

ORDINANCE NO. 2011-005

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING TITLE XV (LAND USAGE) OF THE CODE OF ORDINANCES TO CREATE A NEW CHAPTER 156 ENTITLED "WATER QUALITY PROTECTION", IN ORDER TO ESTABLISH AND ADOPT WATER QUALITY PROTECTION REGULATIONS; PROVIDING FOR A PENALTY AS PROVIDED IN SECTION 10.99 OF THE CODE; AND PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, TO PROVIDE A SAVINGS AND SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Wimberley, Texas (the "City") seeks to provide for the health, safety and welfare of its citizens; and,

WHEREAS, the Council finds that the drainage ways, creeks, tributaries, and rivers of the City are subject to the potential for periodic pollution which may result in the loss of life and property, health and safety hazards, disruption of commerce and governmental services and extraordinary public expenditures for pollution reduction and protection, all of which adversely affect the public health, safety and general welfare; and,

WHEREAS, the Council seeks to protect real property, the drainage ways, creeks, tributaries and rivers of the City from non-point source pollution; and,

WHEREAS, the City has the authority to regulate non-point source pollution within the City's corporate limits and its Extraterritorial Jurisdiction (ETJ) pursuant to Texas Local Government Code Chapters 51, 212, 401, and 402, and Texas Water Code Chapters 7 and 26; and,

WHEREAS, the City recognizes its responsibility and authority to impose ordinances and controls that are necessary for the government of the City, its interest, welfare, and good order of the City as a body politic.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amendment. THAT the City of Wimberley Code of Ordinances, Title XV (Land Usage), is hereby amended to add a new Chapter 156 entitled "Water Quality Protection" to read as shown on the attached Exhibit "A", incorporated by reference for all purposes.

Except as expressly amended herein, the Code of Ordinances shall remain in full force and effect.

Section 3. All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

Section 4. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinances as a whole.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

Section 6. Open Meetings. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Capt. 551, Loc. Gov't. Code.

PASSED AND APPROVED First Reading this 17th day of Feb., 2011, by a vote of 5 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

PASSED AND APPROVED Second Reading this 3rd day of Mar., 2011, by a vote of 5 (Ayes) to 0 (Nays) 0 (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY, TEXAS

Bob Flocke

Bob Flocke, Mayor

ATTEST:

Cara McPartland

Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby

Carolyn J. Crosby, City Attorney

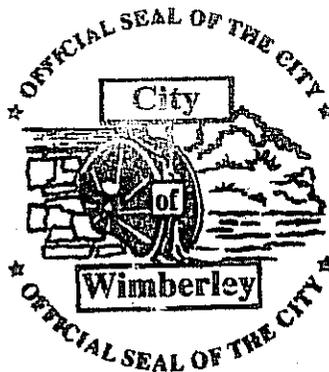


Exhibit A

WATER QUALITY PROTECTION ORDINANCE

TABLE OF CONTENTS

1.	General Provisions	2
	<i>Public Pollution Prevention Controls</i>	
2.	Prohibitions	4
	<i>Development Pollution Controls</i>	
3.	Performance Standards for Development	7
4.	Impervious Cover	9
5.	Water Quality Setbacks	14
6.	Critical Environmental Feature Protection	16
7.	Erosive Flow Controls	16
8.	Landscaping Controls	20
9.	Water Quality Controls	20
10.	Definitions	24
	<i>Administration</i>	
11.	Waivers	32
12.	Enforcement	34

SECTION 156.001

GENERAL PROVISIONS

(A) **Popular Name**

This Ordinance shall be commonly cited as the “Water Quality Protection Ordinance.”

(B) **Introduction**

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

(C) **Purpose**

This Chapter provides standards and procedures for municipal determination of the *non-point source pollution* control management policies which govern the planning, design, construction, operation and maintenance of drainage, *erosion*, and water quality facilities within the *city limits* and the *City’s* extra territorial jurisdiction (*ETJ*).

This Chapter sets forth the minimum requirements necessary to provide and maintain a safe, efficient and effective *non-point source pollution* control system and to establish the various public and private responsibilities for the provision thereof. Further, it is the purpose of this Chapter to:

- (1) Protect human life, health and property; and
- (2) Preserve the natural beauty and aesthetics of the community; and
- (3) Prevent degradation and *pollution* of groundwater resources.
- (4) Protect the integrity of local ecological systems such as Blue Hole, the Blanco River and Cypress Creek; and
- (5) Minimize the expenditure of public money for building and maintaining *non-point source pollution* control projects and cleaning sediments out of storm drains, streets, sidewalks and watercourses; and
- (6) Help maintain a stable tax base and preserve land values; and
- (7) Control and manage the quality of storm water *runoff*, the sediment load in that *runoff*, from points and surfaces within *subdivisions*;
- (8) Utilize *Best Management Practices (BMP)* for *development* which prevents *erosion* and sediment damage and which reduces the *pollutant* loading to *streams*, ponds and other watercourses; and
- (9) Prevent losses of endangered species and habitat of endangered species; and

(D) Applied Location

This Chapter applies to all property within the *city limits* and the *City's ETJ*.

(E) Development

The Planning Area-Land Use Map of the City of Wimberley Comprehensive Plan acknowledges the existing land-use patterns of the *City*, and delineates compatible extensions of these patterns. It is a long-range, general guide for future growth, classified by seven broad categories (Planning Areas). The Comprehensive Plan states the City Center should be the most densely developed Planning Area. Urban sprawl and high intensity land uses outward from the City Center should be resisted. Through the designation of a *High Intensity Planning Area (HIPA)*, the City Council finds it reasonable and prudent to encourage growth within the City Center and discourage heavy *development* in the *ETJ*.

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

(F) Mandate

- (1) Any *person* proposing the *development* of real property within the *city limits* or the *City's ETJ* is subject to the provisions of this Chapter.
- (2) Requirements of this Chapter shall be addressed in *applications* for subdivision plats, *site development permits*, rezoning, Wimberley Planned Development Districts (WPPDs), conditional use permits, development agreements, and building permits.
- (3) It shall be an offense for any *person* to *develop* or improve real property in violation of this Chapter.
- (4) It shall be an offense for any *person* to violate the prohibitions set forth in the Public Pollution Prevention Controls section of this Chapter.

(G) Definitions

Words and phrases used in this Chapter shall have the meanings set forth in Section 156.010 of this Chapter. Terms that are not defined below, but are defined elsewhere in the Code of Ordinances, shall be given the meanings set forth in the Code. Words and phrases not defined in the Code of Ordinances shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and *vice versa*); and words in the masculine gender shall include the feminine gender (and *vice versa*). The word "shall" is always

mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only. Bold italics are used to identify defined terms in this Chapter.

PUBLIC POLLUTION PREVENTION CONTROLS

156.002

PROHIBITIONS

Per the City of Wimberley Comprehensive Plan, it is the intent of the following prohibitions to eliminate sources of *pollution* affecting *watersheds* and aquifers.

(A) General Prohibitions

- (1) No *person* shall discharge, or cause, suffer or allow the *discharge*, of any wastes, substances or other materials into or adjacent to any *water in the State* which causes or will cause *pollution* of any *water in the State*, except where otherwise exempt or allowed through permit by the *TCEQ*.
- (2) No *person* shall introduce or cause to be introduced into a *stormwater drainage system* any *pollutants* or other *discharge* that is not composed entirely of stormwater, except where otherwise exempt or allowed through permit by the *TCEQ*.

(B) Specific Prohibitions

- (1) No *person* shall introduce or cause to be introduced into a Stormwater Drainage System any *discharge* that causes or contributes to causing a violation of a water quality standard established by law.
- (2) No *person* shall introduce, discharge, or cause, suffer or allow a *release* of any quantity of the following substances into a *stormwater drainage system*:
 - (a) motor *oil*, antifreeze, or any other motor fluid;
 - (b) *industrial waste*;
 - (c) asphalt;
 - (d) *hazardous waste*, including *hazardous household waste*;
 - (e) *domestic sewage*, *septic tank waste*, grease trap waste, or grit trap waste;
 - (f) garbage, *rubbish* or *yard waste* beyond that *yard waste* that typically washes off a yard during a rain event;

- (g) wastewater from a commercial carwash *facility*; from any vehicle washing, cleaning, or maintenance operation at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance *facility*; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than two such vehicles;
- (h) wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
- (i) wastewater from commercial floor, rug, or carpet cleaning;
- (j) wastewater from the washdown or other cleaning of pavement that contains any *harmful quantity* of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance as defined by *EPA* or *TCEQ*; or any wastewater from the washdown or other cleaning of any pavement where any spill, leak, or other *release* of *oil*, motor fuel, or other petroleum or *hazardous substance* has occurred, unless all harmful quantities of such released material have been previously removed;
- (k) effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
- (l) ready-mixed concrete, mortar, ceramic, or asphalt base material or hydromulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
- (m) *runoff* or washdown water from any animal pen, kennel, or fowl or livestock containment area;
- (n) filter backwash from a swimming pool, or fountain, or spa;
- (o) swimming pool water containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
- (p) discharge from water line disinfection by superchlorination or other means if it contains any *harmful quantity* of chlorine or any other chemical used in line disinfection;
- (q) fire protection water containing *oil* or *hazardous substances* or materials (except for *discharges* or flows from fire fighting activities by a locally accredited Fire Department);

- (r) water from a water curtain in a spray room used for painting vehicles or equipment;
 - (s) contaminated *runoff* from a vehicle wrecking yard;
 - (t) substance or material that will damage, block, or clog the *stormwater drainage system*;
 - (u) *release* from a *Petroleum Storage Tank (PST)*, or any leachate or *runoff* from soil contaminated by a leaking *PST*, or any *discharge* of pumped, confined, or treated wastewater from the remediation of any such *PST release*, unless the *discharge* satisfies all of the following criteria:
 - (1) the *discharge* complies with all *state* and federal standards and requirements;
 - (2) the *discharge* does not contain a *harmful quantity* of any *pollutant*;
 - (3) the *discharge* does not contain more than 50 parts per billion of benzene; 500 parts per billion combined total quantities of benzene, toluene, ethylbenzene, and xylene (BTEX); or 15 mg/l of total petroleum hydrocarbons (TPH).
- (3) No *person* shall introduce into a *stormwater drainage system* any quantity of sediment, silt, dirt, soil, sand or other material associated with clearing, grading, excavation or other *development* activities, or associated with landfilling or other placement or disposal of soil, rock, sand or other earth materials, in excess of what could be retained on site or captured by employing sediment and *erosion* control measures to the minimum extent required by this Chapter.
- (4) No *person* shall connect a line conveying *sanitary sewage*, whether domestic or industrial, to a *stormwater drainage system*, nor allow such a connection to continue if discovered.
- (5) No *person* shall cause or allow any pavement washwater from a gasoline service station, constructed after the effective date of this ordinance, to be discharged into a *stormwater drainage system* unless such washwater has first passed through a grease, *oil*, and sand interceptor which is properly functioning and maintained.
- (6) *Pesticide, Herbicide and Fertilizer Regulation*
- (a) Any license, permit, registration, certification, or evidence of financial responsibility required by *state* or federal law for sale, distribution, application, manufacture, transportation, storage, or disposal of a *pesticide, herbicide or fertilizer* must be presented to an authorized *City* enforcement officer for examination upon request.

- (b) No *person* shall use, or cause to use any *pesticide* or *herbicide* contrary to any directions for use on any labeling required by *state* or federal statute or regulation.
 - (c) No *person* shall use or cause to be used any *pesticide, herbicide, or fertilizer* in any manner that the *person* knows, or reasonably should know, is likely to cause, or does cause, a *harmful quantity* of the *pesticide, herbicide, or fertilizer* to enter a *stormwater drainage system* or waters in the *State*.
 - (d) No *person* shall dispose of, discard, store, or transport a *pesticide, herbicide, or fertilizer*, or a *pesticide, herbicide, or fertilizer* container, in a manner that the *person* knows, or reasonably should know, is likely to cause, or does cause, a *harmful quantity* of the *pesticide, herbicide, or fertilizer* to enter a *stormwater drainage system* or waters in the *State*.
- (7) Used Oil Regulation
- (a) No *person* shall *discharge* used *oil* into a *stormwater drainage system* or a *sewer, drainage system, septic tank, surface water, groundwater, or water course*;
 - (b) No *person* shall knowingly mix or commingle used *oil* with *solid waste* that is to be disposed of in a landfill or knowingly directly dispose of used *oil* on land or in a landfill;
 - (c) The application of used *oil* shall be allowed for the uses of used *oil* that are defined in 40 CFR 279.1
 - (d) All businesses engaged in the changing of motor *oil* for the public, all municipal waste landfills, and all fire stations may serve as public used *oil* collection centers as provided by *state* law.
 - (e) A retail establishment which sells motor *oil* in containers directly to the public for use off-premises shall post in a prominent place a sign informing the public that improper disposal of used *oil* is prohibited by law. The sign shall prominently display the toll-free telephone number of the *State of Texas* Used Oil Information Center.

DEVELOPMENT POLLUTION CONTROLS

156.003

PERFORMANCE STANDARDS FOR DEVELOPMENT

All new subdivision *development* and new commercial *development* shall achieve the *pollutant* removal standards detailed in this Section through the design and implementation of structural

and nonstructural *BMPs* and *water quality controls*. These standards shall apply to an entire project for which a unified *development* scheme is intended by the *applicant*, without regard to whether the project is comprised of more than one lot. These regulations cannot be avoided by dividing a single project into several small lots. These regulations shall not apply to the *development* of a single family *residence* on an existing platted lot.

The *Technical Construction Standards and Specifications (TCSS) Manual* shall be used to guide efforts to achieve the performance standards for *development* set forth in this Chapter. The *TCSS Manual* describes in detail the technical criteria and procedures to be used to comply with provisions of this Chapter. It neither replaces the need for engineering judgment nor precludes the use of any information relevant to the accomplishment of the purposes of this Chapter. If approved by the *City Engineer*, other generally accepted, or innovative and effective, engineering designs, practices and procedures may be used in conjunction with, or instead of, those prescribed by the *TCSS Manual*.

(A) **Performance Standards for Development Within the High Intensity Planning Area (HIPA)**

All *development* within the area defined as the *HIPA* is subject to the following requirements:

- (1) **5 acres or less:** Technical demonstration of *pollutant* load removal is not required, however, the *applicant* shall employ a combination of structural and non-structural *BMPs* to remove the net increase in *pollutants* due to *development* to a level of not less than 80% of the Total Suspended Solids *pollutant* load while the remaining *pollutant* loading constituents shall be addressed through non-structural measures, in accordance with the TCSS.
- (2) **Greater than 5 acres:** Technical demonstration of *pollutant* load removal is required. For each of the constituents below, the design shall demonstrate 85% removal of the net increase for the *design storm event*:
 - (a) Total Suspended Solids
 - (b) Total Phosphorus
 - (c) *Oil & Grease*
- (3) **Background Pollutant Loads and Pollution Concentrations for developed sites:**
 - (a) Background *pollutant* concentrations shall be as defined in the *TCSS Manual*.
 - (b) Standard *pollutant* concentrations for *developed* sites shall be as defined in the *TCSS Manual*.

- (c) Calculation of annual *pollutant* loading shall comply with the criteria set forth in the *TCSS Manual*.

(B) Performance Standards for Development *Outside the High Intensity Planning Area (HIPA)*

All *development* that is not within the area defined as the *HIPA* is subject to the following requirements:

- (1) Technical demonstration of *pollutant* load removal is required. For each of the constituents below, the design shall demonstrate 90% removal of the net increase for the *design storm event*:
 - (a) Total suspended solids
 - (b) Total phosphorus
 - (c) *Oil & grease*
- (2) *Background Pollutant Loads and Pollution Concentrations* for developed sites:
 - (a) Background *pollutant* concentrations shall be as defined in the *TCSS Manual*.
 - (b) Standard *pollutant* concentrations for developed sites shall be as defined in the *TCSS Manual*.
 - (c) Calculation of annual *pollutant* loading shall comply with the criteria set forth in the *TCSS Manual*.

156.004

IMPERVIOUS COVER

Per the City of Wimberley Comprehensive Plan, it is the intent of the following Section to preserve and protect the quality of *watersheds* and limit the amount of *impervious cover* in *development*. Recognizing there is an established correlation between increasing *impervious cover* and the impairment of water quality and increased *erosion*, the following limitations on *impervious cover* are set forth:

(A) Maximum Limits

Maximum limits on *impervious cover* are established as follows on *developments* occurring after the effective date of this Chapter:

- (1) For areas within the recharge and *contributing zones* of the Edwards Aquifer or Trinity Aquifer in the *ETJ*, the maximum *impervious cover* limit is 20%.
- (2) For areas within the *city limits*, *impervious cover* limits for tracts are established in the *City's* Zoning Ordinance according to the particular Zoning District the tract is designated.

(B) Impervious Cover Limit Calculations

Impervious cover limits in this Section are expressed as a percentage of the gross site area of the subject tract. For purposes of calculation of *impervious cover* limits, the gross site area includes *Water Quality Buffer Zone (WQBZ)* areas and *Critical Environmental Features (CEF)* setback areas.

(C) Items Considered Impervious Cover

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

- (1) roads, pavements, and driveways;
- (2) parking areas;
- (3) buildings;
- (4) pedestrian walkways and sidewalks;
- (5) concrete, asphalt, and masonry surfaced areas, and stone surfaced areas;
- (6) swimming pool water surface area;
- (7) densely compacted natural soils or *fills* which result in a coefficient of permeability less than 1×10^{-6} cm/sec;
- (8) all existing man-made impervious surfaces prior to *development*;
- (9) water quality and stormwater detention basins lined with impermeable materials;
- (10) stormwater drainage conveyance structures lined with impermeable materials;

(D) Items Not Considered Impervious Cover

- (1) existing roads adjacent to the *development* and not constructed as part of the *development* at an earlier phase;
- (2) rock outcrops;

- (3) landscaped areas and areas remaining in their *natural state*;
- (4) *water quality controls* and stormwater detention basins not lined with impermeable materials;
- (5) stormwater drainage conveyance structures not lined with impermeable materials;
- (6) interlocking or "permeable pavers"; and
- (7) functioning rainwater harvesting systems, as defined below.

(E) Reduction Incentives

- (1) As an incentive to reduce *impervious cover*, all *Developments* with less than 15% *impervious cover* are not required to provide technical demonstration for removal of net increase in *pollutants*, but must still incorporate sufficient water quality control measures to comply with the other provisions of this Ordinance.
- (2) Through the incorporation of incentives (rainwater collection, pervious pavement, non-structural *BMPs*), also known as "stormwater credits" for the purposes of water quality calculations, this allows for the reduction of *impervious cover* that is considered (taken into account) in the calculation of *pollutant* load removal for a specific site. (Refer to the *City's TCSS Manual* for more explanation regarding the calculations and methods for attaining effective *impervious cover*.) There is a reduction in the *impervious cover* for purposes of calculation, and also a corresponding allowance for an increase in the physical *impervious cover*.

(F) Rainwater Harvesting Incentives

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

- Catchment Area/Roof which is the surface on which the rain falls;
 - Gutters and Downspouts which transport the water from the catchment area to storage;
 - Leaf screens and Roof washers which are used to filter out debris;
 - Cisterns or Storage Tanks where collected rainfall is stored;
 - Conveyance, which is the method of delivering the water either by gravity or pump; and
 - Water Treatment which include filters and equipment that are used to settle, filter, and disinfect the water if it is to be used for drinking water.
- (1) A rainwater harvesting system approved under this Chapter shall comply with the following minimum requirements:

- (a) The entire system including rainwater collection, conveyance and storage, shall be isolated from the site stormwater system.
 - (b) The collected rainwater shall be used for on-site irrigation or other purposes as approved by the *City*.
 - (c) The system shall comply with the *pollution* control performance standards of Subsections 156.003 (A) and 156.003 (B).
 - (d) The on-site irrigation system shall be designed in accordance with standard irrigation practices considering such factors as soil type, slope, and vegetative uptake rates.
- (2) Rainwater collection and containment structures functioning as a rainwater harvesting system are not considered *impervious cover*. Such structures and/or improvements can be used to obtain credit towards any *impervious cover* requirement set forth in this Chapter. Structures and/or improvements (e.g., building roofs, patios, awnings, etc.) from which stormwater is harvested are considered *impervious cover*.
 - (3) In order to qualify to receive Credit for a rainwater harvesting system, the system must be designed to exceed normal draw (i.e., no credit will be given if tank routinely stays full). Credit is just for the tank cover. In order to qualify, the *applicant* must demonstrate where water is going. (e.g. how it will be drawn down, use as non-potable source rainwater, or irrigation).
 - (4) Credits can zero-out *impervious cover* for purposes of calculating *runoff* treatment. *Applicants* may also get up to 10 percentage points credit toward additional cover.

(G) Transferable Development Intensity (TDI) Incentive

- (1) Transfer of Development Intensity: An *applicant* who complies with a provision of this Subsection qualifies for the *TDI*:
 - (a) For each three (3) acres of land that an *applicant* leaves undeveloped and undisturbed in an area zoned by the *City* for non-residential use, and does not include impervious calculations elsewhere, the *applicant* may transfer up to one (1) acre of *impervious cover*, but in no case shall the maximum *impervious cover* limit be increased by more than ten (10) percentage points; or
 - (b) For each six (6) acres of land that an *applicant* leaves undeveloped and undisturbed in an area zoned by the *City* for residential use and does not include impervious calculations elsewhere, the *applicant* may transfer up to one (1) acre of *impervious cover*, but in no case

shall the maximum *impervious cover* limit be increased by more than ten (10) percentage points; or

- (c) For each six (6) acres of land that an *applicant* leaves undeveloped and undisturbed in the *ETJ* of the *City* and does not include its impervious calculations elsewhere, the *applicant* may transfer up to one (1) acre of *impervious cover*, but in no case shall the maximum *impervious cover* limit be increased by more than ten (10) percentage points.
- (2) An *applicant* who qualifies for a *TDI* must comply with the following requirements to effectuate the transfer:
- (a) the transferring tract and the receiving tract must be located within the *City Limits* or the *City's ETJ*, and
 - (b) the transferring tract does not include a *WQBZ* or *CEF*, and
 - (c) the receiving tract must comply with the water quality control standards of this Chapter, and
 - (d) the transferring and the receiving tracts must be concurrently platted and must transfer development intensity at that time, and
 - (e) the *TDI* must be noted on the plats of the transferring and receiving tracts, and
 - (f) a restrictive covenant must be filed in the deed records, approved by the *City* that runs with the transferring tract and describes the *TDI*.

(H) Restrictions on Siting of Impervious Cover:

- (1) *Impervious cover* shall not be constructed downstream of *water quality controls*.
- (2) *Impervious cover* shall not be constructed within *WQBZs*.
- (3) *Impervious cover* shall not be constructed within Critical Environmental Feature setback areas.
- (4) *Impervious cover* shall not be constructed within the areas designated for on-site irrigation of treated wastewater effluent disposal and/or captured stormwater.

WATER QUALITY SETBACKS**(A) Water Quality Buffer Zones (WQBZ)**

As the location of *development* activities can have significant impacts on water quality, *Water Quality Buffer Zones (WQBZ)* shall be established along *streams* at the time of platting (creation of newly subdivided lots). This subsection does not apply to legally platted lots that existed as of the Effective Date of this Ordinance.

(B) Dimensions for WQBZ

A *WQBZ* shall be established along *streams*. The dimensions of the *WQBZ* shall be based on the size of its watershed as shown below:

- (1) **Up to 80 acres:** The *WQBZ* shall be established per the requirements of the City of Wimberley Protected Water Overlay District.
- (2) **Greater than 80 acres and up to 320 acres:** The *WQBZ* shall extend a minimum of 150 feet from either side of the centerline of the *stream* (total of 300 feet of buffer zone).
- (3) **Greater than 320 acres:** The *WQBZ* shall extend a minimum of 200 feet from either side of the centerline of the *stream* (total of 400 feet of buffer zone).

With approval of the *City Engineer*, modification of the buffer zone dimensions is allowed to address site specific conditions.

(C) Special Instructions Regarding WQBZs

- (1) At the sole discretion of the *City* and based on special circumstances, minimum distances from the stream centerline may be adjusted if there are equivalent protection measures proposed that are found acceptable by the *City Engineer*.
- (2) Along *steep slopes*, as defined, the width of the *WQBZ* shall be 25 feet beyond the edge of the defined *steep slope*.
- (3) Except as specifically provided for in this Chapter, all *development* activities, including temporary construction activities, and landscaping activities, are prohibited in the *WQBZ* of a *stream*, without the express written approval of the *City Engineer* who must be provided evidence of equivalent protection.

(D) Allowable Development in WQBZ

The following *development* activities within a *WQBZ* may be allowed at the sole discretion of the *City* with the corresponding conditions:

- (1) critical utility crossings if the number of crossings of the *WQBZ* is limited to the maximum feasible extent;
- (2) critical roadway crossings if the number of crossings of the *WQBZ* is limited to the maximum feasible extent;
- (3) critical transportation crossings if the number of crossings of the *WQBZ* is limited to the maximum feasible extent;
- (4) hike and bike trails if provided for in an approved *development* plan;
- (5) maintenance and restoration of native, non-invasive vegetation;
- (6) water quality control monitoring devices;
- (7) removal of trash, debris, *pollutants*;
- (8) fences that do not obstruct *flood* flows;
- (9) public and private parks and open space, if human activities are limited to hiking, jogging, or walking trails, and excluding stables, corrals and other forms of animal housing; and/or
- (10) typical private drives (acceptable to the *City*) to allow access to property not otherwise accessible;
- (11) the construction and use of *BMPs* for the express purpose of water quality and stormwater control provided that the natural drainage to the site is less than 128 acres.

(E) Limitations on Allowed Activities in WQBZ

Any *development* within a *WQBZ* allowed under Subsection 156.005 (D) above shall be designed and/or conducted in a manner which limits the alteration and *pollution* of the natural *riparian corridor* to the maximum extent feasible. In no case shall any wastewater line be located less than 100 feet from the center line of a stream unless the *applicant* has demonstrated that installation of the wastewater line outside of this zone is physically prohibitive or environmentally unsound. Any wastewater lines located in a *WQBZ* shall meet design standards and construction specifications to ensure zero leakage.

(F) Requirements for Discharges in WQBZ

All water quality control *discharges* and stormwater *discharges* into a *WQBZ* shall only be in the form of diffused, overland sheet flow and shall have peak velocities of less than 5 feet per second at the 2-year, 3-hour *design storm event*, unless demonstration is

provided that this is not achievable with the proposed *BMPs* for managing stormwater *runoff* and quality, or that other means of diffusing the velocity of the *runoff* is provided that will protect the affected stream's morphology.

156.006

CRITICAL ENVIRONMENTAL FEATURE (CEF) PROTECTION

As *Critical Environmental Features (CEF)* are micro-geologic features that can become direct entry points where *pollutants* are introduced into the aquifer, the following setbacks from *CEFs*, are as set forth in this Chapter to minimize the risk of groundwater *pollution*.

(A) **Minimum Setback**

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

(B) **Restrictions**

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

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

(C) **Hilltop CEFs**

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

156.007

EROSIVE FLOW CONTROLS

Per the City of Wimberley Comprehensive Plan, it is the intent of this Section to minimize the effects of rainwater *runoff* on property *development* and environmental degradation. This Section encourages using structural and non-structural *stormwater drainage systems* to preserve the natural features of the area and to assist with the replenishment of the area's water supply.

As storm water *discharges (hydraulics)* from *development* pose a significant threat to water quality, the following sediment and *erosion* control regulations are set forth for *development*.

(A) **Erosion Control Requirement**

When *development* occurs on a property, all disturbed land areas shall have *erosion* and sediment control measures established prior to any work being performed on the property. This section applies whether or not a *site development permit* or Building Permit is required. Such measures shall be designed so as to eliminate the possible transport of silt, earth, topsoil, *rubbish, yard waste* etc., by water *runoff* from the subject

property to an adjacent property, stream, or onto *City* streets, drainage easements, and drainage facilities, following any land disturbing activity.

(B) Erosion Control Plan

- (1) In those cases where a building permit or *site development permit* is required, including but not limited to *development* within the boundaries of a Protected Water Overlay District, in order to clearly identify all *erosion* and sediment control measures to be installed and maintained throughout the duration of the project, a detailed *erosion* control plan shall be required prior to the issuance of the *site development permit* or the Building Permit. Such plans shall be prepared in accordance with the requirements set forth in the *TCSS Manual*.
- (2) Each *developer* shall implement and maintain the *erosion* control measures shown on its approved *erosion* control plan in order to minimize the *erosion* and the transport of silt, earth, topsoil, etc., by water *runoff* or *development* activities, beyond the limits of the *developer's* site onto *City* streets, drainage easements, drainage facilities, storm drains or other *City* property prior to beginning any land disturbing activity.
- (3) It shall be an offense for a *developer* performing work on a project to violate any of the requirements of this Ordinance, including, but not limited to, the following:
 - (a) Conducting *development* activity without an approved *erosion* control plan, when required, for the location where the violation occurred.
 - (b) Failing to install *erosion* control devices or to maintain *erosion* control devices throughout the duration of *development* activities, in compliance with the approved *erosion* control plan for the location where the violation occurred.
 - (c) Failing to remove off-site sedimentation that is a direct result of *development* activities where such off-site sedimentation results from the failure to implement or maintain *erosion* control devices as specified in an approved *erosion* control plan for the location where the violation occurred.
 - (d) Allowing sediment laden water resulting from below ground installations to flow from a site without being treated through an *erosion* control device.
 - (e) Failing to repair damage to existing *erosion* control devices, including replacement of existing grass or sod.
 - (f) Written notice of violation shall be given to the *developer* or his job site representative as identified in the *erosion* control plan for a site. Such notice shall identify the nature of the alleged violation and the action required to obtain compliance with the intent of the approved *erosion* control plan.

(C) Construction Stormwater General Permit

Prior to the commencement of *development* activity, including clearing, grading, and excavation activities, that result in the disturbance of 5 or more acres of total land area, or that are part of a common plan of *development* or sale within which 5 or more acres of total land area are disturbed, the *developer* is required to obtain the construction stormwater general permits, as may be required by the *TCEQ* and shall submit for review to the *City* a signed copy of its required *Notice of Intent (NOI)* along with a copy of the required *Stormwater Pollution Prevention Plan (SWPPP)*.

- (1) A copy of any *NOI* that is required shall be submitted to the *City* in conjunction with any *application* for a Building Permit, subdivision plat approval, *site development plan* approval, and any other *City* approval necessary to commence or continue construction at the site.
- (2) The *City* shall require any *developer*, who is required to prepare a *SWPPP* to submit the *SWPPP*, and any modifications thereto, to the *City* for review. Such submittal and review of the *SWPPP* shall be required by the *City* prior to commencement of or during construction activities at the site.
- (3) Upon the *City's* review of the *SWPPP* and any site inspection that the *City* may conduct, the *City* may deny approval of any Building Permit, subdivision plat, *site development plan*, or any other *City* approval necessary to commence or continue, or to assume occupancy, on the grounds that the *SWPPP* does not comply with the requirements of the construction general permit, or any additional requirement imposed by or under this Chapter. Also, if at any time the *City* determines that the *SWPPP* is not being fully implemented, the *City* may similarly deny approval of any Building Permit, *site development permit*, subdivision plat, *site development plan* or any other *City* approval necessary to commence or continue *development*, or to assume occupancy, at the site.

(D) Drainage Patterns

Drainage patterns shall be designed to the maximum extent practical to prevent *erosion*, maintain the recharge of local seeps and *springs*, and attenuate the harm of contaminants collected and transported by stormwater. All discharge points from stormwater retention and detention ponds or other accumulation areas shall provide for energy dissipation prior to exiting the site. Overland sheet flow and natural drainage features and patterns shall be maintained, rather than concentrating flows in storm sewers and drainage ditches. Stormwater drainage structures shall be sized to maintain *flood* flow velocities below the velocity associated with the 25-year, 3-hour storm event.

(E) Stormwater Discharge into Waterway

For site designs that provide for *discharge* of stormwater into a waterway, adequate retention and/or detention shall be incorporated into the site design to limit flows into the receiving waterway to the level consistent with the flow rate of the 2-year, 3-hour storm design event evenly distributed over a 24-hour period.

(F) Enclosed Storm Sewers & Impervious Channel Linings

Enclosed storm sewers and impervious channel linings may be considered and approved by the *City* if such storm sewers or impervious linings are considered to be protective of water quality.

(G) Overland Flow Facilities

Overland flow facilities for a *stormwater drainage system* shall be designed in accordance with criteria set forth in the *TCSS Manual*.

(H) Erosion Hazard Setbacks

The *City* may require preservation of an existing channel or waterway for use as a natural *floodplain* through the establishment of *erosion* hazard setbacks in accordance with the *TCSS Manual*. No building, fence, wall, deck, swimming pool or other structure shall be located, constructed or maintained within the area encompassing the setback.

(1) Alternative To Erosion Hazard Setback

As an alternative to the establishment of an *erosion* hazard setback, an existing channel or waterway may be preserved and protected through a bank stabilization and protection plan as approved by the *City*.

(I) BMP Standards

Erosion control, terracing and water quality control *BMPs* shall be designed in accordance with the *TCSS Manual*.

(J) Cut & Fill Stabilization

A cut or *fill* with a finished *grade* steeper than 33% shall be stabilized with a permanent structure.

(K) Roof Runoff

All roof *runoff* from non-residential buildings shall have downspouts disconnected from the site *stormwater drainage system*. Special circumstances may be reviewed and approved by the *City* without a *waiver* to this requirement.

(L) Grass-Lined Swales or Vegetated Buffers

To the maximum extent practical, stormwater drainage shall be treated using overland flow methods to a grass-lined swale or other vegetated buffer. The vegetated buffer shall

be designed in accordance with the *TCSS Manual*. Special circumstances may be reviewed and approved by the *City* without a *waiver* to this requirement.

156.008 LANDSCAPING CONTROLS

- (A) A *developer* shall to the maximum extent practical:
- (1) landscape shall be preserved in its *natural state*;
 - (2) xeriscape and low maintenance vegetation shall be included in all non-residential *development* in accordance with specifications in the *TCSS Manual*;
 - (3) the use of *herbicides, pesticides* and *fertilizers* shall be minimized.
- (B) An *applicant* for a *site development permit* shall submit a *pesticide* and *fertilizer* management plan providing information regarding proper use, storage, and disposal of *pesticides* and *fertilizers*. The plan shall indicate likely *pesticides* and *fertilizers* to be used. The plan shall include two lists of *pesticides* and *fertilizers*:
- (1) those which, due to their chemical characteristics, potentially contribute significantly to water quality degradation;
 - (2) those which, due to their chemical characteristics, potentially would result in minimal water quality degradation.
- City* approval of the *pesticide* and fertilizer plan is required prior to issuance of a site development permit.
- (C) An *applicant* for a *site development permit* shall submit an Integrated Pest Management (IPM) Plan in accordance with criteria set forth in the *TCSS Manual*. *City* approval of the Integrated Pest Management Plan is required prior to issuance of a site development permit.
- (D) Vegetative *BMPs*, such as vegetative filter strips, shall be designed in accordance with the *TCSS Manual*.

156.009 WATER QUALITY CONTROLS (WQC)

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

- (B) Upon *City* approval of the WQC Maintenance Plan, the project *applicant* shall record in the county deed records and on any recorded plat(s) for the *development* a notation stating that the property is subject to a Water Quality Control Maintenance Plan on file at the *City's* administrative offices. Upon transferring title to the property, or any subdivided portion thereof, the *applicant* shall establish a deed restriction stating that the property is subject to a Water Quality Control Maintenance Plan on file at the *City's* administrative offices.
- (C) All *applicants* shall operate, monitor, and maintain each water quality control required by this Chapter in accordance with the WQC Maintenance Plan and the requirements of this Chapter.
- (D) The WQC Maintenance Plan may provide for transfer of responsibility for WQC operation and maintenance activities to:
- (1) a groundwater district, a municipal utility district, a public utility district, or any other special district created under *state* law;
 - (2) a homeowners' or property owners' association;
 - (3) a natural resources conservation or other environmental interest group; or
 - (4) any similar third party entity.

Transfer of responsibility to any such entity requires the advance written consent of the *City*. Any entity assuming responsibility for WQC operation and maintenance shall also assume responsibility for the financial assurance as may be required by the TCSS or the City Council.

- (E) Structural *water quality controls* (WQCs) shall be sized for the entire contributing *drainage area* for the following types of *developments*:
- (1) New multi-family residential *development*; new non-residential *development*; and new subdivision *development*.
 - (2) Redeveloped multi-family residential *development*, redeveloped non-residential *development*, and all redeveloped subdivision *development* that increases total *impervious cover* to a level greater than the *impervious cover* limits described in Section 156.004.
 - (3) New single-family residential *development* which is not part of a subdivision *development* if such *development* has *impervious cover* greater than the *impervious cover* limits described in Section 156.004.

- (F) The volume of *runoff* required to be captured, isolated, and treated by each structural WQC, or series of WQCs operating in sequence as a treatment train, shall be required to handle the *design storm event* and based on the contributing *drainage area* for the WQC or series of WQCs.
- (G) Stormwater *runoff* from the following areas shall not require structural WQCs nor be included in the calculation of the volume of stormwater *runoff* required to be captured, isolated, and treated by a structural WQC:
- (1) The full area of existing natural areas or restored natural areas from which stormwater *runoff* is routed around a WQC structure and which is restricted from *development* and from *pesticides, herbicide, or fertilizer* application through a plat note or restrictive covenant. The *drainage areas* from which stormwater is not routed around a WQC structure and which blends with *runoff* from developed areas shall be included in the water quality volume calculations.
 - (2) 50% of the area using landscaping that requires no irrigation and no *pesticide, herbicide, or fertilizer* applications.
 - (3) The area on which a WQC structure is situated.
 - (4) Swimming pools that do not discharge filter backwash into a stormwater drainage system.
 - (5) Impervious surface areas used for stormwater collection and on-site irrigation.
 - (6) Drainage from off-site areas which is routed around a WQC structure. The *drainage areas* from which stormwater is not routed around a WQC structure and which blends with *runoff* from developed areas shall be included in the water quality volume calculations.
- (H) In determining the required level of treatment, the nature and volume of *pollutant* loads from all developed areas shall be considered including but not limited to the following:
- (1) areas of *impervious cover*;
 - (2) the potential for *pollutant* impacts from industrial, commercial and other nonresidential types of *Development*;
 - (3) lawns, landscaping, and gardens using *pesticides, herbicides or fertilizers*;
 - (4) play fields and other recreational or green space areas using *pesticides, herbicides or fertilizers*; and
 - (5) areas receiving wastewater effluent through surface spray irrigation or sub-surface *infiltration*.

- (I) All WQCs utilized for any *development* or Redevelopment project shall be designed by a licensed Texas professional engineer in accordance with the removal efficiencies and other technical criteria set forth in the *TCSS Manual*. Alternative WQC technical criteria may be approved if it is determined in the sole discretion of the *City* that the alternative technical criteria will result in equal or greater water quality control performance as that required under this Chapter.
- (J) All structural WQCs utilized in the *recharge zone* shall be modified or augmented to prevent direct *infiltration* and recharge from the WQC. To meet this requirement, such WQCs shall utilize artificial linings, evapo-transpiration beds, or other methods designed and operated to prevent *infiltration* into the *CEFs* and Edwards Aquifer and Trinity Aquifers, even during periods of extended rainfall.
- (K) To the maximum extent practical, WQCs shall be designed to restore the *infiltration* capacity to pre-*development* conditions. *Infiltration BMPs* shall be designed in accordance with the *TCSS Manual*.
- (L) The *erosion* control requirements of this Chapter shall apply to all related areas for a *development* project including but not limited to off-site borrow areas, off-site spoil areas and off-site construction staging areas which are owned or controlled by the *developer*.
- (M) The peak *runoff* rate for developed conditions shall not exceed the peak *runoff* rate for pre-*development* conditions for the two-year storm event. Peak *runoff* rate calculations shall comply with the criteria set forth in the *TCSS Manual*.
- (N) To provide necessary access for maintenance and monitoring, *water quality controls* shall be located within an area dedicated to the public by easement, deed restriction, or recorded plat notation. The dedicatory instrument shall note that water quality restrictions exist on the property and that any alternative use or alteration of the property must be approved in writing by the *City*.
- (O) An *applicant* for a *site development permit* shall submit a WQC Maintenance Plan describing the specific measures proposed for operating, monitoring, and maintaining each water quality control proposed for a *development* project as required by this Chapter. The measures described in the WQC Maintenance Plan shall be consistent with the guidelines set forth in the *TCSS Manual* and shall comply with the financial assurance requirements as may be defined by the TCSS and as required by the City Council based upon design criteria and needs. *City* approval of the WQC Maintenance Plan is required prior to issuance of a *site development permit*.

DEFINITIONS

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

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

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

Application: A written request for an approval required by this Chapter.

Background Pollutant Load: The amount of pollution in stormwater runoff that is discharged from a site before development. The method used for calculating Background Pollutant Load is to be found in the TCSS (or the Technical Standards section of this Ordinance).

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

Board of Adjustment: This term is the same as defined and applied in the Zoning Ordinance for the City of Wimberley.

City: The City of Wimberley, an incorporated municipality located in Hays County, Texas.

City Engineer: The engineer for the City of Wimberley.

City Limits: The incorporated municipal boundaries of the City of Wimberley.

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

Critical Environmental Features (CEFs): These are infiltration features and include caves, solution cavities, fractures, sinkholes, and other karst surface features.

Design Storm Event: The design storm event shall be the 2-year, 3-hour storm. The pollutant loadings for this storm event shall be calculated in accordance with the TCSS Manual.

Develop: To engage in the Development of land.

Developer: An individual engaged in the Development of land.

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

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

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

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

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

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

EPA: the federal Environmental Protection Agency, or a successor agency.

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

ETJ: The extraterritorial jurisdiction of the City of Wimberley.

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

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

Fill: The manmade deposition and compaction of material to effect a rise in elevation.

Flood: A general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland or tidal waters, or (2) the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain: For the purposes of Water Quality Buffer Zones, this term shall mean either of one or the other following definitions: (a) a FEMA studied floodplain identified on the FIRM (Flood Insurance Rate Maps) as Zone AE or equivalent; or (b) a studied floodplain as provided through engineering data prepared and certified by a Professional Engineer.

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

Harmful Quantity: The amount of any substance that will cause Pollution of water in the State.

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

Hazardous Substance: Any substance listed in Table 302.4 of 40 CFR Part 302.

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

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

High Intensity Planning Area (HIPA): That area of higher density Development within the *City Limits* as defined in the City of Wimberley Comprehensive Plan and the current Zoning Ordinance as Planning Areas III thru VI. Planning Areas I, II and VII along with the *City's* ETJ are not included in the HIPA.

Impervious Cover: Impermeable Development covering the natural land surface that inhibits Infiltration. The term expressly excludes storage tanks for rainwater harvesting systems, or the structure covering specifically the rainwater collection tanks.

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

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

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

Licensed Professional Engineer/Geoscientist: A person who possesses an active license and is registered by the State Board of Registration for Professional Engineers/Geoscientists in the State of Texas. The term also includes a Professional Engineer (PE).

Limited Plan Review: A level of City review of Development Site Plans that is less detailed than standard review procedures and consisting of a geometric review of proposed impervious cover overlaid on stream buffer zones and CEF setbacks with no requirement in the review process to demonstrate achievement of otherwise applicable performance standards.

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

Local Governmental Agencies: Any department or agency related to the subdivision of the State in the form of the County or municipality.

Natural State: The condition of the land existing prior to any Development.

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

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

Non-Point Source Pollution Control Plan: The drawings and documents submitted by

an applicant seeking plan or permit approval under this *Chapter*. Such a plan consists of a system of vegetative, structural and other measures to control the increased rate and volume of surface runoff and reduce pollutants in the runoff caused by human changes to the land.

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

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

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

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

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

Petroleum Storage Tank (PST): Any one or combination of aboveground or underground storage tanks that contain oil, petroleum products or petroleum substances, and any connecting underground pipes.

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

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

Pollution: The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the State that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to the public health, safety,

or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

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

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

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

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

Rubbish: Non-putrescible solid waste, excluding ashes, that consist of (A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, asphalt, yard trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

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

Septic Tank Waste: Any Domestic Sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

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

Sewage (or Sanitary Sewage): The Domestic Sewage and/or Industrial Waste that is discharged into a sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

Site Development Permit/Plan: The permit required by the City's Code of Ordinances.

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

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

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

State: The State of Texas.

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

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

Stormwater Pollution Prevention Plan (SWPPP): A plan required by either the TPDES Construction Site General Permit or the TPDES Industrial General Permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity.

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

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

TCEQ: The Texas Commission on Environmental Quality or its predecessor or successor agencies as defined by law.

Technical Construction Standards and Specifications (TCSS) Manual: This manual describes in detail the technical criteria and procedures to be used to comply with provisions of this Chapter. Although the purpose of the TCSS Manual is to establish uniform design practices, it neither replaces the need for engineering judgment nor precludes the use of any information relevant to the accomplishment of the purposes of this Chapter. Other generally accepted, or innovative and effective, engineering designs, practices and procedures may be used in conjunction with, or instead of, those prescribed by the TCSS Manual if approved by the City Engineer. The TCSS Manual for the City of Wimberley shall be the same manual adopted by the City of Austin, as may be amended. A copy is maintained and available for inspection at the Wimberley City Hall.

TPDES General Permit for Construction Stormwater Discharges: The Construction General Permit No. TXR150000 issued by TCEQ on March 5, 2003 and any subsequent modifications or amendments thereto.

TPDES General Permit for Industrial Stormwater Discharges: The Industrial General Permit No. TXR050000 issued by TCEQ on August 20, 2001 and any subsequent modifications or amendments thereto.

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

Transferable Development Intensity (TDI): Authorization to exceed the uniform intensity levels otherwise imposed under this *Chapter* on a less environmentally-sensitive tract of land resulting from voluntary relinquishment of Development rights otherwise allowed under this Chapter on a more environmentally-sensitive tract of land (e.g., through dedicated conservation easement). A TDI can also result from the removal of existing impervious cover within an existing Development with water quality protection measures not otherwise required by this Chapter.

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

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

Water Quality Buffer Zone (WQBZ): Natural riparian areas along waterways and critical environmental features that reduce overland flow velocities and filter pollutants.

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

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

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

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

ADMINISTRATION

156.011

WAIVERS

(A) Presumption

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

(B) Identification

All *waivers* requested for a project must be identified during the platting and/or Site Plan approval process (as may be applicable).

(C) Conditions

In granting a *waiver*, the *Board of Adjustment* shall prescribe upon the *applicant* only conditions that it deems necessary to or desirable in the public interest.

(D) Considerations

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

(E) Findings

No *waiver* shall be granted unless the *Board of Adjustment* finds that all of the following provisions are met, and the burden shall be on the *developer* to show that these provisions are satisfied:

- (1) That there are special circumstances or conditions affecting the land involved, such that the strict application of the provisions of this Chapter would deprive the *applicant* of the reasonable use of this land;
- (2) That the *waiver* is necessary for the preservation and enjoyment of a substantial property right of the *applicant*;
- (3) That the granting of the *waiver* will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
- (4) That the granting of the *waiver* will not have the effect of preventing the orderly *development* of other land in the area in accordance with the provisions of this Chapter.

(F) Pecuniary Hardship

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

(G) Minimum Departure

When the *Board of Adjustment* determines that a *waiver* is warranted, the *waiver* permitted shall be the minimum departure from the terms of this Chapter necessary to avoid such deprivation of privileges enjoyed by such other property to facilitate a reasonable use, and which will not create significant probabilities of harmful environmental consequences.

(H) Adequate Basis Option 1

It may be determined by the *Board of Adjustment* to be an adequate basis for granting a *waiver* that doing so will enable the *applicant* to create additional open space, preserve trees, maintain *critical environmental features*, ensure more wildlife preservation, or bring nonconforming structures (including but not limited to signs) into compliance with current regulations. This section is designed to achieve a more favorable outcome for the general public than would be possible complying with the strict mandates of this Chapter.

(I) Adequate Basis Option 2

It may be determined by the *Board of Adjustment* to be an adequate basis for granting a *waiver* that the *applicant* provides the *City* with a proposal pursuant to which the *applicant* presents a site exceeding the standard *impervious cover* rates with a mitigation plan that compensates for the additional *impervious cover*. Examples of potential mitigation include, but are not limited to, the *applicant's* acquisition of *TDIs* to offset the additional *impervious cover*.

ENFORCEMENT**(A) Civil & Criminal Penalties**

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

(B) Criminal Prosecution

Any *person* violating any provision of this Chapter shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this Chapter is violated shall constitute a separate offense. An offense under this Chapter is a misdemeanor.

(C) Civil Remedies

Nothing in this Chapter shall be construed as a *waiver* of the *City's* right to bring a civil action to enforce the provisions of this Chapter and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the Chapter or to require specific conduct that is necessary for compliance with the Chapter; and
- (2) a civil penalty up to one thousand dollars (\$1,000.00) a day when it is shown that the defendant was actually notified of the provisions of the Chapter and after receiving notice committed acts in violation of the Chapter or failed to take action necessary for compliance with the Chapter; and
- (3) other available relief.

(D) Administrative Action

- (1) **Stop Work Orders.** When an appropriate authorized official of the *City* determines that there has been non-compliance with any material term, condition, requirement or agreement under this Chapter, the *person* obtaining such approved plan shall be ordered by the *City* in writing to cease and desist from further *development* or construction material to the alleged non-compliance until corrected by compliance.
- (2) **Withholding Authorizations.** The *City* may refuse to grant *development*, construction, or occupancy approvals for improvements for a property that does

not fully and completely comply with all terms and conditions of this Chapter. Without limiting the type or number of approvals the *City* may withhold, the *City* is specifically authorized to refuse to grant *site development permits*, Building Permits, utility connections, and certificates of occupancy.