

**City of Wimberley**  
City Hall, 221 Stillwater  
Wimberley, Texas 78676  
**Planning & Zoning Commission**  
Minutes of Regular Meeting  
November 11, 2010 at 6:30 p.m.

Meeting called to order by Acting Chair Steve Klepfer. Present were Commissioners Beth Mitchell, Jean Ross, Lila McCall, David Glenn, and Rick Burleson. Chairman Tracey Dean had an excused absence.

Staff Present: City Administrator Don Ferguson

**Citizen Communications:**

No citizen comments were heard.

**1. Consent Agenda**

Approval of minutes of the regular Planning & Zoning Commission meeting on October 28, 2010.

Commissioners Ross and Glenn pulled the minutes. Discussion agreed to delete "Benefit of duration of occupation requirement" (4<sup>th</sup> bullet point, page 4) and amend the following bullet point (see italics): "Owner *occupancy* required for B & Bs, but not for vacation rentals. *However, vacation rentals shall require the designation of a local responsible party.*"

Commissioner Ross moved to approve the minutes, as amended. Commissioner McCall seconded. Motion carried on a vote of 6-0.

**2. Discussion and Possible Action**

- A. Discuss and consider action regarding the possible modification of requirements for bed and breakfasts and short term rentals within the City of Wimberley. (*City Administrator*)

City Administrator Ferguson presented an updated matrix (*attached to these minutes*) detailing possible requirements for bed and breakfast (B & B) operations, vacation rentals, and small inns.

Discussion included:

- Duration of operation requirement, specifically what constitutes a "lapse" and the need for the property owner to re-apply for a conditional use permit (CUP), if active operations have lapsed for more than nine (9) months

- Clarification of the term "active" as relates to B & B and vacation rental operations
- Zoning districts and planning areas where B &Bs and vacation rentals would be allowed
- Whether or not the existing CUP process provides adequate neighborhood protection
- Maximum occupancy requirements
- Requirement that vacation rental owner provide current owner/manager contact information and CUP conditions to all neighboring properties within two-hundred feet (200')
- Pre-existing, non-conforming uses

Acting Chair Klepfer moved to amend the *Maximum Occupancy* requirements with the addition of italicized language as follows:

*"Addressed as part of CUP application based on number of rooms, beds, parking, and neighborhood input; however, for vacation rentals in Planning Areas I and II, maximum occupancy shall be six (6) rental users."*

Commissioner Burlison seconded. Motion carried on a vote of 4-2. Commissioners Mitchell and Ross voted against.

Continued discussion included:

- Specific B & B statistics relating to number of rooms/guests
- Agreement on use of the State's tax records as clearly stated criteria for ascertaining whether or not a B & B/vacation rental is an "active operation"

No further action was taken on this item.

B. Discuss and consider action regarding the development of a water quality protection ordinance. (*City Administrator*)

City Administrator Ferguson highlighted the proposed ordinance's purpose, definitions, and specific provisions. *The full text of the proposed ordinance is attached to these minutes.*

Discussion among the Commission and City Administrator Ferguson addressed:

- Concerns over potential loopholes relating to rainwater harvesting credits, impervious cover requirements, and management of flows for properties less than five (5) acres
- Comments regarding the close inter-relationship between surface and subsurface water quality and pollution of the aquifers, including recharge/contributing zone definitions and standards

- Reasoning for fifteen percent (15%) maximum impervious coverage requirement and whether or not that percentage is too restrictive
- Incentives to curb intense development through “transferrable development rights”
- Basis and process for drafting of ordinance language
- Intent of draft ordinance to produce a concise, understandable document that allows for pre-existing uses, with the primary focus on new development
- Concern that the draft ordinance does not adequately convey its purpose to control “big” development
- Ways to re-group and better phrase regulations in order to truly define the intent and purpose of the proposed ordinance and to educate the public
- Examples of the proposed ordinance’s effect on those property owners wishing to clear cedar
- Clarification of the State’s requirements and acreage thresholds [five (5) acres or more] related to clearing of properties
- The City’s need for an ordinance in line with State regulations in order to effectively prevent and/or deal with potential problems that could occur from lack of erosion control or unmanaged runoff
- Erosion controls such as berming and revegetation
- Importance of educating owners of properties that were included in City-initiated zoning on the need to follow State law and City ordinance (if approved) requirements before clear cutting

City Administrator Ferguson asked Commission members to contact him before its December 9<sup>th</sup> meeting with any additional comments or concerns that will help in clarifying and reorganizing draft ordinance language to make its purpose, intent, and definitions more understandable.

### **3. Staff and Commission Reports**

- Announcements
- Future Agenda Items

City Administrator Ferguson reported on the Commission’s December 9, 2010 meeting agenda, which includes:

- Continued cases requesting CUPs for B & B operations
- A public hearing on proposed B & B/vacation rental/inn regulations
- Proposed amendment to Protected Water Overlay District regulations, as related to septic issues

As a future agenda item, Commissioner Ross requested discussion of design standards. Acting Chair Klepfer requested future discussion of grandfathering standards.

Hearing no further announcements or future agenda items, Commissioner Glenn moved to adjourn. Commissioner McCall seconded. Motion carried on a vote of 6-0.

**Adjourn at 7:35 p.m.**

Recorded by:

*Cara McPartland*

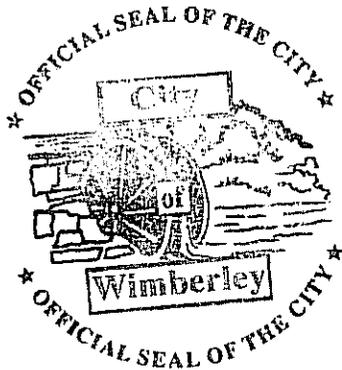
Cara McPartland

**These minutes approved the 9th of December, 2010.**

**APPROVED:**

*Tracey Dean*

**Tracey Dean, Chair**



	<i>Bed and Breakfast (CUP)</i>	<i>Vacation Rental (CUP)</i>	<i>Village Inn (VI Zoning District)</i>
Planning Area Allowed	All Planning Areas	Planning Areas III - VII	Planning Areas III - VII
Zoning District Allowed	RA, R-1, R-2, R-3, O-1, O-2, C-1, C-2, C-3, NS, SC	RA, R-1, O-1, O-2, C-1, C-2, C-3, SC	Not Applicable
CUP Required	Yes Yes (Non-transferable)	Yes Yes (Non-transferable)	No No Yes
Annual Permit	Yes	Yes	Not Applicable
Duration of Operation Requirement	The active operation of the bed and breakfast shall not have lapsed for more than nine (9) months	The active operation of the vacation rental shall not have lapsed for more than nine (9) months	Not Applicable
Owner Occupation Requirement	Yes and use must be maintained within an owner occupied single family dwelling	No	No
Maximum Occupancy	Seven (7) guests	Twelve (12)	Twenty (20)
Maximum Length of Stay	Seven (7) days	Fifteen (15) days	Not Applicable
Room Requirements	Not more than three (3) sleeping rooms maybe used for rental purposes	Not more than one (1) sleeping room for 750 square feet of floor area, with a maximum of five (5) sleeping rooms	Not more than one (1) sleeping room for 500 square feet of floor area, with a maximum of ten (10) sleeping rooms;
Construction Requirements	Rooms utilized for sleeping shall be part of the primary residential structure and shall not have been specifically constructed or remodeled for rental purposes; No alteration to the exterior of the residential dwelling, accessory building, or yard that alters the residential character of the premises is permissible; OSSF shall have adequate capacity	Rooms utilized for sleeping shall be part of the primary residential structure and shall not have been specifically constructed or remodeled for rental purposes. No alteration to the exterior of the residential dwelling, accessory building, or yard that alters the residential character of the premises is permissible; OSSF shall have adequate capacity	New construction of rooms to be utilized for sleeping is allowed in accordance with applicable codes and ordinances; Property must be at least one half acre in size; Maximum building footprint of 2,000 square feet;
Parking	All parking shall be off-street; two (2) parking spaces are required plus one additional space per room rented; yard parking not permitted	All parking shall be off-street; two (2) parking spaces are required plus one additional space per room rented; yard parking not permitted	All parking shall be off-street; one (1) parking space per room rented shall be provided; yard parking not permitted
Lighting	Lighting Code Compliant	Lighting Code Compliant	Lighting Code Compliant
Food Service	At least one (1) meal shall be served daily to residents and overnight guests	Optional; Such service shall involve pre-packaged food or come from a licensed kitchen	Optional; Such service shall involve pre-packaged food or come from a licensed kitchen
Fire Safety	One (1) smoke alarm in each guest bedroom along with a fire extinguisher visible and accessible to guests	One (1) smoke alarm in each guest bedroom along with a fire extinguisher visible and accessible to guests; a fire escape plan shall be developed and graphically displayed in each guest room; second exit shall be provided	One (1) smoke alarm in each guest bedroom along with a fire extinguisher visible and accessible to guests; a fire escape plan shall be developed and graphically displayed in each guest room; second exit shall be provided
Signage Allowed	Signage shall be limited to one (1) non-illuminated sign not to exceed four (4) square feet in area and shall be of traditional hill country design	None	Signage shall be limited to one (1) non-illuminated sign not to exceed sixteen (16) square feet in area and shall be of traditional hill country design
Water Access	Only renters may access the water from the subject property and such access shall be from a point at least fifty (50) feet from any adjacent property line and occur during daylight hours only	Only renters may access the water from the subject property and such access shall be from a point at least fifty (50) feet from any adjacent property lines and occur during daylight hours only	Only renters may access the water from the subject property and such access shall be from a point at least fifty (50) feet from any adjacent property lines and occur during daylight hours only
Prohibited Gathering	Residence shall not be used by the public or paying guests for the hosting of receptions, private parties or the like	Residence shall not be used by the public or paying guests for the hosting of receptions, private parties or the like	Not Applicable
HOT Tax Permit Required	Yes	No	Yes
Required Guest Documentation	A list shall be maintained and available upon request of all guests and their place of residence	A list shall be maintained and available upon request of all guests and their place of residence	A list shall be maintained and available upon request of all guests and their place of residence
Location Requirement	Not Applicable	No permitted vacation rental home shall be located closer than one thousand (1,000) feet to an existing permitted vacation rental	Not Applicable

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## SECTION 1. ENACTMENT PROVISIONS

### 1.1. Popular Name

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

### 1.2. Introduction

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

### 1.3. 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.

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:

- (a) Protect human life, health and property; and
- (b) Prevent losses of endangered species and habitat of endangered species; and
- (c) Protect the integrity of local ecological systems as Blue Hole; and
- (d) 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
- (e) Help maintain a stable tax base and preserve land values; and
- (f) Preserve the natural beauty and aesthetics of the community; and
- (g) Control and manage the quality of storm water runoff, the sediment load in that runoff, from points and surfaces within subdivisions; and
- (h) 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
- (i) Prevent degradation and pollution of groundwater resources.

1.4. This Chapter applies to all property within the city limits and the ETJ.

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

### 1.6. Exemption

1.6.1. This Chapter shall not apply to public school facilities

### 1.7. TCSS Manual

Technical Construction Standards & Specifications (TCSS) Manual establishes 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 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 is maintained and available for inspection at City Hall.

**1.8. Mandate**

- 1.8.1. Any person proposing to develop real property within the jurisdiction of the City is subject to the provisions of this Chapter.
- 1.8.2. 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 Construction Permits.
- 1.8.3. It shall be an offense for any person to develop or improve real property in violation of this Chapter.

**1.9. PGA**

- 1.9.1. Preferred Growth Areas (PGAs) are defined, herein.
- 1.9.2. Through the designation of PGAs, the City Council finds it reasonable and prudent to encourage growth within the mostly-developed urban core of the municipality, and discourage heavy development in the ETJ.
- 1.9.3. PGA status is attained by a tract of land upon the granting of zoning, not upon annexation.

**SECTION 2. DEFINITIONS**

**2.1. General**

Words and phrases used in this Chapter shall have the meanings set forth in this section. 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.

**2.2. Specific:**

***Agricultural Activities:*** Pasturing of livestock or use of the land for planting, growing, cultivating, and harvesting crops for human or animal consumption.

***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:*** A person who submits an application for approval required by this Chapter. 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 or 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 nonpoint source pollution of waters in the State. The two basic types of BMP's for purposes of this Chapter are "structural BMP's" (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 BMP's" (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 BMP's.

***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 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.

***Critical Environmental Features (CEFs):*** These are comprised of sensitive features to include caves, solution cavities, solution enlarged fractures, sinkholes, and other karst surface features.

**Developer:** A person who owns a tract of land and who is engaged in clearing, grubbing, filling, mining, excavating, grading, installing streets and utilities or otherwise preparing that tract of land for the eventual division into one or more lots on which building(s) or other structure(s) will be constructed or placed.

**Development:** All land modification activity, including the construction of building, roads, paved storage areas, and parking lots. "Development" also includes any land disturbing construction activities or human-made change of the land surface, including clearing of vegetative cover, excavating, filling and grading, mining, and dredging, and the deposit of refuse, waste or fill. The following activities are excluded from the definition: care and maintenance of lawns, gardens, and trees; minimal clearing (maximum ten feet (10') wide) for surveying and testing; and agricultural activities.

**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.

**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.

**ETJ:** The extraterritorial jurisdiction of the City of Wimberley.

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

**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 in a household (including single and multiple residences, hotels, motels, bunk houses, ranger stations, crew quarters, camp grounds, picnic grounds, and day use recreational areas) by a consumer 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.

**Impervious Cover:** Buildings, parking areas, roads, and other impermeable man-made improvements covering the natural land surface that prevents infiltration. For purposes of compliance with this Chapter, the term expressly excludes storage tanks for rainwater collection 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.

**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).

**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 activities.

**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.

**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.

**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.

**Pollutant:** Eroded or displaced sediment, soil, silt or sand resulting from development activities; dredged spoil; solid waste; sewage; garbage; chemical waste; biological materials; 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.

**Preferred Growth Area (PGA):** That area as defined by the contiguous city limits as reflected in the most current official City limits map, and is affected by the current Zoning Ordinance defining areas of higher-density development (specifically zoning categories of R-3, R-4, R-5, MF-1, MF-2, O-2, C-2, C-3, HC, I-1, I-2, L-1, L-2 and IP

as may be determined from time to time to be deemed as appropriate for higher-density development. This area allows for change through future contiguous annexations.

**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.

**Riparian Corridor:** The ecological areas within and adjacent to a floodplain that are or can be comprised of 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.

**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 having measurable flow, or a pool, and characterized by the presence of a mesic plant community adapted to the moist conditions of the site.

**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.

**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.

**Transferable Development Right (TDR):** 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 TDR can also result from voluntary retrofitting of 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.

**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.

## SECTION 3. PROHIBITIONS

### 3.1. General Prohibitions

- 3.1.1. Except as otherwise specifically authorized by this Chapter, 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.
- 3.1.2. Except as otherwise specifically authorized by this Chapter, 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.

### 3.2. Specific Prohibitions

- 3.2.1. 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.
- 3.2.2. No person shall introduce, discharge, or cause, suffer or allow a release of any harmful quantity of the following substances into a stormwater drainage system:
  - (a) used motor oil, antifreeze, or any other motor vehicle fluid;
  - (b) industrial waste;
  - (c) hazardous waste, including hazardous household waste;
  - (d) domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  - (e) garbage, rubbish, or yard waste beyond that which typically washes off a yard during by rain event;
  - (f) 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;

- (g) 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;
- (h) wastewater from commercial floor, rug, or carpet cleaning;
- (i) 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;
- (j) effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
- (k) 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;
- (l) runoff or washdown water from any animal pen, kennel, or fowl or livestock containment area;
- (m) filter backwash from a swimming pool, or fountain, or spa;
- (n) 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;
- (o) 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;
- (p) 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);
- (q) water from a water curtain in a spray room used for painting vehicles or equipment;
- (r) contaminated runoff from a vehicle wrecking yard;
- (s) substance or material that will damage, block, or clog the stormwater drainage system;
- (t) 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).

- 3.2.3. No person shall introduce or cause to be introduced into a stormwater drainage system any harmful quantity of sediment, silt, dirt, soil, sand or other material associated with clearing, grading, excavation or other construction 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.
- 3.2.4. 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.
- 3.2.5. No person shall cause or allow any pavement washwater from a 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.

#### **SECTION 4. RESTRICTED ACTIVITIES**

##### **4.1. Pesticides, Herbicides & Fertilizers**

- 4.1.1. 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.
- 4.1.2. 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.
- 4.1.3. 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 of the United States.
- 4.1.4. 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.

## 4.2. Used Oil

### 4.2.1. No person shall:

- (a) discharge used oil into a stormwater drainage system or a sewer, drainage system, septic tank, surface water, groundwater, or water course;
- (b) 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 are defined in 40 CFR 279.1

4.2.2. 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.

4.2.3. 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 used oil information center.

## 4.3. Hazardous Material Traps (HMT)

4.3.1. Roadways capable of conveying at least 5000 vehicles a day must include a hazardous materials trap (HMT).

- (a) These HMTs must be designed to retain a spill of 10,000 gallons of liquid hazardous material.
- (b) These HMTs may be of a variety of designs including that used previously by TxDOT.

4.3.2. To eliminate the need for manual draining of a hazardous material trap after a rain event, the Texas Department of Transportation (TxDOT) has developed an automatic siphon system to drain the HMT when it fills with rainwater. See the City's TCSS for an illustration of a typical siphon detail from a set of TxDOT construction plans.

- (a) The siphon device is designed to drain the trap after it becomes full from a rain event, but is installed at an elevation above the full capacity of the trap. Therefore, as long as a hazardous material spill does not occur during a rain event the system should contain the spill.
- (b) The siphon is provided with bypass and shutoff valves so that alert on-scene responders can shutoff the automatic siphon and thereby maintain some containment even in the event of a concurrent rain/spill.

- (c) Other options for spill containment are presented in the main section of TCEQ's *Optional Enhanced Measures* (OEM), RG-348.

## SECTION 5. PERFORMANCE STANDARDS

### 5.1 Applicability

- 5.1.1. All development shall achieve the pollutant removal standards detailed in this Chapter through the design and implementation of structural and nonstructural BMP's and water quality controls.
- 5.1.2. This Chapter 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.

### 5.2 Performance Standards *Within* the PGA

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

- 5.1.3. **5 acres or less:** Technical demonstration of pollutant load removal is not required, however applicant shall employ a combination of structural and non-structural BMP's to remove the net increase in pollutants due to development to a level of not less than 80% TSS pollutant load removal and shall address the remaining pollutant loading constituents through non-structural measures, in accordance with the TCSS.
- 5.1.4. **Greater than 5 acres:** 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

### 5.3 Performance Standards *Outside* PGA

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

- 5.3.1. It is the desire of these regulations that there be no net increase of Pollutant Load.
- 5.3.2. Plans shall be designed to achieve no net increase above the base analysis.
- 5.3.3. 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

- 5.3.4. 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.

**5.4 Incentive-based alternative standards**

These standards shall apply throughout the city limits and the ETJ as they are to encourage the use of innovative strategies and opportunities for meeting water quality standards and lessening demand on water for irrigation or other water uses that would otherwise use either surface water or groundwater resources.

- (a) The gross Impervious Cover is 15 percent or less.
- (b) Street and drainage network is designed to include the use of open roadway sections, ribbon curb, maintenance of sheet flow and vegetative Buffer Zones.
- (c) Impervious Cover credit by use of porous pavement, rainwater harvesting, and other methods can be used to gain compliance as they are demonstrated to the satisfaction of the City Engineer to provide long-term water quality viability, and the long-term maintenance is ensured by the Developer and subsequent owners through an approved method prescribed by the City Council.

**5.5 Design Storm Event**

The design storm event shall be the two (2) year, three (3) hour storm. The pollutant loadings for this storm event shall be calculated in accordance with the TCSS Manual.

**SECTION 6. IMPERVIOUS COVER**

**6.1 Maximum Limitations**

Maximum limitations on impervious cover are established as follows on developments for which a site development plan is first filed after the effective date of this Chapter:

- (a) For areas within the Edwards Aquifer Contributing Zone and Edwards Aquifer and Trinity Aquifer Recharge Zones in the ETJ: 15%
- (b) For areas within the City limits, refer to the Zoning Ordinance:
  - (1) Zoning: Impervious cover limits for tracts within PGAs are established in the City's Zoning Ordinance according to the particular Zoning District the tract is designated.
  - (2) Reduction Incentives. As an incentive to reduce impervious cover, all developments in the contributing and recharge zones 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 Section. Refer to Section 5.2 and 5.3.

- (3) Effective Impervious Cover. Through the incorporation of incentives (rainwater collection, pervious pavement, non-structural BMP's), 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.

### 6.3 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 areas and Critical Environmental Features setback areas.

### 6.4 Items Considered Impervious Cover

Impervious cover shall include all man-made improvements which prevent the infiltration of water into the natural soil, or prevent the migration of the infiltration as base flow. The following shall be considered as impervious cover, unless modified through the use of incentives (stormwater credit: rainwater collection, porous pavement, etc.):

- (a) roads, pavements, and driveways, except as provided in Subsection 6.5 of this Chapter;
- (b) parking areas;
- (c) buildings;
- (d) pedestrian walkways and sidewalks;
- (e) concrete, asphalt, masonry, surfaces areas, and paving stone surfaced areas;
- (f) swimming pool water surface area;
- (g) densely compacted natural soils or fills which result in a coefficient of
- (h) permeability less than  $1 \times 10^{-6}$  cm/sec;
- (i) all existing man-made impervious surfaces prior to development;
- (j) water quality and stormwater detention basins lined with impermeable materials;
- (k) stormwater drainage conveyance structures lined with impermeable materials;
- (l) fifty percent (50%) of the horizontal surface area of an uncovered deck that has
- (m) drainage spaces between the deck boards that is located over a pervious surface.
- (n) Up to fifty percent (50%) of the horizontal surface of materials whose design has been prepared by a Texas licensed professional engineer and approved by the City to accommodate the capture and/or infiltration of storm water, provided the design incorporates maintenance provisions sufficient to maintain the pervious nature of the material for its full service life.

## 6.5 Items *Not* Considered Impervious Cover

- (a) existing roads adjacent to the development and not constructed as part of the development at an earlier phase;
- (b) rock outcrops;
- (c) landscaped areas and areas remaining in their natural state;
- (d) water quality controls and stormwater detention basins not lined with impermeable materials;
- (e) stormwater drainage conveyance structures not lined with impermeable materials; and
- (f) interlocking or "permeable pavers".
- (g) functioning rainwater harvesting systems, as defined below.

## 6.6 Rainwater Harvesting

- 6.6.1. Rainwater harvesting collection and containment structures functioning as a rainwater harvesting system are not considered impervious cover. Structures and/or improvements (e.g., building roofs, patios, awnings, etc.) from which stormwater is harvested are also not considered impervious cover. Such structures can be used to obtain credit towards any impervious cover requirement set forth in this chapter.
- 6.6.2. In order to qualify to receive Credit for a rainwater system, the system must be designed to exceed normal draw (i.e., no credit will be given if tank routinely stays full). Credit is not just for the tank cover, but for structure collected from. The applicant must demonstrate where water is going to qualify (how are going to draw it down, eg, use as non-potable source rainwater, or irrigation).
- 6.6.3. Credits can zero-out impervious cover for purposes of calculating runoff treatment. Applicants may also get up to 50% credit toward additional cover.

## 6.7 Siting Restrictions

Impervious cover shall not be constructed:

- (a) downstream of water quality controls;
- (b) within Critical Environmental Feature setback areas; or
- (c) within the areas designated for on-site irrigation for treated wastewater effluent disposal.

## 6.8 Transfer and Development Intensity

6.8.1 Transfer of Development Intensity: residential use and nonresidential use.

- (a) An applicant who complies with a provision of this Subsection qualifies for the development intensity transfer:

- (1) 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
- (2) 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
- (3) 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.

**6.8.2** An applicant who qualifies for a development density transfer must comply with the following requirements to effectuate the transfer:

- (1) the transferring tract and the receiving tract must be located within the corporate limits or the ETJ of the City, and
- (2) the transferring tract does not include a water quality buffer zone or critical environmental feature, and
- (3) the receiving tract must comply with the water quality control standards of this Chapter, and
- (4) the transferring and the receiving tracts must be concurrently platted and must transfer development intensity at that time, and
- (5) the development intensity transfer must be noted on the plats of the transferring and receiving tracts, and
- (6) a restrictive covenant must be filled in the deed records, approved by the City that runs with the transferring tract and describes the development intensity transfer

## SECTION 7. WATER QUALITY BUFFER ZONES

### 7.1 Applicability

This Section is applied at the time of the *plattting* (creation of newly-subdivided lots). This Section does not apply to legally platted lots that existed as of the Effective Date of this Ordinance.

### 7.2 Water Quality Buffer Zones (WQBZ)

A Water Quality Buffer Zone (WQBZ) shall be established along streams. The dimensions of the (WQBZ) shall be based on the size of its watershed as shown below:

7.2.1 Up to 80 acres: The WQBZ shall be established per the requirements of the City of Wimberley Protected Water Overlay District.

7.2.2. **Greater than 80 acres and up to 320 acres:** The WQBZ shall extend a minimum of 100 feet from either side of the centerline of the stream (total of 200 feet of buffer zone).

7.2.3. **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).

### 7.3 Special Instructions regarding WQBZ's

7.3.1. 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.

7.3.2. Along steep slopes, as defined, the width of the WQBZ shall be 25' beyond the edge of the defined steep slope.

7.3.3. Except as specifically provided for in this Section, all development activities, including temporary construction activities, and landscaping activities, are prohibited in the Buffer Zone of a stream, without the express written approval of the City Engineer who must be provided evidence of equivalent protection.

### 7.4 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:

- (a) critical utility crossings if the number of crossings of the WQBZ is limited to the maximum feasible extent;
- (b) critical roadway crossings if the number of crossings of the WQBZ is limited to the maximum feasible extent;
- (c) critical transportation crossings if the number of crossings of the WQBZ is limited to the maximum feasible extent;

- (d) hike and bike trails if provided for in an approved development plan;
- (e) maintenance and restoration of native, non-invasive vegetation;
- (f) water quality control monitoring devices;
- (g) removal of trash, debris, pollutants;
- (h) fences that do not obstruct flood flows;
- (i) 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
- (j) typical private drives (acceptable to the City) to allow access to property not otherwise accessible,
- (k) the construction and use of BMP's for the express purpose of water quality and stormwater control provided that the natural drainage to the site is less than 128 acres.

#### **7.5 Limitations on Allowed Activities**

Any development within a WQBZ allowed under Subsection 7.4 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 one hundred (100) feet from the center line of a stream unless the applicant has demonstrates 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.

#### **7.6 Requirements for Discharges**

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 five (5) feet per second at the 2-year, 3-hour design rainfall 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.

### **SECTION 8. CRITICAL ENVIRONMENTAL FEATURE (CEF) SETBACKS**

8.1 A setback area, where development is prohibited, from environmentally sensitive features including caves, solution cavities, solution enlarged fractures, sinkholes, and other karst surface features, shall be established to minimize the risk of groundwater pollution.

#### **8.1.1 Minimum Setback**

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

#### **8.3.2 Restrictions**

No site development activities are allowed within the setback area.

### **8.4.3 Hilltop CEFs**

For CEF's 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.

## **SECTION 9. EROSION FLOW CONTROL**

### **9.1. Erosion Control Requirement**

When land disturbing activity 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, 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.

### **9.2. Erosion Control Plan**

**9.2.1** In those cases where a building permit or site development is required, 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.

**9.2.2** Each owner and/or 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 construction activities, beyond the limits of the owner's or developer's site onto City streets, drainage easements, drainage facilities, storm drains of other City property prior to beginning any land disturbing activity.

**9.2.3** It shall be an offense for an owner, developer or a third party performing work on a project to violate any of the requirements of this Chapter, including, but not limited to, the following:

- (a) Conducting any land disturbing or construction activity without an approved erosion control plan for the location where the violation occurred.
- (b) Failing to install erosion control devices or to maintain erosion control devices throughout the duration of land disturbing 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 land disturbing 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 owner, 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

### **9.3. Construction General Permit**

All operators of sites of construction activity, including clearing, grading, and excavation activities, that result in the disturbance of five (5) or more acres of total land area, or that are part of a common plan of development or sale within which five (5) or more acres of total land area are disturbed, are required obtain the construction stormwater general permits as may be required by the Texas Commission on Environmental Quality (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).

- 9.3.1 A copy of any NOI that is required shall be submitted to the City in conjunction with any application for a building permit, site development, subdivision plat approval, site development plan approval, and any other City approval necessary to commence or continue construction at the site.
- 9.3.2 The City shall require any operator 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.
- 9.3.3 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, site development permit, subdivision plat, site development plan, or any other City approval necessary to commence or continue construction, 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 construction, or to assume occupancy, at the site.

**9.4. Critical Environmental Feature (CEF) Protection**

No untreated stormwater runoff from developed land shall be allowed to flow over critical environmental features.

**9.5. Downspouts for certain Roofs**

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.

**9.6. 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.

**9.7. 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 rainfall event.

**9.8. 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 two-year, three-hour rainfall event evenly distributed over a 24-hour period.

**9.9. 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.

**9.10. Overland Flow Facilities**

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

## SECTION 10. INFILTRATION

### 10.1. Restore Infiltration Capacity

To the maximum extent practical, water quality controls shall be designed to restore the infiltration capacity to pre-development conditions. Infiltration BMP's shall be designed in accordance with the TCSS Manual.

### 10.2. Impact Avoidance

Infiltration systems shall be designed and located to avoid impacts to existing springs and recharge structures.

## SECTION 11. STEEP SLOPES

### 11.2. BMP Standards

Erosion control, terracing and water quality control BMP's shall be designed in accordance with the TCSS Manual.

### 11.3. Cut & Fill

A cut or fill with a finished gradient steeper than thirty-three percent (33%) shall be stabilized with a permanent structure.

## SECTION 12. VEGETATION

### 12.1. Construction Plans

Construction Plans must demonstrate the following:

12.1.1. Landscape shall be restored to the maximum extent practical to its natural state after construction of site is concluded (i.e., restoration of landscaping and vegetation is done at time of post-construction final inspection.

12.1.2. Xeriscape and low maintenance vegetation shall be included in all residential and non-residential development in accordance with specifications in the TCSS Manual.

12.1.3. Guidance shall be provided for the use of herbicides, pesticides and fertilizers.

### 12.2. Pesticide & Fertilizer Management Plan

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 the chemical characteristics, potentially would result in minimal water quality degradation.

**12.3. Integrated Pest Management Plan**

An applicant for a site development permit shall submit an Integrated Pest Management (IPM) Plan in accordance criteria set forth in the TCCS Manual.

**12.4. Non-Structural BMPs**

For the purposes of achieving compliance with this Ordinance, Integrated Pest Management, Pesticide, Fertilizer, and Parking Lot Management Plans are considered a valid non-structural BMP.

**12.5. Vegetative BMP's**

Vegetative BMP's, such as vegetative filter strips, shall be designed in accordance with the TCCS Manual.

**SECTION 13. STRUCTURAL CONTROLS**

**13.1. WQC Sizing**

Structural water quality controls (WQC's) shall be sized for the entire contributing drainage area for the following types of developments:

- (a) New multi-family residential development; new non-residential development; and new subdivision development.
- (b) 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 6.
- (c) 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 6.

**13.2. Runoff Volume**

The volume of runoff required to be captured, isolated, and treated by each structural WQC, or series of WQC's operating in sequence as a treatment train, shall be as required in Section 5.5 and based on the contributing drainage area for the WQC or series of WQC's.

**13.3. Limited Exclusions**

Stormwater runoff from the following areas shall not require structural WQC's nor be included in the calculation of the volume of stormwater runoff required to be captured, isolated, and treated by a structural WQC:

- (a) 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.

- (b) Fifty percent (50%) of the area using landscaping that requires no irrigation and no pesticide, herbicide, or fertilizer applications.
- (c) The area on which a WQC structure is situated.
- (d) Swimming pools that do not discharge its filter backwash into a stormwater drainage system.
- (e) Impervious surface areas used for stormwater collection and on-site irrigation.
- (f) 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.

**13.4. Nature & Volume of Pollutant Loads**

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:

- (a) areas of impervious cover;
- (b) the potential for pollutant impacts from industrial, commercial and other nonresidential types of development;
- (c) lawns, landscaping, and gardens using pesticides, herbicides or fertilizers;
- (d) play fields and other recreational or green space areas using pesticides, herbicides or fertilizers; and
- (e) areas receiving wastewater effluent through surface spray irrigation or sub-surface infiltration.

**13.5. Engineer Required**

All WQC's 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.

**13.6. Direct Infiltration & Recharge from WQC Prohibited**

All structural WQC's utilized in the Recharge Zone shall be modified or augmented to prevent direct infiltration and recharge from the WQC. To meet this requirement, such WQC's shall utilize artificial linings, evapo-transpiration beds, or other methods designed and operated to prevent infiltration into the Edwards Aquifer and Trinity Aquifer even during periods of extended rainfall.

**13.7. Erosion Control**

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.

**13.8. Peak Runoff Rate**

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.

**13.9. Dedicatory Instrument**

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.

**SECTION 14. ROOF RUNOFF & IRRIGATION**

**14.1. Minimum Requirements**

A roof rainfall runoff capture system or rainwater harvesting system approved under this Chapter shall comply with the following minimum requirements:

14.1.1. The entire system including rainwater collection, conveyance and storage, shall be isolated from the site stormwater system.

14.1.2. The collected rainwater shall be used for on-site irrigation or other purposes as approved by the City.

14.1.3. The system shall comply with the pollution control performance standards of Section 5.2 and 5.3.

14.1.4. 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.

**SECTION 15. EROSION HAZARD SETBACKS**

**15.1. 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.

**15.2. Alternative**

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.

## SECTION 16. OPERATION & MAINTENANCE

### 16.1. Maintenance Plan Required

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.

### 16.2. Recordation Required

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.

### 16.3. Operation, Monitoring & Maintenance

All applicants shall operate, monitor, and maintain each water quality control required by this Chapter in accordance with the WQC Maintenance Plan and this Chapter.

### 16.4. Transfer of Responsibility

16.4.1. The WQC Maintenance Plan may provide for transfer of responsibility for WQC operation and maintenance activities to a:

- (a) groundwater district, a municipal utility district, a public utility district, or any other special district created under state law;
- (b) homeowners' or property owners' association;
- (c) natural resources conservation or other environmental interest group; or
- (d) any similar third party entity.

16.4.2. 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.

## SECTION 17. WAIVERS

### 17.1. 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.

**17.2. Identification**

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

**17.3. 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.

**17.4. 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.

**17.5. 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:

- (a) 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;
- (b) That the waiver is necessary for the preservation and enjoyment of a substantial property right of the applicant;
- (c) 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
- (d) 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.

**17.6. Pecuniary Hardship**

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

**17.7. 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.

**17.8. Adequate Basis *Option 1***

It may be determined by the City 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.

**17.9. Adequate Basis *Option 2***

It may be determined by the City 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 is not limited to, the applicant's acquisition of transferable development rights (TDRs) to offset the additional impervious cover.

**SECTION 18. ENFORCEMENT**

**18.1. 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.

**18.2. 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.

**18.3. 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:

- (a) injunctive relief to prevent specific conduct that violates the Chapter or to require specific conduct that is necessary for compliance with the Chapter; and
- (b) 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
- (c) other available relief.

#### 18.4. Administrative Action

**19.4.1. 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.

**19.4.2. 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.