails to remove the drain or make the drain conform in every respect to the requirements of this section and any other applicable provisions of the City's Code of Ordinance, and in addition to any other remedies set out in this article, the City may disconnect the prohibited connection from the MS4 and charge the costs of the disconnection to the person in apparent control of the property from which the prohibited connection originates. The reconnection or reinstallation of the connection shall be at the responsible person's or entity's expense.

(i) In the event the prohibited connection is deemed a health problem by the Director of Public Works or designee, under Section 342.007 of the Health and Safety Code, the City may attach a lien on the property from which the prohibited connection originates.

(j) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

**Sec. 13-207. Annual report, NPDES compliance monitoring, inspection, and sampling.**

(a) The holder of a National Pollutant Discharge Elimination System (NPDES) permit shall annually report its federal compliance status to the Environmental Compliance Manager on forms provided by the City.

(1) It shall be the duty of every holder of a NPDES permit to notify the City of the existence of such permit by providing the Environmental Compliance Manager a copy of the permit upon receipt by the permittee.

(2) Holders of either federal NPDES permits or state NPDES permits, and persons whose facilities connect to the MS4 under written authority of the City, shall report to the Environmental Compliance Manager any spill, release, or event for which the holder was required to notify the National Response Center (NRC), TCEQ, or Texas General Land Office (TGLO) within one (1) hour of the report to the NRC, TCEQ, or TGLO.

(3) The Environmental Compliance Manager has the authority to demand to see any NPDES permits held by the owner or operator of a business facility. The Environmental Compliance Manager may enter a business facility to investigate and make determination whether such business facility is subject to NPDES permitting requirements.

(4) It is a violation of this article if a business facility required to have an NPDES permit operates without a NPDES permit.

(b) The Environmental Compliance Manager may enter any business facility during hours in which the business facility is open for business or is operating or is discharging into the MS4 to ascertain whether there is a violation of this article. The owner or operator of a business facility must allow the Environmental Compliance Manager ready access to all parts of the business facility for the purpose of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where a business facility has security measures in force that require proper identification and clearance before entry into the business facility, the owner or operator shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the City, state, and federal agencies are permitted to enter without delay, for the purposes of performing their specific responsibilities.

(2) City, state and federal agencies have the right to set on the business facility any devices necessary to sample and/or meter any discharge or to detect any illegal or illicit discharge into the MS4.

(3) The Environmental Compliance Manager may require the owner or operator of a business facility to install monitoring equipment, as necessary. The business facility's sampling and monitoring equipment must be maintained at all times in a safe and proper operating condition by the owner or operator of the business facility at the owner's or operator's expense.

(4) Any temporary or permanent obstruction to safe and easy access to a business facility to be inspected and/or sampled must be promptly removed by the owner or operator at the written or verbal request of the Environmental Compliance Manager and shall not be replaced. The costs of clearing such access shall be borne by the owner or occupant.

(5) Unreasonable delays in allowing City personnel access to a residence or business facility is a violation of this article.

(6) Hours of operating of the business facility and times during which the facility is discharging into the MS4 are deemed reasonable hours for entry of City, state, or federal inspectors for the purposes of this section.

**Sec. 13-208. Penalties.**

(a) A violation of any provision of this article is a Class C misdemeanor. A conviction is punishable by a fine as provided in Section 1-8 of the City Code. Each day of [a] violation continues constitutes a separate offense. Each violation of a separate provision in this article constitutes a separate offense. A culpable mental state is not required to prove an offense under this article.

(b) If the person violating any of the provision of this article is a corporation, the president, vice-president, secretary, or treasurer of the corporation or any manager, agent or employee of the corporation responsible for the management of the property where the violation occurred is severally liable for any penalty.

(c) Failure to appear in response to a citation issued for violation of this chapter is a separate violation of this article.

(d) Any person who violates any provision of this article or any provision of any requirement issued pursuant to this chapter may also be in violation of the Clean Water Act or other federal, state or local law and may be subject to the sanctions of that Act or federal, state or local law, including civil and criminal penalties, in addition to the City's enforcement of this article.

**Sec. 13-209. Other enforcement actions authorized.**

(a) Upon the written certification by the Code Enforcement Official or Environmental Compliance Manager of a violation of any section of this article, the City Attorney is authorized to petition any court of competent jurisdiction for an injunction to enjoin the continued violations. This remedy is cumulative of all other enforcement powers granted to the City by the terms of its charter, any ordinance, or by the laws of the state.

(b) In the event the responsibility and maintenance of the MS4 is transferred from the City of Victoria to another public utility, upon the approval of its board, is also authorized to petition any court of competent jurisdiction for an injunction to enjoin the violation of this article upon the written certification of the violation of a provision by an authorized representative of the governing body of such utility.

**Sec. 13-210. Collection of expenses; lien, suit.**

The Environmental Compliance Manager shall file a statement of expenses incurred under this Article, giving the amount of such expenses, the date on which such work was done and a description of the property upon which such work was done or improvements made with the county clerk of the county. The City has a privileged lien on such lot or real estate upon which such work was done or improvements made to secure the expenditures so made, under § 342.007 of the Texas Health and Safety Code, which lien is second only to tax liens and liens for street improvements, and such amount bears ten (10) per cent interest from the date the statement was filed. For any such expenditures and interest, suit may be instituted and recovery and foreclosure of such lien may be had in the name of the City, and the statement of expenses so made, or a certified copy of the statement, is prima facie proof of the amount expended for such work or improvements.

**Sec. 13-211. Special warrants.**

Under Article 18.05, Texas Code of Criminal Procedure, if the Environmental Compliance Manager has been refused access to a building, facility or residence, or any part thereof, and if such official can demonstrate (1) probable cause to believe that there may be a violation of this article and (2) that there is a need to inspect as part of a routine inspection program of the City designed to verify compliance with this article, or any permit or order issued under this article, to protect the overall public health safety and welfare of the community, then upon application by the City attorney, through a Code Enforcement Official, the Municipal Court Judge of the City shall issue a search and/or seizure warrant describing therein the specific location subject to the warrant. The warrant shall specify what, if anything may be searched and/or seized on the property described. Such warrant shall be served at reasonable hours by the Code Enforcement Official in the company of a uniformed police officer of the City. Hours during business operation or during permittee's discharge to the MS4, if there be a permit, shall be presumed reasonable hours of access. In the case of a suspected unpermitted discharge, or discharge from a domestic source, the Municipal Court Judge shall make determination of reasonable hours for entry. In the event of an emergency affecting public health and safety, inspections shall be made without the issuance of a warrant.

**Sec. 13-212. Conflicts with other laws.**

Nothing in this article is intended nor shall any part or portion hereof be construed as to conflict with any applicable provisions of the Act, Texas Health and Safety Code, or Texas Water Code.

**Sec. 13-213. Ultimate responsibility of discharger.**

The standards set forth in and promulgated pursuant to this article are minimum standards. This article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution or unauthorized discharge of pollutants into the waters of the United States caused by that person. This article shall not create liability on the part of the City of Victoria, or any City agent or employee for any damages that result from any discharger's reliance on this article or any administrative decision lawfully made pursuant to this article.

2.

All parts of ordinances in conflict with this ordinance are repealed to the extent of such conflict.

3.

If any provision of this ordinance, or the application thereof to any person or circumstances, shall be held invalid or unconstitutional by a Court of competent jurisdiction, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

4.

It is the intention of the City Council that this ordinance shall become a part of the Code of the City of Victoria, Texas, and it may be renumbered and codified therein accordingly. The Code of the City of Victoria, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

5.

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed \$500.00 as provided in Section 1-8 of the City Code. The City Secretary shall publish the caption or a descriptive title of this ordinance one time within 10 days after final passage of the ordinance in a newspaper of general circulation in the City of Victoria in accordance with Article II, § 10 of the City Charter.

6.

This ordinance shall become effective 10 days after final passage and approval by the City Council of the City of Victoria, Texas.

PASSED FIRST READING, this the 20<sup>th</sup> day of April, 2010.

AYES: 7  
NAYS: 0  
ABSTENTIONS: 0

PASSED SECOND READING, this the 4TH day of MAY, 2010.


AYES: 7  
NAYS: 0  
ABSTENTIONS: 0

PASSED THIRD READING, this the 4TH day of MAY, 2010.

AYES: 7  
NAYS: 0  
ABSTENTIONS: 0

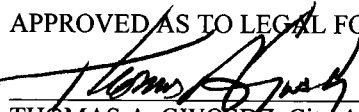
APPROVED AND ADOPTED, this the 4TH day of MAY, 2010.



  
WILL ARMSTRONG, Mayor of the  
City of Victoria, Texas

ATTEST:

  
SCARLET SWOBODA, City Secretary

APPROVED AS TO LEGAL FORM:  
  
THOMAS A. GWOSDZ, City Attorney

Distribution: Legal Department  
Public Works Department  
Environmental Services Department

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