

ORDINANCE NO. 2015-082

AN ORDINANCE OF THE TOWN OF PROVIDENCE VILLAGE, TEXAS, PROHIBITING ILLICIT DISCHARGE AND ILLICIT CONNECTIONS TO MUNICIPAL SEPARATE STORM SEWER SYSTEM; PROVIDING FOR A PENALTY; MAKING FINDINGS OF FACT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Providence Village seeks to regulate the contribution of pollutants to the Municipal Separate Storm Sewer System; and

WHEREAS, the Town Council of the Town of Providence Village seeks to prohibit illicit discharges and illicit connections to the Municipal Separate Storm Sewer System; and

WHEREAS, the Town Council of the Town of Providence Village seeks to establish legal authority to carry out all inspections, surveillance and monitoring procedures necessary to ensure compliance with this ordinance; and

WHEREAS, the Town Council of the Town of Providence Village seeks to provide appropriate procedures and actions for Ordinance violations,

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Providence Village, Texas the following:

ARTICLE I. - IN GENERAL

Purpose, intent.

The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the Town through the regulation of nonstormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Ordinance establishes methods for controlling the introduction of pollutants into the Municipal Separate Storm Sewer System (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) and Texas Pollutant Discharge Elimination System (TPDES) permit process. The objectives of this Ordinance are to:

Definitions.

The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized enforcement personnel means the Town Manager or his designee or designees authorized to enforce this Ordinance.

Best Management Practices (BMPs) include schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. "BMPs" also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Town means the Town of Providence Village, Texas.

Construction activity means any activity subject to NPDES or TPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.

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

Illegal discharge means any direct or indirect nonstormwater discharge to the storm drain system, except as exempted in this Ordinance.

Illicit connections are defined as any of the following:

- (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to, any conveyances which allow any nonstormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial activity means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14).

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means a permit issued by the Environmental Protection Agency (EPA) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Nonstormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

Storm Drainage System means publicly owned facilities by which stormwater is collected and/or conveyed, also known as a Municipal Separate Storm Sewer System (MS4). The MS4 includes, but is not limited to, any roads with drainage systems, bar ditches, municipal streets, gutters, curbs, inlets, piped storm drains, culverts, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater is any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan means a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Texas Pollutant Discharge Elimination System (TPDES) Stormwater Discharge Permit means a permit issued by the Texas Commission on Environmental Quality (TCEQ) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

ARTICLE II. - PROHIBITIONS

Prohibition of illegal discharges.

No person shall discharge or cause to be discharged into the Municipal Storm Drain System or watercourses any materials, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

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

- (a) The following discharges are exempt from discharge prohibitions established by this Ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, individual residential washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - less than one PPM chlorine), firefighting activities, and any other water source not containing pollutants.
- (b) Discharges or flow from firefighting, and other specified in writing by the Town as being necessary to protect public health and safety.
- (c) Dye testing is an allowable discharge, but requires a verbal notification to the Town prior to the time of the test.
- (d) The prohibition shall not apply to any nonstormwater discharge permitted under an NPDES or TPDES Permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA or TCEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

Prohibition of illicit connections.

- (a) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (c) A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (d) Improper connections in violation of this Ordinance must be disconnected and redirected, if necessary, to an approved on-site wastewater management system or the sanitary sewer system upon approval of the Town.
- (e) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Town requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Town.

ARTICLE III. - SUSPENSION OF MS4 ACCESS

Suspension due to illicit discharges in emergency situations.

The Town may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

Suspension due to the detection of illicit discharge.

Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement personnel will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the authorized enforcement personnel.

ARTICLE IV. - INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Industrial or construction activity.

Any person subject to an industrial or construction activity NPDES or TPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges to the MS4.

ARTICLE V. - MONITORING OF DISCHARGES

Applicability.

This article applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

Access to facilities.

- (a) The authorized enforcement personnel shall be permitted to enter and inspect facilities and premises subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the authorized enforcement personnel.

- (b) Facility operators shall allow the authorized enforcement personnel ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES or TPDES Permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (c) The authorized enforcement personnel shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.
- (d) The authorized enforcement personnel has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (e) Any temporary or permanent obstruction to safe and easy access to the facility or premises to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Town and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (f) Unreasonable delays in allowing the authorized enforcement personnel access to a permitted facility is a violation of a stormwater discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES or TPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the authorized enforcement personnel reasonable access to the permitted facility or premises for the purpose of conducting any activity authorized or required by this Ordinance.
- (g) If the authorized enforcement personnel has been refused access to any part of the premises from which stormwater is discharged, and the authorized enforcement personnel is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

ARTICLE VI. - REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

Best Management Practices.

The Town will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes

into the municipal storm drain system or watercourses through the use of these structural and nonstructural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the Municipal Separate Storm Sewer System. Compliance with all terms and conditions of a valid NPDES or TPDES Permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this article. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance with requirements of the NPDES or TPDES permit.

ARTICLE VII. - WATERCOURSE PROTECTION

Watercourses.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property 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 existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

ARTICLE VIII. - NOTIFICATION OF SPILLS

Notification.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the authorized enforcement personnel in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town of Providence Village Town Manager or his designee within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

ARTICLE IX. - ENFORCEMENT; APPEAL; PENALTY

Compliance; notice.

Whenever authorized enforcement personnel finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement personnel may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of source control or treatment BMPs.

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

Appeal of notice of violation; board of appeals.

Any person receiving a notice of violation may appeal the determination of the authorized enforcement personnel. The notice of appeal must be filed with the Town Secretary and received by the Town Secretary within ten days from the date of the notice of violation. The appeal shall be heard by a board of appeals (the "Board of Appeals"), hereby created, consisting of the members of the Town's board of adjustment appointed by the Town Council. Hearing on the appeal before the Board of Appeals shall take place within 15 days from the date of the Town Secretary's receipt of the notice of appeal. At a hearing of the Board of Appeals pursuant to this appeal process, the appellant, the appellant's representative, the authorized enforcement personnel, and any person whose interests are affected shall be given an opportunity to be heard. The decision of the Board of Appeals shall be final.

The number of members of the Board of Appeals shall be equal to the number of members of the said Board of Adjustment, and alternate members of the said Board of Adjustment shall be alternate members of the Board of Appeals who may serve in the absence of one or more regular members when requested to do so by the Town Manager or the Town Manager's designee. Appointment to (including the filling of a vacancy), removal from, and the terms (including term limits) of the members of the Board of Appeals shall be the same as for members of the board of adjustment. A majority of the members of the Board of Appeals (including, in the absence of one or more regular members, alternate members) shall constitute a quorum for the conduct of

business of the Board of Appeals, and any action of the Board of Appeals shall require at least three affirmative votes to be adopted or passed.

Enforcement measures after appeal.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within ten days following the date of the decision of the board of appeals upholding the decision of the authorized enforcement personnel, then authorized enforcement personnel shall, in accordance with law, enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Cost of abatement of the violation.

If measures are taken to abate a violation and/or restore property, then within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the cost within ten days after the property owner's receipt of the notice. If the amount due is not paid within a timely manner as determined by the decision of the Board of Appeals (in the event of an appeal as set forth above) or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment, and a record thereof may be filed in the real property records of the county in which the property is located.

Unlawful violation; injunctive relief.

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

Violations deemed a public nuisance.

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

Remedies not exclusive.

The rights and remedies listed in this Ordinance are not exclusive of any other rights or remedies available to the Town of Providence Village under any applicable

federal, state or local law, and it is within the discretion of the Town of Providence Village to seek cumulative remedies.

Penalty.

It shall be unlawful for any person, firm, corporation, or other business entity to violate any provision of this Ordinance, and any person, firm, corporation, or other business entity violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not more than \$500.00, and a separate offense shall be deemed committed each day during or on which a violation or failure occurs or continues.

Applicability.

This Ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Town.

Responsibility for administration.

The authorized enforcement personnel shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the authorized enforcement personnel may be delegated by the Town Manager to persons or entities acting in the beneficial interest of or in the employ of the Town.

Compatibility with other regulations.

This Ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this Ordinance are in addition to the requirements of any other Ordinance, article, section, or subsection of the Code of Ordinances of the Town, and any ordinance, rule, regulation, or other provision of law, and where any provision of this Ordinance imposes restrictions different from those imposed by any other Ordinance, article, section, subsection of the said Code of Ordinances or any ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Severability.

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

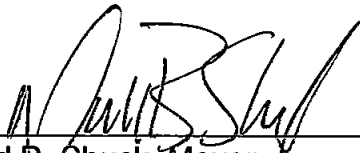
Ultimate responsibility.

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

READ, CONSIDERED, PASSED AND APPROVED on the first reading by the Town Council at a regular meeting the 6th day of October, 2015, at which a quorum was present.

READ, CONSIDERED, PASSED AND APPROVED on the second and final reading by the Town Council at a regular meeting the 20th day of October, 2015, at which a quorum was present.

PASSED AND APPROVED on second and final reading this 25th day of October, 2015.



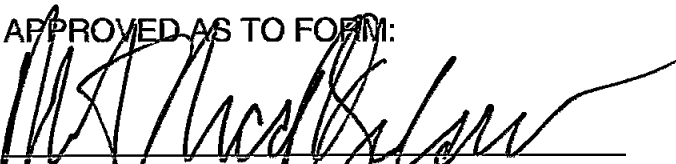
David B. Shuck, Mayor
Town of Providence Village, Texas

ATTEST:



Connie S. Hansen, TRMC, Town Secretary

APPROVED AS TO FORM:



Philip Mack Furlow, Town Attorney

