

**ORDINANCE FOR ADOPTION OF THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PHASE II  
REGULATIONS OF CHINA GROVE, TX**

**ORDINANCE NO. 190702-1**

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**WHEREAS**, the Legislature of the State of Texas has authorized the Texas Commission on Environmental Quality (TCEQ) to enact the Texas Pollutant Discharge Elimination System (TPDES), General Permit TXR040000 for regulated Phase II Small Municipal Separate Storm Sewer Systems (MS4s); and

**WHEREAS**, the updated statewide permit, TXR040000 was adopted by TCEQ on January 16, 2019, and

**WHEREAS**, the City of China Grove, Texas has been notified that it is required to enact minimum regulations as a Level 1 community under the new TXR040000 permit; and

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of China Grove, Texas that the following MS4 regulations are hereby adopted.

**SECTION 1. INTENT AND PURPOSE**

This Ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) of the City of China Grove in order to comply with requirements of the Texas Pollutant Discharge Elimination System (TPDES) permit process. The objectives of this ordinance are:

- To regulate pollutants from stormwater discharges into and from the MS4;
- To prohibit illicit connections and discharges to the MS4;
- To control the discharge of spills and prohibit dumping or disposal of materials other than stormwater into the small MS4;
- To enforce compliance with the permittee's ordinances, permits, contracts, or orders;
- To require installation, implementation, and maintenance of control measures;
- To receive and collect information, such as stormwater plans, inspection reports, and other information deemed necessary to assess compliance with this permit, from operators of construction sites, new or redeveloped land, and industrial and commercial facilities;
- To establish legal authority to implement inspection and enforcement procedures to ensure compliance with this Ordinance;
- To respond to non-compliance with Best Management Practices (BMPs) required by the small MS4 consistent with its ordinances or other regulatory mechanism(s);
- To assess penalties, including monetary, civil, or criminal penalties; and
- To enter into interagency or interlocal agreements or other maintenance agreements, as necessary.

**SECTION 2. DEFINITIONS**

**Applicant** - Property owner or agent of a property owner who filed an application for a stormwater authorization under a TPDES general permit or an individual TPDES permit.

**Authorized Enforcement Agency** - Employees or designees of the City of China Grove or the Texas Commission on Environmental Quality (TCEQ) have authority to enforce this Ordinance and/or the TPDES regulations.

**Best Management Practices (BMPs)** - Schedule of activities, prohibitions of practices, maintenance procedures, structural controls, local ordinances, and other management practices to prevent or reduce the discharge of pollutants. BMPs also include treatment practices, operating procedures, and practices to control runoff, spills or leaks, waste disposal, or drainage from raw materials storage areas.

**Building** - Any structure, either temporary or permanent, with walls and a roof, designed to shelter a person, animal, or property, and occupying more than 100 square feet of area.

**Construction Activity** - Includes soil disturbance, including clearing, grading, excavating, and other construction related activities (e.g., stockpiling of fill material and demolition); and 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 right-of-ways, and similar maintenance activities). Regulated construction activity is defined in terms of small and large construction activity.

**Small Construction Activity** is construction activity that results in land disturbances equal to or greater than one (1) acre and less than five (5) acres of land. 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 equal to or greater than one (1) and less than five (5) acres of land.

**Large Construction Activity** is construction activity that results in land disturbance of equal to or greater than five (5) acres of land. 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 equal to or greater than five acres of land.

**Conveyance** - Curbs, gutters, man-made channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

**Hazardous Materials** - Any item or agent (biological, chemical, physical) that has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

**Illicit Connection** - Any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

**Illicit Discharge** - Any discharge to a municipal separate storm sewer that is not entirely composed of stormwater, except discharges pursuant to a TPDES stormwater general permit or a separate authorization and discharges resulting from emergency firefighting activities.

**Land Disturbance Activity** - Any activity which changes the volume or discharge rate of stormwater runoff from the land surface. This includes grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse.

**Maintenance Agreement** - A formal contract between a local government and a property owner to guarantee long-term maintenance of stormwater management practices.

**Non-Stormwater Discharge** - Any discharge to the storm drain system that is not composed entirely of stormwater.

**Person** - 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** – In accordance with the Texas Water Code, §26.001(13) a pollutant includes the following: 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 water in the state.

**Premises** - Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Stormwater and Stormwater Runoff** - Rainfall runoff, snow-melt runoff, and surface runoff and drainage.

**Stormwater Management** - The use of structural or non-structural control practices/BMPs designed to reduce stormwater pollutant runoff, discharge volumes, peak flow discharge rates, and detrimental changes in stream temperature that affect water quality.

**Stormwater Pollution Prevention Plan (SWP3)** - A document that describes the Best Management Practices and activities to be implemented by the permit holder to identify sources of pollution or contamination at a site and actions to eliminate or reduce pollutant discharges.

**Stormwater Control Practices** - Structural or nonstructural measures to minimize stormwater runoff to surface water in the state.

**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 [MHWM] 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.

**Texas Pollutant Discharge Elimination System Stormwater (TPDES) Discharge Permit** - A permit issued by the TCEQ, under the authority of Texas Water Code Sections 26.027 or 26.040 that authorizes the discharge of pollutants into or adjacent to water in the state. The TPDES program is administered under the authority delegated pursuant to 33 U.S.C. Section 1342(b).

**Unauthorized Discharge** - Any direct or indirect non-stormwater discharge to the storm drain system except as exempted in Section V Prohibition of Illicit Connections of this Ordinance.

### **SECTION 3. APPLICABILITY**

Unless exempted, this Ordinance applies to discharges entering the storm drain system within the jurisdictional limits of the authorized enforcement agency.

### **SECTION 4. RESPONSIBILITY FOR ADMINISTRATION**

The City of China Grove shall administer, implement, and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the City Administrator of the City of China Grove may be delegated in writing by the City Administrator to persons or entities acting in the beneficial interest of the City of China Grove.

Authorized individual(s) under this Section shall have the authority to enforce this Ordinance in its entirety and shall be designated as a TPDES Stormwater Manager and/or Inspector. Any person subject to an industrial or construction TPDES stormwater discharge permit or authorization shall comply with all provisions of the permit and may be required by the City of China Grove to have authorization to discharge stormwater into the MS4.

#### **SECTION 5. PROHIBITION OF ILLICIT CONNECTIONS AND DISCHARGES**

The City of China Grove has the authority to prohibit illicit discharges and illicit connections in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)a. This Ordinance prohibits unauthorized discharges into the storm drain system. No person shall release discharges into the municipal storm drain containing any pollutants that cause or contribute to a violation of water quality standards, other than stormwater or authorized non-stormwater discharges.

#### **SECTION 6. RESPONSE TO RELEASES**

The City of China Grove has the authority to respond to and contain other releases. The local jurisdiction must control the discharge of a spill and prohibit dumping or disposal of material other than stormwater and authorized non-stormwater discharges into the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)b. Any person in violation of this Ordinance may risk having their discharge authorization to the MS4 terminated. The authorized enforcement agency will notify the violator of the proposed termination of its authorization. The violator may petition the City to reconsider and schedule a hearing.

When the person responsible has knowledge of any known or suspected release of materials resulting in or potentially resulting in unauthorized discharges into a storm sewer system or surface water in the state, the person must contain and clean up the release. If hazardous materials are released, the person must immediately notify emergency response agencies. If non-hazardous materials are released, the person must notify the authorized enforcement agency no later than the next business day. Notifications in person or by telephone must be confirmed by written notice addressed and mailed to the City of China Grove.

#### **SECTION 7. PERMIT PROCEDURES AND REQUIREMENTS**

The City of China Grove can enforce compliance with the permittee's ordinances, permits, contracts, or orders in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)c.

Unless specifically excluded by this Ordinance, the land owner or operator seeking a permit for land disturbance activity shall submit to the local jurisdiction a permit application on a form provided for that purpose. The permit application must be accompanied by the following: a stormwater management plan (as referenced in Section 9 "Requirements for Stormwater Management Plan Approval" in this Ordinance); a stormwater maintenance agreement and a non-refundable permit review fee. Note that TPDES Construction General Permit TXR150000 requires regulated construction activities (those disturbing one acre or more) to provide a signed and certified construction site notice to the operator of any MS4 receiving the construction site stormwater discharge prior to commencement of land disturbing activities. See TXR150000 Part II Sections E. 1.(f), 2.(c), and 3.(d) and (f).

The land development application fee shall be based on the amount of land to be disturbed, and the fee structure shall be established by the City.

## **SECTION 8. MAINTENANCE AND REPAIR OF STORMWATER FACILITIES**

The City of China Grove has the authority to require installation, implementation, and maintenance of control measures in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)d.

## **SECTION 9. REQUIREMENTS FOR STORMWATER MANAGEMENT PLAN APPROVAL**

The City of China Grove has the authority to receive and collect information (i.e. stormwater pollution prevention plans, inspection reports, etc.) from any person (i.e. operators of regulated construction sites, new or redeveloped land, and industrial and commercial facilities) in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2).e to assess compliance with this permit.

A detailed Stormwater Pollution Prevention Plan (SWPPP) will be required for any development activity that disturbs one (1) acre or more of land. No construction activity shall be authorized until the SWPPP's for each development have been approved by the City.

SWPPP's shall address and evaluate the environmental characteristics of the project site, potential impacts of proposed developments (both present and future), and the effectiveness of proposed stormwater management measures to regulate stormwater runoff. The SWPPP shall indicate the type of stormwater management measures necessary to control stormwater runoff from the current project and future development.

The following elements are required to be included with all SWPPP's:

- **Contact Information:** The name, address, and telephone number of all persons with a legal interest in the property along with the tax reference number and parcel number of the property or properties affected.
- **Map(s)** identifying the location of existing and proposed buildings, roads, parking areas, utilities, and structural stormwater management and sediment control facilities. The map(s) must show proposed land use and percentage of surface area to be adapted to various uses. The map(s) must identify drainage patterns, locations of utilities, roads and easements, the limits of clearing and grading, and a written description of the site plan.
- Sufficient engineering analysis to demonstrate the proposed stormwater management measures will control runoff from the site.
- An inventory of the natural resources at the site and surrounding area prior to proposed activities and a description of the watershed and its relation to the project site. The description shall include the soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention shall be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
- A written description of the maintenance requirements for any proposed stormwater management facility.
- An erosion and sediment control plan shall be included for all construction activities involving on-site stormwater management practices. The erosion and sediment control plan shall indicate the specific measures for the erosion and sediment control on a development site during and after construction.
- Copies of the TPDES "Notice of Intent" and their TPDES "Notice of Termination".

For any activity on a previously developed site, the applicant must indicate within the SWPPP the best management practices it will utilize to control stormwater runoff from the site in accordance with the standards of this Ordinance. If modifications to the SWPPP are required by the City, a final SWPPP shall be submitted for review and subsequent approval once all deficiencies in the plan have been addressed to the satisfaction of the City.

#### **SECTION 10. AUTHORITY TO ENTER AND INSPECT**

The City of China Grove has the authority to enter and inspect private property including facilities, equipment, practices, or operations related to stormwater discharges to the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)f.

The City may enter and inspect facilities, equipment, practices and operations subject to regulation under this Ordinance as often as necessary to determine compliance with this Ordinance. If a discharger's security measures require proper identification and clearance before entry into the premises, the discharger shall make necessary arrangements to allow access to representatives of the authorized enforcement agency.

Facility operators shall allow the City access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records.

The City shall have the right to monitor and/or sample the facility's stormwater discharge.

The City may require the discharger to install and maintain necessary sampling and monitoring equipment.

The operator must remove temporary or permanent obstruction(s) at the written or oral request of the City to allow safe and easy access to the facility for inspection and/or sampling purposes. The costs of clearing access will be borne by the operator and the obstructions may not be replaced.

Unreasonable delays in allowing the City access to a permitted facility is a violation of a TPDES stormwater discharge permit and of this Ordinance. A person commits an offense if the authorized enforcement agency is denied reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

#### **SECTION 11. BEST MANAGEMENT PRACTICES (BMPs) TO REDUCE STORMWATER POLLUTANTS**

The City of China Grove has the authority to respond to non-compliance with BMPs required by the small MS4 in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)g. The City shall adopt measures to identify BMPs for any activity, operation, or facility which may facilitate pollution of stormwater, the storm drain system, or surface water in the state. The owner or operator of a commercial or industrial establishment shall implement, at their own expense, appropriate pollution control measures through the use of structural and non-structural BMPs to prevent and reduce discharge of pollutants into the municipal storm drain system or watercourses. The BMPs must be identified in the Stormwater Pollution Prevention Plan (SWP3) to satisfy requirements of the TPDES permit.

#### **SECTION 12. ENFORCEMENT**

The City of China Grove has the authority to assess penalties, including monetary, civil, or criminal penalties in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)h.

If the City finds a person in violation with this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require:

- Monitoring, analysis, and reporting
- Elimination of illicit connections or discharges
- Termination of existing discharges or practices and/or operations in violation of this Ordinance
- Abatement and/or remediation of stormwater pollution or contamination hazards
- Payment of fines to cover administrative and remediation costs
- Implementation of pollution control measures or treatment BMPs

If the property must be remediated, the notice must establish a deadline to restore the site. The notice must further advise that, if the violator fails to remediate the site by the deadline, a designated governmental agency or contractor will restore the site at the expense of the violator.

Any person receiving a Notice of Violation may appeal the determination to the City Council of the City of China Grove. The Notice of Appeal must be received within three (3) calendar days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or designee shall take place within 14 calendar days from the date of receipt of the Notice of Appeal. The decision of the Council or their designee shall be final.

If the violation remains uncorrected after 14 calendar days pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, then representatives of the authorized enforcement agency shall enter the regulated property to take the necessary actions to abate the violation and/or restore the property. It shall be unlawful for any person to refuse the City to enter upon the premises for the purposes set forth above.

Within 14 calendar 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 seven (7) calendar days. If the amount due is not paid within a timely manner as determined by the decision of the local jurisdiction or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation.

It is 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 entity from activities prompting further violations or compel the person to perform abatement or remediation of the violation(s).

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, drainage cleanup, etc.

Any person that violated or continues to violate this Ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of not more than \$500 per violation.

The City may recover all attorney fees, court costs, and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

The City is authorized to develop a schedule of fines and to develop policy from time to time to assure compliance with requirements of Section 1 "Intent and Purpose". The schedule of fines shall adhere to

all applicable local, state and federal laws. The policy shall include, but will not be limited to development of a TPDES enforcement program, staff training requirements, development of job descriptions, assignment of fines to specific violations, budget requirements, and job assignments.

### **SECTION 13. MAINTENANCE AGREEMENTS**

The City of China Grove has the authority to enter into interagency or interlocal agreements or other maintenance agreements, as necessary in accordance with TPDES Phase II MS4 Permit TXR040000 Part III Section A.3.(a)(2)i. This agreement will include maintenance easements to access and inspect stormwater control practices, and perform routine maintenance to ensure proper stormwater control. A legally binding covenant will identify the responsible parties to maintain stormwater control practices.

### **SECTION 14. ULTIMATE RESPONSIBILITY**

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person will ensure prevention of contamination, pollution, and unauthorized discharge of pollutants.

### **SECTION 15. SEPARABILITY**

The provisions and sections of this Ordinance shall be deemed to be independent, and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

### **SECTION 16. ADOPTION OF ORDINANCE**

This Ordinance shall be in full force and effect after its final passage and adoption. All prior Ordinances in conflict with this Ordinance are hereby repealed.

Passed and Adopted this 1st day of August, 2019

Approved:

  
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Mary Ann Hajek, Mayor

Attest:   
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Susan Conaway, City Secretary