

CHAPTER 33

CONSTRUCTION SITE STORM WATER RUNOFF CONTROL (Adopted 2010-05; 07/15/2010)

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CONSTRUCTION SITE STORM WATER RUNOFF CONTROL ORDINANCE

Sec. 33.100 GENERAL PROVISIONS

33.101 Introduction/Purpose/Intent

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

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

The objectives of this ordinance are:

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

33.102 Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this Ordinance, shall have the meanings hereinafter designated:

1. Best Management Practices (BMP)

Methods and techniques to prevent or reduce the discharge of pollutants, including schedules of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices. BMPs also include treatment requirements, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

2. City

The City of Olmos Park, Texas or the City Council of Olmos Park, Texas.

3. City Manager

The person appointed to the position of City Manager by the City Council of the City of Olmos Park, Texas, and authorized to act on behalf of the City and/or City Council, or his/her duly authorized representative, including, but not limited to, a City Building Official (Building Official) designated by the City Manager or City Engineer as appointed by the City Council.

4. City Notice of Change (CNOC)

Written notification to the City Manager, City Building Official, or City Engineer from a discharger authorized under this permit, providing changes to information that was previously provided to the City in a City Notice of Intent form. The CNOC is a form that is provided by the City and filed only with the City as it pertains to Minimal Construction Activities and Small Construction Activities, which are smaller than the TCEQ's Large Construction Activity threshold of 5 acres or more of disturbed soil.

5. City Notice of Intent (CNOI)

A written submission to the City Manager, City Building Official, City Engineer, or his/her/their designee from an applicant requesting review of a Storm Water Pollution Prevention Plan and approval to perform construction which will disturb soil. The CNOI is a form that is provided by the City and filed only with the City as it pertains to Minimal Construction Activities and Small Construction Activities, which are smaller than the TCEQ's Large Construction Activity threshold of 5 acres or more of disturbed soil.

6. City Notice of Termination (CNOT)

A written submission to the City Manager, City Building Official, City Engineer, or his/her/their designee from a discharger authorized under an authorized Permit requesting termination of a construction activity that was approved through the submittal of a CNOI and Storm Water Pollution Prevention Plan. The CNOT is a form that is provided by the City and filed only with the City as it pertains to Minimal Construction Activities and Small Construction Activities, which are smaller than the TCEQ's Large Construction Activity threshold of 5 acres or more of disturbed soil. A CNOT shall not be deemed effective until a permittee has completed final stabilization or, in the alternative, temporary stabilization (e.g. silt fence, temporary seeding, geotextiles, mulches, etc.) accompanied by a legally enforceable agreement with a third party (e.g. homeowner, realty agent, etc.) who assumes responsibility for final stabilization.

7. Commencement of Construction

The initial disturbance of soils associated with clearing, demolition, grading, excavating, filling, stockpiling, erection of forms, or any other construction-related activity. Also referred to as "Start of Construction."

8. Common Plan of Development

A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as a "common plan of development or sale") is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities. A common plan of development does not necessarily include all construction projects within the jurisdiction of the city. Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located ¼ mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or

sale, provided that any interconnecting road, pipeline or utility project that is part of the same “common plan” is not included in the area to be disturbed.

9. Conveyance

Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for drainage, flood control, or the transport of storm water runoff.

10. Discharge

The drainage, release, or disposal of storm water and other surface runoff from locations of soil-disturbing activities (e.g., clearing, grading, excavating, stockpiling, and demolishing), construction materials, equipment storage or maintenance operations (e.g., fill piles, borrow areas, and fueling). Discharge also includes the drainage, release, or disposal of industrial storm water directly related to the construction process.

11. Drought

A period of dry weather, usually lengthy, that is injurious to crops, as determined by City officials in accordance with established standards.

12. Erosion Control

A structure or measure that limits erosion.

13. Facility or Activity

A construction site or construction support activity that is regulated under TCEQ TPDES General Permit Number TXR150000 relating to storm water discharges associated with construction activities, including all contiguous land and fixtures (e.g., ponds and materials stockpiles), structures, or appurtenances used at a construction site or industrial site described by this ordinance and/or the TCEQ general construction permit. Facility or Activity also includes smaller construction sites and construction support activities (Minimal Construction Activities) that are specifically identified in this ordinance, but not necessarily regulated under TCEQ TPDES General Permit Number TXR150000.

14. Final Stabilization

(a) The status of a construction site when all soil disturbing activities at the site have been completed and the disturbed soil has been covered with:

- (1) a uniform (i.e., evenly distributed, without large bare areas) perennial vegetative cover with a density of at least 70%;
- (2) permanent structures such as buildings, and/or
- (3) permanent stabilization measures such as pavement, riprap, or gabions.

(b) For individual lots in a residential construction site, Final Stabilization may be achieved only by the homebuilder completing final stabilization as specified in condition (a) above.

(c) For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use.

(d) For construction activities on land that was not previously used for agricultural activities, such as buffer strips immediately adjacent to surface water and areas that are not being returned to their

preconstruction agricultural use, Final Stabilization can be achieved only by meeting the conditions of (a) above.

(d) For the event of drought, Final Stabilization can be achieved only when all soil disturbing activities at the site have been completed and both of the following criteria have been met:

- (1) Temporary erosion control measures (e.g., degradable rolled erosion control mats) are selected, designed, and installed with an appropriate seed base to provide erosion control for at least three years without active maintenance by the operator, and
- (2) The temporary erosion control measures are selected, designed, and installed to achieve 70 percent vegetative coverage within three years.

15. General Permit

TPDES General Permit No. TXR150000 for the Discharge of Wastes provides a means for construction sites and other sources of soil disturbance to lawfully discharge storm water to surface water in the state in compliance with Section 402 of the Clean Water Act and Chapter 26 of the Texas Water Code. The provisions of the General Permit are promulgated and enforced by the TCEQ.

16. Grading

Shaping, excavating or filling of clay, sand, rock and/or other types of soil material.

17. Hyperchlorination of Waterlines

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

18. Large Construction Activity

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

19. Minimal Construction Activity

Construction activities including clearing, grading, and excavating that result in land disturbance measuring one (0.25) acre or more and less than one (1) acre. Minimal Construction Activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing rights-of-way, and similar maintenance activities.)

20. Municipal Separate Storm Sewer System (MS4)

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

21. Notice of Change (NOC)

Written notification to the Executive Director of the TCEQ which is also to be copied to the City Manager, City Building Official, or City Engineer from a discharger authorized under TPDES General Permit TXR150000, providing changes to information that was previously provided to the agency in a Notice of Intent form.

22. Notice of Intent (NOI)

A written submission to the Executive Director of the TCEQ which is also to be copied to the City Manager, City Building Official, City Engineer, or his/her/their designee from an applicant requesting coverage under TPDES General Permit TXR150000.

23. Notice of Termination (NOT)

A written submission to the Executive Director of the TCEQ which is also to be copied to the City Manager, City Building Official, City Engineer, or his/her/their designee from a discharger authorized under a TPDES General Permit TXR 150000 requesting termination of coverage.

24. Operator

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

A. Primary Operator: The person or persons associated with a large or small construction activity that meets either of the following two criteria: (a) the person or persons have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (b) the person or persons have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a storm water pollution prevention plan (SWP3) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

B. Secondary Operator: The person whose operational control is limited to the employment of other operators or to the ability to approve or disapprove changes to plans and specifications. A secondary operator is also defined as a primary operator and must comply with the permit requirements for primary operators if there are no other operators at the construction site.

25. Outfall

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

26. Perimeter Control

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

27. Permit

A site development permit issued by the City of Olmos Park, Texas for construction or the alteration of ground.

28. Permittee

An operator authorized under the City Code and this ordinance to commence construction that involves disturbing the soil. The authorization may be gained by applying for a building permit and submitting a CNOI or NOI.

29. Phasing

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

30. Point Source (from 40 CFR §122.2)

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

31. Pollutant

Sediment, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any surface water in the state. The term "pollutant" does not include tail water, irrigation runoff, or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

32. Pollution (from Texas Water Code §26.001(14))

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

33. Review Fee

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

34. Sediment Control

A structure or measure that prevents eroded sediment from leaving the site.

35. Separate Storm Sewer System (S4)

A conveyance or system of conveyances (including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains), designed or used for collecting or conveying storm water; that is not a combined sewer, and that is not part of a publicly owned treatment works (POTW).

36. Site

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

37. Site Development

Any construction project that involves the disturbing of soil.

38. Small Construction Activity

Construction activities including clearing, grading, and excavating that result in land disturbance measuring one (1) acre or more and less than five (5) acres. Small construction activity also includes the disturbance of less than one (1) acre of total land area that is part of a larger common plan of development or sale if the larger

common plan will ultimately disturb areas of land measuring one (1) acre or more and less than five (5) acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing rights-of-way, and similar maintenance activities.)

39. Stabilization

Practices and measures that prevent exposed soil from eroding.

40. Start of Construction

See “Commencement of Construction.”

41. State

The State of Texas.

42. Storm Water, Storm Water Runoff, or Runoff

Surface runoff and drainage resulting from precipitation.

43. Storm Water Associated with Construction Activity

Storm water runoff from a construction site where soil disturbance is of a size large enough to be regulated by this ordinance.

44. Storm Water Pollution Prevention Plan (SWP3 or SW3P)

A set of plans prepared by or under the direction of a licensed professional engineer proposing specific Best Management Practices, including Erosion Controls, Sediment Controls, and sequencing schedules for limiting the amount of sediment that is discharged to drainage easements, public rights-of-way, the storm drain system, Waterways, and Watercourses. Separate plans may be required to address conditions during and after construction.

45. Structural Control (or Practice)

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

46. Surface Water in the State

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

47. TCEQ

Texas Commission on Environmental Quality.

48. Temporary Stabilization

A condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include temporary seeding, geotextiles,

mulches, and other techniques to reduce or eliminate erosion until permanent stabilization can be achieved or until further construction activities take place.

49. Watercourse

Any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by the City of Olmos Park, Texas on its storm water map.

50. Waterway

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

51. Waters of the United States (from 40 CFR, Part122, § 2)

Waters of the United States or waters of the U.S. means: (a) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) all interstate waters, including interstate wetlands; (c) all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (1) which are or could be used by interstate or foreign travelers for recreational or other purposes; (2) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (3) which are used or could be used for industrial purposes by industries in interstate commerce; (d) all impoundments of waters otherwise defined as waters of the United States under this definition; (e) tributaries of waters identified in paragraphs (a) through (d) of this definition; (f) the territorial sea; and (g) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA.

SEC. 33.200 PERMITS

33.201 Applicability and Coverage

1. Discharges Eligible for Authorization

(a) Storm Water Associated with Construction Activity

Discharges of storm water runoff from Minimal, Small and Large construction activities may be authorized under this ordinance.

(b) Discharges of Storm Water Associated with Construction Support Activities

Examples of construction support activities include, but are not limited to, rock crushers, asphalt batch plants, equipment staging areas, material storage yards, material borrow areas, and excavated material disposal areas. Discharges of storm water runoff from construction support activities may be authorized under this general ordinance, provided that the following conditions are met:

- (1) the activities are located within the same city, located within one (1)-mile from the boundary of the permitted construction site, and directly support the construction activity;

(2) a Storm Water Pollution Prevention Plan is developed according to the provisions of this ordinance which includes appropriate controls and measures to reduce erosion and discharge of pollutants in storm water runoff from the construction support activities; and

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

(c) Non-Storm Water Discharges

The following non-storm water discharges are not prohibited under this ordinance:

(1) discharges from fire fighting activities (fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities);

(2) uncontaminated fire hydrant flushings (excluding discharges of hyper chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life), which include flushings from systems that utilize potable water, surface water, or groundwater that does not contain additional pollutants (uncontaminated fire hydrant flushings do not include systems utilizing reclaimed wastewater as a source water);

(3) water from the routine external washing of vehicles, the external portion of buildings or structures, and pavement, where spills or leaks of toxic or hazardous materials have not occurred (unless spilled materials have been removed; and if local, state, or federal regulations are applicable, the materials are removed according to those regulations), and where the purpose is to remove mud, dirt, or dust;

(4) uncontaminated water used to control dust;

(5) potable water sources including waterline flushings (excluding discharges of hyper chlorinated water, unless the water is first dechlorinated and discharges are not expected to adversely affect aquatic life);

(6) uncontaminated air conditioning condensate;

(7) uncontaminated ground water or spring water, including foundation or footing drains where flows are not contaminated with industrial materials such as solvents; and

(8) lawn watering and similar irrigation drainage.

(d) Other Permitted Discharges

Any discharge authorized under a separate permit may be combined with discharges authorized by this ordinance, provided those discharges comply with the associated permit.

SEC. 33.300 PERMIT REQUIREMENTS

33.301 No person shall be granted a site development permit for a project disturbing one quarter (0.25) acre of land or more without the approval of a Storm Water Pollution Prevention Plan (as described more fully in Sec. 33.400) by the City Engineer or the City Building Official or his/her/their duly authorized representative(s).

33.302 No site development permit is required for the following activities:

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

33.303 Each CNOI or NOI shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee.

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

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

SEC. 33.400 STORM WATER POLLUTION PREVENTION PLAN (SWP3)

33.401 General Requirements

1. Storm Water Pollution Prevention Plans must be prepared for the purpose of limiting pollutants in discharges from Minimal, Small, and Large Construction Activities that will reach MS4s and privately-owned Separate Storm Sewer Systems. The SWP3 must also identify and address potential sources of pollution (including off-site material storage areas, overburden and stockpiles of dirt, borrow areas, equipment staging areas, vehicle repair areas, fueling areas, and etc.) that are reasonably expected to affect the quality of construction site discharges. The SWP3 must describe the practices that will be used to minimize, to the extent practicable, the discharge of construction-related pollutants in storm water and certain non-storm water discharges
2. SWP3s must utilize temporary and permanent BMPs, measures, and controls complying with the City's Technical Guidance Manual.
3. SWP3s require maps and/or drawings. The scale of the maps and drawings must be large enough to provide a clear understanding of the site and the project. Sheet sizes must not exceed 24 inches by 36 inches. Where the amount of information required to be included on the map would result in a

single map being difficult to read and interpret, the operator shall develop a series of maps that collectively include the required information.

4. SWP3s must list MS4s receiving discharges from the subject Construction Activity. The same MS4s must receive copies of the SWP3 and application submittal.

5. Shared SWP3 Development
 - a. For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different operators at a site is encouraged. Operators must independently obtain authorization, but may work together to prepare and implement a single, comprehensive SWP3 for the entire construction site.
 - b. The SWP3 must clearly list the name and, for large construction activities, the permit authorization numbers, for each operator that participates in the shared SWP3. Until the City responds to receipt of the NOI with a permit authorization number, the SWP3 must specify the date that the NOI was submitted to the City by each operator. Each operator participating in the shared plan must also sign the SWP3.
 - c. The SWP3 must clearly indicate which operator is responsible for satisfying each shared requirement of the SWP3. If the responsibility for satisfying a requirement is not described in the plan, then each permittee is entirely responsible for meeting the requirement within the boundaries of the construction site where it performs construction activities. The SWP3 must clearly describe responsibilities for meeting each requirement in shared or common areas.
 - d. Individual operators may develop separate SWP3s that apply only to their portion of the project, provided reference is made to the other operators working on the site. Where there is more than one SWP3 for a site, permittees must coordinate to ensure that BMPs and controls are consistent and do not negate or impair the effectiveness of other controls. Regardless of whether a single comprehensive SWP3 is developed or separate SWP3s are developed for each operator, it is the responsibility of each operator to ensure compliance with the terms and conditions of this ordinance in the areas of the construction site where that operator has control over construction plans and specifications or day-to-day operations.

33.402 Minimal Construction Activities

For Minimal Construction Activities, the SWP3 must include, at a minimum:

1. A site or project description, which includes:
 - (a) a description of the nature of the construction activity;
 - (b) the intended schedule or sequence of activities that will disturb soils and implement temporary and permanent BMPs;
 - (c) the number of acres of soil disturbance; and
 - (d) the address of the site.

2. A detailed site plan which is not required be to scale or to have elevation contours, indicating:

- (a) north arrow;
- (b) property lines;
- (c) easements;
- (d) access to the site;
- (e) existing site conditions;
- (f) the areas and extent of proposed soil disturbance;
- (g) proposed project conditions;
- (h) Conveyances and Watercourses.
- (i) locations of all planned or in-place erosion controls; and
- (j) locations of temporary and permanent stabilization measures.

33.403 Small and Large Construction Activities

For Small and Large Construction Activities, the SWP3 must include, at a minimum:

1. A site or project description, which includes the following information:

- (a) the address and lot description of the site;
- (b) a description of the nature of the construction activity;
- (c) a list of potential pollutants and their sources;
- (d) a description of the best management practices (BMPs) that will be used to minimize pollution in runoff;
- (e) the intended schedule or sequence of activities that will disturb soils for major portions of the site; the schedule of sequence must provide dates for beginning and ending construction activities such as stripping and clearing, rough grading, installing utilities, constructing infrastructure, constructing buildings, final grading, landscaping, and installing Erosion and Sediment Controls including temporary and permanent measures;
- (f) the total number of acres of the entire project property and the total number of acres where construction activities will occur, including off-site material storage areas, overburden and stockpiles of dirt, and borrow areas that are authorized under the permittee's CNOI or NOI;
- (g) data describing the soil or the quality of any discharge from the site;

(h) seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of mineral and fertilizer, kind and quantity of mulching for both temporary and permanent vegetative control measures; and

(i) a maintenance plan for BMPs.

2. A general map showing the location of the site;

3. A detailed topographic site map (or maps) indicating the following:

(a) north arrow;

(b) identifying property lines;

(c) easements;

(d) access to the site;

(e) existing site conditions;

(f) the areas and extent of proposed soil disturbance;

(g) proposed project conditions;

(h) Conveyances and Watercourses;

(i) Drainage patterns and approximate slopes anticipated after major grading activities;

(j) Locations of all planned or in-place structural controls;

(k) Locations of temporary and permanent stabilization measures;

(l) Locations of construction support activities, including off-site activities, that are authorized under the permittee's CNOI or NOI, including material, waste, borrow, fill, equipment storage, asphalt plants, and concrete plants;

(m) surface waters (including wetlands) either at, adjacent to, or in close proximity to the site;

(n) locations where storm water discharges from the site directly to a surface water body or MS4; and

(o) vehicle wash areas.

SEC. 33.500 MAINTENANCE AND INSPECTION OF CONTROLS

33.501 Maintenance of Controls

1. All protective measures identified in the SWP3 must be maintained in effective operating condition. If, through inspections or other means, the permittee determines that BMPs are not operating effectively, then the permittee shall perform maintenance as necessary to maintain the continued

effectiveness of storm water controls, and prior to the next rain event if feasible. If maintenance prior to the next anticipated storm event is impracticable, the reason shall be documented in the SWP3 and maintenance must be scheduled and accomplished as soon as practicable. Erosion and sediment controls that have been intentionally disabled, run over, removed, or otherwise rendered ineffective must be replaced or corrected immediately upon discovery.

2. If periodic inspections or other information indicates a control has been used incorrectly, is performing inadequately, or is damaged, then the operator must replace or modify the control as soon as practicable after making the discovery.

3. Sediment must be removed from sediment traps and sedimentation ponds no later than the time that design capacity has been reduced by 50%. For perimeter controls such as silt fences, berms, etc., the trapped sediment must be removed before it reaches 50% of the above-ground height.

4. If sediment escapes the site, accumulations must be removed at a frequency that minimizes off-site impacts, and prior to the next rain event, if feasible. If the permittee does not own or operate the off-site conveyance, then the permittee must work with the owner or operator of the property to remove the sediment.

33.502 Inspection of Controls

1. Personnel provided by the permittee must inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system. Personnel conducting these inspections must be knowledgeable of this ordinance, any permit issued under it, and the TCEQ general construction permit, familiar with the construction site, and knowledgeable of the SWP3 for the site. Sediment and erosion control measures identified in the SWP3 must be inspected to ensure that they are operating correctly. Locations where vehicles enter or exit the site must be inspected for evidence of off-site sediment tracking. Inspections must be conducted at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

2. Where sites have been finally or temporarily stabilized or where runoff is unlikely due to winter conditions (e.g., site is covered with snow, ice, or frozen ground exists), inspections must be conducted at least once every month.

3. As an alternative to the above-described inspection schedule of once every 14 calendar days and within 24 hours of a storm event of 0.5 inches or greater, the SWP3 may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, then the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection. The inspections may occur on either schedule provided that the SWP3 reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of one time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWP3 (e.g., end of "dry" season and beginning of "wet" season).

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

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

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

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

SEC. 33.600 REVIEW, APPROVAL, OBTAINING AUTHORIZATION TO DISCHARGE

33.601 SUBMISSIONS

In order to apply for a Permit for site development and to obtain an approval for a Minimal, Small, or Large Construction Activity, the applicant must complete or develop and submit the following application documents to the City for review:

1. Minimal Construction Activity (Submit at least 7 calendar days prior to the date to commence work)
 - (a) CNOI
 - (b) Copies of any prior related permits.
 - (c) SWP3 meeting requirements for a Minimal Construction Activity
 - (d) Minimal Construction Site Notice
 - (e) Review Fee

2. Small Construction Activity (Submit at least 15 calendar days prior to the date to commence work)
 - (a) CNOI
 - (b) Copies of any prior related permits.
 - (c) SWP3 meeting requirements for a Small Construction Activity
 - (d) Small Construction Site Notice
 - (e) Review Fee

3. Large Construction Activity (Submit at least 30 calendar days prior to the date to commence work)
 - (a) NOI
 - (b) Copies of any prior related permits.
 - (c) SWP3 meeting requirements for a Large Construction Activity
 - (d) Large Construction Site Notice

(e) Review Fee

33.601 REVIEW AND APPROVAL

The City Engineer or City Building Official will review each submittal for a site development permit to determine its conformance with the provisions of this ordinance. After receiving a complete submittal, the City Engineer or City Building Official within 10 calendar days for a Minimal Construction Activity, 20 calendar days for a Small Construction Activity and 30 calendar days for a Large Construction Activity, shall, in writing:

1. Approve the permit;
2. Approve the permit subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
3. Disapprove the permit, indicating the reason(s) for disapproval and the procedure for submitting a revised and/or submission.

33.603 MINOR MODIFICATIONS

Minor modifications to an approved SWP3 shall be documented by the Permittee on a form provided by the City and shall be approved or disapproved by the City Engineer or City Building Official, with such decision so indicated on the form, within five business days of receiving the completed form.

33.604 MAJOR MODIFICATIONS

Major modifications to an approved SWP3 shall be processed and approved or disapproved in the same manner as for first-time submittals of this ordinance, and may be authorized by the City Engineer and/or City Building Official by written authorization to the permittee.

33.605 ADDITIONAL PRIMARY OPERATORS

If an additional primary operator is added or changed after the initial NOI is submitted, the new primary operator must submit an NOI at least ten (10) calendar days prior to assuming operational control.

33.606 POSTING CNOI OR NOI

All primary operators and permittees must post a copy of the signed CNOI or NOI at the construction site in a location where it is readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction activities, and must maintain the CNOI or NOI in that location until completion of the construction activity.

33.607 POSTING SITE NOTICE

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

33.608 SECOND OPERATORS

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

33.609 DATE OF COVERAGE

Operators of Construction Activities are authorized and their Construction Activities are permitted after the required submittals are received by the City, reviewed by the City, and written notification, including a stamped SWP3 and City authorization number are issued by the City to the Operator/Permittee.

33.610 LATE NOIs

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

33.611 CITY NOTICE OF CHANGE (CNOC) OR NOTICE OF CHANGE (NOC).

1. If relevant information provided in the NOI changes, the following items must be submitted:
 - (a.) for Minimal Construction Activities – a CNOC at least 7 calendar days prior to the change occurring;
 - (b.) for Small Construction Activities – a CNOC at least 10 calendar days prior to the change occurring; and
 - (c.) for Large Construction Activities – an NOC at least 14 calendar days prior to the change occurring.

2. When the required advance notice is not possible, the operator must submit an NOC within 14 days of discovery of the change. If the operator becomes aware that it failed to submit any relevant facts or submitted incorrect information in an NOI, the correct information must be provided to the City Manager, the City Engineer, or City Building Official in an NOC within 14 days after discovery. The NOC shall be submitted on a form provided by the City Manager, the City Engineer, or City Building Official, or by letter if an NOC form is not available. A copy of the NOC must also be provided to the operator of any MS4 receiving the discharge, most notably the City,

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

33.612 SIGNATORY REQUIREMENTS

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

SEC. 33.700 INSPECTIONS BY CITY

33.701 CITY INSPECTIONS

The City Engineer, the City Building Official, or his/her/their designated agent, shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Storm Water Pollution Prevention Plan as approved. Plans for

grading, stripping, excavating, and filling work and an SWP3 bearing the stamp of City approval shall be maintained at the site during the progress of the work. To obtain inspections, the permittee shall notify the City Engineer or the City Building Official at least three working days before the following:

1. Start of construction
2. Installation of sediment and erosion measures
3. Completion of site clearing
4. Completion of rough grading
5. Completion of final grading
6. Close of the construction season
7. Completion of final landscaping

33.702 PERMITTEE INSPECTIONS

The permittee or his/her agent shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Storm Water Pollution Prevention Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the Storm Water Pollution Prevention Plan and the need for additional control measures. All inspections shall be documented on forms provided by the City and submitted to the City Engineer or the City Building Official at the time interval specified in the approved permit.

33.703 ENTRY PERMITTED

The City Manager, the City Council of Olmos Park, the City Engineer, the Building Official, or their designated agents shall be permitted to enter the construction site or disturbed area as deemed necessary to make inspections to ensure the validity of the reports filed by the Permittee.

33.704 REFUSAL OF ACCESS

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

SEC. 33.800 LIMITATIONS ON PERMIT COVERAGE

33.801 Post Construction Discharges

Discharges that occur after construction activities have been completed, and after the construction site and any supporting activity site have undergone final stabilization, are not eligible for coverage under a permit issued in accordance with this ordinance. Discharges originating from permitted sites are not authorized under this ordinance following the submission of the notice of termination (NOT) for the construction activity.

33.802 Prohibition of Non-Storm Water Discharges

Except as otherwise provided, only discharges that are composed entirely of storm water associated with construction activity may be authorized under this ordinance.

33.803 Compliance with Water Quality Standards

Discharges to surface water in the City that would cause or contribute to a violation of water quality standards or that would fail to protect and maintain existing designated uses are not eligible for coverage under this ordinance. The City Manager, City Building Official, or City Engineer may require an application for a TPDES individual permit to authorize discharges to surface water in the state from any activity that is determined to cause a violation of water quality standards or is found to cause, or contribute to, the loss of a designated use.

The City Manager, the City Engineer, or City Building Official may also require an application for a TPDES individual permit considering factors described in Article IV(B) and (C) of this ordinance.

33.804 Discharges to Water Quality-Impaired Receiving Waters

New sources or new discharges of the constituents of concern to impaired waters are not authorized by a permit granted under this ordinance unless otherwise allowable under 30 TAC Chapter 305 and applicable state law. Impaired waters are those that do not meet applicable water quality standards and are listed on the EPA approved Clean Water Act Section 303(d) list. Constituents of concern are those for which the water body is listed as impaired. Discharges of the constituents of concern to impaired water bodies for which there is a total maximum daily load (TMDL) are not eligible for a permit unless they are consistent with the approved TMDL. Permittees must incorporate the limitations, conditions, and requirements applicable to their discharges, including monitoring frequency and reporting required by Texas Commission on Environmental Quality (TCEQ) rules, into their storm water pollution prevention plan in order to be eligible for coverage under this ordinance.

33.805 Discharges to Specific Watersheds and Water Quality Areas

Discharges otherwise eligible for coverage cannot be authorized by this ordinance where prohibited by 30 TAC Chapter 311 (relating to Watershed Protection) for water quality areas and watersheds.

33.806 Protection of Streams and Watersheds by Other Governmental Entities

This ordinance does not limit the authority or ability of federal, state, or other local governmental entities from placing additional or more stringent requirements on construction activities or discharges from construction activities.

33.807 Oil and Gas Production

Storm water runoff from construction activities associated with the exploration, development, or production of oil or gas or geothermal resources, including transportation of crude oil or natural gas by pipeline, are not under the authority of the City and are not eligible for coverage under this ordinance. If discharges of storm water require authorization under federal NPDES regulations, authority for these discharges must be obtained from the EPA.

33.808 Storm Water Discharges from Agricultural Activities

Storm water discharges from agricultural activities that are not point source discharges of storm water are not subject to the requirements or restrictions of this ordinance. Where properly zoned for such uses, these activities may include clearing and cultivating ground for crops, construction of fences to contain livestock, construction of stock ponds, and other similar agricultural activities.

33.809 Other

Nothing in Section I of this ordinance is intended to negate any person's ability to assert the force majeure (act of God, war, strike, riot, or other catastrophe) defenses found in 30 TAC §70.7.

SEC. 33.900 CONCRETE BATCH PLANTS PROHIBITED

Concrete Batch Plants are prohibited in the City.

SEC. 33.1000 CONCRETE TRUCK WASH OUT REQUIREMENTS

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

1. Land disposal of concrete truck wash out water is permitted only from concrete trucks that are associated with off-site production facilities. Disposal of concrete truck wash out water associated with on-site concrete production facilities is specifically prohibited within the City.
2. Direct discharge of concrete truck wash out water to surface water in the state, including discharge to storm sewers, is prohibited.
3. Concrete truck wash out water shall be discharged to areas at the construction site where structural controls have been established to prevent direct discharge to surface waters, or to areas that have a minimal slope that allow infiltration and filtering of wash out water to prevent direct discharge to surface waters. Structural controls may consist of temporary berms, temporary shallow pits, temporary storage tanks with slow rate release, or other reasonable measures to prevent runoff from the construction site.
4. Wash out of concrete trucks during rainfall events shall be minimized. The direct discharge of concrete truck wash out water is prohibited at all times, and the operator shall insure that its Best Management Practices are sufficient to prevent the discharge of concrete truck washout as the result of rain.
5. The discharge of wash out water shall not cause or contribute to groundwater contamination.
6. If a Storm Water Pollution Prevention Plan (SWP3) is required to be implemented, the SWP3 shall include concrete wash out areas on the associated map.

SEC. 33.1100 DEADLINES FOR OBTAINING DISCHARGE AUTHORIZATION

33.1101 Large Construction Activities

1. New Construction - Discharges from sites where the commencement of construction occurs on or after the effective date of this ordinance must be authorized, either according to this ordinance or a separate permit issued by the City, prior to the commencement of those construction activities.
2. Ongoing Construction - Operators of large construction activities operating prior to the effective date of this ordinance, and continuing to operate after the effective date of a permit issued under this ordinance, must submit an NOI to the City Manager, the City Engineer, or City Building Official to renew authorization of any permit issued under any previous law, ordinance or rule under which construction activity began within 90 days of this ordinance. During this interim period, as a requirement of issuance of such permit under this ordinance, the operator must continue to meet the conditions and requirements of any previous permit.

33.1102 Small Construction Activities

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

33.1103 Minimal Construction Activities

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

SEC. 33.1200 PERMIT EXPIRATION

33.1201 INITIAL TERM

A permit issued under this ordinance is issued for a term not to exceed one (1) year. Unless otherwise specified in the permit issued, all active discharge authorizations expire one year from the date provided in the permit. The City, through the City Council or City Manager, may amend, revoke, or cancel a permit issued under this ordinance at any time.

33.1202 NOTICE OF INTENT TO RENEW

If the City officially provides, in writing, a notice of the intent to renew or amend a permit before the expiration date, the permit will remain in effect for existing, authorized discharges until the City takes final action on the permit. Upon issuance of a renewed or amended permit, permittees may be required to submit an NOI within 90 days following the effective date of the renewed or amended permit, unless that permit provides for an alternative method for obtaining authorization.

33.1203 NEW PERMIT

If the City does not propose to reissue a permit within 90 days before the expiration date, permittees shall apply for authorization under a new permit or an alternative permit. If the CNOI or NOI for a new permit is submitted before the expiration date, authorization under the expiring permit remains in effect until the issuance or denial of a new permit. No new NOIs will be accepted nor new authorizations honored under the original permit after the expiration date.

SEC. 33.1300 RETENTION OF RECORDS

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

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

SEC. 33.1400 STANDARD PERMIT CONDITIONS

33.1401 DUTY TO COMPLY

The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued, and is grounds for enforcement action, for terminating coverage under a permit issued under this ordinance, or for requiring a discharger to apply for and obtain an individual permit under this ordinance.

33.1402 PERMIT SUSPENSION OR REVOCATION

Authorization under a permit issued under this ordinance may be suspended or revoked for cause. Filing a notice of planned changes or anticipated non-compliance by the permittee does not stay any permit condition imposed by this ordinance. The permittee must furnish to the City Manager, the City Engineer, or City Building Official, upon request and within a reasonable time, any information necessary for the City Manager, the City Engineer, or City Building Official to determine whether cause exists for revoking, suspending, or terminating authorization under any permit issued in compliance with this ordinance. Additionally, the permittee must provide to the City Manager, the City Engineer, or City Building Official, upon request, copies of all records that the permittee is required to maintain as a condition of this ordinance.

33.1403 LIMIT ON DEFENSE

It is not a defense for a discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.

33.1404 INSPECTION AND ENTRY

Inspection and entry by the City shall be allowed under Texas Water Code Chapters 26-28, Texas Health and Safety Code §361.032, and 40 Code of Federal Regulations (CFR) §122.41(i).

33.1405 WATER CODE PENALTIES APPLY

The discharger is subject to administrative, civil, and criminal penalties, as applicable, for violations including, but not limited to, the following:

1. Negligently or knowingly violating the federal Clean Water Act (CWA), §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under CWA, §402, or any requirement imposed in a pretreatment program approved under CWA, §402(a)(3) or 402(b)(8);
2. Knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.

33.1406 SIGNING OF REPORTS

All reports and other information requested by the City Manager, the City Engineer, or City Building Official must be signed by the person and in the manner required by 30 TAC §305.128 (relating to Signatories to Reports).

33.1407 AUTHORIZATION DOES NOT CONVEY PROPERTY OR WAIVE RIGHTS

Authorization under this ordinance does not convey property or water rights of any sort and does not grant any exclusive privilege.

33.1408 ADDITIONAL PROVISIONS

Nothing in this ordinance shall be construed to allow storm water runoff from any construction and/or land disturbing activity onto any other public or private property except as expressly provided by this ordinance. Additionally, any permittee under this ordinance is specifically required to complete internal Final Stabilization of the entirety of a permitted construction and/or land disturbance area prior to the City's acceptance of a CNOT or NOT, or the issuance by the City of any Certificate of Occupancy.

SEC. 33.1500 FEES

33.1501 REVIEW FEE

A Review Fee as defined by Article I of this ordinance must be submitted along with the CNOI or NOI.

33.1502 WHEN FEES ARE DUE

Fees are due upon submission of the application documents, including the CNOI or NOI. An application will not be declared administratively complete unless the associated fee has been paid in full.

33.1503 NO ANNUAL FEES; FEES OF OTHER ENTITIES

No separate annual fees will be assessed upon the issuance of a permit under this ordinance with a duration of greater than one (1) year. Any fee assessed under the terms of the TCEQ general construction permit, or any other permit required by any other federal, state or local governmental entity or agency, is a separate fee, and it is the sole responsibility of the prospective permittee to satisfy any such fee requirement(s).

SEC. 33.1600 NOTICE OF VIOLATION

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

1. The performance of monitoring, analysis, and reporting;
2. The elimination of construction site storm water runoff;
3. That violating construction practices or operations shall cease and desist;
4. The abatement or remediation of construction storm water runoff and the restoration of any affected property;
5. Payment of a fine to cover administrative and remediation costs; and/or
6. The implementation of construction storm water runoff BMPs.

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

SEC. 33.1700 APPEAL OF NOTICE OF VIOLATION

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

date of the hearing. The City Building Official and/or his/her designee and the person submitting the Notice of Appeal may present evidence at the hearing. The decision of the City Manager will be rendered at the close of the hearing or within 30 days thereafter. The decision of the City Manager shall be final.

SEC. 33.1800 ENFORCEMENT MEASURES

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

SEC. 33.1900 COST OF ABATEMENT OF VIOLATIONS

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

SEC. 33.2000 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 City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

SEC. 33.2100 VIOLATIONS DEEMED A PUBLIC NUISANCE

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

SEC. 33.2200 ENFORCEMENT

33.2201 Stop Work Order; Revocation of Permit

In the event that any person holding a site development permit pursuant to this ordinance violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the City Manager or the City Council of Olmos Park may suspend or revoke the site development permit.

33.2202 Violation and Penalties

No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of any terms of this ordinance. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and each day during which any violation of any of the provisions of this ordinance is committed, continued, or permitted, shall constitute a separate offense. Upon

conviction of any such violation, such person, partnership, or corporation shall be punished by a fine of not more than \$500.00 for each offense. In addition to any other penalty authorized by this section, any person, partnership, or corporation convicted of violating any of the provisions of this ordinance shall be required to bear the expense of such restoration. Each day that a violation occurs shall be a separate offense.

SEC. 33.2300 PROSECUTION

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

SEC. 33. 2400 CIVIL PENALTY

In an action against the owner of property or the owner's representative with control over the premises or property (including, without limitation, a Site), the City may recover a civil penalty of up to \$1,000.00 per day for a violation of this ordinance if the defendant was actually notified of the provisions of this ordinance and thereafter committed acts in violation of this ordinance or failed to take action necessary for compliance with this ordinance. Each day that a violation occurs shall be a separate offense.

SEC. 33.2500 REMEDIES NOT EXCLUSIVE

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

SEC. 33.2600 SEVERABILITY CLAUSE

If any section, subsection, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be stricken from the ordinance, and such holding shall not affect the validity of the remaining portions thereof. The balance of the ordinance shall be construed as one instrument and as if the offending portion had not been included.

SEC. 33.2700 SAVINGS CLAUSE

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed. The balance of such ordinance is hereby saved from repeal.

SEC. 33.2800 EFFECTIVE DATE

This ordinance will be effective one day after the publication of this ordinance or the caption of this ordinance in the official newspaper of the City.

PASSED and APPROVED this the ____ day of _____, 2010.

Susan O. Gragg, Mayor

ATTEST:

Celia DeLeon, City Secretary