



October 18, 2022

Notice is hereby given of a Regular Meeting of Nacogdoches City Council to be held on the above date in the City Council Chambers of City Hall, 202 E. Pilar Street, Nacogdoches, Texas, beginning at 5:30 p.m. for the purpose of considering the following agenda items.

Some City Council Members may attend via videoconference but a quorum of the City Council and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21> There will be an opportunity for the public to comment on agenda items either by teleconference or in person in Council Chambers.

Members of the public who wish to submit comments on a listed agenda item by telephone must contact the City Secretary's office by email at vinsonj@nactx.us or by calling 936-559-2506 and providing their name, telephone number and relevant agenda item upon which they wish to speak. All requests to make comments must be received by 12:00 p.m. on October 18, 2022. For all timely requests received, staff will call the submitted phone numbers directly during the meeting when the corresponding item comes up for comment. NOTE: The incoming phone call from City staff will be an unfamiliar number.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. OPEN FORUM. Open Forum is an opportunity for citizens to speak about items not listed on the agenda. In order to address City Council please complete the Open Forum Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, City Council shall not discuss, deliberate, or make any decisions on items discussed during Open Forum. Comments are limited to 3 minutes per person. Open Forum is limited to the first 5 citizens who submit an Open Forum Form.
4. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
5. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Consider approval of minutes for October 11, 2022. (City Secretary)
 - B. Consider an Interlocal Cooperation Contract between Texas State University and the City of Nacogdoches to conduct controlled buy/stings of tobacco. (Lt. Nick Stewart, Police Department)
6. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.

- A. **Public Hearing:** Consider approval of a request for a Historic Overlay at 701 Cox Street. Case File HO2022-02.(Community Services Director)
- B. **Public Hearing:** Consider a request to amend a Specific Use Permit for an RV Park in a B-2, General Business District, on Lot 1, Block 1, of the Westward Subdivision Phase 3, located at 5001 N.W. Stallings Drive. This request has been made by Western Pines RV Park, LLC. Case Number SUP2022-07. (City Planner)
- C. **Public Hearing:** Consider a request for approval of a Specific Use Permit for Manufactured Home Sales in a B-2, General Business District, on Lot 93-E, City Block 56, and Lot 4 of the South Star Plaza Subdivision, located at 3411 South Street. This request has been made by Barham Properties. Case Number SUP2022-06. (City Planner)
- D. Consider approval of an ordinance amending Part II, Chapter 106, Utilities, Article II., Sewer System, Division 2. Sewer Use Regulations of the City of Nacogdoches Code of Ordinances. (Public Works Director)
- E. Discussion regarding upcoming Capital Improvement Plan meetings scheduled for late October and early November. (City Manager)
- F. Consider approval of a resolution supporting the possible transfer of a portion of the water distribution system in the Central Heights Area to the Angelina Neches River Authority. (Public Works Director)

7. ADJOURN.



Jan Vinson, City Secretary



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact Attorney General of Texas at 1-800-252-8011; City Secretary at 936/559-2506 or visit City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on October 12, 2022 at 4 p.m. and remained posted until meeting convened.

Jan Vinson, City Secretary



City Council Meeting

Date: October 18, 2022

Agenda Item: 5.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes for October 11, 2022. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Jan Vinson, City Secretary
vinsonj@nactx.us
936-559-2506

ATTACHMENTS: 1. Minutes



Regular Session
Nacogdoches City Council
October 11, 2022 – 5:30 p.m.
City Council Room – City Hall
202 East Pilar Street

DRAFT

City Council present in person: Mayor Jimmy Mize, Council Members Roy Boldon, Amelia Fischer, Kathleen Belanger and Chad Huckaby.

1. Called to order at 5:30 p.m.
2. Pledge of Allegiance.
3. No one spoke during Open Forum.
4. No items removed from the Consent Agenda.
5. **CONSENT AGENDA:** Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.
 - A. Minutes for September 20, 2022 regular meeting and September 27, 2022 special meeting.
 - B. Consider approval of an ordinance amending Ordinance No. 1881-09-21 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2021 and ending September 30, 2022.
 - C. Annual review and adoption of a resolution approving the City's Investment Policy.
 - D. Consider approval of an ordinance amending Ordinance No. 1929-09-22 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2022 and ending September 30, 2023 for adjustment of the revenue and expenditures related to the Certificates of Obligation that were not authorized due to the successful petition submitted on September 19, 2022.
 - E. Consider approval of an agreement by and between the City of Nacogdoches and the Nacogdoches Convention and Visitors Bureau (CVB) which outlines the terms by which employees of the CVB are employees of the City and thereby subject to the policies and guidelines established by the City.
 - F. Consider approval of an agreement between the City of Nacogdoches and the Convention and Visitors Bureau for professional services.

Council Member Chad Huckaby moved approval; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

6. REGULAR AGENDA:

- A. Receive a presentation from the Massey Rose Foundation regarding the Old Town Rig Down held September 16-17, 2022 in downtown Nacogdoches.

Sherry Morgan, Convention and Tourism Director, discussed the economic impact of the event which was in excess of \$330,000. She also discussed the popularity of the event and how much work Massey Rose Foundation put into the event.

Troy Massey stated that a substantial amount of time and effort was put into the event by many different people. The net proceeds from this event were distributed to the Old University Building, Boys and Girls Club, Nacogdoches Animal Shelter and Christ Episcopal School. Mr. Massey also discussed ways to improve the event for next year.

Steven Molanders discussed how exciting it was to impact Nacogdoches in such a positive way.

Mayor Mize presented a proclamation to the Massey Rose Foundation.

Minutes unofficial until approved by City Council

Representatives from the Old University Building, Boys and Girls Club, Nacogdoches Animal Shelter and Christ Episcopal School expressed their appreciation for the donations made to their respective organizations.

- B. Consider acceptance of a donation in the amount of \$50,000 from the Massey Rose Foundation to the Nacogdoches Animal Shelter.

Alaina Helton, Director of Neighborhood Services, stated that this budget amendment is to formally accept the donation from the Massey Rose Foundation. The donation will go toward much needed security improvements at the Animal Shelter.

Council Member Kathleen Belanger moved approval; motion duly seconded by Council Member Chad Huckaby and carried by unanimous vote.

- C. **Public Hearing:** Consider a request for a Specific Use Permit, to operate a Piercing Studio in a B-2, General Business District, on Lot 16-A, Block 67, of the North Heights Addition Subdivision, located at 3500 North Street, Suite 10. This request has been made by Primal Piercing & Jewelry. Case Number SUP2022-05.

Alaina Helton, City Planner, stated this request is for the operation of a piercing studio which will operate as part of a jewelry store at this location. The location is currently zoned B-2 and allows piercing studios by right with a Specific Use Permit.

No responses were received as a result of the notification letters that were mailed out. The Planning and Zoning Commission approved this requested unanimously at their meeting on September 26, 2022.

Council Member Chad Huckaby moved approval; motion duly seconded by Council Member Roy Boldon and carried by unanimous vote.

- D. **Public Hearing:** Consider a request for a Zone Change from A, Agricultural to R-4, Multi-Family for approximately 15 acres, being Lots 10-A and 12, of City Block 50, generally located at the southwest corner of West Austin and Pearl Street. This request has been submitted by 2 Prepay Communications Services LLC. Case Number ZON2022-08.

Alaina Helton, City Planner, stated that this item is about land use and not a specific project although the applicant has submitted a preliminary concept plan for discussion purposes. This zone change request is for only the area that is outside the 100-year floodplain which is 8.5 acres and the remainder of the property will remain A-Agricultural.

Council Member Boldon discussed additional traffic and what triggers a traffic impact analysis.

Two letters were received in opposition from the 200 foot notification letters. Ms. Helton stated that emails were received from citizens not in the notification area expressing concern about protecting the floodplain.

The Planning and Zoning Commission heard this item on September 26, 2022 recommended approval of the request limiting the R-4 zoning to only the property outside the 100-year floodplain which is approximately 8.5 acres with the property in the floodplain remaining A-Agricultural.

Ron Collins, Brandi Cartwright, Olivia Kiritsy and Scott Bowyer spoke in support of this zone change.

Sammy Smith stated this location was not ideal for the proposed development. Mr. Smith discussed drainage issues and traffic problems.

Council Member Belanger stated we need to have property development but we also need to protect our creeks and watersheds, and manage drainage.

Council Member Fischer said that a commitment to what the comprehensive plan says about zoning and land use needs to be established. She also said that if we vary from the comprehensive plan it should only be for a good reason. Council Member Fischer expressed gratitude to staff, the Planning and Zoning Commission and the applicant for working together to devise a solution that works for everyone involved. She also discussed the impact the proposed project will have on the creek.

Council Member Huckaby stated that developing near the creek should be carefully examined. He also asked for clarification between floodplain and floodway which City Engineer Steve Bartlett explained.

Council Member Kathleen Belanger moved approval of R-4 zoning for the property outside the 100-year floodplain as recommended by the Planning and Zoning Commission; motion duly seconded by Council Member Chad Huckaby and carried by unanimous vote.

- E. Hold a discussion and give staff direction regarding the City of Nacogdoches' legislative priorities for the 88th Legislative Session that begins on January 10, 2023.

Kelly Barnes with HillCo Partners discussed the key issues coming up for the 88th Legislative Session and key dates to remember. Mr. Barnes discussed the budget which includes a large surplus in the Rainy Day Fund, property tax/appraisal reform, school district M&O tax, economic development incentives, school choice, school safety, immigration/border security, ERCOT/PUC reform, Texas Sunset Commission and the Nacogdoches Legislative Agenda.

City Council discussed the busing program, funding municipalities with surplus monies, protecting the City's ability to advocate in Austin, school choice, broadband and federal dollars for infrastructure.

7. Adjourned 7:24 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary



City Council Meeting

Date: October 18, 2022

Agenda Item: 5.B.

PRESENTER: Nick Stewart, Police Lieutenant

ITEM/SUBJECT: Consider an Interlocal Cooperation Contract between Texas State University and the City of Nacogdoches to conduct controlled buy/stings of tobacco. (Lt. Nick Stewart, Police Department)

SUMMARY/BACKGROUND: This Interlocal Agreement between Texas State University and the City of Nacogdoches will conduct 50 controlled buy/stings and follow-ups of tobacco permitted retail outlets and sales and use tax permitted e-cigarette retail outlets to determine compliance with applicable laws in accordance with the Texas Health and Safety Code.

Performing parties shall be paid \$125.00 for each correct and completed controlled buy/sting and follow-up and shall not exceed 6,250.00. The contract will be effective upon the date of execution and will terminate August 31, 2023.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Nick Stewart, Lieutenant
stewartn@nactx.us
936-559-2688

ATTACHMENTS: 1. Interlocal Cooperation Contract Tobacco Enforcement

INTERLOCAL COOPERATION CONTRACT

THE STATE OF TEXAS
COUNTY OF HAYS

This Interlocal Cooperation Contract (this "Contract") is entered into by and between the Contracting Parties shown below pursuant to authority granted in and in compliance with the *Interlocal Cooperation Act, Chapter 791, Texas Government Code*.

I. Contracting Parties

The Receiving Party: **Texas State University ("Texas State")** an institution of higher education and agency of the State of Texas.

*Texas School Safety Center
601 University Dr.
San Marcos, Texas 78666*

The Performing Party: **City of Nacogdoches** a local government of the State of Texas

*Nacogdoches Police Department
202 E Pilar St
Nacogdoches, TX 75961-5508*

II. Statement of Services to be Performed

Performing Party will perform the following service(s):

Conduct **50** controlled buy/stings and follow-ups of tobacco permitted retail outlets and sales and use tax permitted e-cigarette retail outlets using minors as decoys, to determine compliance with applicable laws in accordance with *Texas Health and Safety Code §161.082 – Sale of cigarettes, e-cigarettes, or tobacco products to persons younger than 21 years of age prohibited: Proof of age required*. Work shall be performed following the details outlined in attached **Exhibit A – Scope of Work**, and **Exhibit B – Performance Measures**.

III. Basis for Calculating Reimbursable Costs

Performing Party shall be paid \$125.00 for each correct and completed controlled buy/sting and follow-up reported on the Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report form (TEP-102 (Rev 9/2020)) **(for a maximum of 50 Controlled Buy/Stings and Follow-ups x \$125.00 each for a total of \$6,250.00)**. Payment will be based on the receipt and approval of an invoice for services following the details outlined in attached **Exhibit C – Payment for Services**.

IV. Contract Amount

The total amount of this Contract shall not exceed SIX THOUSAND TWO HUNDRED AND FIFTY DOLLARS AND NO/100 CENTS (\$6,250.00). This is the maximum amount collectable under the Contract as written.

V. Payment of Services

Receiving Party will remit payments to Performing Party for services satisfactorily performed under this Contract in accordance with the *Texas Prompt Payment Act, Chapter 2251, Texas Government Code*.

Payments made under this Contract will (1) fairly compensate Performing Party for the services performed under this Contract, and (2) be made from current revenues available to Receiving Party in the form of a contract from the Department of State Health Services and/or the Texas Health and Human Services Commission to fund local law enforcement agencies to enforce *Texas Health and Safety Code §161.082 – Sale of cigarettes, e-cigarettes, or tobacco products to persons younger than 21 years of age prohibited: Proof of age required*.

VI. Warranties

Receiving Party warrants that (1) the services are necessary and authorized for activities that are properly within its statutory functions and programs; (2) it has the authority to contract for the services under authority granted in *Texas Government Code 403.105 – Permanent Fund for Health and Tobacco Education and Enforcement*; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Contract; and (4) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

Performing Party warrants that (1) it has authority to perform the services under authority granted in *Chapter 161.088, Texas Health and Safety Code and Chapter 791, Texas Government Code*; (2) it has all necessary power and has received all necessary approvals to execute and deliver this Contract; and (3) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

VII. Term of the Contract

This Agreement is effective **upon execution of this contract** and shall terminate on **August 31, 2023**.

VIII. Termination

In the event of a material failure by a Performing Party to perform its duties and obligations in accordance with the terms of this Contract, the other party may terminate this Contract upon **30 days'** advance written notice of termination setting forth the nature of the material failure; provided that, the material failure is through no fault of the terminating party. The termination will not be effective if the material failure is fully cured prior to the end of the **30-day** period.

IX. Other Provisions

Entire Contract; Modifications. This Contract supersedes all prior agreements, written or oral, between Receiving Party and Performing Party and shall constitute the entire agreement and understanding between the parties with respect to the subject matter of this Contract. This Contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Receiving Party and Performing Party.

Assignment. This Contract is not transferable or assignable except upon written approval by Receiving Agency and Performing Agency.

Severability. If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

Public Records. It shall be the independent responsibility of Receiving Party and Performing Party to comply with the provisions of Chapter 552, *Texas Government Code* (the "*Public Information Act*"), as those provisions apply to the parties' respective information. Receiving Party is not authorized to receive public information requests or take any action under the *Public Information Act* on behalf of Performing Party. Likewise, Performing Party is not authorized to receive public information requests or take any other action under the *Public Information Act* on behalf of Receiving Party.

Certification. The Receiving Party and the Performing Party certify that, (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies, (2) the proposed arrangements serve the interest of efficient and economical administration of the State of Texas, and (3) the services, supplies or materials contracted for are not required by Section 21, Article 16 of the *Texas Constitution* to be supplied under contract given to the lowest responsible bidder.

Duly authorized representatives of the Performing Party and the Receiving Party have executed and delivered this Contract to be effective as of the Effective Date.

PERFORMING PARTY
City of Nacogdoches

By _____
Name Scott Weems
Title Interum Chief of Police
Date _____

By _____
Name Mario Canizares
Title City Manager
Date _____

RECEIVING PARTY
Texas State University

By _____
Name _____
Title _____
Date _____

EXHIBIT A SCOPE OF WORK

The Performing Party shall diligently render the following performance:

Contract funds shall be used to support the enforcement activities and additional program requirements outlined below. The Performing Party shall meet the assigned Performance Measures assigned in Exhibit B.

1. Enforcement Activities

The Performing Party shall:

- a. Conduct Controlled Buy/Stings and Follow-ups of tobacco permitted retail outlets and sales and use tax permitted e-cigarette retail outlets using youth as decoys, to determine compliance with applicable laws in accordance with *Texas Health and Safety Code §161.082 – Sale of cigarettes, e-cigarettes, or tobacco products to persons younger than 21 years of age prohibited: Proof of age required*. Refer to **Exhibit B Schedule – Performance Measures**, for the number of controlled buy/stings to be conducted.
- b. Conduct controlled buy/stings and follow-ups in target areas to include high retail density, low socio economic, high risk areas, and local perspective of previous sales to youth and/or complaints received.
- c. Record the results of the controlled buy/stings conducted using the Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report form (TEP-102 (Rev 9/2020)) provided by the Texas School Safety Center at Texas State University.
- d. Use non-smoking male and female youth ages 16 –20 (born on or after September 1, 2001) in accordance with *Texas Health and Safety Code, Chapter 161.088 – Enforcement; Announced Inspections*.
- e. Use the State Comptroller of Public Accounts most recent Tobacco Permitted Retail Outlet List and Sale and Use Tax Outlet List of e-cigarette retail outlets for the controlled buy/stings to obtain retail outlet name, address, and tobacco permit numbers.
- f. Conduct follow-up controlled buy/stings of retail outlets found to be in violation of the sale of cigarettes, e-cigarettes, or tobacco products to youth. Reasons for follow-up may include: 1) repeated violations, 2) knowledge of historical perspective of previous sales to youth, and /or 3) complaints received where a follow-up is needed. Follow-up controlled buy/stings shall be conducted within two to ten (2-10) days of original controlled buy/sting.

2. Training Activities

The Performing Party shall:

- a. Participate in a web-based training session conducted by Texas School Safety Center at Texas State University prior to implementation of contract activities.
Representative(s) shall include the person(s) assigned to the implementation of the contract activities, and/or the supervisor overseeing the day-to-day activities of this contract, and the person(s) conducting the enforcement activities outlined in Exhibit A – Scope of Work.
- b. Participate in any and all ongoing technical assistance and training activities offered by the Texas School Safety Center at Texas State University.

3. Reporting Requirements

The Performing Party shall:

- a. Submit a completed Monthly Summary and Invoice form (TEP-101 (Rev 9/2022)) provided by the Texas School Safety Center at Texas State University that tallies the number of controlled buy/stings and follow-ups conducted and number of citations issued within the performance reporting period.
- b. Submit billing information for services provided in the invoice section of the Monthly Summary and Invoice form (TEP-101 (Rev 9/2022)). Payment amount for services is outlined in **Exhibit C – Payment for Services**. The Monthly Summary and Invoice form (TEP-101 (Rev 9/2022)) shall be signed by the designated authorized official
- c. Attach completed Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report forms (TEP-102 (Rev 9/2020)) for each controlled buy/sting conducted for the performance reporting period. The total activity reported shall correspond to the pre-established monthly goal listed in the Work Plan (TEP-100 (Rev 9/2020)).
- d. The Monthly Summary and Invoice form (TEP-101 (Rev 9/2022)) shall be submitted to the Texas School Safety Center on the first day of the month. The report may be mailed to the Texas School Safety Center, Attn. Bea Pyle, 601 University Dr., San Marcos, Texas 78666 or emailed to beapyle@txstate.edu.
- e. Texas School Safety Center forwards violation information to the Comptroller of Public Accounts as required by law, (*Texas Health & Safety Code, Section 161.090 Reports of Violation*) by the 10th working day of the month for activity of the previous month.

4. Additional Program Requirements

The Performing Party shall:

- a. Assign a minimum of one (1) agency representative to the implementation of the activities of this contract, and provide the name(s) of any key personnel changes that impact the requirements of this contract to via email: beapyle@txstate.edu or phone: 512-245-0821.

- b. Coordinate enforcement activities with other law enforcement agencies within the Performing Party's area. Coordination of services shall include but not limited to resources such as officers and youth decoys to maintain integrity of the undercover operation in testing compliance with tobacco sales to youth.
- c. Performing Party shall maintain specific, detailed supporting documentation of all programmatic records used in the course of conducting the Controlled Buy/Stings for a minimum of 4 years.

EXHIBIT B PERFORMANCE MEASURES

The following performance measures will be used to measure compliance with the services rendered as described in Exhibit A, Scope of Work.

The Performing Party shall:

1. Conduct the number of activities for this contract period as follows:
 - a. Total number of controlled buy/stings and follow-ups using youth as decoys: **50**
 - i. In at least 50% of all controlled buy/stings conducted, the youth must attempt to purchase an e-cigarette, component, part, or accessory.
 - ii. Minimum number of e-cigarette attempts: **25**
 - b. A performance measure will not be assigned for follow-up of controlled buy/stings as a result of local perspective of previous sales to minors and/or complaints received. However, contractor is required to conduct follow-up of retail outlets not in compliance and report the activity monthly.
2. The Performing Party shall follow the Work Plan's (TEP-100 (Rev 9/2020)) monthly goals as pre-established upon the execution of the contract. The Work Plan (TEP-100 (Rev 9/2020)) outlines monthly goals to follow from **September 2022 to August 2023**.
 - a. Deviation from the pre-established Contractor's Program Work Plan requires **prior** approval from the Texas School Safety Center at Texas State University via email: beapyle@txstate.edu or phone: 512-245-0821.
 - b. Failure to complete and/or update the Work Plan (TEP-100 (Rev 9/2020)) may result in payment being withheld until completion or submission.

EXHIBIT C PAYMENT FOR SERVICES

Payment will be based on the receipt and approval of Monthly Summary and Invoice form (TEP-101 (Rev 9/2022)) and attached Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report forms (TEP-102 (Rev 9/2020)).

The Performing Party shall:

1. Be paid monthly upon submission of completed Monthly Summary and Invoice form (TEP-101 (Rev 9/2022)) and attached Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report forms (TEP-102 (Rev 9/2020)) as confirmation of services rendered.
2. Be paid \$125.00 for each correct and completed controlled buy/sting reported on the Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report form (TEP-102 (Rev 9/2020)). All costs incurred for the purpose of conducting a complete control buy/sting are the responsibility of the contractor. In order to receive full payment for the controlled buy/stings including follow-ups billed for each performance reporting period, a completed Cigarette, E-cigarette, and Tobacco Controlled Buy/Sting Report form (TEP-102 (Rev 9/2020)) must be attached for each.
3. Submit invoices and attachments to the Texas School Safety Center, Attn. Bea Pyle, 601 University Dr., San Marcos, Texas 78666 or emailed to beapyle@txstate.edu.

The Monthly Summary and Invoice form (TEP-101 (Rev 9/2022)) will be reviewed by the receiving agency and submitted for payment if information included in the report and attachments are correct. Payment shall be subject to laws of the State of Texas including Prompt Payment.

Notwithstanding the foregoing, the cumulative amount of Service Fees remitted by University to Contractor shall not exceed **\$6,250.00** without prior written approval from the Texas School Safety Center at Texas State University.

PRESENTER: Brian Bray, Community Services Director

ITEM/SUBJECT: Public Hearing: Consider approval of a request for a Historic Overlay at 701 Cox Street. Case File HO2022-02.(Community Services Director)

SUMMARY/BACKGROUND: Applicants Lauren & Daniel Lawrence have requested the property located at 701 Cox Street, be included in the Historic Overlay Zoning.

701 Cox Street is located West of the Virginia Avenue Historic District and Nettie Marshall Elementary School campus. There are 2 other buildings on this street that are individually designated as historic - 702 Cox Street and 709 Cox Street.

Research provided by the applicant:

"701 Cox Street was built in 1888 and is located in an older neighborhood that is a mix of renovated historic homes and dilapidated rentals. We love our neighborhood and hope to gradually see it restored. Almost 10 years ago, we bought three houses in a row on Cox Street and live in the 701 house. We are doing our best to bring them all back to life inside and out, restoring them to their historic origins yet making them more energy efficient in the process.

Ours is a single-story Victorian-style home with wooden siding built on a pier and beam. The house has 12' ceilings and the original floors as well as shiplap ceilings. The height of the house alone gives it that unique character of being from a different era."

The Historic Landmark Preservation Committee met on Monday, October 3rd to consider this request. The committee voted unanimously to approve Historic Overlay Zoning Request HO 2022-002 based on a finding that it met criteria 4 laid out in Section 50-130 Criteria for designation.

4 - Embodies the distinctive characteristics of a type or period of architecture, or method of construction.

The Planning and Zoning Commission met on Monday, October 10th to consider this zoning request. The committee voted unanimously to approve the Historic Overlay Zoning Request HO 2022-002.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Brian W. Bray, Community Services Director

brayb@nactx.us
936-559-2935

- ATTACHMENTS:**
1. HO 2022-002 Staff Report
 2. Criteria for Designation
 3. PowerPoint Presentation

Nacogdoches Historic Landmark Preservation Committee

STAFF REPORT

CASE NUMBER: HO 2022-002

NAME OF APPLICANT: Lauren & Daniel Lawrence

LOCATION: 701 Cox Street

REQUESTED ACTION: Historic Overlay zoning designation

STAFF COMMENTS:

Applicants Lauren & Daniel Lawrence have requested the property located at 701 Cox Street, be included in the Historic Overlay Zoning. This property is eligible under Criteria 4.

701 Cox Street is located West of the Virginia Avenue Historic District and Nettie Marshall Elementary School campus. There are 2 other buildings on this road that are individually designated as historic - 702 Cox Street and 709 Cox Street.

Research provided by applicant:

701 Cox Street was built in 1888 and is located in an older neighborhood that is a mix of renovated historic homes and dilapidated rentals. We love our neighborhood and hope to gradually see it restored. Almost 10 years ago, we bought three houses in a row on Cox Street and live in the 701 house. We are doing our best to bring them all back to life inside and out, restoring them to their historic origins yet making them more energy efficient in the process.

Ours is a single story Victorian style home with wooden siding built on a pier and beam. The house has 12' ceilings and the original floors as well as shiplap ceilings. The height of the house alone gives it that unique character of being from a different era.

STAFF REPORT:

Sec 50-130. Criteria for designation.

- (1) Possesses significance in history, architecture, archaeology, or culture.
 - (2) Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
 - (3) Is associated with the lives of persons significant in the city's past.
 - (4) Embodies the distinctive characteristics of a type or period of architecture, or method of construction.
 - (5) Represents the work of a master designer, builder, or craftsman.
 - (6) Represents an established and familiar visual feature of the city.
- (Ord. No. 1130, art. XI, § 6, 11-3-1998)

City Ordinance requires that at least one of the six criteria be met in order to achieve designation in a historic overlay district. In deciding this case, HLPC must consider if 701 Cox Street meets any of the above mentioned criteria for designation. If the property meets any one of the criteria, it qualifies for Historic Overlay zoning. If it meets none, it is ineligible.

Nacogdoches Historic Landmark Preservation Committee
STAFF REPORT

Nacogdoches Historic Landmark Preservation Committee will make a recommendation to the Planning and Zoning Commission, who will meet on October 10, 2022. Both HLPC and Planning and Zoning will present their recommendations to City Council for final approval on October 18, 2022.

Code of Ordinances, City of Nacogdoches, Texas

Sec 50-130. Criteria for designation.

Upon meeting any one of the following criteria, a historical landmark or district may be designated if it:

- (1) Possesses significance in history, architecture, archaeology, or culture.
- (2) Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
- (3) Is associated with the lives of persons significant in the city's past.
- (4) Embodies the distinctive characteristics of a type or period of architecture, or method of construction.
- (5) Represents the work of a master designer, builder, or craftsman.
- (6) Represents an established and familiar visual feature of the city.

(Ord. No. 1130, art. XI, § 6, 11-3-1998)

HO 2022-002 - 701 Cox Street







Sec 50-130. Criteria for designation.

- (1) Possesses significance in history, architecture, archaeology, or culture.
 - (2) Is associated with events that have made a significant contribution to the broad patterns of local, regional, state, or national history.
 - (3) Is associated with the lives of persons significant in the city's past.
 - (4) Embodies the distinctive characteristics of a type or period of architecture, or method of construction.
 - (5) Represents the work of a master designer, builder, or craftsman.
 - (6) Represents an established and familiar visual feature of the city.
- (Ord. No. 1130, art. XI, § 6, 11-3-1998)

Meetings:

October 3, 2022 - Historic Landmark Preservation Committee
-Recommend approval

October 10, 2022 - Planning & Zoning Committee
-Recommend approval

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider a request to amend a Specific Use Permit for an RV Park in a B-2, General Business District, on Lot 1, Block 1, of the Westward Subdivision Phase 3, located at 5001 N.W. Stallings Drive. This request has been made by Western Pines RV Park, LLC. Case Number SUP2022-07. (City Planner)

SUMMARY/BACKGROUND: The request is to amend a Specific Use Permit (SUP) for an existing RV Park. The property is zoned B-2, General Business, which allows an RV Park as a permitted use with the approval of a SUP. The applicant, Western Pines RV Park, has been in operation since October, 2020. The prior owners of the RV Park received approval of an SUP to expand and rehabilitate the facility in October 2019.

The applicant is proposing to modify the current layout of the RV Park in two (2) phases. The first phase will include 26 (80' by 24') RV spaces on the west side (back) of the park. The first phase will also include infrastructure upgrades such as improved drainage lines, extending utilities, and installation of landscaping along the front of the property. The second phase will include adding amenities such as a guest service center, kids' play area, dog park, pavilion, and upgrades to existing RV spaces. Phase two will also include the addition of 32 new 72' by 20' RV spaces on the south side of the park,

Adjacent Land Use & Zoning

The subject property is zoned B-2, General Business and is developed as a Recreational Vehicle Park. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North	Rural Development	B-2, General Business	Commercial
South	Commercial	B-2, General Business	Commercial
East (across Hwy 59)	Commercial	Outside City Limits	Undeveloped
West	Rural Development	B-2, General Business	Undeveloped

The property is already developed as an RV Park and the property itself is zoned General Business. The properties to the north and south fronting NW Stallings Drive are zoned and developed for commercial uses. The 50-acre tract to the west is undeveloped and belongs to the City of Nacogdoches.

STAFF REVIEW:

Per Section 118.139 of the Nacogdoches Zoning Ordinance, the following conditions shall be

considered when reviewing an application for a Specific Use Permit:

Compatibility: The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;

The proposed RV Park is consistent with the current use of the property and the surrounding zoning and commercial development fronting NW Stallings Drive.

The request includes 85 total RV spaces along with guest amenities and shared green spaces on approximately nine (9) acres. This SUP amendment will reduce the overall footprint of the original RV Park (11.6 acres), and thus should not be injurious to the use and enjoyment of other property in the immediate vicinity.

Orderly Growth and Development: The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;

The large 50-acre undeveloped tract located to the west of the proposed SUP has direct access to Westward Drive, as well as water and sewer utilities. The abutting properties to the north and south along NW Stallings Drive are all developed for commercial uses. The approval of this SUP would not impede the normal development of the surrounding properties.

Supporting Facilities: Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;

The subject property takes direct access from DPS Road, a frontage road for NW Stallings Drive. NW Stallings is classified as an expressway and is adequate to accommodate the nature and volume of traffic typically generated by the use. The property also has access to public utilities, with a 12-inch water main and an 8-inch sewer main located along the roadway. Per the FEMA Floodplain Map, there is no floodplain located on the subject properties.

Drives and Parking: The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;

The proposed development meets all current driveway and parking requirements.

Nuisances: Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;

The SUP proposal is to increase the number of existing RV spaces and construct guest amenities. The proposed development is not located in close proximity to any residential districts and should not create a nuisance to adjacent properties.

Lighting: Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;

If the SUP is approved, any new outdoor lighting would be subject to the City's current standards, which requires light fixtures to utilize a down lighting design, and prohibits fixtures that directly project light in all directions.

Landscaping: Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided;

The property is surrounded by B-2, General Business zoning, which does not require screening from adjacent properties. The applicant will be adding street landscaping along the eastern property line fronting the roadway.

Comprehensive Plan: The proposed use is in accordance with the comprehensive plan.

Future Land Use

Per the 2003 Nacogdoches Comprehensive Plan, the Future Land Use Plan (FLUP) Map designates the majority of the subject property as *Rural Development* and *Commercial* on the southeast corner. The *Rural Development* FLUP category is described as, “Sparsely-populated areas with limited development that are still distinct from more urbanized areas...” The *Commercial* FLUP category is described as, “Shopping and service facilities for the sale of goods and services, including small shops and larger retail stores and centers...”

Thoroughfare Plan

NW Stallings Drive is an Expressway. The roadway is adequate to accommodate the nature and volume of traffic typically generated by the proposed use.

The proposed SUP amendment will not affect the land uses permitted by the underlying B-2 zoning district.

NOTICES & COMMUNITY INPUT:

Staff mailed 12 notices to property owners within the 200 foot notification area. Since the time of this report, Staff has received one (1) response in opposition from the property owner to the south with general concerns with the potential for users of the RV park trespassing onto the adjacent property.

This zoning application was also subject to the additional noticing practices that were approved by City Council in January, 2021. These included: a zoning notice sign located on the subject property; notices published on the City’s Planning & Zoning webpage and social media platforms; and, mailed courtesy notices to property owners within 500 feet of the subject property.

RECOMMENDATION:

P&Z Recommendation

The P&Z Commission heard this item on October 10, 2022 and voted unanimously (5-0) to approve the Specific Use Permit as proposed by the applicant.

Staff Recommendation

Staff supports the recommendation of the P&Z Commission to approve the Specific Use Permit.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

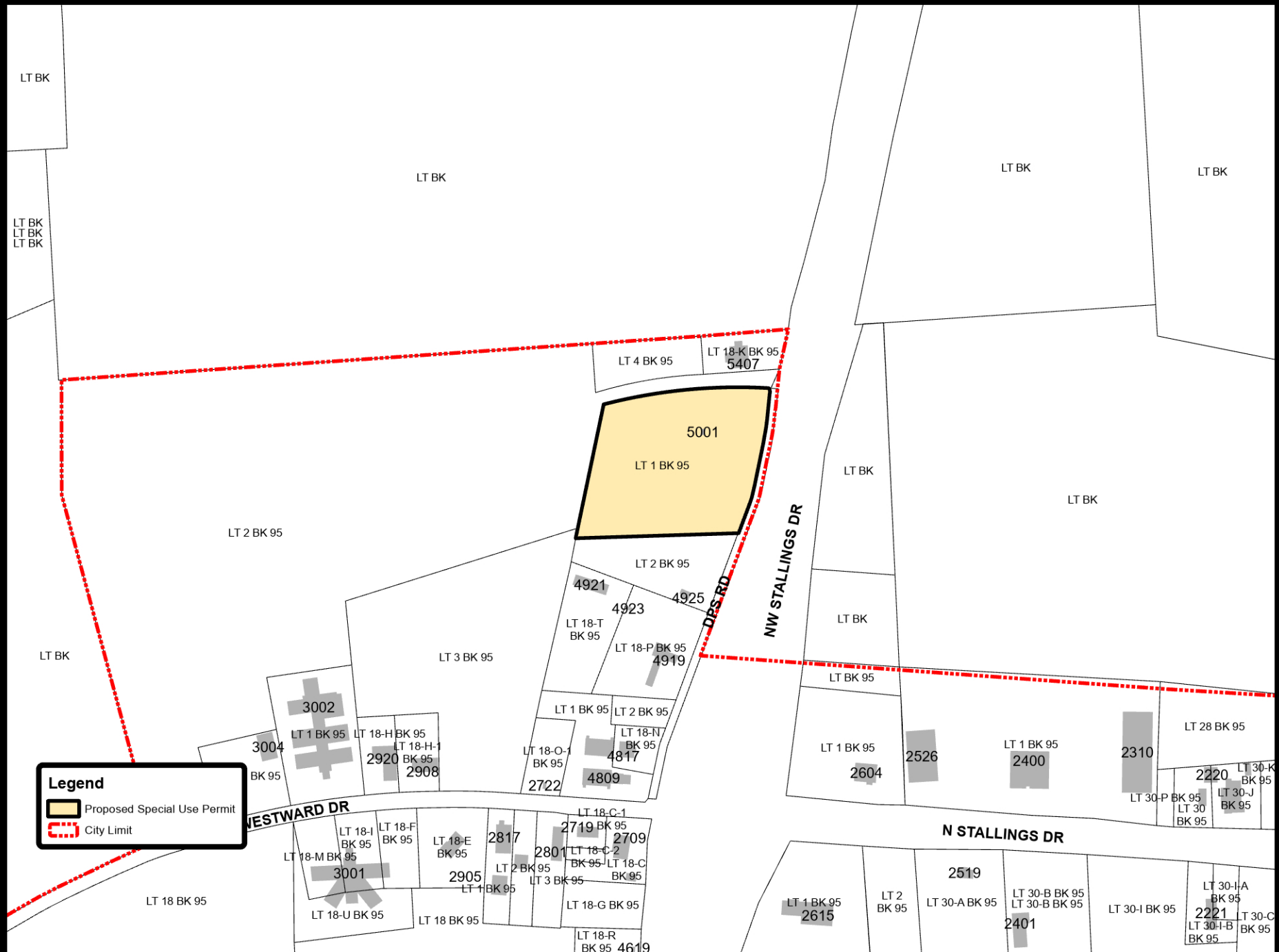
Economic Development

CITY CONTACT: Alaina Helton, AICP, City Planner
heltona@nactx.us
936-559-2574

ATTACHMENTS:

1. Location Map
2. Aerial Map
3. Zoning Map
4. Future Land Use Map

5. Notification Map
6. Response Form
7. Proposal Letter
8. Site Plan
9. Site Photos
10. Ordinance



Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



0 130 260 520 Feet

Date Created: September 29, 2022 Software: ArcGIS Pro 3.0.2

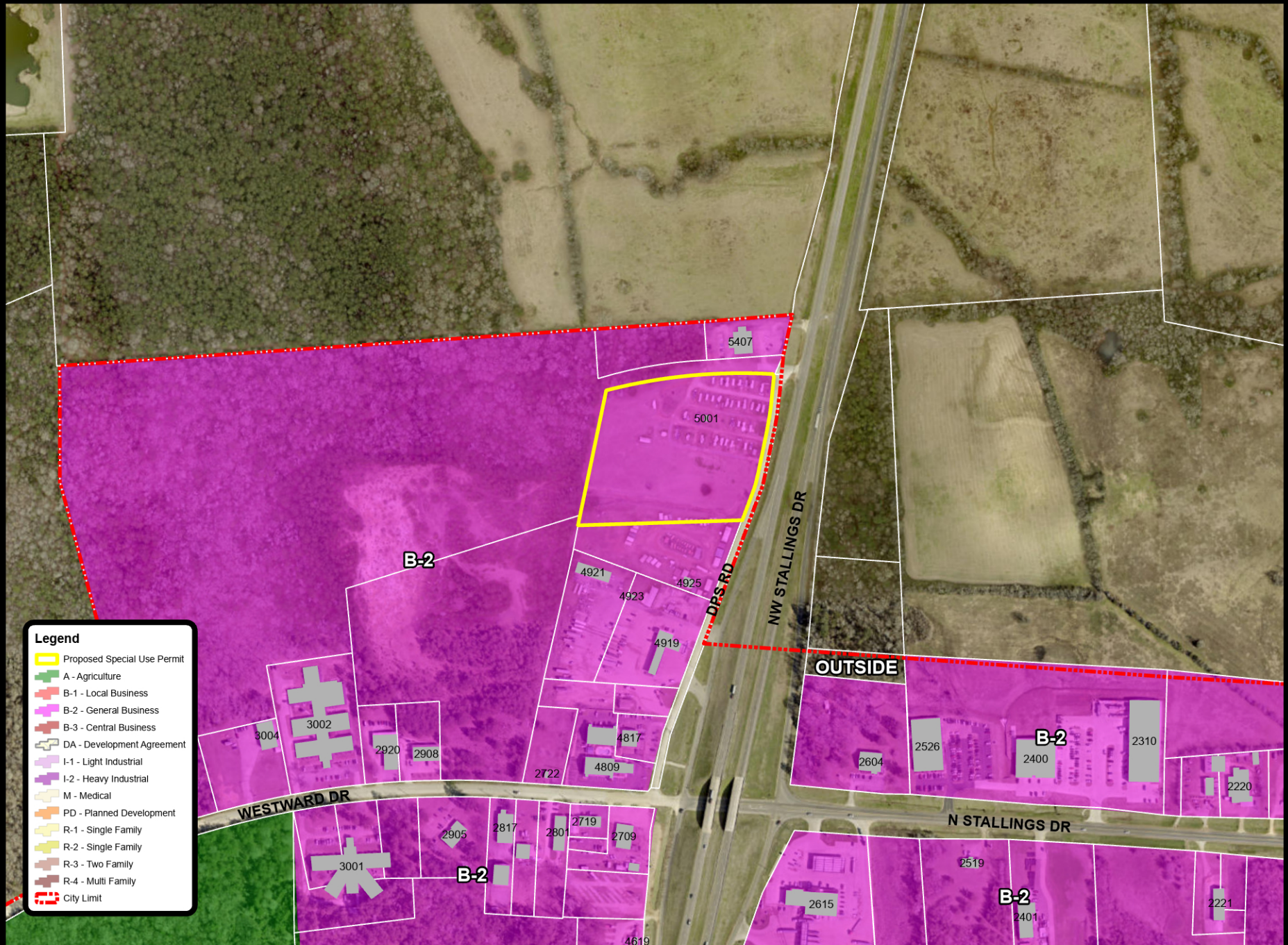


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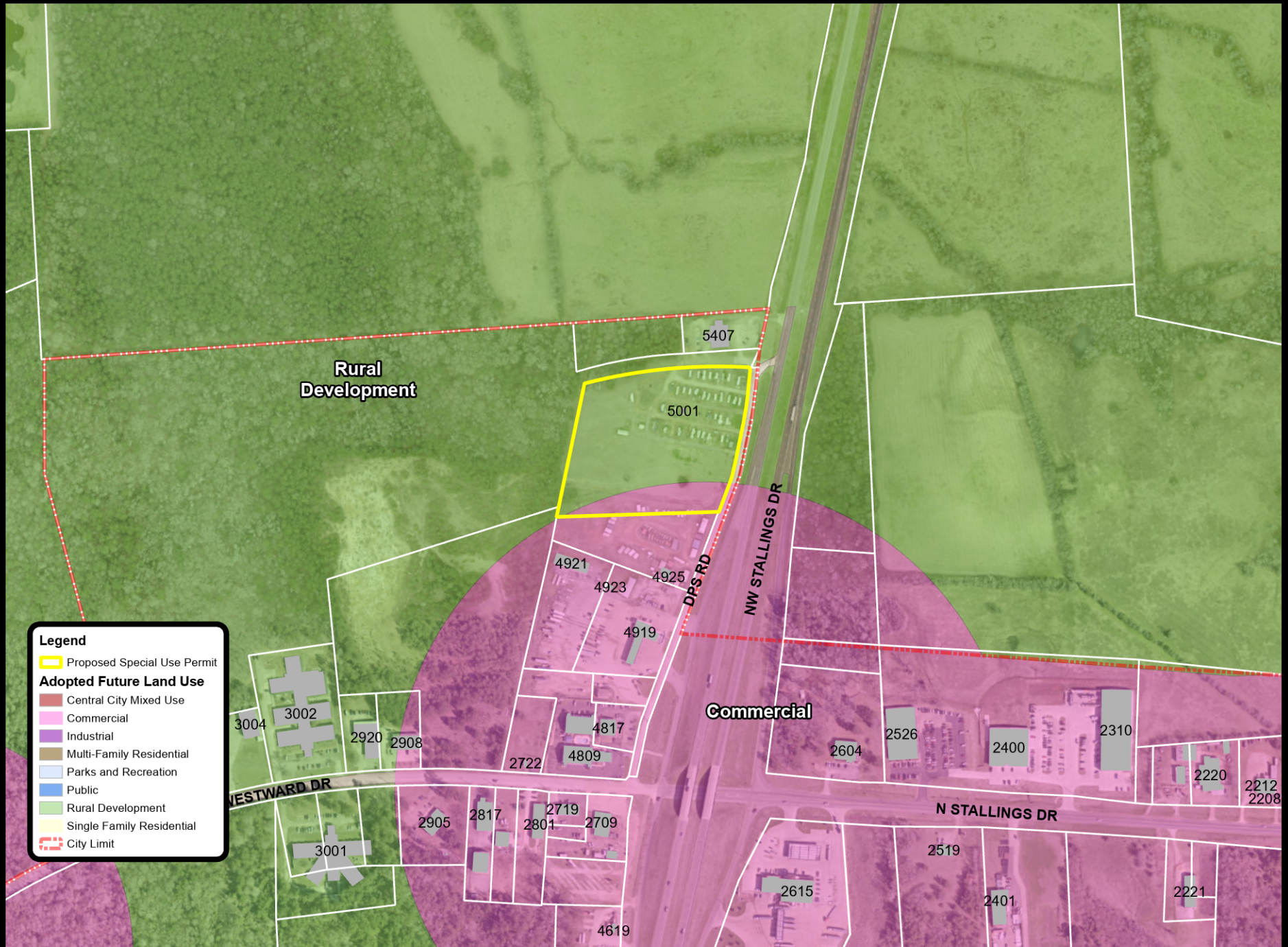


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0 130 260 520 Feet

200 Foot Notification Map

SUP2022-07: 5001 NW Stallings Dr.

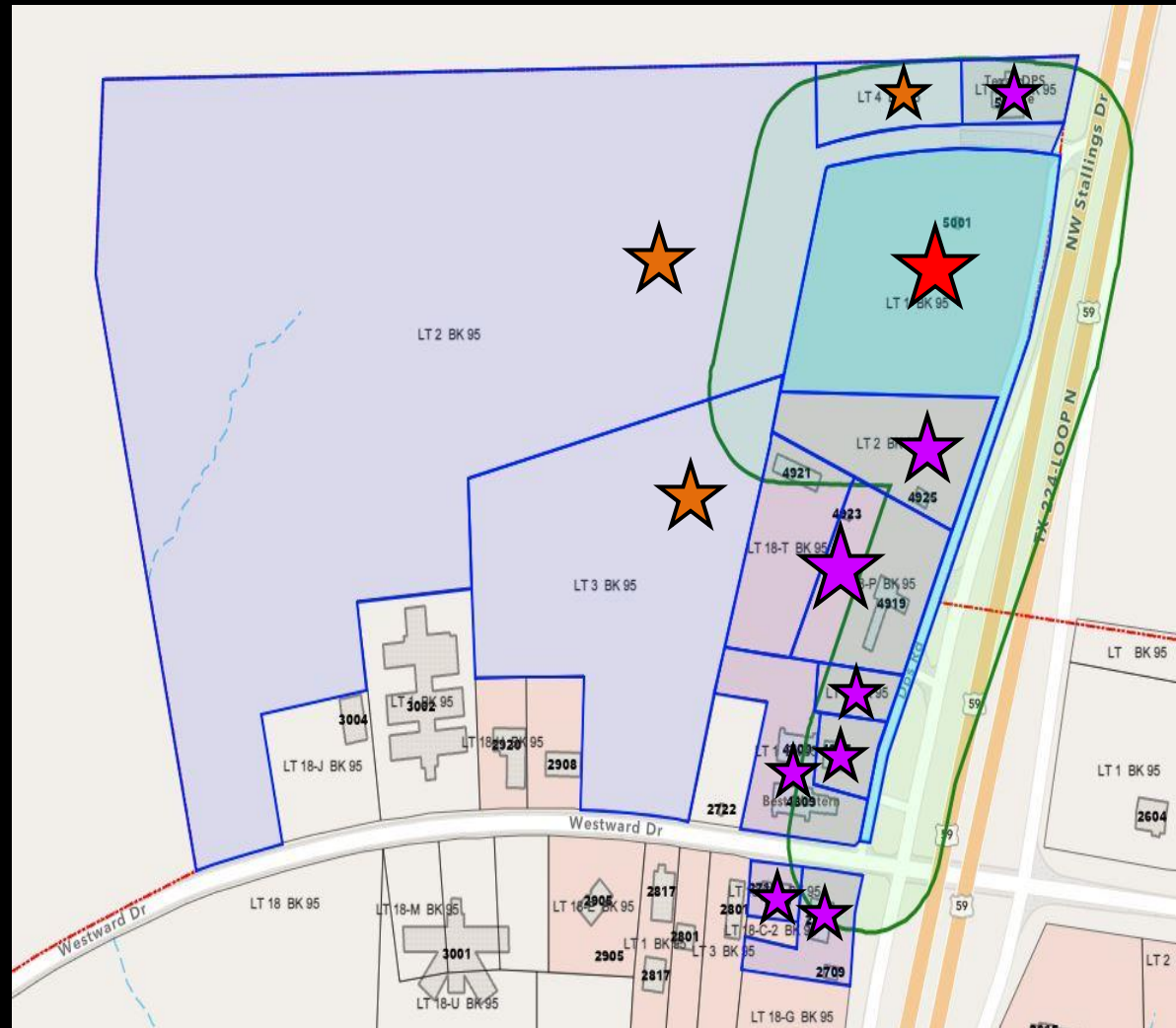
Legend



★ Proposed SUP

★ Commercial

★ Undeveloped





Response Form

Project Number: SUP2022-07
5001 NW Stallings Dr.

You may make your views known by completing this form and returning it to the Planning & Zoning department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

City of Nacogdoches Planning & Zoning Department
Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, lewisr@nactx.us

Project Number: SUP2022-07

Please circle one:

☐ In favor of request

☒ Opposed to request

Comments:

I OWN PROPERTY NEXT DOOR TO RV PARK, MY BUSINESS NAME IS DOUBLE D SALES. I HAVE A FENCE INSTALLED NEXT TO RV PARK THERE IS A HUGE DITCH ON RV SIDE OF MY FENCE. IF THEY PLAN TO MOVE THIS DITCH CLOSER TO MY LINE I DO NOT WANT ANY DIRT

next page

Signature: Dwayne Stroud

Printed Name: DWAYNE STROUD OWNER OF DOUBLE D SALES

Street Address: 4925 DPS RD. (NW STALLINGS DR)

City, State and Zip Code: NACOGDOCHES, TX 75964

Phone Number: 936-560-0117

Email Address: dstroud33@yahoo.com

Physical Address of Property within 200 Feet: 4925 DPS RD. (NW STALLINGS)
NACOGDOCHES, TX 75964

City of Nacogdoches

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963
936-559-2574 Fax 936-559-2910 www.nactx.us
Home of Stephen F. Austin State University www.sfasu.edu

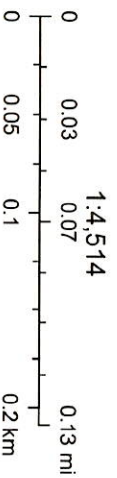
FROM THE DITCH ON MY FENCE ROW. I UNDERSTAND THAT THE OWNERS OF THE PARK BUY RV'S AND PLACE THEM ON THE PARK GROUNDS & RENT THEM OUT. IT IS BECOMING A TRAILER HOUSE PARK INSTEAD OF RV'S THAT COME AND GO. IF THEY ARE GRANTED THIS REQUEST I WOULD LIKE A WOODEN PRIVACY FENCE ON THEIR SIDE OF THE PROPERTY LINE. IN THE PAST THERE HAS BEEN CHILDREN FROM THE PARK COMING ON MY PROPERTY AND LEAVING DOORS OPEN ON MY BUILDINGS THAT I SELL FOR MY LIVING. THE WIND CATCHES THE DOORS & DAMAGE THE HINGES & DOOR FRAME, ALSO, IF THEY MOVE THE DITCH MAKE SURE NO DIRT FROM IT ENTERS MY FENCE ROW, AND THE DITCH NEEDS TO BE AS DEEP & WIDE AS THE CURRENT DITCH. IF NOT BUILT PROPERLY WATER & SAND FROM PROPERTY BEHIND MY LOT WILL WASH DOWN & FILL MY PROPERTY ON NE CORNER OF MY PROPERTY. I HAVE BEEN HERE 18 YEARS AND WE HAD THIS PROBLEM SEVERAL YEARS AGO. THE SAND FILLED UP CULVERT THAT RUNS UNDER US 59 AND BACKS UP ON MY PROPERTY. THANKS FOR YOUR CONSIDERATION.



9/23/2022, 11:24:22 AM

☐ Parcels ☐ Street Labels

☐ Buildings ☐ City Limits



Western Pines RV Park

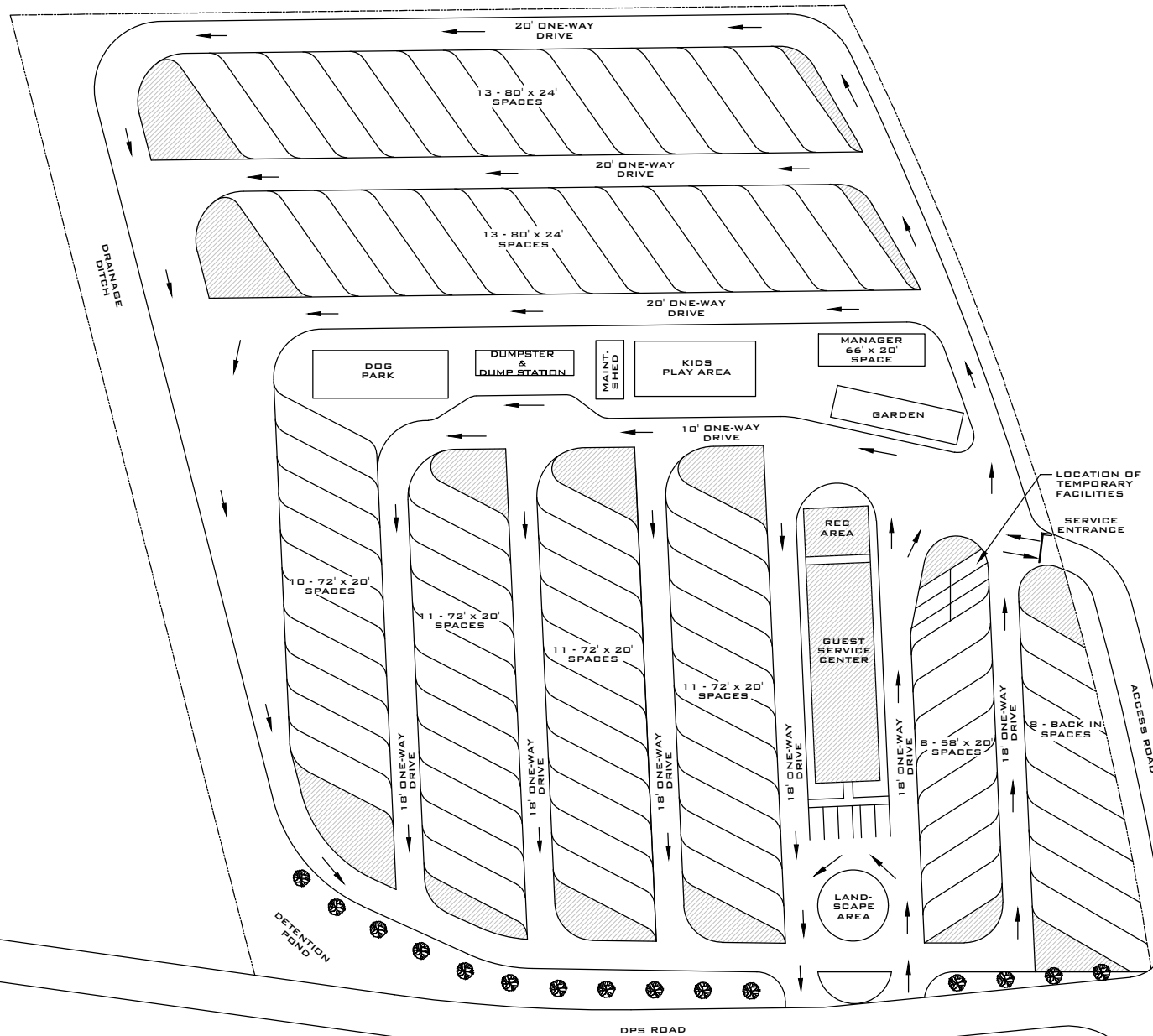
Expansion Proposal

Phase I (Pink) 2 years to complete

- Install and connect temporary portable shower and laundry facilities.
- New 80' by 24' RV spaces on west side (back) of property.
- Drives needed to access back row and exit.
- Infrastructure drainage lines and ditch.
- Extend utility lines to service new spaces in back.
- Install landscaping in front of property along DPS Road.

Phase II (Yellow) 2 years to complete

- Complete the build out of the new building, drives and parking areas.
- New 72' by 20' RV spaces on south side of property.
- Upgrades to all existing spaces including electrical & plumbing.
- Landscaping and green space development.
- Kids play area, dog park, pavilion, and dump station.
- Services entrance and exits.



1 SITE LAYOUT
1" = 100'-0"

DRAFTING SOLUTIONS
MARTY HARRIS
19898 CR 172
FLINT, TX 75762
903.574.0226

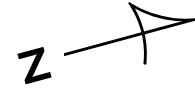
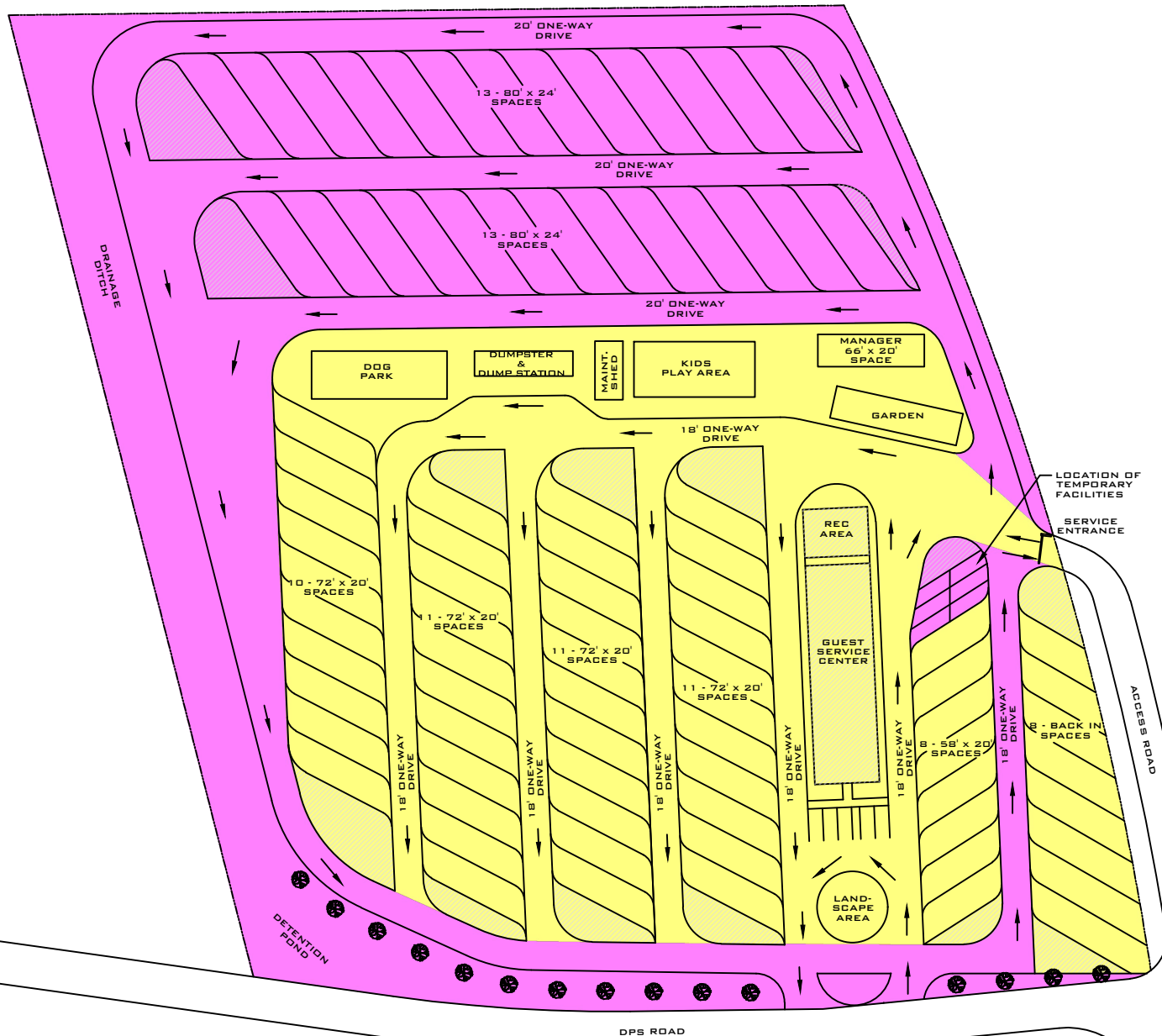
WESTERN PINES
RV PARK
NACOGDOCHES, TX

CONCEPTUAL
SITE LAYOUT

REVISIONS

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PROJECT FOR	SHEET NO.
WESTERN PINES	S-1
DRAWN BY:MDH	1 OF 1
DATE: 09/20/22	



PHASE I
 PHASE II

1 SITE LAYOUT
 1" = 100'-0"

DRAFTING SOLUTIONS
 MARTY HARRIS
 19898 CR 172
 FLINT, TX 75762
 903.574.0226

WESTERN PINES
 RV PARK
 NACOGDOCHES, TX

CONCEPTUAL SITE LAYOUT

REVISIONS

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PROJECT FOR	SHEET NO.
WESTERN PINES	S-1
DRAWN BY:MDH	1 OF 1
DATE:09/26/22	



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 903.574.0226

WESTERN PINES
 RV PARK
 NACOGDOCHES, TX

CONCEPTUAL SITE LAYOUT	
REVISIONS	
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PROJECT FOR	SHEET NO.
WESTERN PINES	S-1
DRAWN BY:MDH	1 OF 1
DATE: 09/20/22	

SUP2022-07: Site Photos



Front of subject property





View to the south
along NW Stallings Dr.

View to the north
along NW Stallings Dr.





Phase I area of RV site
(west side)

Phase II area of RV
site (south side)





Interior of RV Park

Current office
(to be replaced)



ORDINANCE NO. 1941-10-22

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING A SPECIFIC USE PERMIT FOR AN RV PARK FACILITY LOCATED WITHIN THE B-2, GENERAL BUSINESS ZONING DISTRICT, BEING LOT 1, BLOCK 1, OF THE WESTWARD SUBDIVISION PHASE 3, LOCATED AT 5001 NW. STALLINGS DRIVE, IN NACOGDOCHES, TEXAS, PROVIDING REQUIREMENTS AND CONDITIONS FOR SAID SPECIFIC USE PERMIT; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Specific Use Permit process allows the Planning and Zoning Commission and City Council to consider the conditions specific to individual tracts of land and operational characteristics of various businesses; and

WHEREAS, Western Pines RV Park, LLC, filed an application to amend a Specific Use Permit for an RV Park on property that is currently zoned as B-2, General Business; located at 5001 NW. Stallings Drive, said tract being legally described as Lot 1, Block 1, of the Westward Subdivision Phase 3 (the “Property”), and situated within the corporate limits of the City of Nacogdoches, Texas (the “City”), being more particularly described in **Exhibit “A”**, attached hereto and made a part hereof for all purposes; and

WHEREAS, the Owner of the Property, through its above mentioned and duly authorized representatives, has presented an application to the City for amending a Specific Use Permit to use said Property for the purpose of a RV Park (the “Specific Use”), as authorized by the City's Zoning Ordinance; and

WHEREAS, after satisfaction of all conditions precedent required by law, the Planning and Zoning Commission held a public hearing and did make recommendation to City Council for approval of amending the Specific Use Permit application submitted for the above referenced site; and

WHEREAS, after satisfaction of all conditions precedent required by law and receiving the recommendation of the Planning and Zoning Commission, the City Council conducted a public hearing, and immediately thereafter approved the application for amending Specific Use Permit allowing for the construction, operation and maintenance of an RV Park.

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

SECTION I
Findings.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.

SECTION II

Approval of Specific Use Permit

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a Specific Use Permit is hereby approved allowing for the construction, operation and maintenance of an RV Park at the above described location, as shown in **Exhibit “B”**.

SECTION III

Repeal

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the Specific Use Permit as herein provided.

SECTION IV

Effective Date

This Ordinance shall take effect following its passage and publication as may be required by governing law.

SECTION V

Severability

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION VI

Proper Notice and Open Meetings

It is hereby officially found and determined that the meeting at which this Ordinance was 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 Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VII

Filing

The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

PASSED AND APPROVED, this the ____ day of _____, 2022, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

JAN VINSON, City Secretary

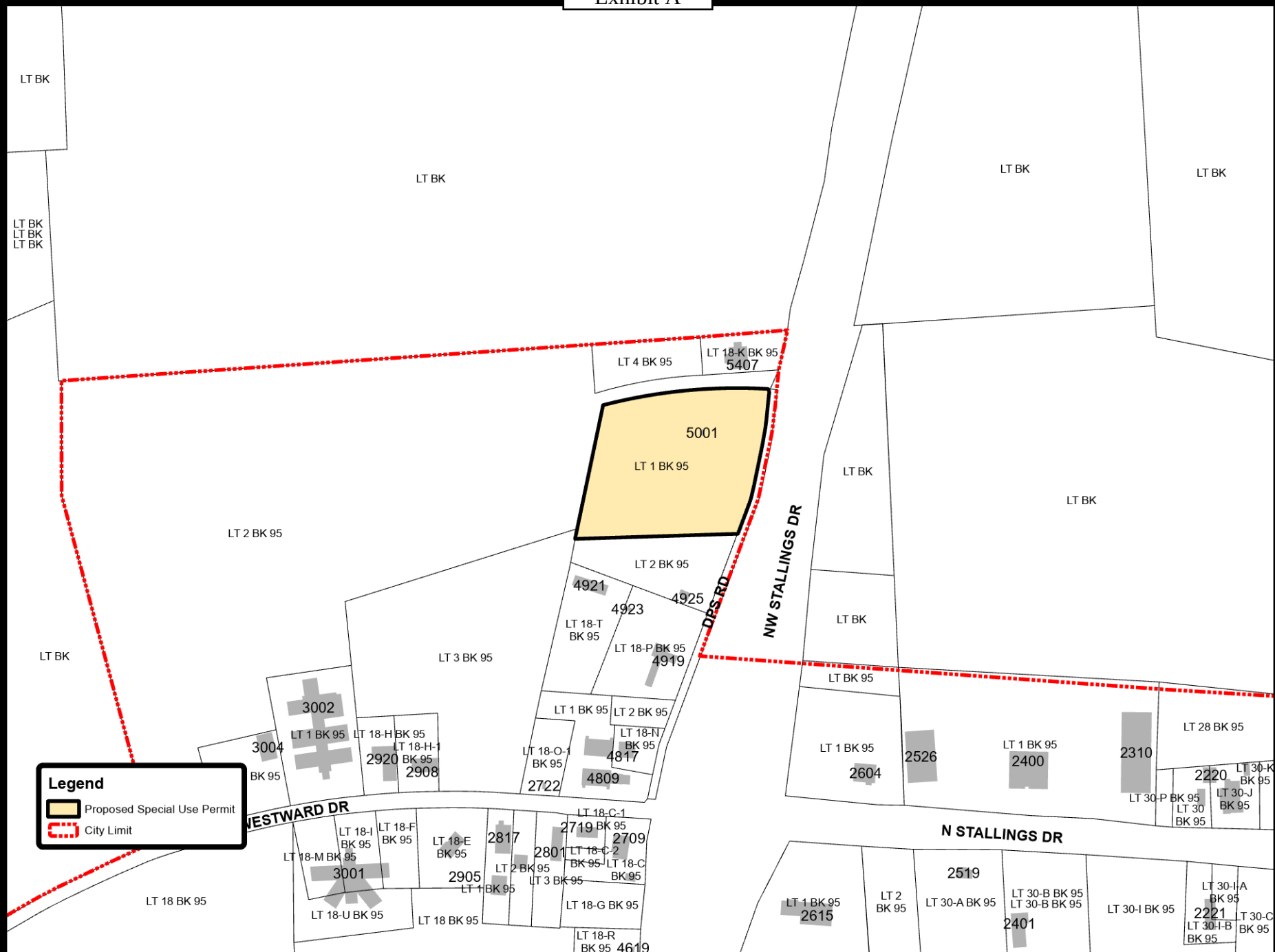
APPROVED AS TO FORM:

STEVEN KIRKLAND, City Attorney

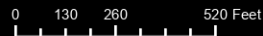
APPROVED AS TO CONTENT:

ALAINA HELTON, City Planner

Exhibit A

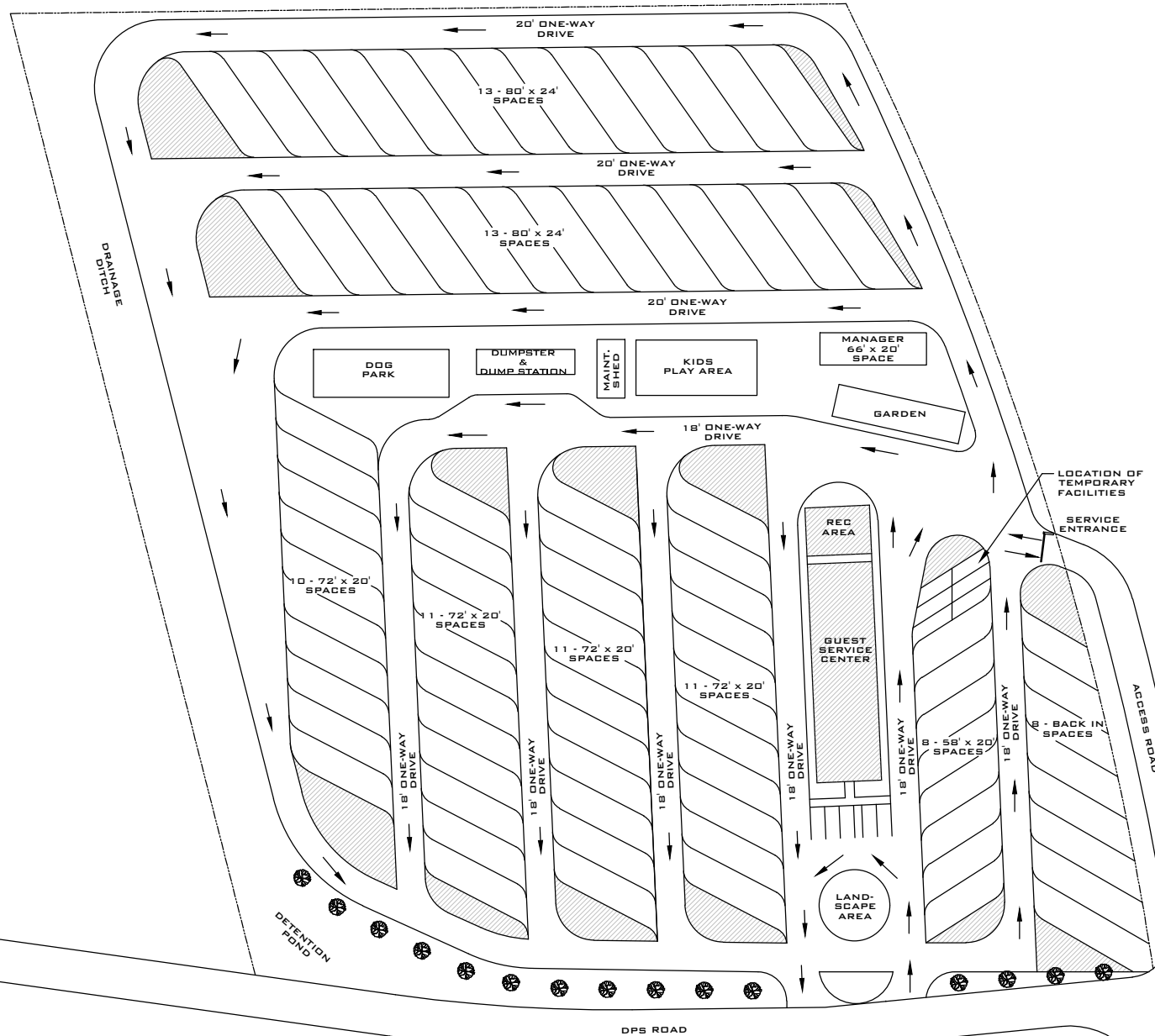


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Date Created: September 29, 2022 Software: ArcGIS Pro 3.0.2

Exhibit B



DRAFTING SOLUTIONS
MARTY HARRIS
19898 CR 172
FLINT, TX 75762
903.574.0226

WESTERN PINES
RV PARK
NACOGDOCHES, TX

CONCEPTUAL
SITE LAYOUT

REVISIONS

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1 SITE LAYOUT
1" = 100'-0"

PROJECT FOR	SHEET NO.
WESTERN PINES	S-1
DRAWN BY:MDH	1 OF 1
DATE: 09/20/22	



DRAFTING SOLUTIONS
MARTY HARRIS
19898 CR 172
FLINT, TX 75762
903.574.0226

WESTERN PINES
RV PARK
NACOGDOCHES, TX

CONCEPTUAL
SITE LAYOUT

REVISIONS

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PROJECT FOR	SHEET NO.
WESTERN PINES	S-1
DRAWN BY:MDH	1 OF 1
DATE: 09/20/22	

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider a request for approval of a Specific Use Permit for Manufactured Home Sales in a B-2, General Business District, on Lot 93-E, City Block 56, and Lot 4 of the South Star Plaza Subdivision, located at 3411 South Street. This request has been made by Barham Properties. Case Number SUP2022-06. (City Planner)

SUMMARY/BACKGROUND: The request is for a Specific Use Permit (SUP) for a Manufactured Home Sales facility. The property is zoned B-2, General Business and is currently vacant. Per the Zoning Ordinance, Manufactured Home Sales is a permitted use in the B-2, General Business district with the approval of a SUP.

The applicant is proposing to replace the existing commercial building (on Lot 93-E) with a sales office, and utilize the property to the east (Lot 4) as a display lot showcasing the manufactured homes inventory. Both lots combined are approximately 2 acres.

Adjacent Land Use & Zoning

The subject properties are zoned B-2, General Business and are currently commercial. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North	Commercial	B-2, General Business	Commercial
South	Commercial	B-2, General Business	Commercial
East	Commercial	B-2, General Business	Future I-69 Flyover
West (across from South Street)	Commercial	B-2, General Business	Commercial

The property fronts South Street with approximately 125 feet of street frontage and is zoned General Business. The property is currently vacant and was previously occupied as a restaurant. The surrounding properties along this section of South Street are zoned and developed for commercial uses. The property is bound to the east by the future I-69 flyover.

STAFF REVIEW:

Per Section 118.139 of the Nacogdoches Zoning Ordinance, the following conditions shall be considered when reviewing an application for a Specific Use Permit:

Compatibility: The specific use will be compatible with and not injurious to the use and

enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;

The proposed use is consistent with the surrounding commercial development, and should not be injurious to the use and enjoyment of other property in the immediate vicinity.

Orderly Growth and Development: The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;

The proposed SUP is located within one of the city's main commercial corridors and the surrounding properties are fully developed. The approval of the SUP would not impede the normal development of the surrounding properties.

Supporting Facilities: Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;

The subject property takes direct access from South Street, which functions as primary access for the surrounding commercial properties. The applicant has stated that over 50% of the manufactured home sales are typically custom-ordered directly from the manufacturer, with the on-site sales office serving primarily as a display lot.

Additionally, the Texas Department of Motor Vehicles (TxDMV) requires a permit for the movement of manufactured housing or industrialized buildings/housing. These permits may only be used for one movement, during the times specified on the permit, from a specific point of origin to a specific destination. Typically, the times specified for these types of permits are limited to before 6:00am, outside of peak traffic hours.

Drives and Parking: The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;

The proposed development will utilize the existing driveway and parking area.

Nuisances: Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;

The proposed SUP is surrounded by B-2, General Business and is located in a main commercial corridor and will not increase the nuisance level to the surrounding commercial activity.

Lighting: Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;

If the SUP is approved, any new outdoor lighting would be subject to the City's current standards, which requires light fixtures to utilize a down lighting design, and prohibits fixtures that directly project light in all directions.

Landscaping: Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided;

The adjacent properties surrounding the subject property are all commercial, therefore no screening is required. The applicant will be required to add street landscaping along the front property line.

Comprehensive Plan: The proposed use is in accordance with the comprehensive plan.

Future Land Use

Per the 2003 Nacogdoches Comprehensive Plan, the Future Land Use Plan (FLUP) Map designates the subject property as *Commercial*. The *Commercial* FLUP category is described as, "Shopping and service facilities for the sale of goods and services, including small shops and larger retail stores and centers..." Staff finds that the FLUP designation of the property is

consistent with the proposed request.

NOTICES & COMMUNITY INPUT:

Staff mailed 13 notices to property owners within the 200-foot notification area. Of the 13 notices sent, Staff has received one (1) written response in support of the request from the owners of the Sonic restaurant located just south of the subject property. Staff also received two (2) written responses in support from residents outside of the 200' and 500' notification area.

This zoning application was also subject to the additional noticing practices that were approved by City Council in January, 2021. These included: a zoning notice sign located on the subject property; notices published on the City's Planning & Zoning webpage and social media platforms; and, mailed courtesy notices to property owners within 500 feet of the subject property.

RECOMMENDATION:

P&Z Recommendation

The P&Z Commission heard this item on October 10, 2022 and voted unanimously (5-0) to approve the Specific Use Permit as proposed by the applicant.

Staff Recommendation

Staff supports the recommendation of the P&Z Commission to approve the Specific Use Permit.

FINANCIAL:

No financial impact associated with this item

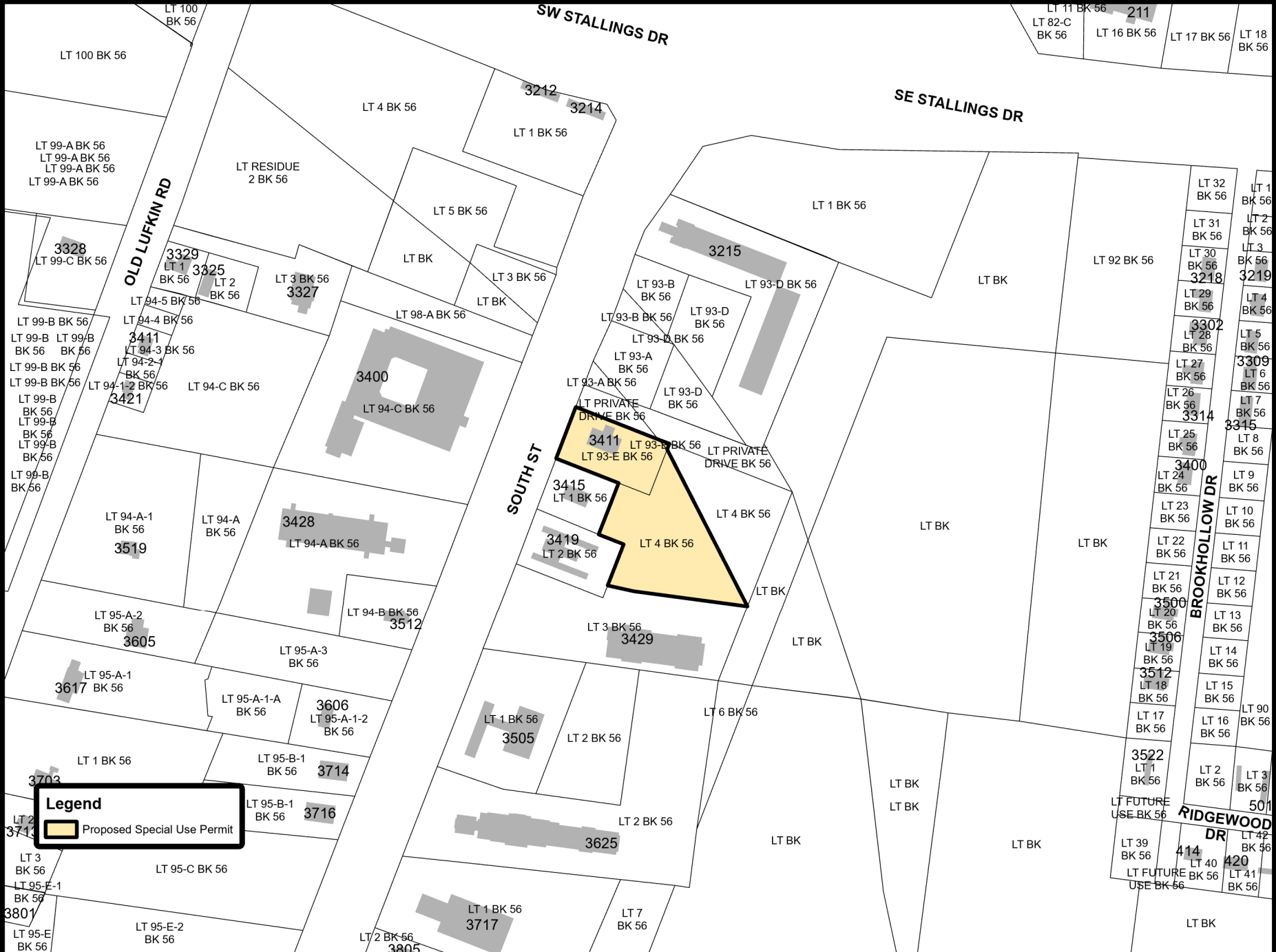
COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Economic Development

CITY CONTACT: Alaina Helton, AICP, City Planner
heltona@nactx.us
936-559-2574

ATTACHMENTS:

1. Location Map
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Notification Map
6. Written Responses
7. Site Plan
8. Site Photos
9. Ordinance

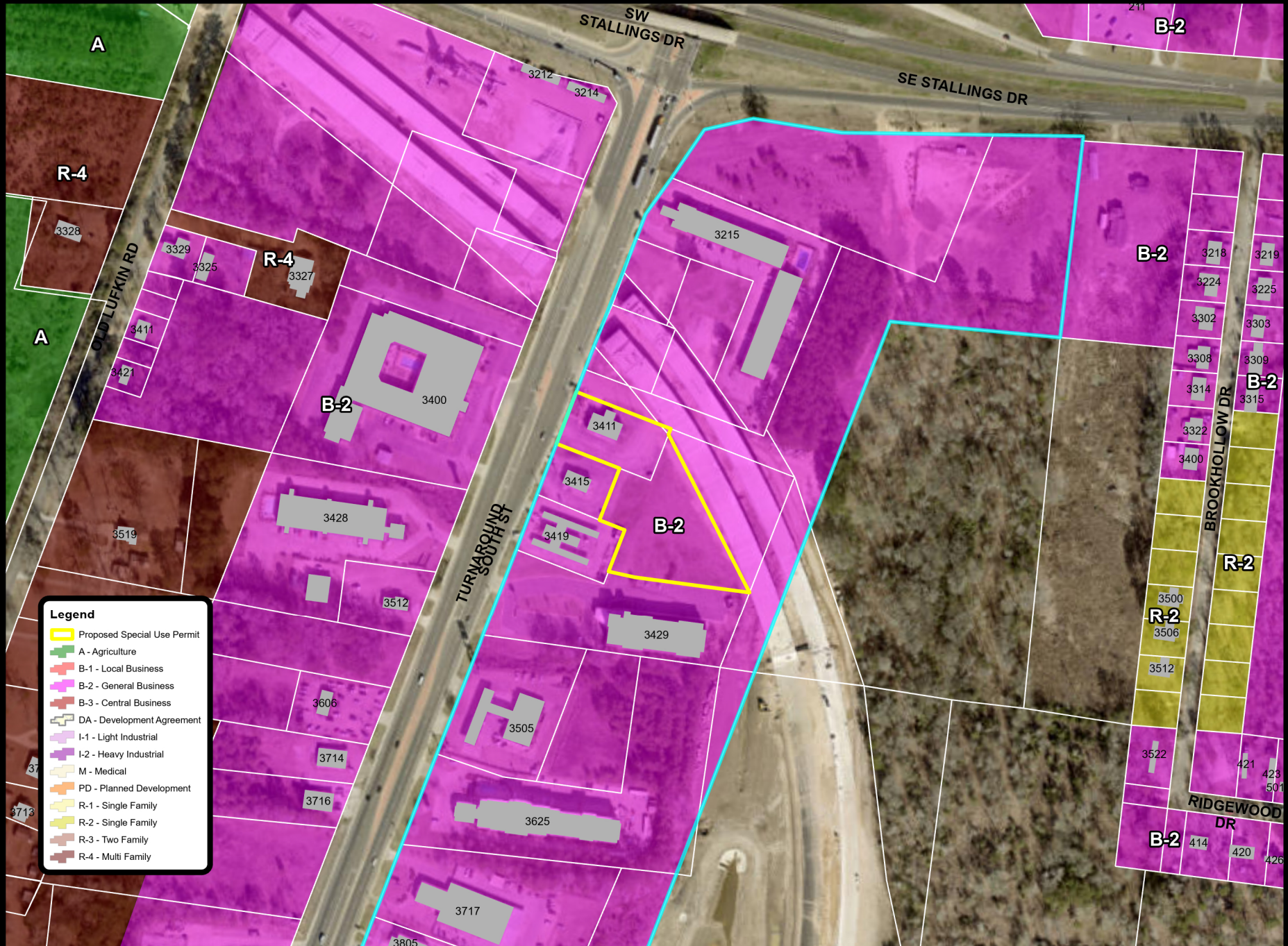




Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



0 75 150 300 Feet



Legend

- Proposed Special Use Permit
- A - Agriculture
- B-1 - Local Business
- B-2 - General Business
- B-3 - Central Business
- DA - Development Agreement
- I-1 - Light Industrial
- I-2 - Heavy Industrial
- M - Medical
- PD - Planned Development
- R-1 - Single Family
- R-2 - Single Family
- R-3 - Two Family
- R-4 - Multi Family

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0 75 150 300 Feet





Helton, Alaina <heltona@nactx.us>

Support for new development on South Street

1 message

candice@wintcoacctg.com <candice@wintcoacctg.com>

Fri, Oct 7, 2022 at 2:14 PM

To: heltona@nactx.us

Cc: Brian Winterringer <bwinerringer@gmail.com>

Good afternoon,

My husband and I are the franchise owners of the Sonic Drive-in located on South Street. We have been notified of a new manufactured home retail office near our store. The owners have contacted us and explained their future plans.

We support this new business as it will enhance the area and clean up a vacant property.

With all the road construction negatively impacting our sales volume resulting in no profit over the past year, we can use all the extra business we can get in the area! And this appears to be a quality development.

Thank you,

Candice

Candice Winterringer

Principal/Franchisee

Wintco Sonic Group and Wintco Accounting

C: 972-523-1003

candice@wintcoacctg.com



Be obsessed with your commitment to TRAINING.

You have to be driven to improve EVERY DAY.



A1 -Construction

423 County Road 8113

Nacogdoches, TX 75964

(936)215-1489

a1construction12@gmail.com

9/29/2022

City of Nacogdoches,

My name is Justin Thompson and I recently learned that a new sales office for manufactured homes is coming to town. I am a small business owner that specializes in service, repairs and remodels for dealers and park owners across East Texas. I am in full support of this new company.

Sincerely,

A handwritten signature in blue ink. The first part of the signature is cursive and appears to read 'Justin'. The second part is a stylized, elongated 'T' followed by a horizontal line.

Justin Thompson

Owner

Support

2 messages

Thralls Cafe <thrallscafe@gmail.com>
To: "lewisl@nactx.us" <lewisl@nactx.us>

Thu, Oct 6, 2022 at 12:29 PM

City Planner,

Please accept this email as a vote in support of the new manufactured home dealership coming to 3411 South Street. I own a residential park that would greatly benefit from local inventory. As of now, I have to buy my homes from out of town.

Sincerely,
James Thrall

Lewis, Rhonda <lewisl@nactx.us>
To: Thralls Cafe <thrallscafe@gmail.com>
Bcc: Alaina Helton <heltona@nactx.us>, Juan Pollette <pollettej@nactx.us>

Fri, Oct 7, 2022 at 9:27 AM

Good morning,

Planning and Zoning is in receipt of your email in support of Case number SUP2022-06. Your email response will be forwarded to the City Planner.

Thank you,

*Rhonda K. Lewis
Office Assistant III
Planning & Zoning Department
City of Nacogdoches
(936) 559-2574
lewisl@nactx.us*

[Quoted text hidden]

**CITY OF NACOGDOCHES
NACOGDOCHES COUNTY, TEXAS**

LEGEND

- FOR PLANNING PURPOSES ONLY; THIS IS NOT A BOUNDARY SURVEY PLAT.
This drawing prepared from instruments of record and information provided by
Barham Properties, Inc.

- Replat of Lots 3 & 4 of South Star Plaza Addition recorded in 10/32 NCPR

Prepared for

BARHAM PROPERTIES, INC.

GLENN HOFFPAUIR SURVEYING, PLLC

LICENSED FIRM NO. 10194243
252 CR 817 NACOGDOCHES, TEXAS 75964-2801
936-560-1227

REV:	JOB NO:	DRAWN BY:
		gh
DATE:	SHEET NO:	SCALE:
9/20/2022	1 OF 1	1" = 50'

U.S. HIGHWAY 59 BUS (SOUTH STREET) (164/117 NCPR)

PRIVATE STREET - 44' PAVED 10/38 NCPR, 9/49 NCPR, 5/28 NCPR

2021-2022 NCOPR 10' wide Access Easement called 225.00'

PROPOSED TREE

UTILIZE EXISTING CURB CUT

PROPOSED TREE

PROPOSED SALES OFFICE #3411 SOUTH ST. EXISTING STRUCTURE TO BE DEMOLISHED AND REPLACED WITH MODULAR BUILDING called 225.00'

2021-2022 NCOPR Dan Stansel Lot 93-E, City Block 56

ASPHALT SURFACE

3019/237 NCOPR Cotton Weaver Ltd., LLP Tract 2: Lot 1 of South Star Plaza Addition. Section 1 ref. 5/28 NCPR

2016-5286 NCOPR ET Hotels LLC (residue of) Lot 4 of Replat of Lots 3 & 4, South Star Plaza Addition ref. 10/38 NCPR

4852/61 NCOPR State of Texas called 0.9539 Acres

called 125.00'

called 125.00'

called 75.00'

called 125.00'

called 61.00'

called 100.10'

called 60.68'

called 260.20'

called 404.38'

PROPOSED INVENTORY LOT - GRAVEL SURFACE -

920/288 NCOPR J.C. Winteringer, Inc. Lot 2 of South Star Plaza Addition Section 2 ref. 5/44 NCPR

2022-1124 NCOPR Nacogdoches Hotel Group, LLC Part of Lot 3 of the Replat of Lots 3 & 4 of South Star Plaza Addition

RPLS No. 4492

- PRELIMINARY -
FOR REVIEW 9/20/2022

(GRID)

**- PRELIMINARY -
FOR REVIEW 9/20/2022**

RPLS No. 4492

2022-1124 NCOPR
Nacogdoches Hotel Group, LLC
Part of Lot 3 of the Replat of Lots 3 & 4
of South Star Plaza Addition

SUP2022-06: Site Photos

Front lot of
subject property



Back lot of
subject property





View to the north
along South St.

View to the south
along South St.





View to the west along
access easement



View to the east along
access easement



View to the west
across South St.

View to the east
from South St.
(parking lot of
subject property)



ORDINANCE NO. 1942-10-22

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, GRANTING A SPECIFIC USE PERMIT FOR A MANUFACTURED HOME SALES FACILITY LOCATED WITHIN THE B-2, GENERAL BUSINESS ZONING DISTRICT, BEING LOT 93-E, CITY BLOCK 56, AND LOT 4 OF THE SOUTH STAR PLAZA SUBDIVISION, LOCATED AT 3411 SOUTH STREET, IN NACOGDOCHES, TEXAS, PROVIDING REQUIREMENTS AND CONDITIONS FOR SAID SPECIFIC USE PERMIT; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Specific Use Permit process allows the Planning and Zoning Commission and City Council to consider the conditions specific to individual tracts of land and operational characteristics of various businesses; and

WHEREAS, Barham Properties filed an application for a Specific Use Permit for Manufactured Home Sales facility on property that is currently zoned as B-2, General Business; located at 3411 South Street, said tract being legally described as Lot 93-E, City Block 56, and Lot 4 of the South Star Plaza Subdivision (the “Property”), and situated within the corporate limits of the City of Nacogdoches, Texas (the “City”), being more particularly described in **Exhibit “A”**, attached hereto and made a part hereof for all purposes; and

WHEREAS, the Owner of the Property, through its above mentioned and duly authorized representatives, has presented an application to the City for the granting a Specific Use Permit to use said Property for the purpose of a Manufactured Home Sales facility (the “Specific Use”), as authorized by the City's Zoning Ordinance; and

WHEREAS, after satisfaction of all conditions precedent required by law, the Planning and Zoning Commission held a public hearing and did make recommendation to City Council for approval of the Specific Use Permit application submitted for the above referenced site; and

WHEREAS, after satisfaction of all conditions precedent required by law and receiving the recommendation of the Planning and Zoning Commission, the City Council conducted a public hearing, and immediately thereafter approved the application for a Specific Use Permit allowing for the construction, operation and maintenance of a Manufactured Home Sales facility.

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

SECTION I
Findings.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.

SECTION II

Approval of Specific Use Permit

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a Specific Use Permit is hereby approved allowing for the construction, operation and maintenance of a Manufactured Home Sales facility at the above described location, as shown in **Exhibit “B”**.

SECTION III

Repeal

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the Specific Use Permit as herein provided.

SECTION IV

Effective Date

This Ordinance shall take effect following its passage and publication as may be required by governing law.

SECTION V

Severability

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION VI

Proper Notice and Open Meetings

It is hereby officially found and determined that the meeting at which this Ordinance was 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 Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VII

Filing

The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

PASSED AND APPROVED, this the ____ day of _____, 2022, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

JAN VINSON, City Secretary

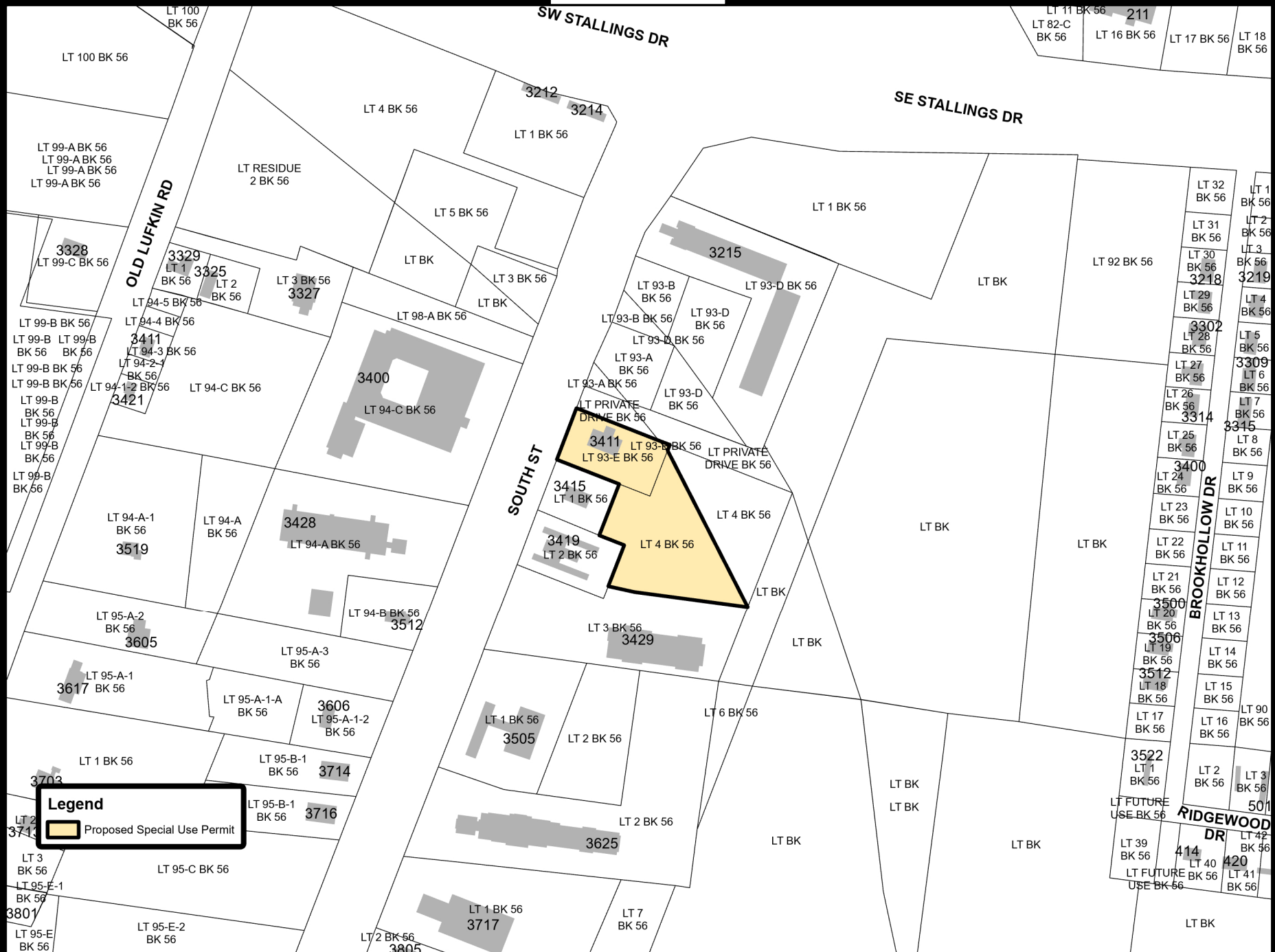
APPROVED AS TO FORM:

STEVEN KIRKLAND, City Attorney

APPROVED AS TO CONTENT:

ALAINA HELTON, City Planner

Exhibit A



Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



Date Created: September 19, 2022 Software: ArcGIS Pro 3.0.1

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider approval of an ordinance amending Part II, Chapter 106, Utilities, Article II., Sewer System, Division 2. Sewer Use Regulations of the City of Nacogdoches Code of Ordinances. (Public Works Director)

SUMMARY/BACKGROUND: The Environmental Protection Agency (EPA) develops and enforces specific limits for pollutants in the wastewater system. The City conducted sampling at the wastewater plant (in 1995 and 2001) to determine the amount of pollutants the plant could receive without causing pass-through or interference to the plant. As a result of the sampling, the City was able to allocate the maximum allowable industrial loadings of pollutants to each of our industrial users. This determines the amount and concentration of pollutants the plant can receive from industries without harming the treatment process.

Currently, all industries have the same concentration-based limits for all pollutants, regardless of the type of industry or how much wastewater they discharge. There are four (4) larger industries (called Significant Industrial Users) each discharging different amounts of wastewater to the plant with one facility discharging more than one million gallons per day, far more than the others. The amount of lead allocated to this industry is much larger than the other 3 permitted industries, simply based on their flow volume. However, this industry only uses a tiny fraction of its allowable lead volume since its production processes don't generate any lead into the waste stream.

In contrast, there are other industries in the city that have lead in their wastewater discharge that have a difficult time meeting the current lead limits in their permit. Reallocating higher local limits to lead to these industries will provide a more equitable distribution and help these facilities operate in compliance without compromising the safety of the treatment plant.

The City submitted a minor program modification to TCEQ and received approval to redistribute our lead limits. The modification proposed in this ordinance revision divided the industries into two tiers. Tier I industries discharge less than one million gallons per day of wastewater to the plant and will be allotted higher concentrations of lead. Our single Tier II industry, discharging more than one million gallons per day, will be permitted at a lower concentration of lead in their waste stream with no ill effects on their production or processes. Their new lower limits are still approximately 10 times their average lead discharge.

Upon approval of the revised ordinance, staff will amend all industrial user discharge permits to reflect the redistribution limits for lead. This should greatly improve compliance issues for some of our local industries.

FINANCIAL:

No financial impact associated with this item

**COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE
FOLLOWING CITY COUNCIL PRIORITIES**

Not Applicable

CITY CONTACT: Steve Bartlett, Public Works Director
bartletts@nactx.us
936-559-2522

ATTACHMENTS: 1. Redlined Ordinance Showing Changes
2. Amended Ordinance
3. PowerPoint Presentation

**CITY OF NACOGDOCHES
SEWER USE ORDINANCE**

ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS REGULATING THE COLLECTION OF SEWAGE IN THE CITY REQUIRING PERMITS FOR CERTAIN DISCHARGES; AMENDING CHAPTER 106 DIVISION 2 “SEWER USE REGULATIONS”, SECTION 106-66 THROUGH 106-79, OF THE CODE OF ORDINANCES FOR THE CITY OF NACOGDOCHES, TEXAS, PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the City of Nacogdoches has provided facilities for the collection and treatment of sewage to promote health, safety, and convenience of its people and to safeguard the water resources common to all;

WHEREAS, such facilities are designed, constructed, and operated for the purpose of receiving and treating domestic sewage and compatible industrial wastes, without excessive amounts of toxic or incompatible wastes, and without excessive amounts of storm drainage or ground water;

WHEREAS, proper protection and operation of the collection and treatment facilities may require exclusion, pretreatment, or regulated discharge of waste matter other than domestic sewage, as well as exclusion of storm drainage or ground water; and

WHEREAS, the City must be able to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 3 1251 *et seq*) and the General Pretreatment Regulations (40 CFR 403, issued by the Environmental Protection Agency); and

WHEREAS, said federal and state laws are directed toward various objectives, including but not limited to:

Excluding pollutants which will interfere with operation of the City's treatment plant;

Preventing pollutants from passing through the plant into the receiving stream inadequately treated, or from being otherwise incompatible with the operation of the plant;

Assuring quality of sludge to allow its disposal and/or use according with statutes and regulations;

Protection of collection/treatment works personnel as well as the general public;

Improving opportunities to recycle and reclaim wastewater and sludge;

Providing equitable distribution of costs of operating, maintaining, an enabling the City to comply with its EPA permit conditions, sludge use/disposal requirements, and any other federal or state laws; and

WHEREAS, the City has adopted various ordinances designed to meet requirements of the EPA and of the relevant state agency, including Ordinance No. ~~1581-11-11~~1863-04-21, adopted on ~~November 1, 2011~~April 20, 2021, and;

WHEREAS, Ordinance No. 1863-04-21 contained a definition that did not update the name of the state environmental agency to it's current name of Texas ~~Commision~~Commission on Environmental Quality,

WHEREAS, Ordinance No. 1863-04-21 contained limitations on the amount of lead allowed in industrial effluent going into the treatment plant based on an allocation of the total amount of lead entering the treatment plant and those limitations have not worked as designed for the efficient operation of the collection and treatment system; and

WHEREAS, Ordinances No. ~~1581-11-11~~1863-04-21 must be amended for various reasons ~~including to correct the name of the state environmental agency and to~~ updated requirements ~~of the Environmental Protection Agency for allowable lead pollutants in an industry's waste stream~~; and

WHEREAS, the new requirements for allowable lead have been approved by the Texas Commission on Environmental~~Environmental~~ Quality;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES:

SECTION I

All above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

Chapter 106, "Utilities," of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended by replacing "DIVISION 2. - SEWER USE REGULATIONS" Sections 106-66 through 106-79, as set hereafter to read as follows:

DIVISION 2. - SEWER USE REGULATIONS

Sec. 106-66.-General Provisions

(a) Purpose and Policy

This ordinance sets forth uniform requirements for Users of the Publicly Owned Treatment Works for the City of Nacogdoches and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United State Code [U.S.C.] section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the *Code of Federal Regulations [CFR] Part 403*). The objectives of this ordinance are:

- (1) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operations;
- (2) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- (3) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- (4) To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
- (5) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
- (6) To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

This ordinance shall apply to all Users of the Publicly Owned Treatment Works. The ordinance authorizes the issuance of individual wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; established administrative review procedures; and requires User reporting.

(b) Administration

Except as otherwise provided herein, water utilities manager shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon water utilities manager may be delegated by water utilities manager to a duly authorized City employee.

(c) Definitions.

The meaning of terms used in this division shall be as follows:

Act or "*the Act*" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 3 1251 et seq.

Administrator means the administrator of the EPA, or any duly authorized official acting in his behalf.

Approval authority means the Executive Director of the Texas Commission on Environmental Quality.

Authorized representative of industrial user means an authorized representative of an industrial user may be:

(1) *Corporations.*

- a. A president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.
- b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measure to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit [or general permit (optional)] requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures

(2) *Partnerships.* A general partner.

(3) *Proprietorships.* The proprietor.

(4) *Governmental facility (federal, state, or local).* A director or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or a ranking elected official for the governmental entity.

(5) *Any organization.* A duly authorized representative of the individual designated in subsection (1), (2), or (3) above, provided:

- a. The authorization is made in writing by the individual above;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, or an equivalent position, or having overall responsibility for environmental matters for the company; and
- c. The written authorization is submitted to the city.

Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 106-212(a) and (b) [40 CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning three feet outside the inner face of the building wall.

Building sewer, also called house connection, means the extension from the building drains to the public sewer or other place of disposal.

Bypass means the intentional diversion of waste streams around any portion of an industrial user's pretreatment facility and into the sewage works.

Carbonaceous biochemical oxygen demand (CBOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, with chemical inhibition of nitrogenous oxygen demand, five days at 20E Centigrade expressed in terms of weight and concentration (mg/1).

Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard under 40 CFR 403.6 and 40 CFR chapter I, subchapter N.

Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

CFR means Code of Federal Regulations.

Chemical oxygen demand (COD) means the quantity of oxygen consumed from a chemical oxidation of inorganic and organic matter present in the water or wastewater, with testing conducted according to "Standard Methods", expressed in mg/l.

Chronic violation of wastewater discharge limits, also referred to as sixty-six percent (66%) rule, means a repeated violation of discharge limits for any one pollutant parameter, in which sixty-six percent (66%) or more of all measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits as defined in Section 106-70.

City means the City of Nacogdoches, Texas, or any authorized person acting in its behalf.

Composite sample means a sample obtained over a period of time by continuous collection or by multiple aliquot samples, proportioned according to varying flow over the period of time. Unless otherwise specified, a 24-hour composite sample shall be used, consisting of:

- (1) A minimum of 12 effluent portions collected at equal time intervals over 24 hours and combined proportional to flow, or
- (2) A sample collected continuously or at frequent intervals proportional to flow over a 24-hour period.

Control authority means the city as long as the city operates a pretreatment program approved by the approval authority; otherwise, the approval authority.

Control manhole means a manhole giving access to a building sewer at some point before discharge to a public sewer.

Daily Discharge. The discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are

expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

Direct discharger means a facility discharging industrial waste into a watercourse rather than into a public sewage works.

Director of public works means the Nacogdoches city official whose duties include oversight of all water and wastewater operations, as well as certain other city operations.

To discharge means to deposit, conduct, drain, allow to seep, or otherwise release or dispose of, or to allow any of these acts to occur.

Domestic sewage means water-borne wastes normally discharging into the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, free of storm and surface water and industrial wastes.

Dry industry means an industry discharging only domestic sewage into the sewage works and having no process or manufacturing operation discharging any type of industrial waste into the sewage works.

Emergency means an event in which an actual or imminent discharge into the sewage works requires immediate action to prevent (1) rapid deterioration of the sewage works, (2) major fire or explosion hazards, (3) severe danger to the health and welfare of persons, (4) severe blockage of major collection lines, or (5) severe interference with the treatment process.

Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

Equivalent concentration limit means when:

- (1) The concentration of any pollutant in the effluent from a specific process is limited by pretreatment standards or requirements, and
- (2) That effluent is mixed with other sewage prior to discharge into the public sewer, a concentration limit for that pollutant in the mixed stream may be calculated. This equivalent concentration limit in the mixed stream represents the specified limit in the stream from the regulated process, as derived by a combined waste stream formula.

Establishment means a commercial or industrial facility under one management and located within the same premises.

Existing discharger means an industrial user which was discharging industrial wastes into the sewage works prior to the effective date of this division.

Existing source means any source of industrial waste which is in operation or under construction (as defined herein) at the date of publication of the applicable pretreatment standards in the Federal Register (provided such standards are thereafter promulgated). This definition excludes new sources as defined herein.

Garbage means animal and vegetable wastes and residue from preparation, cooking, and dispensing of food, and from the handling, processing, storage, and sale of food products and produce.

Grab sample means an individual sample collected over a period of time not exceeding 15 minutes.

Indirect discharge means the introduction of pollutants into the sewage works from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

Industrial sewer means a sewer transporting industrial wastes from one or more sources prior to discharge into the public sewer.

Industrial user means a user of the sewage works, regardless of amount of flow, who discharges any type of non-domestic wastes into the sewage works.

Industrial waste means waste resulting from any process of industry, manufacturing, trade, business, or service, or from the development of any natural resource, or any mixture of the waste with water or domestic sewage, as distinct from normal domestic sewage.

Instantaneous maximum allowable discharge limit means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

Interference. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; therefore, is a cause of a violation of the City's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations; Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); and State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection Research, and Sanctuaries Act.

Local Limit means specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

Manager means water utilities manager for the city, or any person acting in this capacity, or his duly authorized deputy, agent, or representative, whose duties include oversight of all water and wastewater operations, as well as certain other city operations.

Mass limit means any limit on the total amount of a pollutant which may be discharged from a specific source over a specific length of time. A mass limit may be imposed by a pretreatment standard or requirement, and may be a fixed amount or may be proportional to production of a specified product.

Medical waste means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

Milligrams per liter (mg/l) means a weight-to-volume ratio numerically equal to parts per million. The mg/l value multiplied by 8.34 equals pounds per million gallons of water.

Minor industrial user, also minor user, means an industrial user subject to permit requirements but not a significant industrial user.

Monthly Average Limits. The highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

National Pollution Discharge Elimination System (or NPDES) permit means a permit issued pursuant to Section 402 of the Act.

Natural outlet means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

New discharger means an industrial user which begins discharging industrial wastes into the sewage works after the effective date of this division.

New source means any source of industrial waste which first comes under construction (as defined herein) after the date publication of the applicable pretreatment standards in the Federal Register (provided such: standards are thereafter promulgated). The source is defined as a new source only if it meets one of the following criteria:

- (1) The facility is constructed at a site where no other source is located.
- (2) The facility totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.
- (3) The production or wastewater generating processes of the new facility are substantially independent of an existing source at the same site.

Noncontact cooling water means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Normal domestic sewage means sewage (excluding industrial wastes) discharged into sanitary sewers with average concentrations of suspended solids and CBOD not more than 200 mg/l.

NPDES state means a state water pollution control agency with an NPDES permit program approved by the EPA.

O & M means operation and maintenance.

Overloading means the imposition of organic or hydraulic loading on a treatment facility in excess of its engineered design-capacity.

Parts per million (ppm) means a weight-to-weight ratio numerically equal to mg/l.

Pass through means a discharge from the city's treatment plant which (alone or in conjunction with discharge(s) from other sources) causes a violation of any requirement of the city's NPDES permit or increases the magnitude or duration of such violation.

Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

Plumbing ordinance means the Nacogdoches City Ordinance adopting the standard plumbing code, or any other plumbing code; or the plumbing code so adopted; or any other ordinance regulating gas, water, and sewer plumbing.

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

Pollution means the manmade or man-included alteration of the chemical, physical, biological, and radiological integrity of water.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in sewage to a less harmful state prior to or in lieu of discharging such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, or process changes, or other means, except by dilution as prohibited in subsection 106-68(g) of this division.

Pretreatment coordinator means the city official administering the pretreatment program, or any person acting in this capacity, or his duly authorized deputy, agent, or representative.

Pretreatment program means a local program for monitoring and enforcing pretreatment standards and requirements; or a state program for performing or overseeing these duties.

Pretreatment requirements means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

Pretreatment standard means prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

Prohibited discharge standards means absolute prohibitions against the discharge of certain substances as required by 40 CFR 403.

Properly shredded garbage means the wastes from the preparation, cooking, and dispensing of food that have been shredded to such degree that all particles shall be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than two inches in any dimension.

Public sewer means a publicly owned sewer in which all owners of abutting properties shall have equal rights and interest controlled by public authority.

Publicly owned treatment works (POTW) means a treatment works as defined by Section 212 of the Act owned by the city. This definition includes any devices or systems used in the collection; storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

Qualified professional (when used in reference to items submitted by industrial users) means a person working in the field of industrial waste management and treatment, qualified by education and/or experience to provide technical assistance and certification for documents submitted by an industrial user.

Rate ordinance means the Nacogdoches City Ordinance establishing user charges (including pretreatment fees) as periodically updated.

Receiving stream means the watercourse into which the effluent from the sewage treatment plant is discharged.

Sanitary sewer, also sewer, means pipe or conduit which conveys domestic sewage, industrial sewage, or a combination of both, and into which storm, surface, and groundwaters or unpolluted industrial wastes (except cooling water) are not passed intentionally.

Septage means any liquid, semi-solid, or solid domestic wastes pumped out of septic tanks.

Sewage, also wastewater, means a combination of the water-carried waste from residences, business buildings, and industrial establishments, together with such ground, surface, and stormwater as may be present.

Sewage treatment plant, also treatment plant, means any components of the POTW as defined herein except for the collection and conveyance facilities.

Sewage works means all-components of the POTW as defined herein, plus sewers from users located outside the city and connected to the sewage works.

Shall, may. Shall is mandatory; may is permissive or discretionary.

Significant industrial user means any discharger meeting any of the following criteria and not excluded by other sections of this division:

- (1) Any industrial user subject to categorical standards;
- (2) Any discharger of a nondomestic waste stream (excluding unpolluted cooling water and boiler blowdown water) of 25,000 gallons per day or more;
- (3) Any industrial user that contributes a nondomestic waste stream which makes up five percent or more of the average dry weather hydraulic or pollutant capacity of the treatment plant;
- (4) Any industrial user which has a reasonable potential, in the opinion of the water utilities manager and the pretreatment coordinator, to:
 - a. Adversely affect the treatment plant through inhibition, pass through of pollutants, sludge contamination, or endangerment of treatment plant personnel;
 - b. Violate any pretreatment standard or requirement; or
 - c. Adversely affect the operation and maintenance of the sewage collection system through blockage; fire or explosion hazard, damage to facilities, or endangerment to personnel. This definition includes potential effects from accidental spills.

Significant noncompliance means an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits (66% rule) as defined in this section.
- (2) Technical review criteria violations (33% rule) as defined in this section.

- (3) Any other violation of a Pretreatment Standard or Requirement as defined by Section 106-70 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the city determines has caused (alone or in combination with other discharges) interference or pass through. (Including endangerment to the health or welfare of persons).
- (4) Any discharge of a pollutant which has:
 - a. Caused imminent endangerment to the health or welfare of persons or to the environment, or
 - b. Has resulted in the city's exercise of its emergency authority to stop or prevent such a discharge.
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone in a city-issued permit or enforcement order for starting or completing construction or for attaining final compliance.
- (6) Failure to submit required baseline monitoring reports, self-monitoring reports, compliance reports, etc., within 45 days after their due date.
- (7) Failure to report noncompliance accurately.
- (8) Any other violation or group of violations which may include a violation of Best Management Practices that the city determines will adversely affect the operation or implementation of the city's pretreatment program.

Significant violator means an industrial user with violations meeting any of the criteria for significant noncompliance as defined above.

Slug Load or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 106-212 of this ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits, or Permit conditions.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972 as revised 1987 or any later revision. The SIC number characterizes the type of industrial process or operation.

Standard methods means the examination and analytical procedures set forth in the latest edition; at the time of analysis, of "Standard Methods for the Examination of Water and Wastewater" as prepared, approved, and published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.

Storm sewer, also storm drain, means a sewer which carries storm and surface waters but excludes sewage and polluted industrial wastes.

Stormwater means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Suspended solids means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by a laboratory filtration device.

Quantitative determination of suspended solids shall be made in accordance with procedures set forth in "standard methods."

Technical review criteria (TRC) violation, also referred to as the thirty-three percent (33%) rule, means a repeated violation of discharge limits for any one pollutant parameter, in which thirty-three percent (33%) or more of all measurements taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 106-70 multiplied by the applicable TRC factor as follows:

TRC = 1.4 for BOD, total suspended solids, fats, oil, and grease.

TRC = 1.2 for all other pollutants excluding pH.

Toxic pollutant means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator under the provisions of Section 307(a) of the Act, or other Acts.

Toxicity test means any test measuring the lethal or sublethal effects of the treatment plant effluent on designated species of aquatic life.

Trap means a device designed to skim, settle, or otherwise remove grease, oil, sand, flammable wastes, or other harmful substances.

Under construction, for purposes of defining existing sources and new sources, means a facility is under construction if the owner or operator has:

- (1) Begun as part of a continuous onsite construction program:
 - a. Any placement, assembly or installation of facilities or equipment; or
 - b. Significant site preparation work (including clearing; excavation; removal of existing buildings, structures, or facilities; or construction of an all-weather road), which is necessary for placement, assembly, or installation of new source facilities or equipment; or
 - c. Entered into a binding contractual obligation for the purchase of facilities or equipment intended to be used in the operation of the facility within a reasonable time. (This definition excludes options to purchase, contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies).

Unpolluted water or waste means water containing:

- (1) No free or emulsified grease or oil;
- (2) No acids or alkalis;
- (3) No phenols or other substances producing taste or odor in receiving water;
- (4) No toxic or poisonous substances in suspension, colloidal state, or solution;
- (5) No noxious or otherwise obnoxious or odorous gases;

- (6) Not more than an insignificant amount in mg/1 each of suspended solids and CBOD, as determined by the ~~Texas Natural Resource Conservation Commission~~Texas Commission on Environmental Quality; and
- (7) Color not exceeding 50 units as measured by the Platinum-Cobalt method of determination as specified in "standard methods".

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards or requirements because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational errors, improperly designed or inadequate treatment facilities, lack of preventive maintenance, or, careless or improper operation.

USC means United States Code.

User means any person who contributes, causes, or permits the contribution of wastewater into the city sewage works.

User charge means the charge made to all users for collection and treatment of wastes, including any charges for administering the pretreatment program. The definition excludes tap fees.

User charge ordinance means the Nacogdoches City Ordinance providing a system for establishing, assessing, and collecting user charges and other charges related to the sewer system.

Waste-activated sludge means sludge wasted from an activated sludge process for treatment of domestic sewage (or for similar wastes), whether in digested or undigested form.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Wholesale customer means any city, water, district, water supply corporation, or other similar entity which collects sewage from individual customers located outside the city and passes it on to the city for treatment.

Sec. 106-67. - Permits for industrial discharges.

- (a) *Permit required for industrial wastes.* Any significant or minor industrial user discharging or proposing to discharge industrial wastes (including unpolluted process water) into the city sewage works shall obtain a permit from the city for this purpose. This is in addition to any permits required by the plumbing ordinance.

Any significant or minor industrial user proposing to discharge industrial wastes shall obtain a city permit before connecting to the city sewage works. This provision applies to (1) new or relocated establishments; (2) new sources of industrial waste within an existing establishment; and (3) direct dischargers wishing to divert any part of their industrial waste to the city sewage works.

Permitting requirements shall apply to all significant or minor industrial users receiving, or to receive, service from the city's sewage works, whether located inside or outside the city. No industrial user may be served through a wholesale customer unless the city and the wholesale customer first make an agreement giving the city the same authority over industrial users as provided in this division.

Any person (not already permitted) whom the city reclassifies as a significant or minor industrial discharger shall apply for a permit within 30 days after receiving notice from the city.

Each permit for a significant industrial user shall specify appropriate limits for (1) flow and (2) concentrations and/or mass limits for pollutants. Any significant industrial user who wishes to increase his flow, concentration, or mass of pollutants above the limits stated in his permit must obtain an amended permit from the city.

- (b) *Users subject to permit requirement.* Each significant industrial user shall obtain a permit for the discharge of any industrial waste. Each minor user, including automobile repair and servicing; shops and car washes; dry cleaners and laundries; hospitals and nursing homes; restaurants and food dispensing services; schools with cafeterias; and dry industries with a risk for accidental spills of toxic or harmful substances into the city sewer system shall likewise obtain a permit. This requirement shall apply to such facilities even when included within a larger establishment, such as restaurant facilities within a supermarket.

In the absence of evidence to the contrary, the following types of business shall not be considered significant industrial users: automobile dealers and gas stations without repair or service facilities; and schools without cafeterias.

- (c) *Application requirements.* Each application for a permit to discharge industrial waste into the sewage works shall be made on forms provided by the city or according to a format prescribed by the city. Each application shall be signed by an authorized representative of the industrial user, as defined in section 106-66, and certified by a qualified professional. A permit application shall also be required for any new sources of industrial waste within a facility.

The city may require any information in the permit application which may be deemed necessary to evaluate the application and/or to administer the pretreatment program or any other necessary monitoring. Information which may be required includes, but is not limited to, the following:

- (1) Name, address; location, applicable telephone numbers, and ownership of the industrial User (including major stockholders and/or parent corporations);
- (2) Supervisors (including shift supervisors) and other contact persons, including all persons on whom legal notice could be served;
- (3) List of any applicable environmental permits, including any permits related to transportation of waste materials;
- (4) SIC number;
- (5) Description of the operations: A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and SIC of the operation(s) carried out by the user. The description should include a schematic process diagram, which indicates points of discharge to the city's sewer system from the regulated processes.
- (6) Wastewater characteristics, certified by a reliable analytical laboratory, based on a sample which is representative of daily operations;
- (7) Time and duration of discharge;

- (8) Flow measurements. Average daily, maximum daily, and peak flow rates, in gallons per day, for industrial wastes, along with any daily or seasonal variations. This shall apply separately to each waste stream regulated by categorical standards, as necessary, to allow use of the combined waste stream formula set out in section 106-71(a)(2);
- (9) Site plans, floor plans, and details of all sewers within the plant which carry industrial waste;
- (10) Description and schedule for any facilities needed to meet pretreatment standards and/or requirements;
- (11) Each product produced by type, amount, process(es) and rate of production;
- (12) Type and amount of raw materials processed (average and maximum per day);
- (13) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- (14) Justification for discharging unpolluted process water to the sewage works rather than to natural drainage; and
- (15) Type and amount of any toxic pollutants brought into the plant, or generated within the plant, and scheduled for disposal outside the sewage works.

If an industrial user considers any of the required information to be confidential in nature, he may request the city to withhold that information from the general public according to section 106-67. The user must be able to justify his request according to subsection (i).

The city shall evaluate the data furnished by the industrial user and may require additional information. After evaluation and acceptance of the data furnished, the city will determine whether to issue a permit. The city may deny any application.

(d) *Permit modifications.*

- (1) *Pretreatment standards.* Within 45 days after the promulgation of any new or revised national pretreatment standard, the city shall revise the permits of all users subject to that standard. The revised permits shall require compliance with the standard within the time frame prescribed by that standard.

Each existing user subject to any new or revised pretreatment standard shall submit to the pretreatment coordinator the baseline report required by subsections 106-69(c)(1). This information shall be submitted within 180 days after the later of (a) the promulgation of the standard and (b) the final administrative decision by the EPA that the standard (and/or one or more specific subcategories within the standard) is applicable to the user.

New sources and sources which become subject to categorical standards after promulgation of the applicable categorical standard shall submit the required baseline report at least 90 days before beginning their indirect discharges. For these sources, the baseline report shall meet the requirements of subsections 106-69(c)(1)

This requirement for submitting information applies to any user, regardless of whether that user at the time is classified by the city as a significant industrial user.

- (2) *Conditions warranting temporary relief.* The city may modify existing permits to provide temporary relief from specific discharge limits when all of the following conditions are met:

- a. The city prohibits or limits by ordinance the discharge of a specific substance or parameter into the city's sewage works.
- b. An industrial user which discharges such substance or parameter has asked the city from relief from such restrictions and has submitted justification for such relief.

The city reasonably anticipates that the restrictive ordinance provisions will be eliminated or relaxed through pretreatment program modifications to be submitted by the city to the approval authority for approval.

- c. Both the city and the approval authority concur that temporary or permanent relief is justified.

- (3) *Actions to provide temporary relief.* In cases when the conditions above are met, the city may modify the permit of any applicable industrial user to include a compliance schedule for meeting the requirements for which temporary relief is warranted. Such compliance schedule shall at a minimum meet the following requirements:

- a. Recognize the current status of the city's proposed pretreatment program modifications and the anticipated revisions to the requirements in question.
- b. Require the industrial user to submit his own compliance schedule for meeting current (unmodified) requirements no later than six months after the time that the city is scheduled to submit the pretreatment program modifications to the approval authority for approval.
- c. Note the possibility that the compliance schedule issued by the city may be changed before the expiration of the six-month period to reflect developments regarding the pretreatment program modifications.

The industrial user shall not be required to meet the requirements in question until the expiration of the six-month period, plus such additional reasonable time as may be required for compliance.

- (e) *Permit conditions.* City permits for industrial waste discharges shall be expressly subject to all provisions of this division and any other applicable regulations, user charges, and fees established by the city. Permits shall contain conditions (1)—(6) below, or in the case of conditions (2) and (3) an explanation as to why these conditions are inapplicable (such as in the case of a dry industry or a minor industry). Permits may also contain any or all of the other conditions below, as applicable.

- (1) Duration (in no case more than five years) and statement of non-transferability;
- (2) Limits on the average and maximum waste constituents and characteristics, based on applicable general pretreatment standards (in 40 CFR 403), categorical pretreatment standards, local limits, and state and local law;
- (3) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;

- (4) Requirements to control Slug Discharge, if determined by the water utilities manager to be necessary;
- (5) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law. Written documentation must be maintained to demonstrate alternate sample techniques are representative of discharge.
- (6) Requirements for maintaining and retaining plant records relating to industrial waste discharge as specified by the city, and affording the city access to those records;
- (7) Requirements for notification to the city of any new introduction of pollutants or any substantial change in the volume or character of the pollutants being introduced into the sewage works;
- (8) List of applicable civil and criminal penalties for permit violations, and any applicable compliance schedules (which may not extend the time for compliance beyond that required by applicable federal, state, or local law or regulations);
- (9) The unit charge or schedule of user charges and fees for the industrial waste to be discharged to the public sewer;
- (10) Limits on average and maximum rate and time of discharge or requirements for flow regulation and equalization;
- (11) Notice that the flow and/or pollutant loadings in the permit are temporary or subject to future modification, water utilities manager may modify an individual wastewater discharge permit for good cause, including, but not limited to, the following reasons:
 - a. To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;
 - b. To address significant alterations or additions to the User's operation, processes, or wastewater or character since the time of the individual wastewater discharger permit issuance;
 - c. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
 - d. Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel, or the receiving waters; [Note: The Control Authority should consider threats to the POTW's beneficial sludge use.]
 - e. Violation of any terms or conditions of the individual wastewater discharge permit;
- (12) Requirements for gradual phasing in and/or out of specified pollutants in the waste, when the city finds that sudden changes in concentration may interfere with treatment;
- (13) Requirements for installation and maintenance of inspection and sampling facilities, including protection from flooding and any all-weather roads necessary for access;
- (14) Requirements for submission of technical reports or discharge reports according to subsection 106-69(c), (d);

- (15) Requirements for notification of slug discharges as defined in section 106-66;
 - (16) Identification of specific permitted waste streams;
 - (17) Location of discharge point(s);
 - (18) Controls on batch dumping;
 - (19) Requirements for toxic organic plans and/or solvent management programs;
 - (20) Requirements for calibration of flow meters;
 - (21) Requirements for periodic cleanout (with documentation) of tanks, sumps, and grease traps;
 - (22) Requirements for operation of pretreatment facilities;
 - (23) Requirements for waste minimization plans to reduce the amount of pollutants discharged to the sewage works;
 - (24) Requirements for documenting the disposal of toxic pollutants outside the sewage works, where appropriate;
 - (25) Compliance schedules or a requirement for the user to submit a schedule;
 - (26) Stipulated administrative penalties up to \$1,000.00 per violation for further violations; and
 - (27) Other conditions as deemed appropriate by the city to ensure compliance with this division.
- (f) *Duration of permit.* Permits shall be issued for a specified time period, not to exceed five years. The user shall apply for permit reissuance a minimum of 90 days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the city during the term of the permit as limitations or requirements as identified in subsection (e) are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- (g) *Reporting of changes.* The industrial user shall promptly notify the city in writing of any significant changes in the data which was required for the permit application. Items which must be reported include the following:
- (1) Changes in ownership and mailing address;
 - (2) Significant changes in operations, processes, and products, including any change in the SIC number or any increase in flow of 20 percent or greater;
 - (3) Changes in strength or volume of industrial waste, including any new pollutants;
 - (4) Any changes in the layout of sewers carrying industrial wastes;
 - (5) Major changes in plant employment, production schedule, and pretreatment facility schedule;
 - (6) Any conditions which could increase the possibility of an accidental discharge; and

- (7) Changes in type or amount of toxic pollutants scheduled for disposal outside the sewage works.
- (8) Any changes affecting the potential for a slug discharge.
- (9) A permit may not be assigned to a new owner or to a new or changed operation without the approval of the city. Any succeeding owner to which a permit is assigned shall comply with the conditions of that permit. Permits issued to new owners or due to changed operation shall be subject to the fee charged for a new permit.
- (h) *Suspension and revocation.* Any industrial user who commits the following violations of this division is subject to having his permit revoked and services terminated according to the procedure of section 106-75:
 - (1) Misrepresentation or failure to fully disclose all relevant facts in the permit application;
 - (2) Failure of a user to factually report the wastewater constituents and characteristics of his discharge;
 - (3) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics;
 - (4) Tampering with monitoring equipment;
 - (5) Refusal of reasonable and timely access to the user's premises for the purpose of inspection, monitoring, or examination of records;
 - (6) Violation of conditions of the permit, including effluent limits, other pretreatment standards, and compliance schedule;
 - (7) Failure to pay user charges (including pretreatment fees) when due;
 - (8) Failure to pay fines and penalties; or
 - (9) Refusal to comply with emergency notices issued by the city under section 106-77 of this division.

The permit may also be revoked for cessation of operation with no evidence of intention to resume operation:

The permit may be reinstated only after all violations have been corrected, any applicable fines or damages have been paid to the city, and provisions have been made to prevent recurrence of the violation. Any disconnection and reconnection shall be at the expense of the user.

- (i) *Confidential information.* Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs, and inspections shall be available to the public or other governmental agencies without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information processes or methods of production entitled to protection as trade secrets of the user:

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public

but shall be made available upon written request to governmental agencies for uses related to this division, the NPDES permit, state permit and/or the pretreatment programs; provided, however, that such portions of a report shall be immediately available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Waste constituents and characteristics and other effluent data defined in 40 CFR (2)302 will not be recognized as confidential information.

Information accepted by the city as confidential shall not be transmitted to any governmental agency (except as noted above) or to the general public by the city unless a ten-day notification is given to the user.

- (j) *Inactive permit status.* The city may place any permit in an inactive status in cases where no industrial wastes expected to be discharged over an extended period of time. Such cases include temporary suspension of existing discharges of industrial wastes, or long-term or indefinite postponements of proposed discharges. As long as a permit remains in inactive status, the city may suspend reporting, monitoring, and/or inspection requirements to the extent warranted by the circumstances.

The city may move any inactive permit back to active status at the request of the user, or in event of actual or imminent resumption of discharge of industrial waste.

- (k) *Cancellation of permits for former industrial users.* The city may cancel a permit for an industrial waste discharge and allow discharge without a permit in cases where a permit is no longer required. Such cases are as follows:

- (1) Industries which were permitted under previous ordinance requirements, but for which a permit is no longer mandatory because of adoption of this division or subsequent revisions.
- (2) Industries which no longer meet any of the criteria under which a permit is mandatory because of:
 - a. Major changes in operations;
 - b. Diversion of waste streams away from the sewage works;
 - c. Changes in federal regulations and/or application of regulations which cause the industry to be no longer subject to categorical standards; and/or
 - d. Determination by the city that a non-categorical industry does not meet the criterion in item (4) of the definition of a significant industrial user in section 106-66.

In such cases of permit cancellations; the user may continue to discharge as a non-industrial user unless his service is terminated according to other provisions of this division.

The city shall notify the approval authority before or after such permit cancellations, as may be required by the approval authority.

Sec. 106-68. - Control of admissible wastes.

(a) *General.* Industrial wastes which do not violate the provisions of section 106-70, and which meet any pretreatment standards and requirements which may be applicable, may be discharged into the sewage works upon obtaining a permit according to section 106-67.

Septage, waste-activated sludge, or grease trap waste may be discharged at the treatment plant at designated locations according to subsection (i) below, provided the hauler meets all city requirements including permitting.

(b) *Monitoring facilities.* Each significant industrial user shall provide and maintain at his own expense one or more control manholes with such monitoring facilities as may be required for the type of operation and industrial waste involved. The purpose of these facilities shall be to allow inspection, sampling, and flow measurement of the building sewer(s). The monitoring facility(ies) should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility(ies) to be constructed in the public street or sidewalk area and located so that they will not be obstructed by landscaping or parked vehicles.

In cases where regulated waste streams are mixed with other regulated waste streams or with unregulated waste streams before discharge, the city may require the control manhole(s) to be upstream from the mixing point(s). The city may require more than one control manhole in cases where two or more industrial waste streams originate in the same establishment and, in the opinion of the city, require separate monitoring. There shall be ample room in or near such control manholes or facilities to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Facilities shall be protected from flooding and shall have an all-weather access road. Construction shall be completed within 90 days following written notification by the city.

All sampling and flow measurement equipment used in control manholes shall be calibrated at the expense of the user at least semiannually with written verification submitted to the city. This equipment shall also be subject to calibration by the city, unless other arrangements acceptable to the city are made.

Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, maintained in good working order, safe from flooding, and accessible at all times. The failure of a user to keep its monitoring facility accessible and in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(c) *Flow measurement.* The following provisions shall apply to all users, whether residential, industrial, or other:

The water consumption for any user during the previous month from all sources shall ordinarily be the basis for computing the sewage flow. Water supplied by the city shall be determined from the meter records of the water department. If any user obtains all or part of his water supply from private wells, surface water, or other suppliers, he shall furnish the city with

certified meter readings, copies of water billings, or other evidence of the amount of water consumption during the month.

Any user who wishes to measure his sewage flow directly may at his own expense install and maintain a recording flow meter. The reading obtained from this meter shall become the basis for computing the sewage flow, provided the meter:

- (1) Is of a type approved by the city;
- (2) Remains properly calibrated;
- (3) Is accessible for reading and calibration by city personnel; and
- (4) Is verified semi-annually for accuracy, with a verification report submitted to the city, at the user's expense. Verification and calibration shall be provided by a certified instrument technician at the user's expense.

Should meter readings indicate that the effluent flow meter is inaccurate, the city shall notify the user, in writing, and the user shall verify that the reading is correct or have the meter repaired, recalibrated, or replaced as necessary. The city shall adjust the billing immediately to reflect a predetermined percentage of water consumption for the sewer charge.

Should meter readings the next month indicate that the meter is still inaccurate; the city shall adjust the sewer charge to reflect 100 percent of water consumption. This charge shall remain in effect until the user provides written notification and verification that the meter has been repaired and recalibrated, and is recording effluent flow accurately.

In lieu of a permanent recording flow meter, a user may apply for a reduction in the volume of computed sewage flow by using separate water supply meters for water not returned to the sewer. The user shall provide all necessary verification to the city, including flow and piping diagrams as required.

If an unusually large amount of water has been used for watering lawns throughout the city because of dry weather, the city may adjust computed sewage flow to reflect the estimated amount of such usage.

(d) *Sampling and analyses of wastes.*

- (1) All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the pretreatment coordinator or other parties approved by EPA.
- (2) The quantitative limits for all applicable pollutants shall be sufficiently sensitive to demonstrate compliance with applicable effluent limitations. For sampling and testing required by specific instructions of the EPA or the Texas Commission on Environmental Quality, the instructions from that agency shall govern.

- (3) Samples shall be taken at intervals to be established by the city (1) to control the quality of industrial waste and/or (2) to determine surcharges. In all cases the sampling shall be performed often enough to be representative of average effluent quality. The following minimum standards are to be followed:
- a. Except as indicated in Section b and c below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by water utilities manager. Where time-proportional composite sampling or grab sampling is authorized by control authority the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.
 - b. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
 - c. For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the periodic compliance reports, the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.
- (4) All routine sampling and testing shall be performed by (or at the expense of) the user unless the city specifies otherwise under contract or permit provisions. The city shall have the right to perform its own sampling and testing at any reasonable time in order to check the accuracy of the user's testing. The city shall also have the right to require sample splitting upon proper notice.
- (5) For all required sampling performed by the user, chain of custody documents from sample collection through final analysis shall be maintained in the user's records with copies included with all laboratory reports submitted to the city. Records shall be retained for at least three years per subsection 106-69(i).
- (e) *Pretreatment.* Industrial users must comply with any applicable pretreatment standards or requirements in accordance with sections 106-69 and 106-71.
- (f) *Traps.* Where necessary to prevent the discharge of grease, oil, flammable substances, sand, or other harmful wastes into the sewage works, a user shall provide at his own expense a trap to intercept these substances. Traps shall not be required for private living quarters or

dwellings, unless the city has observed problems in the sewage works resulting from the discharge from such dwellings.

Traps shall be required for all schools, restaurants, cafeterias, car washes, automotive services (including service stations), hospitals, nursing homes, and other commercial establishments for which, in the opinion of the city's pretreatment coordinator, a trap is necessary for protection of the sewage works. The owner or operator of an establishment shall have the right to appeal the pretreatment coordinator's decision to the water utilities manager.

The pretreatment coordinator may waive the requirement for a grease trap provided the user can verify that only domestic sewage is being discharged, with no floor drains or process water. The pretreatment coordinator may require testing by the user in connection with his request.

All traps shall be of a type and capacity approved by the city and shall be located so as to be readily accessible for easy cleaning and inspection. Grease and oil traps shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight. All traps shall be maintained by the user, at his expense, in continuously efficient operation at all times.

Each trap in active use shall be cleaned at least once every 60 days (unless the city specifies otherwise). Cleaning more frequently than 60 days may be specified by the city's pretreatment coordinator. Any user desiring a schedule less frequent than 60 days shall submit a request to the pretreatment coordinator along with testing (as required by the pretreatment coordinator) and copies of the cleaning records for the last four trap cleanings.

The user shall maintain written verification of the date when each trap is cleaned, with the location and identity of the trap clearly defined. Unless otherwise allowed by the city, such verification shall be provided by the commercial firm performing the cleaning. Such verifications shall be kept on site and available to the city for inspection and copying for a minimum of three years.

The city may assess penalties for grease trap violations according to the rate ordinance.

Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(g) *Dilution.* Dilution of wastes by increased use of process water, or by any other methods, will not be acceptable as a partial or complete substitute for adequate pretreatment to achieve compliance with a pretreatment standard or requirement, unless specifically allowed elsewhere in this division or in the applicable national pretreatment standard or local pretreatment requirement.

(h) *Slug discharges.* Significant Industrial Users must be evaluated within 1 year of designation to determine if a plan or other action to control Slug Discharge is required. The results of such activities shall be made available to the Approval Authority upon request. Significant users are required to notify the POTW immediately of any changes at its facilities affecting the potential for Slug Discharge.

(i) *Septage and other hauled wastes.*

(1) *Transporter registration.* Any person wishing to:

- a. Transport septage, waste activated sludge, or grease trap wastes from sources within the city; or
- b. Dispose of any of these wastes at the city sewage works (regardless of source) shall obtain a permit from the pretreatment coordinator for each company or individual hauling such wastes.

Haulers with city permits shall maintain copies of all city and state permits at their designated place of business and in each vehicle operated under the permit. These documents shall be available to the operating staff of the city treatment plant at the time of delivery.

Each permit shall be for the term of one [year], with annual permit fee according to the rate ordinance. Application for permit renewal shall be made at least 30 days before expiration. The permit shall be non-transferable without the approval of the city.

(2) *Vehicles/equipment.*

- a. *Marking and identification.* Owners or operators of vacuum pump trucks shall mark each truck to show the company name, city, telephone number(s), and city and state permit numbers.
- b. *Sanitation standards.* All vehicles and equipment used for the collection and transportation of the waste shall be operated and maintained to prevent loss of liquid or solid waste materials to prevent health and safety hazards to operating personnel and the public.
- c. *Incompatible wastes.* Mixing of incompatible wastes (wastes that have different processing, storage, or disposal requirements) within the same vacuum truck for disposal at the city treatment plant is prohibited.
- d. *Sight gauges.* All vehicles used to transport wastes regulated by this permit shall be equipped with sight gauges to determine the volume of the waste delivered. Gauges shall show what percentage of the tank capacity is filled. The city may require proof of calibration of sight gauges.

(3) *Inspection.* All transport vehicles will be subject to inspection by the city for sight gauges, city and state registration, and truck marking.

A sample of the waste may be taken at the plant prior to unloading the truck. If the sample results prove unacceptable, the hauler will be responsible for the proper disposal of the waste elsewhere.

(4) *Recordkeeping.* Persons who collect and transport waste under this permit shall maintain a record of each collection. Such records shall be in the form of a trip ticket, including:

- a. Name, address, telephone number, city registration number, and Texas Commission on Environmental Quality registration number of transporter.
- b. Name, signature, address, and telephone number of the person who generated the waste and the date and time collected.
- c. Type(s) and amount(s) of all waste collected and transported.

- d. Name(s) and signature(s) of responsible person(s) collecting, transporting, and disposing of the waste.
- e. Name and signature of the facility on-site representative acknowledging receipt of the waste and the type(s) and amount of waste(s) received. This applies whether the wastes are disposed of at the city treatment plant or elsewhere.

In cases where a load of waste is rejected by the city, the rejection shall be noted on the trip ticket or on a supplementary ticket. The treatment plant operating staff shall be provided with a copy of all relevant information concerning the rejected load.

Copies of the trip tickets shall be retained for five years and shall be readily available for review by the water utilities manager and/or the pretreatment coordinator.

- (5) *Accidental discharge or spills.* In the event of an accidental discharge or spill of waste, the collector or transporter must take appropriate action to protect human health and the environment. Transporters are responsible for cleanup and for reporting spills to the city's pretreatment coordinator; to the city health inspector, if health hazards exist; and to local law enforcement if there is a possibility of a traffic hazard.
- (6) *Time and place for wastes hauled to plant.* Wastes shall be hauled to the treatment plant for disposal during hours designated by the city. The wastes shall be discharged into that portion of the plant designated by the city, provided:
 - a. The plant is capable, in the opinion of the plant operator, of receiving and treating the wastes without inconvenience to the operating staff, overloading, or degradation of plant effluent.
 - b. The city verifies by inspection that no toxic wastes, incompatible wastes (such as mixed septage and grease trap wastes), or other unacceptable wastes are present. The city reserves the right to require laboratory testing of the wastes at no cost to the city.
 - c. Grease trap wastes are delivered within 24 hours after pumpout.*
*Grease trap wastes, if disposed of at the city treatment plant, must be delivered to the plant within 24 hours after pumping from grease traps.
 - d. Inspection and treatment fees are paid according to the rate ordinance and/or the user charge ordinance.
- (7) *Penalties.*
 - a. The following may result in cancellation of the city permit and/or loss of authorization to dispose of waste at the city's facilities:
 - 1. Failure of a transporter to maintain records, trip tickets, or other documents properly, without falsification;
 - 2. Failure of a transporter to submit to the city's pretreatment personnel correct information on a permit application by the required due date;
 - 3. Unauthorized discharge of waste; and

4. Failure of a transporter to maintain a current state permit and to comply with state regulations.
- b. The city may also take any action authorized by law to secure compliance including:
 1. Assessment of administrative penalties of \$50.00 per violation per day up to \$5,000.00 maximum for the violation.
 2. Seeking civil penalties as prescribed by city ordinance.

Sec. 106-69. - Pretreatment.

(a) *Required pretreatment.* Pretreatment of industrial wastes shall be required under any of the following circumstances:

- (1) When an industrial user is subject to:
 - a. Unmodified national pretreatment standards;
 - b. Locally modified national pretreatment standards;
 - c. Local pretreatment requirements;
 - d. General prohibitions per subsection 106-70(b)(1); or
 - e. Local limits per section 106-70(d) and the industrial waste violates the applicable standard or requirement for one or more pollutants; or
- (2) When the industrial waste is, in the opinion of the city:
 - a. Harmful to the structures; processes, or operations of the sewage disposal works;
 - b. Harmful to the receiving stream;
 - c. Detrimental to any existing or proposed method of sludge use or disposal; or,
- (3) In cases where the treatment plant cannot safely accept the proposed pollutant loading from an industrial user because of limited treatment capacity. (In cases where there is adequate unused capacity, but that capacity is allocated or permitted to other industrial users or user classes for future growth, the city may reserve the right to require pretreatment when needed in the future.)

When pretreatment of industrial wastes is required, the industrial user shall provide, operate, and maintain at his own expense such pretreatment facilities as may be necessary to render the wastes acceptable for discharge. The user may also be required to submit schedules for compliance and other reports in accordance with subsections (c) through (g).

(b) *Applicable standards.* The city shall notify any industrial user of any of the following requirements to which that user is subject:

- (1) National pretreatment standard (with or without local modification). The notification shall include any schedule of compliance required in the standard.
- (2) General prohibitions (subsection 106-70(b)(1)) or local limits (subsection 106-70(d)) to the extent that the city can determine such applicability.

- (3) Any local pretreatment requirement, including a compliance schedule, to which that user is subject. The city shall also state the reasons for the requirement.
- (c) *Reporting requirements-categorical industries.* The city shall require all industries subject to categorical standards to submit the following reports:
- (1) *Baseline report.* Within either one hundred eighty (180) days after the effective date of a categorical Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to city a report which contains the information listed in paragraph a, below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall submit to city a report which contains the information listed in paragraph b, below. A New Source shall report the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- a. Name, address, telephone number, location, and ownership of the industrial user;
 - b. Supervisors (including shift supervisors) and other contact persons.
 - c. List of any environmental permits held by or for the facility, including any permits related to transportation of waste materials.
 - d. Description of the operations: A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and SIC of the operation(s) carried out by the user. The description should include a schematic process diagram, which indicates points of discharge to the city's sewer system from the regulated processes.
 - e. Average and maximum daily discharge flow from the user into the sewage works in gallons per day (1) from regulated process streams, (2) from other streams if necessary for use of combined formula, and (3) as totals for each discharge point. Discharges shall be measured unless otherwise allowed by the city.
 - f. Measurement of Pollutants.
 - 1. The results of sampling and analysis identifying the nature and concentration (determined according to subsection (h)) of regulated pollutants in the discharge from each regulated process from the user, and identification of the applicable pretreatment standards and requirements. The concentration shall be reported as both an average and a daily maximum level. If an equivalent concentration limit has been calculated in accordance with the standard, this adjusted concentration limit shall also be submitted to the city for approval. If required by the applicable standard or by the city, the mass of regulated pollutants shall be reported in lieu of the concentration.
 - 2. Time, date and place of sampling and methods of analysis, and certification that such sampling and analysis is representative of normal work cycles and expected pollutants of discharges to the sewer system.

4. Copies of the laboratory reports shall be provided.

5. Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

- g. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP), the User must submit documentation required by the control authority or the Pretreatment Standard necessary to determine the compliance status of the User.
- h. Type and amount of any toxic pollutants brought into the plant, or generated within the plant, and scheduled for disposal outside the sewage works.

New sources shall provide the best practical estimates of the information noted in subitems e. and f., above. In addition, new sources shall submit the information in subitem i.

- i. Proposed method of pretreatment, if any, for meeting applicable pretreatment standards.
- j. Where the standard requires compliance with Best Management Practices, the user shall submit documentation so required by the control authority or the applicable standards to determine compliance with the standard.

In addition to subitems a—g., above; the city shall require existing sources to submit the following information:

- k. A statement, reviewed by an authorized representative of the industrial user (as defined in section 106-66) and certified to by a qualified professional, indicating:
 - 1. Whether standards and requirements are being met consistently, and if not,
 - 2. Whether additional O & M and/or pretreatment will be needed to meet the standards and requirements; and

If additional pretreatment and/or O & M is required, the shortest schedule by which the user will provide these measures. The completion date in this schedule shall not be later than the compliance date established for the applicable standard. The schedule shall be prepared according to subsection (f).

If a standard is modified for the user, either through an equivalent concentration limit or through a variance approved by the approval authority, all information in subitems i. and j. shall be based on the modified limits. If the modification occurs after the user submits the baseline report, the user shall submit amended information for subitems i. and j. within 60 days after approval of the modification.

- l. The baseline report shall be signed by an authorized representative of the user (as defined in section 106-66) and certified by a qualified professional. The authorize user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).

(2) *Initial compliance reports.*

- a. *Due date.* This report shall be submitted to the pretreatment coordinator within 90 days after the following dates:
 1. For an existing source, the date for final compliance with applicable standards and requirements; or
 2. For a new source; the commencement of the introduction of industrial waste into the sewage works.
- b. *Contents.* The report shall include the following information:
 1. All information listed in subsection (c)(1) above (subitems e., f., g., and j.)
 2. (For industrial users subject to equivalent mass or concentration limits established by the city) Reasonable estimate of long term production rate.
 3. (For other industrial users subject to pretreatment standards specifying pollutant quantities proportional to operation or production) Actual production during sampling period.
- c. *Certification.* The compliance report shall be signed by an authorized representative of the user: (as defined in section 106-66) and certified by a qualified professional. The authorized representative of the user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).

(3) *Periodic compliance reports.*

- a. *Due dates.* These reports are due periodically after the initial compliance report during the months of May and November, unless required more frequently in the pretreatment standard, by the pretreatment coordinator, or by the approval authority. At the discretion of the pretreatment coordinator and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the pretreatment coordinator may agree to alter the months during which the reports are to be submitted.
- b. *Contents.*
 1. Type of facility;
 2. Type of discharge;
 3. Nature and concentration (determined according to subsection (h)) of pollutants in the industrial waste which are limited by pretreatment standards and requirements.
 4. A certification statement by the industrial user indicating compliance or noncompliance with the applicable pretreatment requirements. The authorized representative of the user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).
 5. The average and maximum daily flow of:
 - i. All process units in the user's facility which are governed by the standards and requirements;

- ii. Any other streams if necessary for use of combined formula;
 - iii. Totals for each discharge point; and
 - iv. Any other streams if required by city.
6. Production rate (long-term or for sampling period, as specified in subsection (2) above).
 7. Whether the applicable standards and requirements are being met consistently.
 8. A description of its operations and/or any changes in operations since the previous report.
 9. A description of any additional O & M modifications and/or pretreatment equipment necessary to achieve compliance for non-compliant discharges.
 10. Compliance schedules and related reports.
 11. Proof that tanks; sumps, and/or grease traps have been cleaned according to the required schedule.
 12. Proof of calibration of effluent meters and/or any other meters used for billing and/or monitoring reports
 13. A copy of the laboratory report for the required sampling and analysis.
 14. Documentation of any disposal of toxic pollutants outside the sewage works.
 15. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP), the User must submit documentation required by the control authority or the Pretreatment Standard necessary to determine the compliance status of the User.
 16. Any other items which the city may require under other provisions of this division:
- c. *Mass limitations.* The pretreatment coordinator may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by subitem b. above shall indicate the mass pollutants regulated by pretreatment standards in the industrial waste of the user.
 - d. *Certification.* The compliance report shall be signed by an authorized representative of the user (as defined in section 106-66) and certified by a qualified professional. The authorized representative of the user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).
 - e. *Waiver.* These reports may be waived to the extent that the city performs the sampling and analysis and otherwise gathers information for the reports.
- (d) *Reporting requirements - Permitted non-categorical industries.* The city shall require initial and/or periodic (monthly, quarterly, or semi-annual) self-monitoring reports from any permitted industrial user. (The reports may be waived to the extent that the city performs the

sampling and analysis and otherwise gathers the information.) The information required may include any or all of the following:

- (1) Identification of the industrial user:
 - (2) List of any applicable environmental permits, including any permits related to transportation of waste materials.
 - (3) A description of its operations and/or any changes in operations since the previous report.
 - (4) Process flows at all points specified by the city (average and/or daily maximum as specified by city).
 - (5) Nature and concentration (determined according to subsection (h) below) of all pollutants required by the city to be reported.
 - (6) A certification statement by the industrial user indicating compliance or non-compliance with the applicable pretreatment requirements. The authorized representative of the user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).
 - (7) A description of any additional O & M modifications and/or pretreatment equipment necessary to achieve compliance for non-compliant dischargers.
 - (8) Compliance schedules and related reports.
 - (9) Proof that tanks, sumps, and/or grease traps have been cleaned according to the required schedule.
 - (10) Proof of calibration of effluent meters and/or any other meters used for billing and/or monitoring reports.
 - (11) A copy of the laboratory report for the required sampling and analysis.
 - (12) Type and amount of any toxic pollutants brought into the plant or generated within the plant, and scheduled for disposal outside the plant.
 - (13) Documentation of any disposal of toxic pollutants outside the sewage works.
 - (14) In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP), the User must submit documentation required by the control authority or the Pretreatment Standard necessary to determine the compliance status of the User.
- (e) *Resampling requirements.* In the event the sampling and analysis indicates non-compliance for one or more of the pollutant parameters, the industrial user shall notify the city of the violation within 24 hours after becoming aware of it. The user shall also resample for all non-compliant parameters. The repeat sampling and analysis must be completed and a report submitted to the city within 30 days after receipt of the laboratory report indicating non-compliance. The industrial user shall continue to monitor the non-compliant parameter on a 30-day schedule until compliance is achieved. The industrial user shall submit copies of all laboratory reports to the city.

Resampling will not automatically be required if the city samples the user's effluent either monthly, or between the time of the user's sampling and the time the user receives the corresponding test results. Resampling may be required, however, on the basis of the city's test results.

If the City performed the sampling and analysis in lieu of the Industrial User, the City will perform the repeat sampling and analysis within 30 days after receipt of the laboratory report indicating non-compliance unless it notifies the User of the violation and requires the User to perform the repeat sampling and analysis.

- (f) *Schedule for pretreatment facilities.* In the event that any of the reports required by subsection (c) or (d) indicate the need for pretreatment facilities, the industrial user shall provide the city with a schedule for facility installation. The following conditions shall apply to the required schedule:
 - (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards and/or requirements (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, beginning routine operation, etc.).
 - (2) No increment referred to in paragraph (1) shall exceed nine months.
 - (3) Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the pretreatment coordinator including, as a minimum, (1) whether or not it complied with the increment of progress to be met on such date and, if not, (2) the date on which it expects to comply with this increment of progress; reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the pretreatment coordinator.
- (g) *Submission-of plans.* Any industrial user required to construct pretreatment facilities shall submit to the city detailed plans for their construction and for their operating procedures. The city must approve these plans before construction begins. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this division. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the city prior to the user's initiation of the changes.
- (h) *Sampling and analysis for reports.* The reports required by subsections (c)[(1)f., (2)b.1. (referring to (1)f.), (3)b.3.], (d)(4), and (e) shall contain the results of sampling and analysis of the industrial waste, including the flow and the nature and concentration (or production and mass where applicable) of pollutants contained therein which are limited by the applicable standards. The frequency of monitoring shall be prescribed in the applicable standard (or by the city in cases of sampling due to city requirements). The nature of the sampling (grab, flow composite, or time composite), the number of samples, sample preservation, and holding time shall be as directed by the city, but in no case less stringent than required by the standard or by 40 CFR 403. Sampling locations shall be as directed by the city.

Sampling for these reports shall be conducted during the reporting period and shall be representative of daily operations and conditions occurring during that period. If any pollutant is monitored (according to the requirements of this subsection) more frequently than required by the city, the results of the additional monitoring shall be included in the report.

All sampling and analysis procedures shall be as required in subsection 106-68(d).

The laboratory report shall identify the industrial facility and show all times, dates, sampling locations, and analytical methods. The industrial user shall certify that the sampling is representative of normal work cycles and operating conditions. The report shall include documentation of the chain of custody from sampling through testing.

- (i) *Recordkeeping.* User subject to the reporting requirements of this division shall retain, and make available for inspection and copying all records of information obtained pursuant to any monitoring activities (a) required by this division or (b) undertaken by the user independent of such requirements and documentation associated with Best Management Practices. Records shall indicate the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates and by whom analyses were performed; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall automatically be extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention time by the city.
- (j) Operation of pretreatment facilities.
 - (1) *General.* Any industrial user who operates pretreatment facilities as a requirement for meeting pretreatment standards or requirements shall normally:
 - a. Keep the pretreatment facilities in full operation at all times during discharge of industrial waste to the sewage works, and
 - b. Route all designated industrial waste through such facilities prior to discharge.
 - (2) *Applicability.* This requirement shall apply only to those specific waste streams for which pretreatment is required by permit. Pretreatment operation is required only during periods of discharge of designated waste, plus such startup operations as are necessary to prevent inadequate treatment.
 - (3) *Bypass.*
 - a. *Definitions.*
 - 1. *Bypass* means the intentional diversion of waste streams from any portion of an industrial user's treatment facility.
 - 2. *Severe property damage* means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 - b. *Bypass not violating applicable pretreatment standards or requirements.* An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential

maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.

- c. *Notice.* If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the city, if possible at least ten days before the date of the bypass.
- (4) *Notice of bypass.* An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the city within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The city may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
 - a. *Prohibition of bypass.*
 - 1. Bypass is prohibited, and the city may take enforcement action against an industrial user for a bypass, unless;
 - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - iii. The industrial user submitted notices as required under paragraph (3) of this section.
 - b. The city may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three conditions listed in paragraph (d)(1) of this section.
 - (k) *Public notification by city.* The city shall annually publish in a newspaper of general circulation that provides meaningful public notice with the jurisdiction served by the City of Nacogdoches, a list of industrial users in significant noncompliance with the city's pretreatment program (as defined in [section] 106-66) for the preceding 12-month period. The city may at its discretion publish information on permit violations, including any corrective or remedial measures by the violator, at any time.
 - (l) *Annual inspection.* The city shall inspect each significant industrial user which holds an active permit at least once per year. The city shall, in conjunction with the inspection, sample all waste streams containing industrial waste. Minor industries shall be inspected at

least once every three years; although sampling need not be performed unless applicable to the permit.

All records relating to compliance with pretreatment standards shall be made available to officials of the EPA or approval authority upon request.

Sec. 106-70. - Prohibited or limited discharges.

- (a) *Infiltration/inflow sources.* No person shall discharge any stormwater, ground water, roof runoff, foundation drains, subsurface drainage, downspouts, yard drains, ponds, or lawn sprays into any sanitary sewer, or into any building sewer or industrial sewer connected thereto. Stormwater and all other unpolluted drainage shall be discharged into storm sewers or to natural outlets approved by the city.

All building drains, building sewers, industrial sewers; and sanitary sewers leading to the public sewers, including connections thereto, shall be constructed and maintained so as to exclude any ground or surface water from entering the sewer. The city shall require the owner of any of these facilities to correct at his own expense any leaks or other conditions allowing the entry of groundwater or surface water into the sewage works. This provision shall apply to all such leaks or conditions whether they exist prior to the effective date of this division or occur at a later date.

The requirements of the plumbing ordinance, where applicable, shall govern the construction of these facilities. All sewer repairs shall be inspected by the city in the same manner as new facilities. Unpolluted industrial process water (if not returned to a process) may be discharged into storm sewers, natural outlets, or the sewage works, as agreed on by the user, the city, and any applicable state or federal regulatory agencies. Any new discharge of such water into the sewage works shall require the written approval of the water utilities manager and/or the pretreatment coordinator. The city may require written justification for any existing or proposed discharge of unpolluted water, based on factors such as economic considerations and regulatory requirements for direct dischargers. In the case of cooling water, the city may require cooling before discharge to the sewage works or otherwise.

- (b) *Prohibited discharges.*

- (1) *General prohibitions.* No user shall discharge or otherwise introduce into the sewage works any pollutant or sewage which causes pass through or interference. This prohibition applies to all industrial and nonindustrial users (regardless of whether they are subject to categorical standards, pretreatment requirements, and/or permitting) and also to all waste haulers.
- (2) *Specific.* No person shall discharge either directly or indirectly any of the following described substances, materials, waters or waste:
 - a. Pollutants which create a fire or explosive hazard in the sewage works, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degree Fahrenheit (60 degrees Centigrade) using the test methods specified in 40 CFR 261.21;
 - b. Any waters or wastes having a pH lower than 5.5 or higher than 9.5 or having any corrosive property capable of causing damage or hazards to structures, equipment, or personnel of the sewage treatment plant;

- c. Any solids, slurries, or viscous substances of such character and amounts as to be capable of obstructing the flow in sewers, or otherwise interfering with the proper operation of the sewage works, such as ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, hair and fleshlings, entrails, lime slurry, lime residues, slops, chemical residues, paint residues, grease trap cleanings, or bulk solids;
- d. Pollutants, including oxygen demanding pollutants (CBOD, etc.), discharged at a flow rate and/or pollutant concentration which, either, singly or by interaction with other pollutants, will cause interference;
- e. Any liquid having a temperature higher than 150 degrees Fahrenheit (65 degrees Centigrade), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case any sewage which raises the temperature at the upstream end of the treatment plant above 104 degrees Fahrenheit (40 degrees Centigrade);
- f. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the sewage works in a quantity that may cause acute worker health and safety problems;
- h. Trucked or hauled pollutants, except for those wastes authorized in subsection 106-68(i) of this division, and then only at the treatment plant according to subsection 106-68(i);
- i. Any water or waste which contain wax, grease, or oil, plastic or other substance that will solidify or become discernibly viscous at temperatures between 32 degrees to 150 degrees Fahrenheit;
- j. Any garbage except properly shredded garbage as defined in section 106-66;
- k. Any noxious or malodorous substance, which either singly or by interaction with other substances is capable of causing objectionable odors, or hazard to life; or forms solids in concentrations exceeding limits established in subsections (c), (d), and (e); or creates any other condition deleterious to structures or treatment processes; or requires unusual provisions, alteration, or expense to handle such material; or can prevent entry into the sewers for maintenance and repair;
- l. Any wastes or waters containing suspended or dissolved solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant or in the public sewage works;
- m. Any waters or wastes containing a toxic or poisonous substance such as plating or heat treating wastes in sufficient quantity to injure or interfere with any sewage treatment process, to constitute a hazard to persons or animals, or to create any hazard in the receiving stream of the sewage treatment plant;
- n. Any materials causing excessive discoloration to the treatment plant effluent, unusual or immediate biochemical oxygen demand, or hydrogen sulfide concentrations sufficient to cause explosion hazards or structural corrosion;

- o. Any antibiotics, bactericidal solutions, or bacteriostatic solutions, unless rendered ineffective by pretreatment;
 - p. Sludges, screenings, or other residues from the pretreatment of industrial wastes;
 - q. Medical wastes, unless specifically authorized in a permit;
 - r. Sewage causing alone or in conjunction with other substances, the treatment plant effluent to fail a toxicity test; or
 - s. Detergents, surface-active agents, or other substances which may cause excessive foaming in the treatment plant
- (c) *Limited discharges (general)*. Except in concentrations, or with provisions stipulated herein, no person shall discharge either directly or indirectly to the sewer works waters or wastes containing any of the following:
- (1) Free or emulsified oil and/or grease exceeding 100 ppm if, in the opinion of the city, it appears probable that such wastes:
 - a. Can deposit grease and oil in the sewer lines in such a manner as to clog the sewers;
 - b. Can overload skimming and grease handling equipment;
 - c. Are not amenable to bacterial action and will therefore pass to the receiving waters without being affected by normal sewage treatment processes; or
 - d. Can have deleterious effects on the treatment process due to the excessive quantities;
 - (2) Any radioactive wastes greater than the allowable releases as specified by current United States Bureau of Standards handbooks dealing with the handling and release of radioactivity;
 - (3) Cyanides or cyanogen compounds capable of liberating hydrocyanic gas on acidification in excess of 0.5 ppm by weight as CN in the wastes from any outlet into the public sewers;
 - (4) Chlorides in excess of 250 mg/l; or
 - (5) Substances causing an excessive chemical oxygen demand.
- (d) *Technically based local limits*. The allowable concentrations of specified substances in mg/l, determined on the basis of individual sampling in accordance with "standard methods," are as follows. These limits are approved by the approval authority as being technically based local limits, derived according to procedures specified or approved by the EPA for protection of the receiving stream, the treatment process, and the city's sludge disposal method. These limits may not be modified without the approval of the approval authority.

	Not To Exceed		
Substance	Monthly	Daily	Daily

	Average	Average	Composite
Aluminum	—	2.9	2.9
Arsenic	—	0.3	0.3
Cadmium	—	0.025	0.05
Chromium (total)	—	3.4	3.4
Chromium (hexavalent)	—	0.0012 ⁺¹	0.0012 ⁺¹
Copper	0.9	—	2
Cyanide	—	0.1	0.25
Lead	0.04	—	0.1
Mercury	—	0.000 ^{*2}	0.000 ^{*2}
Nickel	—	1.5	3.1
Silver	—	0.25	0.5
Zinc	0.65	—	0.7

	Monthly Average		Daily Composite	
Substance	Tier I ³	Tier II ⁴	Tier I ³	Tier II ⁴
Lead	0.33	0.002	0.79	0.004

¹For Hexavalent Chromium, permit compliance determinations will be based on the MAL (minimum analytical level). Monitored discharge concentrations measured as less than the MAL shall be deemed to be compliant with the limit.

^{2*}For mercury, permit compliance/noncompliance determinations will be based on the minimum analytical level of 0.0002 mg/L. Monitored discharge concentrations measured as less than 0.0002 mg/L shall be deemed to be compliant with the mercury limit. Mercury concentrations measured below that value shall be reported as "<0.0002 mg/L" and shall be interpreted as zero values for compliance purposes.

³Tier I monthly average and daily composite Local Limits for lead apply to Users that discharge less than one million gallons per day of sewage.

⁴Tier II monthly average and daily composite Local Limits for lead apply to Users that discharge greater than one million gallons per day of sewage.

~~+For Hexavalent Chromium, permit compliance determinations will be based on the MAL (minimum analytical level). Monitored discharge concentrations measured as less than the MAL shall be deemed to be compliant with the limit.~~

(e) *Other hazardous metals.* The allowable concentrations of hazardous metals in mg/l, determined on the basis of individual sampling in accordance with "Standard methods," are:

Metal	NOT TO EXCEED		
	Average	Daily Composite	Grab Sample
Barium	1	2	4
Manganese	1	2	3
Selenium	0.05	0.1	0.2

(f) *Other hazardous materials*

(1) Any User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharged more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. The notification requirement in this Section does not apply to pollutants already reported by Users subject to categorical Pretreatment Standards.

(2) Dischargers are exempt from the requirements of paragraph 1, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of

hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.

- (3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the control authority, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (4) In the case of any notification made under this Section, the User shall certify that it has a program in place to reduce the volume of toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

(g) *Accidental discharges.*

- (1) *General.* Each user as specified in subsection (2) below shall provide protection from (a) accidental discharge of materials prohibited or regulated by this division and (b) slug discharges. The user shall provide and maintain the necessary facilities at his own expense.

Detailed plans showing facilities and operating procedures to provide this protection (as specified in subsection (3) below) shall be submitted to the city for review, and shall be approved by the city before construction of the facility. No new user shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the city.

Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify his facility as necessary to meet the requirements of this division.

In the case of an accidental discharge; it is the responsibility of the user to immediately telephone and notify the city of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

Within five days following an accidental discharge, the user shall submit to the pretreatment coordinator a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the treatment plant, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties; or other liability which may be imposed by this division or other applicable law.

A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge. Employers shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure. Such notice shall be replaced promptly by updated notices as issued by the city.

- (2) *Applicability.* The requirements of this subsection shall apply to each industrial user and also to each commercial (non-industrial) user, including dry industries, which the city has reason to believe may have the potential for accidental discharges of prohibited or regulated materials. Each existing user which the city determines to be subject to the requirements of this subsection shall submit the necessary plans upon 90 days' notice by the city. In lieu of the required plans, any user may provide verification to the satisfaction of the city that such plans are inapplicable.
- (3) *Requirements for plans.* The plans required by this subsection shall address the following as a minimum:
 - a. Description of discharge practices, including nonroutine batch discharges;
 - b. Description, location, and storage facilities for stored chemicals;
 - c. Procedures for immediately notifying the city of any accidental or slug discharge, including names or positions of responsible personnel; and
 - d. Procedures and facilities to prevent adverse impact from any accidental or slug discharge. Such measures include, but are not limited to inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
- (4) *Periodic evaluation by city.* At least every two years the city shall perform the following evaluations:
 - a. Adequacy of each existing plan for control of accidental discharges and slugs.
 - b. Possible need for such plans for users who have previously verified the inapplicability of such plans, or who have not previously been identified as needing them.
- (5) Notification of facility changes affecting potential slug discharge.

Sec. 106-71. - Establishment of standards.

- (a) *National pretreatment standards.* Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts, 405-471.
 - (1) Each existing national pretreatment standard (with any authorized local modification) shall be binding on those industrial users covered by that standard. Any new industrial users who are covered by one or more standards, or existing users who become covered by such standard(s) because of new or changed operations, shall be governed by the pretreatment standards in the same manner as existing users. If the EPA should subsequently revise any existing standards or

promulgate new standards, these revisions or new standards shall automatically be binding in the same manner as existing standards.

- (2) When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, water utilities manager shall impose an alternate limit in accordance with 40 CFR 403.6(e).
- (b) *Modification of pretreatment standards.* If the city's treatment works is found to achieve consistent partial removal of one or more pollutants limited by national pretreatment standards, the city may apply to the approval authority for modification of specific limits in the standards. Upon approval of the approval authority, the city may modify one or more pollutant discharge limits in the pretreatment standards. These modified limits shall be binding upon all industrial users subject to the specific standards which have been modified. The modified limits shall remain in effect as long as the approval authority does not withdraw the authorization for the modification or revise the extent of modifications.
- (c) *Local pretreatment requirements.* The city may develop specific limits for the following prohibited discharges and may incorporate such limits into this division or may publish them as a separate ordinance.
 - (1) Pollutants which create a fire or explosion hazard in the collection or treatment works;
 - (2) Pollutants which will cause corrosive structural damage to the collection or treatment works;
 - (3) Solid or viscous pollutants amounts which will obstruct the flow in sewers or otherwise interfere with the operation of the sewage treatment plant;
 - (4) Any pollutant; including oxygen demanding pollutants, released in a discharge of such volume and strength as to cause interference in the sewage treatment plant; and
 - (5) Heat in amounts which will inhibit biological activity in the sewage treatment plant or raises the temperature of the treatment plant influent above 104°F.

The city may develop other local pretreatment requirements not covered by pretreatment standards if it is found necessary to prevent interference with the treatment process, overloading of the sewage treatment plant, interference with sludge disposal, or stream pollution. These pretreatment requirements shall be incorporated into this division or shall be published as a separate ordinance.
- (d) *Termination or revision of local modifications.* If the approval authority should:
 - (1) Withdraw its approval of any local modifications to national pretreatment standards, or
 - (2) Revise the extent of such modifications,

The pretreatment standards with any remaining modifications shall become binding on all users covered by those standards. The users will be required to achieve compliance within the time schedule specified by the approval authority.
- (e) *City's right of revision.* The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the sewage works.

- (f) *Notification of industries.* The city shall promptly notify all affected industries in writing of:
- (1) Any pretreatment standards which are in effect on the effective date of this division;
 - (2) Any new pretreatment standards or requirements, or any revisions to existing standards or requirements;
 - (3) Any local modifications to national pretreatment standards;
 - (4) Termination or revision of any local modifications to pretreatment standards;
 - (5) Any applicable state pretreatment standards.
 - (6) Any new or revised sampling, monitoring, or reporting requirements;
 - (7) Reclassification of industry as significant industrial user or otherwise;
 - (8) Reclassification of industry as subject to pretreatment standards or otherwise; or
 - (9) Any changes in permit status, such changing to active or inactive status.
 - (10) The required notice to industries shall include any appropriate schedules of compliance as specified by the approval authority or by the city.
- (g) *Uniform application.* Any limitation on quantity, concentration, or discharge rate of a specific pollutant shall be applied uniformly to all new or existing discharges within any industrial category. This applies to national pretreatment standards or any local modifications thereto; limitations on prohibited discharges as listed in subsection (c); any state pretreatment standards; and any other local pretreatment requirements.

Sec. 106-72. - Protection from damage.

No unauthorized person shall maliciously, willfully, or negligibly break, damage, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the city sewage works. The city may pursue all criminal and civil penalties to which it is entitled under authority of statutes and ordinances against a person violating this section of the division.

Sec. 106-73. - Substances not discharged into sewage works.

- (a) No person may discharge any substances, whether normal domestic sewage, admissible industrial waste, prohibited substances, or unpolluted water, into the sewage works except through a building sewer or industrial sewer as authorized by the city. This provision shall not apply to city forces or contractors in the course of performing construction, maintenance, cleaning, or testing of the sewage works. This provision shall also not apply to liquid waste delivered to the treatment plant and accepted by the operating staff according to subsection 106-68(i) of this division.
- (b) The city may require information from any industry within the city regarding the type and amount of toxic pollutants scheduled for disposal outside the city sewage works. This requirement shall apply to all industries whether dry industries or subject to permitting as industrial users.

- (c) The city shall require documentation of the time and method of transportation and disposal of toxic pollutants outside the sewage works within ten days after removal from the plant, unless otherwise specified in the applicable discharge permit.

Sec. 106-74. - User charges.

The following user charges shall be assessed and collected as prescribed by the rate ordinance and/or the user charge ordinance:

- (1) Collection and treatment charges for-normal domestic sewage and for industrial wastes.
- (2) Pretreatment fees for industrial users subject to mandatory pretreatment of wastes.
- (3) Treatment charges for septage, waste activated sludge, and grease trap wastes.
- (4) Surcharges for parameters outside allowable values, or for grease trap violations.

Sec. 106-75. - Billing.

- (a) *Billing procedure.* All user charges for normal domestic sewage and industrial waste, including pretreatment fees, as well as all surcharges, shall be assessed and collected according to provisions of the rate ordinance and/or the user charge ordinance.
- (b) *Grounds for disconnection.* Any of the following violations shall be sufficient reason to disconnect any and all water and/or sanitary sewer service provided by the city, after the prescribed notification and hearing process is carried out:
 - (1) Failure to pay monthly bills for city services when due, including all user charges for the sewage works.
 - (2) Violations by industrial users, as listed in subsection 106-67(h).
 - (3) Any other violations of this ordinance, when termination of services is prescribed by injunction according to subsection 106-76(d).

Before terminating water and/or sanitary sewer services for nonpayment, the city shall notify the user of its intention and shall allow a minimum of ten days to show cause why such services shall not be terminated.

- [(c)] *Restoration of service.* Reconnection shall be made only after:

- (1) Payment of:
 - a. All outstanding charges for city services;
 - b. Any charge for late payment which may be provided in the city ordinance prescribing user charges;
 - c. Any lawfully assessed fines and damages; and
 - d. Disconnection and reconnection expenses.
- (2) Evidence satisfactory to the pretreatment coordinator that restoration of service will not result in hazardous discharges to the sewage works (if applicable).
- (3) Reinstatement of the user's discharge permit (if applicable).

Sec. 106-76. - Enforcement powers.

- (a) *Access.* Authorized personnel (from the city, the approval authority, or the EPA) bearing credentials and identification shall be permitted to gain ready access (within 15 minutes) at all reasonable times to such properties as may be necessary for the purpose of inspection, observation, measurement, sampling, testing, calibration, examining, and copying records in accordance with provisions of this division. When a user has security measures requiring proper identification and clearance before entry into its premises, the user shall arrange with its security guards for the pretreatment coordinator to enter without delay upon presenting suitable identification.

Properties to which such access must be granted include, but are not limited to, effluent sources, pretreatment systems, monitoring facilities, flow meters (when used for billing and/or monitoring purposes), control manholes, and any areas where records are kept to satisfy federal, state, or local requirements to assure compliance with pretreatment standards. The city, the approval authority, or the EPA shall also have a right to install such devices upon a user's property as are necessary to conduct sampling inspection, compliance monitoring, and/or metering operations.

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user (at his own expense) at the written or verbal request of the pretreatment coordinator and shall not be replaced.

- (b) *Search warrants.* If the pretreatment coordinator has been refused access to a building, structure or property, or any part thereof, and can demonstrate:
- (1) Probable cause to believe that there may be a violation of this division, or
 - (2) The need to inspect and/or sample as part of a routine inspection and sampling program of the city designed (a) to verify compliance with this division or any permit or order issued hereunder, or (b) to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from the appropriate city or state court.
- (c) *Minimum procedures in event of violation.*

- (1) *General.* Any person discovered to be violating this division shall, at a minimum, be subject to the following enforcement proceedings. (In cases of emergency, as defined in section 106-66, section 106-77 will apply. Severe or recurring violations may result in measures listed in subsections (d) through (f) below.)

Except in an emergency, the city shall not terminate water and/or sewer service without due process of law as provided in this section or in subsection 106-75(b).

- a. Upon identification of an industrial user's permit violation, the city shall notify the violating user by telephone and/or letter of the violation and request corrective action.
- b. If additional monitoring indicates that the violation has not been corrected, the city shall provide a written notice of violation to the industrial user, indicating that it is in violation of its permit. The notice of violation shall require the violating user to submit to the city a written report explaining the cause of the violation, describing

corrective measures, and specifying a compliance schedule under which it will implement said corrective measures.

- c. If the industrial user fails to respond within 30 days after the notice of violation, or if the city finds its response inadequate, the city shall attempt to meet with the management of the user to develop corrective actions and a compliance schedule.
- d. If the industrial user fails to agree to adequate corrective actions and a compliance schedule within 90 days after the notice of violation or fails to implement corrective actions in accordance with its compliance schedule, the city shall:
 1. Assess an administrative penalty against the user and/or
 2. Initiate legal action to assess a fine against the user.

If the violation creates a potential health hazard or an upset condition at the city's sewage works, the city shall also initiate action to discontinue water and/or sewer service to the user.

2. *Flexibility of action.* The city ~~Indy~~ [may] at its option shorten the time frames listed above within this subsection, and/or skip one or more steps in cases where deemed necessary or appropriate by the water utilities manager and/or the pretreatment coordinator. Such cases include, but are not limited, to significant violators (as defined in section 106-66); incidents of harm to the treatment works and/or the environment; obvious failure to undertake corrective action; failure to respond to communications from the city; falsification of information provided to the city; and users with a history of serious, prolonged, or recurring noncompliance.
 3. *Significant violations.* All significant violators (as defined in section 106-66) shall incur at the minimum an administrative fine, a stipulated penalty, and/or legal action to assess a fine, in addition to requirements for correcting and/or remediating the violation(s). Notice shall be served on the user within 30 days after identification of significant violation.
 4. *Stipulated penalties.* The provisions of this subsection shall not prevent the city from assessing any stipulated penalties and/or surcharges specified in other portions of this division, in the rate ordinance, or in the users permit.
- (d) *Injunctive relief.* The city shall have the right to seek injunctive relief against violators of this division in such city, county, state, or federal courts as may be deemed appropriate, where such action is necessary to achieve compliance. Injunctive relief may include:
- (1) Specific performance of the division with respect to discharge standards, reporting requirements, payment of user charges; access to industrial properties, repair of private sewer leaks; or other provisions;
 - (2) Termination of service where necessary for compliance;
 - (3) Liquidated damages for any illegal discharges which result in:
 - a. Damage to the sewage works;
 - b. Excessive treatment costs; and/or

c. Fines for stream pollution;

(4) Civil penalties designed to recover any economic benefits which the user may have received through noncompliance, including avoided or delayed costs for compliance; and/or

(5) Environmental remediation if needed.

A petition for injunctive relief shall not be a barrier against, or a prerequisite for, taking any other action against a user.

(e) *Miscellaneous remedies.* The city may take any or all of the following actions where such action is necessary to achieve compliance. None of these actions shall be a barrier against, or a prerequisite for, taking any other action against a user.

(1) Administrative penalties not to exceed \$1,000.00 per violation or \$2,000.00 per administrative order. These penalties will be assessed by the pretreatment coordinator along with an administrative order citing the applicable violations. The user shall have the right of appeal to the water utilities manager, then (if unsuccessful) in city court.

(2) Consent orders or similar documents establishing a judicially enforceable agreement with a user.

(3) Show cause hearings in the appropriate city, county, or state court in which the user must show cause why a proposed enforcement action should not be taken. The city shall serve any authorized representative of the user (as defined in section 106-66) with a notice stating the time and place for the hearing; the proposed enforcement action, the reasons for such action, and an opportunity to show cause why the action should not be taken. The notice shall be served personally or by registered or certified mail at least three days before the hearing.

(4) Compliance orders or administrative orders imposing a schedule for compliance and, if appropriate, specific measures designed to assure compliance. The order may state that sewer service will be discontinued if compliance is not achieved within the specified time.

(5) Cease and desist orders requiring immediate compliance even to the extent of halting operations.

(6) The requirement of a performance bond as a prerequisite for permit issuance or renewal in an amount determined by the city as necessary to assure consistent compliance.

(7) Issuance of a permit with a duration less than the standard duration.

(8) Referral to the approval authority for further enforcement action.

(f) *Severe violations.* The city may seek injunctive relief or may assess a fine not to exceed \$2,000.00 per day per violation against persons falling in the following categories:

(1) Willful violators of any provisions of this division;

(2) Persons refusing access or placement of equipment under the provisions of subsection (a);

- (3) Persons not complying promptly with duly issued notices or agreements to correct violations;
- (4) Persons discharging pollutants which can:
 - a. Cause structural damage to the sewage works;
 - b. Obstruct the collection lines;
 - c. Interfere with the treatment process;
 - d. Create fire or explosion hazard; or
 - e. Cause a violation of stream standards.
- (5) Persons not complying with emergency notices issued by the city under section 106-77 of this division;
- (6) Persons failing to comply with reporting or notification requirements; or
- (7) Persons making false or fraudulent statements in connection with their sewer use.

For violations of a monthly average permit limit, each day of discharged during the month may be considered a day of violation.

- (g) *Limits of inquiry.* No person acting for the city under subsection (a) may inquire into the processes of any industrial user beyond that point having a direct bearing on the type and source of discharge into the sewage works.
- (h) *Staying of enforcement pending ordinance modifications.* The enforcement procedures listed in this section of the division shall be stayed to the extent that the requirements in question are covered by the city-issued compliance schedule specified in subsection 106-67(d)(3) of this division as long as the industrial user remains in compliance with such compliance schedule.
- (i) *Act of God defense.*
 - (1) The act of God defense constitutes a statutory affirmative defense [Texas Water Code §7.251] in an action brought in municipal or state court. If a person can establish that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of the ordinance or permit.
 - (2) An industrial user who wishes to establish the act of God affirmative defense shall demonstrate through relevant evidence that:
 - a. An event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance occurred, and the sole cause of the event was an act of God, war, strike, riot, or other catastrophe; and
 - b. The industrial user has submitted the following information to the pretreatment coordinator within 24 hours of becoming aware of the event that would otherwise be a violation of a pretreatment ordinance or a permit under the ordinance (if this information is provided orally, a written submission must be provided within five days):

1. A description of the event, and the nature and cause of the event;
 2. The time period of the event, including exact dates and times or, if still continuing, the anticipated time the event is expected to continue; and
 3. Steps being taken or planned to reduce, eliminate and prevent recurrence of the event.
- (3) *Burden of proof.* In any enforcement proceeding, the industrial user seeking to establish the act of God affirmative defense shall have the burden of providing, by a preponderance of the evidence, that an event that would otherwise be a violation of a pretreatment ordinance, or a permit under the ordinance, was caused solely by an act of God, war, strike, riot or other catastrophe.
- (j) *Affirmative defense for prohibited discharge standards.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the prohibitions in subsections 106-75(b)(1) and 106-75(b)(2) (items c. through g.) of this division if it can prove that:
- (1) It did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference; and
 - (2) Either:
 - a. Limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
 - b. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city's treatment plant was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.
- (k) *Uniform application.* All provisions of this division shall be impartially enforced for all users, or for all users within a specific category when applicable. No distinction shall be made between existing and new dischargers, or between existing and new haulers of septage, waste-activated sludge, and/or grease trap wastes.
- All retail users of the sewage works, whether located inside or outside the city, shall be subject to the provisions of this division. In the event that any user outside the extraterritorial jurisdiction of the city requests services, the city shall require the execution of any necessary service contracts to ensure compliance with the provisions of this division.
- (l) *Criminal prosecution.*
- (1) A user who willfully or negligently violates any provision of this division, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$2,000.00 per violation, and each day that the violation continues shall constitute a distinct and separate offense.
 - (2) A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a maximum fine of up to \$2,000.00. This penalty shall be in addition to any other cause of action for personal injury or property damage

available under state law. Each day that the violation continues shall constitute a distinct and separate offense.

- (3) A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this division, individual wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this division shall, upon conviction, be punished by a fine of not more than \$2,000.00 per violation. Each day that the violation continues shall constitute a distinct and separate offense.
- (4) Nothing in this section shall limit in any manner the authority of the city to seek any injunctive or other civil relief available under state or federal law.

Sec. 106-77. - Emergency procedures.

- (a) *Severe emergencies.* The city shall take immediate action to stop any actual or imminent discharge of corrosive, flammable, toxic, organic, or other substances which can cause:
 - (1) Rapid deterioration of the sewage works;
 - (2) Major fire or explosion hazards; and/or
 - (3) Severe danger to the health or welfare of persons.

In the event of actual or imminent discharge as described in this subsection, the city shall, if necessary, shutoff any or all water and/or sewer services immediately. The city shall make all possible efforts to notify the affected user prior to shutting off services, so that the user may begin shutdown operations so as to minimize damage to his property. The water utilities manager and/or the pretreatment coordinator may, at his discretion, notify the user to take immediate action to stop or prevent such discharges in lieu of immediate shutoff of city services, provided such action is effective in eliminating the hazards described above. If the user fails to eliminate the hazard immediately and effectively, the city shall proceed at once to shut off water and/or sewer services.

- (b) *Less severe emergencies.* The city shall notify a user immediately if an actual or imminent discharge from that user contains corrosive, toxic, viscous, organic, or other substances which can cause:
 - (1) Severe blockage of major collection lines, or
 - (2) Severe interference with the treatment process. Non-compliance with ordinance or permit for facilities subject to Best Management Practices.

The required notice shall inform the user of the nature of his violation and of the actual and potential consequences to the sewage works, the treatment process, and/or the environment. Such notice shall require the user to take immediate action to stop the discharge of substances described above, even to the extent of shutting down his operation if necessary. If the user fails to take immediate action, or if the action taken is ineffective, the city shall shut off water and/or sewer service.

- (c) *Restoration of service.* If water and/or sewer service to any user is shut off by the city under subsection (a) or (b) of this section, the city shall not restore the service until the water utilities manager and/or the pretreatment coordinator is satisfied that restoration of service

will not result in hazardous discharges to the sewage works. The water utilities manager and/or the pretreatment coordinator may at his discretion restore partial service to the extent required for cleanup and repair operations, withholding full service until the industrial process can be resumed without resulting in hazardous discharges.

Any disconnection and reconnection performed under this section of the ordinance shall be at the expense of the user.

- (d) *Penalties.* If additional damages to the sewage works, to the environment, or to the health and welfare of persons results because the city:
- (1) Allows a user to stop a hazardous discharge by his own procedures, or
 - (2) Restores all or part of city services to facilitate cleanup, the fact that the city took such discretionary action will not relieve the user of any applicable civil or criminal penalties for such additional damages.

Sec. 106-78. - Penalties.

- (a) *Violation of state and federal statutes.* if any person violates any provision of this division, and thereby violates a state or federal statute or injunction, the city may seek prosecution of that person in the appropriate state or federal court, and may seek such penalties as are prescribed by that statute or injunction.
- (b) *Fines.* If any person violates any provision of this division and the violation is not punishable in state or federal courts, that person shall be guilty of a misdemeanor upon conviction in the city court. Each offense shall be punished by a fine not to exceed \$2,000.00. Each day of such violation shall be deemed a separate offense. For violations of a monthly average permit, each day of discharge during the month may be considered a day of violation.
- (c) *Damages.* Any person violating any of the provisions of this division shall become liable to the city for any expense, loss, or damage incurred by the city by reason of such violation. Such recoverable expenses shall include, but not be limited to, reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses.
- (d) *Federal or state prosecution.* Any penalties imposed under this division, including penalties imposed by state or federal courts, shall not relieve the violator from further state or federal prosecution.

Sec. 106-79. - Validity.

All ordinances or parts of ordinances in conflict herewith are hereby repealed. In particular, this ordinance is intended to modify and replace Ordinance No. ~~1863-04-21~~~~1581-11-11~~ and to constitute an update of section 31, article II, sewer use provisions of the Nacogdoches Code. If any section or provision of this division, or the application of same to any person or set of circumstances is invalidated or rendered unenforceable by a court of competent jurisdiction, such judgment shall not affect the validity of any remaining parts of the division which can be given effect without the invalidated part or parts, or their application to other persons or sets of circumstances.

Secs. 106-80—106-320. - Reserved.

SECTION III

Severability. If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

SECTION IV

Continuation. All provisions of Chapter 106 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION V

Repeal. This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VI

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VII

Proper Notice & Open Meeting. It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION IX

Official Public Records. The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED this the ____ day of _____, 2024¹², by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches.

ATTEST:

CITY OF NACOGDOCHES

BY: _____

~~XXXX-XX-XX~~1935-10-22

Jan Vinson, City Secretary _____
~~Shelley Brophy~~
~~Mize~~, Mayor _____
~~Jimmy~~

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

~~Robert Davis~~Steven Kirkland, City Attorney
City Engineer

_____~~Steve Bartlett~~, PE,

**CITY OF NACOGDOCHES
SEWER USE ORDINANCE**

ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS REGULATING THE COLLECTION OF SEWAGE IN THE CITY REQUIRING PERMITS FOR CERTAIN DISCHARGES; AMENDING CHAPTER 106 DIVISION 2 “SEWER USE REGULATIONS”, SECTION 106-66 THROUGH 106-79, OF THE CODE OF ORDINANCES FOR THE CITY OF NACOGDOCHES, TEXAS, PROVIDING A CONTINUATION CLAUSE; PROVIDING A REPEAL CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

WHEREAS, the City of Nacogdoches has provided facilities for the collection and treatment of sewage to promote health, safety, and convenience of its people and to safeguard the water resources common to all;

WHEREAS, such facilities are designed, constructed, and operated for the purpose of receiving and treating domestic sewage and compatible industrial wastes, without excessive amounts of toxic or incompatible wastes, and without excessive amounts of storm drainage or ground water;

WHEREAS, proper protection and operation of the collection and treatment facilities may require exclusion, pretreatment, or regulated discharge of waste matter other than domestic sewage, as well as exclusion of storm drainage or ground water; and

WHEREAS, the City must be able to comply with all applicable state and federal laws, including the Clean Water Act (33 USC 3 1251 *et seq*) and the General Pretreatment Regulations (40 CFR 403, issued by the Environmental Protection Agency); and

WHEREAS, said federal and state laws are directed toward various objectives, including but not limited to:

Excluding pollutants which will interfere with operation of the City's treatment plant;

Preventing pollutants from passing through the plant into the receiving stream inadequately treated, or from being otherwise incompatible with the operation of the plant;

Assuring quality of sludge to allow its disposal and/or use according with statutes and regulations;

Protection of collection/treatment works personnel as well as the general public;

Improving opportunities to recycle and reclaim wastewater and sludge;

Providing equitable distribution of costs of operating, maintaining, an enabling the City to comply with its EPA permit conditions, sludge use/disposal requirements, and any other federal or state laws; and

WHEREAS, the City has adopted various ordinances designed to meet requirements of the EPA and of the relevant state agency, including Ordinance No. 1863-04-21, adopted on April 20, 2021, and;

WHEREAS, Ordinance No. 1863-04-21 contained a definition that did not update the name of the state environmental agency to it's current name of Texas Commission on Environmental Quality,

WHEREAS, Ordinance No. 1863-04-21 contained limitations on the amount of lead allowed in industrial effluent going into the treatment plant based on an allocation of the total amount of lead entering the treatment plant and those limitations have not worked as designed for the efficient operation of the collection and treatment system; and

WHEREAS, Ordinance No. 1863-04-21 must be amended for various reasons to correct the name of the state environmental agency and to update requirements for allowable lead pollutants in an industry's waste stream; and

WHEREAS, the new requirements for allowable lead have been approved by the Texas Commission on Environmental Quality;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES:

SECTION I

All above premises are hereby found to be true and correct legislative and factual findings.

SECTION II

Chapter 106, "Utilities," of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended by replacing "DIVISION 2. - SEWER USE REGULATIONS" Sections 106-66 through 106-79, as set hereafter to read as follows:

DIVISION 2. - SEWER USE REGULATIONS

Sec. 106-66.-General Provisions

(a) Purpose and Policy

This ordinance sets forth uniform requirements for Users of the Publicly Owned Treatment Works for the City of Nacogdoches and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United State Code [U.S.C.] section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the *Code of Federal Regulations [CFR] Part 403*). The objectives of this ordinance are:

- (1) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operations;

- (2) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
- (3) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
- (4) To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
- (5) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and
- (6) To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

This ordinance shall apply to all Users of the Publicly Owned Treatment Works. The ordinance authorizes the issuance of individual wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; established administrative review procedures; and requires User reporting.

(b) Administration

Except as otherwise provided herein, water utilities manager shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon water utilities manager may be delegated by water utilities manager to a duly authorized City employee.

(c) Definitions.

The meaning of terms used in this division shall be as follows:

Act or "*the Act*" means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 3 1251 et seq.

Administrator means the administrator of the EPA, or any duly authorized official acting in his behalf.

Approval authority means the Executive Director of the Texas Commission on Environmental Quality.

Authorized representative of industrial user means an authorized representative of an industrial user may be:

- (1) Corporations.

- a. A president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.
 - b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measure to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit [or general permit (optional)] requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures
- (2) *Partnerships*. A general partner.
 - (3) *Proprietorships*. The proprietor.
 - (4) *Governmental facility (federal, state, or local)*. A director or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or a ranking elected official for the governmental entity.
 - (5) *Any organization*. A duly authorized representative of the individual designated in subsection (1), (2), or (3) above, provided:
 - a. The authorization is made in writing by the individual above;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, or an equivalent position, or having overall responsibility for environmental matters for the company; and
 - c. The written authorization is submitted to the city.

Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Sections 106-212(a) and (b) [40 CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning three feet outside the inner face of the building wall.

Building sewer, also called house connection, means the extension from the building drains to the public sewer or other place of disposal.

Bypass means the intentional diversion of waste streams around any portion of an industrial user's pretreatment facility and into the sewage works.

Carbonaceous biochemical oxygen demand (CBOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, with

chemical inhibition of nitrogenous oxygen demand, five days at 20E Centigrade expressed in terms of weight and concentration (mg/l).

Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard under 40 CFR 403.6 and 40 CFR chapter I, subchapter N.

Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

CFR means Code of Federal Regulations.

Chemical oxygen demand (COD) means the quantity of oxygen consumed from a chemical oxidation of inorganic and organic matter present in the water or wastewater, with testing conducted according to "Standard Methods", expressed in mg/l.

Chronic violation of wastewater discharge limits, also referred to as sixty-six percent (66%) rule, means a repeated violation of discharge limits for any one pollutant parameter, in which sixty-six percent (66%) or more of all measurements taken for the same pollutant parameter taken during a six-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits as defined in Section 106-70.

City means the City of Nacogdoches, Texas, or any authorized person acting in its behalf.

Composite sample means a sample obtained over a period of time by continuous collection or by multiple aliquot samples, proportioned according to varying flow over the period of time. Unless otherwise specified, a 24-hour composite sample shall be used, consisting of:

- (1) A minimum of 12 effluent portions collected at equal time intervals over 24 hours and combined proportional to flow, or
- (2) A sample collected continuously or at frequent intervals proportional to flow over a 24-hour period.

Control authority means the city as long as the city operates a pretreatment program approved by the approval authority; otherwise, the approval authority.

Control manhole means a manhole giving access to a building sewer at some point before discharge to a public sewer.

Daily Discharge. The discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

Direct discharger means a facility discharging industrial waste into a watercourse rather than into a public sewage works.

Director of public works means the Nacogdoches city official whose duties include oversight of all water and wastewater operations, as well as certain other city operations.

To discharge means to deposit, conduct, drain, allow to seep, or otherwise release or dispose of, or to allow any of these acts to occur.

Domestic sewage means water-borne wastes normally discharging into the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, free of storm and surface water and industrial wastes.

Dry industry means an industry discharging only domestic sewage into the sewage works and having no process or manufacturing operation discharging any type of industrial waste into the sewage works.

Emergency means an event in which an actual or imminent discharge into the sewage works requires immediate action to prevent (1) rapid deterioration of the sewage works, (2) major fire or explosion hazards, (3) severe danger to the health and welfare of persons, (4) severe blockage of major collection lines, or (5) severe interference with the treatment process.

Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

Equivalent concentration limit means when:

- (1) The concentration of any pollutant in the effluent from a specific process is limited by pretreatment standards or requirements, and
- (2) That effluent is mixed with other sewage prior to discharge into the public sewer, a concentration limit for that pollutant in the mixed stream may be calculated. This equivalent concentration limit in the mixed stream represents the specified limit in the stream from the regulated process, as derived by a combined waste stream formula.

Establishment means a commercial or industrial facility under one management and located within the same premises.

Existing discharger means an industrial user which was discharging industrial wastes into the sewage works prior to the effective date of this division.

Existing source means any source of industrial waste which is in operation or under construction (as defined herein) at the date of publication of the applicable pretreatment standards in the Federal Register (provided such standards are thereafter promulgated). This definition excludes new sources as defined herein.

Garbage means animal and vegetable wastes and residue from preparation, cooking, and dispensing of food, and from the handling, processing, storage, and sale of food products and produce.

Grab sample means an individual sample collected over a period of time not exceeding 15 minutes.

Indirect discharge means the introduction of pollutants into the sewage works from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act.

Industrial sewer means a sewer transporting industrial wastes from one or more sources prior to discharge into the public sewer.

Industrial user means a user of the sewage works, regardless of amount of flow, who discharges any type of non-domestic wastes into the sewage works.

Industrial waste means waste resulting from any process of industry, manufacturing, trade, business, or service, or from the development of any natural resource, or any mixture of the waste with water or domestic sewage, as distinct from normal domestic sewage.

Instantaneous maximum allowable discharge limit means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

Interference. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; therefore, is a cause of a violation of the City's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations; Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); and State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection Research, and Sanctuaries Act.

Local Limit means specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

Manager means water utilities manager for the city, or any person acting in this capacity, or his duly authorized deputy, agent, or representative, whose duties include oversight of all water and wastewater operations, as well as certain other city operations.

Mass limit means any limit on the total amount of a pollutant which may be discharged from a specific source over a specific length of time. A mass limit may be imposed by a pretreatment standard or requirement, and may be a fixed amount or may be proportional to production of a specified product.

Medical waste means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

Milligrams per liter (mg/l) means a weight-to-volume ratio numerically equal to parts per million. The mg/l value multiplied by 8.34 equals pounds per million gallons of water.

Minor industrial user, also minor user, means an industrial user subject to permit requirements but not a significant industrial user.

Monthly Average Limits. The highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

National Pollution Discharge Elimination System (or NPDES) permit means a permit issued pursuant to Section 402 of the Act.

Natural outlet means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

New discharger means an industrial user which begins discharging industrial wastes into the sewage works after the effective date of this division.

New source means any source of industrial waste which first comes under construction (as defined herein) after the date publication of the applicable pretreatment standards in the Federal Register (provided such: standards are thereafter promulgated). The source is defined as a new source only if it meets one of the following criteria:

- (1) The facility is constructed at a site where no other source is located.
- (2) The facility totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.
- (3) The production or wastewater generating processes of the new facility are substantially independent of an existing source at the same site.

Noncontact cooling water means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Normal domestic sewage means sewage (excluding industrial wastes) discharged into sanitary sewers with average concentrations of suspended solids and CBOD not more than 200 mg/l.

NPDES state means a state water pollution control agency with an NPDES permit program approved by the EPA.

O & M means operation and maintenance.

Overloading means the imposition of organic or hydraulic loading on a treatment facility in excess of its engineered design-capacity.

Parts per million (ppm) means a weight-to-weight ratio numerically equal to mg/l.

Pass through means a discharge from the city's treatment plant which (alone or in conjunction with discharge(s) from other sources) causes a violation of any requirement of the city's NPDES permit or increases the magnitude or duration of such violation.

Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

Plumbing ordinance means the Nacogdoches City Ordinance adopting the standard plumbing code, or any other plumbing code; or the plumbing code so adopted; or any other ordinance regulating gas, water, and sewer plumbing.

Pollutant means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

Pollution means the manmade or man-included alteration of the chemical, physical, biological, and radiological integrity of water.

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in sewage to a less harmful state prior to or in lieu of discharging such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, or process changes, or other means, except by dilution as prohibited in subsection 106-68(g) of this division.

Pretreatment coordinator means the city official administering the pretreatment program, or any person acting in this capacity, or his duly authorized deputy, agent, or representative.

Pretreatment program means a local program for monitoring and enforcing pretreatment standards and requirements; or a state program for performing or overseeing these duties.

Pretreatment requirements means any substantive or procedural requirement related to pretreatment, other than a national pretreatment standard, imposed on an industrial user.

Pretreatment standard means prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

Prohibited discharge standards means absolute prohibitions against the discharge of certain substances as required by 40 CFR 403.

Properly shredded garbage means the wastes from the preparation, cooking, and dispensing of food that have been shredded to such degree that all particles shall be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than two inches in any dimension.

Public sewer means a publicly owned sewer in which all owners of abutting properties shall have equal rights and interest controlled by public authority.

Publicly owned treatment works (POTW) means a treatment works as defined by Section 212 of the Act owned by the city. This definition includes any devices or systems used in the collection; storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant.

Qualified professional (when used in reference to items submitted by industrial users) means a person working in the field of industrial waste management and treatment, qualified by education and/or experience to provide technical assistance and certification for documents submitted by an industrial user.

Rate ordinance means the Nacogdoches City Ordinance establishing user charges (including pretreatment fees) as periodically updated.

Receiving stream means the watercourse into which the effluent from the sewage treatment plant is discharged.

Sanitary sewer, also sewer, means pipe or conduit which conveys domestic sewage, industrial sewage, or a combination of both, and into which storm, surface, and groundwaters or unpolluted industrial wastes (except cooling water) are not passed intentionally.

Septage means any liquid, semi-solid, or solid domestic wastes pumped out of septic tanks.

Sewage, also wastewater, means a combination of the water-carried waste from residences, business buildings, and industrial establishments, together with such ground, surface, and stormwater as may be present.

Sewage treatment plant, also treatment plant, means any components of the POTW as defined herein except for the collection and conveyance facilities.

Sewage works means all-components of the POTW as defined herein, plus sewers from users located outside the city and connected to the sewage works.

Shall, may. Shall is mandatory; may is permissive or discretionary.

Significant industrial user means any discharger meeting any of the following criteria and not excluded by other sections of this division:

- (1) Any industrial user subject to categorical standards;
- (2) Any discharger of a nondomestic waste stream (excluding unpolluted cooling water and boiler blowdown water) of 25,000 gallons per day or more;
- (3) Any industrial user that contributes a nondomestic waste stream which makes up five percent or more of the average dry weather hydraulic or pollutant capacity of the treatment plant;
- (4) Any industrial user which has a reasonable potential, in the opinion of the water utilities manager and the pretreatment coordinator, to:
 - a. Adversely affect the treatment plant through inhibition, pass through of pollutants, sludge contamination, or endangerment of treatment plant personnel;
 - b. Violate any pretreatment standard or requirement; or
 - c. Adversely affect the operation and maintenance of the sewage collection system through blockage; fire or explosion hazard, damage to facilities, or endangerment to personnel. This definition includes potential effects from accidental spills.

Significant noncompliance means an industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits (66% rule) as defined in this section.
- (2) Technical review criteria violations (33% rule) as defined in this section.

- (3) Any other violation of a Pretreatment Standard or Requirement as defined by Section 106-70 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the city determines has caused (alone or in combination with other discharges) interference or pass through. (Including endangerment to the health or welfare of persons).
- (4) Any discharge of a pollutant which has:
 - a. Caused imminent endangerment to the health or welfare of persons or to the environment, or
 - b. Has resulted in the city's exercise of its emergency authority to stop or prevent such a discharge.
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone in a city-issued permit or enforcement order for starting or completing construction or for attaining final compliance.
- (6) Failure to submit required baseline monitoring reports, self-monitoring reports, compliance reports, etc., within 45 days after their due date.
- (7) Failure to report noncompliance accurately.
- (8) Any other violation or group of violations which may include a violation of Best Management Practices that the city determines will adversely affect the operation or implementation of the city's pretreatment program.

Significant violator means an industrial user with violations meeting any of the criteria for significant noncompliance as defined above.

Slug Load or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 106-212 of this ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits, or Permit conditions.

Standard industrial classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972 as revised 1987 or any later revision. The SIC number characterizes the type of industrial process or operation.

Standard methods means the examination and analytical procedures set forth in the latest edition; at the time of analysis, of "Standard Methods for the Examination of Water and Wastewater" as prepared, approved, and published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.

Storm sewer, also storm drain, means a sewer which carries storm and surface waters but excludes sewage and polluted industrial wastes.

Stormwater means any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Suspended solids means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by a laboratory filtration device.

Quantitative determination of suspended solids shall be made in accordance with procedures set forth in "standard methods."

Technical review criteria (TRC) violation, also referred to as the thirty-three percent (33%) rule, means a repeated violation of discharge limits for any one pollutant parameter, in which thirty-three percent (33%) or more of all measurements taken during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 106-70 multiplied by the applicable TRC factor as follows:

TRC = 1.4 for BOD, total suspended solids, fats, oil, and grease.

TRC = 1.2 for all other pollutants excluding pH.

Toxic pollutant means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator under the provisions of Section 307(a) of the Act, or other Acts.

Toxicity test means any test measuring the lethal or sublethal effects of the treatment plant effluent on designated species of aquatic life.

Trap means a device designed to skim, settle, or otherwise remove grease, oil, sand, flammable wastes, or other harmful substances.

Under construction, for purposes of defining existing sources and new sources, means a facility is under construction if the owner or operator has:

- (1) Begun as part of a continuous onsite construction program:
 - a. Any placement, assembly or installation of facilities or equipment; or
 - b. Significant site preparation work (including clearing; excavation; removal of existing buildings, structures, or facilities; or construction of an all-weather road), which is necessary for placement, assembly, or installation of new source facilities or equipment; or
 - c. Entered into a binding contractual obligation for the purchase of facilities or equipment intended to be used in the operation of the facility within a reasonable time. (This definition excludes options to purchase, contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies).

Unpolluted water or waste means water containing:

- (1) No free or emulsified grease or oil;
- (2) No acids or alkalis;
- (3) No phenols or other substances producing taste or odor in receiving water;
- (4) No toxic or poisonous substances in suspension, colloidal state, or solution;
- (5) No noxious or otherwise obnoxious or odorous gases;
- (6) Not more than an insignificant amount in mg/1 each of suspended solids and CBOD, as determined by the Texas Commission on Environmental Quality; and

- (7) Color not exceeding 50 units as measured by the Platinum-Cobalt method of determination as specified in "standard methods".

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with pretreatment standards or requirements because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational errors, improperly designed or inadequate treatment facilities, lack of preventive maintenance, or, careless or improper operation.

USC means United States Code.

User means any person who contributes, causes, or permits the contribution of wastewater into the city sewage works.

User charge means the charge made to all users for collection and treatment of wastes, including any charges for administering the pretreatment program. The definition excludes tap fees.

User charge ordinance means the Nacogdoches City Ordinance providing a system for establishing, assessing, and collecting user charges and other charges related to the sewer system.

Waste-activated sludge means sludge wasted from an activated sludge process for treatment of domestic sewage (or for similar wastes), whether in digested or undigested form.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently.

Wholesale customer means any city, water, district, water supply corporation, or other similar entity which collects sewage from individual customers located outside the city and passes it on to the city for treatment.

Sec. 106-67. - Permits for industrial discharges.

- (a) *Permit required for industrial wastes.* Any significant or minor industrial user discharging or proposing to discharge industrial wastes (including unpolluted process water) into the city sewage works shall obtain a permit from the city for this purpose. This is in addition to any permits required by the plumbing ordinance.

Any significant or minor industrial user proposing to discharge industrial wastes shall obtain a city permit before connecting to the city sewage works. This provision applies to (1) new or relocated establishments; (2) new sources of industrial waste within an existing establishment; and (3) direct dischargers wishing to divert any part of their industrial waste to the city sewage works.

Permitting requirements shall apply to all significant or minor industrial users receiving, or to receive, service from the city's sewage works, whether located inside or outside the city. No industrial user may be served through a wholesale customer unless the city and the wholesale customer first make an agreement giving the city the same authority over industrial users as provided in this division.

Any person (not already permitted) whom the city reclassifies as a significant or minor industrial discharger shall apply for a permit within 30 days after receiving notice from the city.

Each permit for a significant industrial user shall specify appropriate limits for (1) flow and (2) concentrations and/or mass limits for pollutants. Any significant industrial user who wishes

to increase his flow, concentration, or mass of pollutants above the limits stated in his permit must obtain an amended permit from the city.

- (b) *Users subject to permit requirement.* Each significant industrial user shall obtain a permit for the discharge of any industrial waste. Each minor user, including automobile repair and servicing; shops and car washes; dry cleaners and laundries; hospitals and nursing homes; restaurants and food dispensing services; schools with cafeterias; and dry industries with a risk for accidental spills of toxic or harmful substances into the city sewer system shall likewise obtain a permit. This requirement shall apply to such facilities even when included within a larger establishment, such as restaurant facilities within a supermarket.

In the absence of evidence to the contrary, the following types of business shall not be considered significant industrial users: automobile dealers and gas stations without repair or service facilities; and schools without cafeterias.

- (c) *Application requirements.* Each application for a permit to discharge industrial waste into the sewage works shall be made on forms provided by the city or according to a format prescribed by the city. Each application shall be signed by an authorized representative of the industrial user, as defined in section 106-66, and certified by a qualified professional. A permit application shall also be required for any new sources of industrial waste within a facility.

The city may require any information in the permit application which may be deemed necessary to evaluate the application and/or to administer the pretreatment program or any other necessary monitoring. Information which may be required includes, but is not limited to, the following:

- (1) Name, address; location, applicable telephone numbers, and ownership of the industrial User (including major stockholders and/or parent corporations);
- (2) Supervisors (including shift supervisors) and other contact persons, including all persons on whom legal notice could be served;
- (3) List of any applicable environmental permits, including any permits related to transportation of waste materials;
- (4) SIC number;
- (5) Description of the operations: A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and SIC of the operation(s) carried out by the user. The description should include a schematic process diagram, which indicates points of discharge to the city's sewer system from the regulated processes.
- (6) Wastewater characteristics, certified by a reliable analytical laboratory, based on a sample which is representative of daily operations;
- (7) Time and duration of discharge;
- (8) Flow measurements. Average daily, maximum daily, and peak flow rates, in gallons per day, for industrial wastes, along with any daily or seasonal variations. This shall apply separately to each waste stream regulated by categorical standards, as necessary, to allow use of the combined waste stream formula set out in section 106-71(a)(2);

- (9) Site plans, floor plans, and details of all sewers within the plant which carry industrial waste;
- (10) Description and schedule for any facilities needed to meet pretreatment standards and/or requirements;
- (11) Each product produced by type, amount, process(es) and rate of production;
- (12) Type and amount of raw materials processed (average and maximum per day);
- (13) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- (14) Justification for discharging unpolluted process water to the sewage works rather than to natural drainage; and
- (15) Type and amount of any toxic pollutants brought into the plant, or generated within the plant, and scheduled for disposal outside the sewage works.

If an industrial user considers any of the required information to be confidential in nature, he may request the city to withhold that information from the general public according to section 106-67. The user must be able to justify his request according to subsection (i).

The city shall evaluate the data furnished by the industrial user and may require additional information. After evaluation and acceptance of the data furnished, the city will determine whether to issue a permit. The city may deny any application.

(d) *Permit modifications.*

- (1) *Pretreatment standards.* Within 45 days after the promulgation of any new or revised national pretreatment standard, the city shall revise the permits of all users subject to that standard. The revised permits shall require compliance with the standard within the time frame prescribed by that standard.

Each existing user subject to any new or revised pretreatment standard shall submit to the pretreatment coordinator the baseline report required by subsections 106-69(c)(1). This information shall be submitted within 180 days after the later of (a) the promulgation of the standard and (b) the final administrative decision by the EPA that the standard (and/or one or more specific subcategories within the standard) is applicable to the user.

New sources and sources which become subject to categorical standards after promulgation of the applicable categorical standard shall submit the required baseline report at least 90 days before beginning their indirect discharges. For these sources, the baseline report shall meet the requirements of subsections 106-69(c)(1)

This requirement for submitting information applies to any user, regardless of whether that user at the time is classified by the city as a significant industrial user.

- (2) *Conditions warranting temporary relief.* The city may modify existing permits to provide temporary relief from specific discharge limits when all of the following conditions are met:

- a. The city prohibits or limits by ordinance the discharge of a specific substance or parameter into the city's sewage works.
- b. An industrial user which discharges such substance or parameter has asked the city from relief from such restrictions and has submitted justification for such relief.

The city reasonably anticipates that the restrictive ordinance provisions will be eliminated or relaxed through pretreatment program modifications to be submitted by the city to the approval authority for approval.

- c. Both the city and the approval authority concur that temporary or permanent relief is justified.

(3) *Actions to provide temporary relief.* In cases when the conditions above are met, the city may modify the permit of any applicable industrial user to include a compliance schedule for meeting the requirements for which temporary relief is warranted. Such compliance schedule shall at a minimum meet the following requirements:

- a. Recognize the current status of the city's proposed pretreatment program modifications and the anticipated revisions to the requirements in question.
- b. Require the industrial user to submit his own compliance schedule for meeting current (unmodified) requirements no later than six months after the time that the city is scheduled to submit the pretreatment program modifications to the approval authority for approval.
- c. Note the possibility that the compliance schedule issued by the city may be changed before the expiration of the six-month period to reflect developments regarding the pretreatment program modifications.

The industrial user shall not be required to meet the requirements in question until the expiration of the six-month period, plus such additional reasonable time as may be required for compliance.

(e) *Permit conditions.* City permits for industrial waste discharges shall be expressly subject to all provisions of this division and any other applicable regulations, user charges, and fees established by the city. Permits shall contain conditions (1)—(6) below, or in the case of conditions (2) and (3) an explanation as to why these conditions are inapplicable (such as in the case of a dry industry or a minor industry). Permits may also contain any or all of the other conditions below, as applicable.

- (1) Duration (in no case more than five years) and statement of non-transferability;
- (2) Limits on the average and maximum waste constituents and characteristics, based on applicable general pretreatment standards (in 40 CFR 403), categorical pretreatment standards, local limits, and state and local law;
- (3) Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;
- (4) Requirements to control Slug Discharge, if determined by the water utilities manager to be necessary;

- (5) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law. Written documentation must be maintained to demonstrate alternate sample techniques are representative of discharge.
- (6) Requirements for maintaining and retaining plant records relating to industrial waste discharge as specified by the city, and affording the city access to those records;
- (7) Requirements for notification to the city of any new introduction of pollutants or any substantial change in the volume or character of the pollutants being introduced into the sewage works;
- (8) List of applicable civil and criminal penalties for permit violations, and any applicable compliance schedules (which may not extend the time for compliance beyond that required by applicable federal, state, or local law or regulations);
- (9) The unit charge or schedule of user charges and fees for the industrial waste to be discharged to the public sewer;
- (10) Limits on average and maximum rate and time of discharge or requirements for flow regulation and equalization;
- (11) Notice that the flow and/or pollutant loadings in the permit are temporary or subject to future modification, water utilities manager may modify an individual wastewater discharge permit for good cause, including, but not limited to, the following reasons:
 - a. To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;
 - b. To address significant alterations or additions to the User's operation, processes, or wastewater or character since the time of the individual wastewater discharger permit issuance;
 - c. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
 - d. Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel, or the receiving waters; [Note: The Control Authority should consider threats to the POTW's beneficial sludge use.]
 - e. Violation of any terms or conditions of the individual wastewater discharge permit;
- (12) Requirements for gradual phasing in and/or out of specified pollutants in the waste, when the city finds that sudden changes in concentration may interfere with treatment;
- (13) Requirements for installation and maintenance of inspection and sampling facilities, including protection from flooding and any all-weather roads necessary for access;
- (14) Requirements for submission of technical reports or discharge reports according to subsection 106-69(c), (d);
- (15) Requirements for notification of slug discharges as defined in section 106-66;
- (16) Identification of specific permitted waste streams;

- (17) Location of discharge point(s);
 - (18) Controls on batch dumping;
 - (19) Requirements for toxic organic plans and/or solvent management programs;
 - (20) Requirements for calibration of flow meters;
 - (21) Requirements for periodic cleanout (with documentation) of tanks, sumps, and grease traps;
 - (22) Requirements for operation of pretreatment facilities;
 - (23) Requirements for waste minimization plans to reduce the amount of pollutants discharged to the sewage works;
 - (24) Requirements for documenting the disposal of toxic pollutants outside the sewage works, where appropriate;
 - (25) Compliance schedules or a requirement for the user to submit a schedule;
 - (26) Stipulated administrative penalties up to \$1,000.00 per violation for further violations; and
 - (27) Other conditions as deemed appropriate by the city to ensure compliance with this division.
- (f) *Duration of permit.* Permits shall be issued for a specified time period, not to exceed five years. The user shall apply for permit reissuance a minimum of 90 days prior to the expiration of the user's existing permit. The terms and conditions of the permit may be subject to modification by the city during the term of the permit as limitations or requirements as identified in subsection (e) are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- (g) *Reporting of changes.* The industrial user shall promptly notify the city in writing of any significant changes in the data which was required for the permit application. Items which must be reported include the following:
- (1) Changes in ownership and mailing address;
 - (2) Significant changes in operations, processes, and products, including any change in the SIC number or any increase in flow of 20 percent or greater;
 - (3) Changes in strength or volume of industrial waste, including any new pollutants;
 - (4) Any changes in the layout of sewers carrying industrial wastes;
 - (5) Major changes in plant employment, production schedule, and pretreatment facility schedule;
 - (6) Any conditions which could increase the possibility of an accidental discharge; and
 - (7) Changes in type or amount of toxic pollutants scheduled for disposal outside the sewage works.
 - (8) Any changes affecting the potential for a slug discharge.

- (9) A permit may not be assigned to a new owner or to a new or changed operation without the approval of the city. Any succeeding owner to which a permit is assigned shall comply with the conditions of that permit. Permits issued to new owners or due to changed operation shall be subject to the fee charged for a new permit.
- (h) *Suspension and revocation.* Any industrial user who commits the following violations of this division is subject to having his permit revoked and services terminated according to the procedure of section 106-75:
- (1) Misrepresentation or failure to fully disclose all relevant facts in the permit application;
 - (2) Failure of a user to factually report the wastewater constituents and characteristics of his discharge;
 - (3) Failure of the user to report significant changes in operations, or wastewater constituents and characteristics;
 - (4) Tampering with monitoring equipment;
 - (5) Refusal of reasonable and timely access to the user's premises for the purpose of inspection, monitoring, or examination of records;
 - (6) Violation of conditions of the permit, including effluent limits, other pretreatment standards, and compliance schedule;
 - (7) Failure to pay user charges (including pretreatment fees) when due;
 - (8) Failure to pay fines and penalties; or
 - (9) Refusal to comply with emergency notices issued by the city under section 106-77 of this division.

The permit may also be revoked for cessation of operation with no evidence of intention to resume operation:

The permit may be reinstated only after all violations have been corrected, any applicable fines or damages have been paid to the city, and provisions have been made to prevent recurrence of the violation. Any disconnection and reconnection shall be at the expense of the user.

- (i) *Confidential information.* Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs, and inspections shall be available to the public or other governmental agencies without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information processes or methods of production entitled to protection as trade secrets of the user:

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this division, the NPDES permit, state permit and/or the pretreatment programs; provided, however, that such portions of a report shall be immediately available for use by the state or any state

agency in judicial review or enforcement proceedings involving the person furnishing the report. Waste constituents and characteristics and other effluent data defined in 40 CFR (2)302 will not be recognized as confidential information.

Information accepted by the city as confidential shall not be transmitted to any governmental agency (except as noted above) or to the general public by the city unless a ten-day notification is given to the user.

- (j) *Inactive permit status.* The city may place any permit in an inactive status in cases where no industrial wastes expected to be discharged over an extended period of time. Such cases include temporary suspension of existing discharges of industrial wastes, or long-term or indefinite postponements of proposed discharges. As long as a permit remains in inactive status, the city may suspend reporting, monitoring, and/or inspection requirements to the extent warranted by the circumstances.

The city may move any inactive permit back to active status at the request of the user, or in event of actual or imminent resumption of discharge of industrial waste.

- (k) *Cancellation of permits for former industrial users.* The city may cancel a permit for an industrial waste discharge and allow discharge without a permit in cases where a permit is no longer required. Such cases are as follows:

- (1) Industries which were permitted under previous ordinance requirements, but for which a permit is no longer mandatory because of adoption of this division or subsequent revisions.
- (2) Industries which no longer meet any of the criteria under which a permit is mandatory because of:
 - a. Major changes in operations;
 - b. Diversion of waste streams away from the sewage works;
 - c. Changes in federal regulations and/or application of regulations which cause the industry to be no longer subject to categorical standards; and/or
 - d. Determination by the city that a non-categorical industry does not meet the criterion in item (4) of the definition of a significant industrial user in section 106-66.

In such cases of permit cancellations; the user may continue to discharge as a non-industrial user unless his service is terminated according to other provisions of this division.

The city shall notify the approval authority before or after such permit cancellations, as may be required by the approval authority.

Sec. 106-68. - Control of admissible wastes.

- (a) *General.* Industrial wastes which do not violate the provisions of section 106-70, and which meet any pretreatment standards and requirements which may be applicable, may be discharged into the sewage works upon obtaining a permit according to section 106-67.

Septage, waste-activated sludge, or grease trap waste may be discharged at the treatment plant at designated locations according to subsection (i) below, provided the hauler meets all city requirements including permitting.

- (b) *Monitoring facilities.* Each significant industrial user shall provide and maintain at his own expense one or more control manholes with such monitoring facilities as may be required for the type of operation and industrial waste involved. The purpose of these facilities shall be to allow inspection, sampling, and flow measurement of the building sewer(s). The monitoring facility(ies) should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility(ies) to be constructed in the public street or sidewalk area and located so that they will not be obstructed by landscaping or parked vehicles.

In cases where regulated waste streams are mixed with other regulated waste streams or with unregulated waste streams before discharge, the city may require the control manhole(s) to be upstream from the mixing point(s). The city may require more than one control manhole in cases where two or more industrial waste streams originate in the same establishment and, in the opinion of the city, require separate monitoring. There shall be ample room in or near such control manholes or facilities to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Facilities shall be protected from flooding and shall have an all-weather access road. Construction shall be completed within 90 days following written notification by the city.

All sampling and flow measurement equipment used in control manholes shall be calibrated at the expense of the user at least semiannually with written verification submitted to the city. This equipment shall also be subject to calibration by the city, unless other arrangements acceptable to the city are made.

Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, maintained in good working order, safe from flooding, and accessible at all times. The failure of a user to keep its monitoring facility accessible and in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

- (c) *Flow measurement.* The following provisions shall apply to all users, whether residential, industrial, or other:

The water consumption for any user during the previous month from all sources shall ordinarily be the basis for computing the sewage flow. Water supplied by the city shall be determined from the meter records of the water department. If any user obtains all or part of his water supply from private wells, surface water, or other suppliers, he shall furnish the city with certified meter readings, copies of water billings, or other evidence of the amount of water consumption during the month.

Any user who wishes to measure his sewage flow directly may at his own expense install and maintain a recording flow meter. The reading obtained from this meter shall become the basis for computing the sewage flow, provided the meter:

- (1) Is of a type approved by the city;
- (2) Remains properly calibrated;
- (3) Is accessible for reading and calibration by city personnel; and
- (4) Is verified semi-annually for accuracy, with a verification report submitted to the city, at the user's expense. Verification and calibration shall be provided by a certified instrument technician at the user's expense.

Should meter readings indicate that the effluent flow meter is inaccurate, the city shall notify the user, in writing, and the user shall verify that the reading is correct or have the meter repaired, recalibrated, or replaced as necessary. The city shall adjust the billing immediately to reflect a predetermined percentage of water consumption for the sewer charge.

Should meter readings the next month indicate that the meter is still inaccurate; the city shall adjust the sewer charge to reflect 100 percent of water consumption. This charge shall remain in effect until the user provides written notification and verification that the meter has been repaired and recalibrated, and is recording effluent flow accurately.

In lieu of a permanent recording flow meter, a user may apply for a reduction in the volume of computed sewage flow by using separate water supply meters for water not returned to the sewer. The user shall provide all necessary verification to the city, including flow and piping diagrams as required.

If an unusually large amount of water has been used for watering lawns throughout the city because of dry weather, the city may adjust computed sewage flow to reflect the estimated amount of such usage.

(d) *Sampling and analyses of wastes.*

- (1) All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the pretreatment coordinator or other parties approved by EPA.
- (2) The quantitative limits for all applicable pollutants shall be sufficiently sensitive to demonstrate compliance with applicable effluent limitations. For sampling and testing required by specific instructions of the EPA or the Texas Commission on Environmental Quality, the instructions from that agency shall govern.
- (3) Samples shall be taken at intervals to be established by the city (1) to control the quality of industrial waste and/or (2) to determine surcharges. In all cases the sampling shall be performed often enough to be representative of average effluent quality. The following minimum standards are to be followed:
 - a. Except as indicated in Section b and c below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless

time-proportional composite sampling or grab sampling is authorized by water utilities manager. Where time-proportional composite sampling or grab sampling is authorized by control authority the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

- b. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
 - c. For sampling required in support of baseline monitoring and 90-day compliance reports, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the periodic compliance reports, the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.
- (4) All routine sampling and testing shall be performed by (or at the expense of) the user unless the city specifies otherwise under contract or permit provisions. The city shall have the right to perform its own sampling and testing at any reasonable time in order to check the accuracy of the user's testing. The city shall also have the right to require sample splitting upon proper notice.
- (5) For all required sampling performed by the user, chain of custody documents from sample collection through final analysis shall be maintained in the user's records with copies included with all laboratory reports submitted to the city. Records shall be retained for at least three years per subsection 106-69(i).
- (e) *Pretreatment.* Industrial users must comply with any applicable pretreatment standards or requirements in accordance with sections 106-69 and 106-71.
- (f) *Traps.* Where necessary to prevent the discharge of grease, oil, flammable substances, sand, or other harmful wastes into the sewage works, a user shall provide at his own expense a trap to intercept these substances. Traps shall not be required for private living quarters or dwellings, unless the city has observed problems in the sewage works resulting from the discharge from such dwellings.

Traps shall be required for all schools, restaurants, cafeterias, car washes, automotive services (including service stations), hospitals, nursing homes, and other commercial establishments for which, in the opinion of the city's pretreatment coordinator, a trap is necessary for protection of the sewage works. The owner or operator of an establishment shall have the right to appeal the pretreatment coordinator's decision to the water utilities manager.

The pretreatment coordinator may waive the requirement for a grease trap provided the user can verify that only domestic sewage is being discharged, with no floor drains or process water. The pretreatment coordinator may require testing by the user in connection with his request.

All traps shall be of a type and capacity approved by the city and shall be located so as to be readily accessible for easy cleaning and inspection. Grease and oil traps shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight, and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight. All traps shall be maintained by the user, at his expense, in continuously efficient operation at all times.

Each trap in active use shall be cleaned at least once every 60 days (unless the city specifies otherwise). Cleaning more frequently than 60 days may be specified by the city's pretreatment coordinator. Any user desiring a schedule less frequent than 60 days shall submit a request to the pretreatment coordinator along with testing (as required by the pretreatment coordinator) and copies of the cleaning records for the last four trap cleanings.

The user shall maintain written verification of the date when each trap is cleaned, with the location and identity of the trap clearly defined. Unless otherwise allowed by the city, such verification shall be provided by the commercial firm performing the cleaning. Such verifications shall be kept on site and available to the city for inspection and copying for a minimum of three years.

The city may assess penalties for grease trap violations according to the rate ordinance.

Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(g) *Dilution.* Dilution of wastes by increased use of process water, or by any other methods, will not be acceptable as a partial or complete substitute for adequate pretreatment to achieve compliance with a pretreatment standard or requirement, unless specifically allowed elsewhere in this division or in the applicable national pretreatment standard or local pretreatment requirement.

(h) *Slug discharges.* Significant Industrial Users must be evaluated within 1 year of designation to determine if a plan or other action to control Slug Discharge is required. The results of such activities shall be made available to the Approval Authority upon request. Significant users are required to notify the POTW immediately of any changes at its facilities affecting the potential for Slug Discharge.

(i) *Septage and other hauled wastes.*

(1) *Transporter registration.* Any person wishing to:

- a. Transport septage, waste activated sludge, or grease trap wastes from sources within the city; or
- b. Dispose of any of these wastes at the city sewage works (regardless of source) shall obtain a permit from the pretreatment coordinator for each company or individual hauling such wastes.

Haulers with city permits shall maintain copies of all city and state permits at their designated place of business and in each vehicle operated under the permit. These

documents shall be available to the operating staff of the city treatment plant at the time of delivery.

Each permit shall be for the term of one [year], with annual permit fee according to the rate ordinance. Application for permit renewal shall be made at least 30 days before expiration. The permit shall be non-transferable without the approval of the city.

(2) *Vehicles/equipment.*

- a. *Marking and identification.* Owners or operators of vacuum pump trucks shall mark each truck to show the company name, city, telephone number(s), and city and state permit numbers.
- b. *Sanitation standards.* All vehicles and equipment used for the collection and transportation of the waste shall be operated and maintained to prevent loss of liquid or solid waste materials to prevent health and safety hazards to operating personnel and the public.
- c. *Incompatible wastes.* Mixing of incompatible wastes (wastes that have different processing, storage, or disposal requirements) within the same vacuum truck for disposal at the city treatment plant is prohibited.
- d. *Sight gauges.* All vehicles used to transport wastes regulated by this permit shall be equipped with sight gauges to determine the volume of the waste delivered. Gauges shall show what percentage of the tank capacity is filled. The city may require proof of calibration of sight gauges.

(3) *Inspection.* All transport vehicles will be subject to inspection by the city for sight gauges, city and state registration, and truck marking.

A sample of the waste may be taken at the plant prior to unloading the truck. If the sample results prove unacceptable, the hauler will be responsible for the proper disposal of the waste elsewhere.

(4) *Recordkeeping.* Persons who collect and transport waste under this permit shall maintain a record of each collection. Such records shall be in the form of a trip ticket, including:

- a. Name, address, telephone number, city registration number, and Texas Commission on Environmental Quality registration number of transporter.
- b. Name, signature, address, and telephone number of the person who generated the waste and the date and time collected.
- c. Type(s) and amount(s) of all waste collected and transported.
- d. Name(s) and signature(s) of responsible person(s) collecting, transporting, and disposing of the waste.
- e. Name and signature of the facility on-site representative acknowledging receipt of the waste and the type(s) and amount of waste(s) received. This applies whether the wastes are disposed of at the city treatment plant or elsewhere.

In cases where a load of waste is rejected by the city, the rejection shall be noted on the trip ticket or on a supplementary ticket. The treatment plant operating staff shall be provided with a copy of all relevant information concerning the rejected load.

Copies of the trip tickets shall be retained for five years and shall be readily available for review by the water utilities manager and/or the pretreatment coordinator.

- (5) *Accidental discharge or spills.* In the event of an accidental discharge or spill of waste, the collector or transporter must take appropriate action to protect human health and the environment. Transporters are responsible for cleanup and for reporting spills to the city's pretreatment coordinator; to the city health inspector, if health hazards exist; and to local law enforcement if there is a possibility of a traffic hazard.
- (6) *Time and place for wastes hauled to plant.* Wastes shall be hauled to the treatment plant for disposal during hours designated by the city. The wastes shall be discharged into that portion of the plant designated by the city, provided:
 - a. The plant is capable, in the opinion of the plant operator, of receiving and treating the wastes without inconvenience to the operating staff, overloading, or degradation of plant effluent.
 - b. The city verifies by inspection that no toxic wastes, incompatible wastes (such as mixed septage and grease trap wastes), or other unacceptable wastes are present. The city reserves the right to require laboratory testing of the wastes at no cost to the city.
 - c. Grease trap wastes are delivered within 24 hours after pumpout.*

*Grease trap wastes, if disposed of at the city treatment plant, must be delivered to the plant within 24 hours after pumping from grease traps.
 - d. Inspection and treatment fees are paid according to the rate ordinance and/or the user charge ordinance.
- (7) *Penalties.*
 - a. The following may result in cancellation of the city permit and/or loss of authorization to dispose of waste at the city's facilities:
 1. Failure of a transporter to maintain records, trip tickets, or other documents properly, without falsification;
 2. Failure of a transporter to submit to the city's pretreatment personnel correct information on a permit application by the required due date;
 3. Unauthorized discharge of waste; and
 4. Failure of a transporter to maintain a current state permit and to comply with state regulations.
 - b. The city may also take any action authorized by law to secure compliance including:
 1. Assessment of administrative penalties of \$50.00 per violation per day up to \$5,000.00 maximum for the violation.

2. Seeking civil penalties as prescribed by city ordinance.

Sec. 106-69. - Pretreatment.

- (a) *Required pretreatment.* Pretreatment of industrial wastes shall be required under any of the following circumstances:
- (1) When an industrial user is subject to:
 - a. Unmodified national pretreatment standards;
 - b. Locally modified national pretreatment standards;
 - c. Local pretreatment requirements;
 - d. General prohibitions per subsection 106-70(b)(1); or
 - e. Local limits per section 106-70(d) and the industrial waste violates the applicable standard or requirement for one or more pollutants; or
 - (2) When the industrial waste is, in the opinion of the city:
 - a. Harmful to the structures; processes, or operations of the sewage disposal works;
 - b. Harmful to the receiving stream;
 - c. Detrimental to any existing or proposed method of sludge use or disposal; or,
 - (3) In cases where the treatment plant cannot safely accept the proposed pollutant loading from an industrial user because of limited treatment capacity. (In cases where there is adequate unused capacity, but that capacity is allocated or permitted to other industrial users or user classes for future growth, the city may reserve the right to require pretreatment when needed in the future.)

When pretreatment of industrial wastes is required, the industrial user shall provide, operate, and maintain at his own expense such pretreatment facilities as may be necessary to render the wastes acceptable for discharge. The user may also be required to submit schedules for compliance and other reports in accordance with subsections (c) through (g).

- (b) *Applicable standards.* The city shall notify any industrial user of any of the following requirements to which that user is subject:
- (1) National pretreatment standard (with or without local modification). The notification shall include any schedule of compliance required in the standard.
 - (2) General prohibitions (subsection 106-70(b)(1)) or local limits (subsection 106-70(d)) to the extent that the city can determine such applicability.
 - (3) Any local pretreatment requirement, including a compliance schedule, to which that user is subject. The city shall also state the reasons for the requirement.
- (c) *Reporting requirements-categorical industries.* The city shall require all industries subject to categorical standards to submit the following reports:
- (1) *Baseline report.* Within either one hundred eighty (180) days after the effective date of a categorical

Pretreatment Standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to city a report which contains the information listed in paragraph a, below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall submit to city a report which contains the information listed in paragraph b, below. A New Source shall report the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

- a. Name, address, telephone number, location, and ownership of the industrial user;
- b. Supervisors (including shift supervisors) and other contact persons.
- c. List of any environmental permits held by or for the facility, including any permits related to transportation of waste materials.
- d. Description of the operations: A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and SIC of the operation(s) carried out by the user. The description should include a schematic process diagram, which indicates points of discharge to the city's sewer system from the regulated processes.
- e. Average and maximum daily discharge flow from the user into the sewage works in gallons per day (1) from regulated process streams, (2) from other streams if necessary for use of combined formula, and (3) as totals for each discharge point. Discharges shall be measured unless otherwise allowed by the city.
- f. Measurement of Pollutants.
 1. The results of sampling and analysis identifying the nature and concentration (determined according to subsection (h)) of regulated pollutants in the discharge from each regulated process from the user, and identification of the applicable pretreatment standards and requirements. The concentration shall be reported as both an average and a daily maximum level. If an equivalent concentration limit has been calculated in accordance with the standard, this adjusted concentration limit shall also be submitted to the city for approval. If required by the applicable standard or by the city, the mass of regulated pollutants shall be reported in lieu of the concentration.
 2. Time, date and place of sampling and methods of analysis, and certification that such sampling and analysis is representative of normal work cycles and expected pollutants of discharges to the sewer system.
 4. Copies of the laboratory reports shall be provided.
 5. Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being

applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

- g. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP), the User must submit documentation required by the control authority or the Pretreatment Standard necessary to determine the compliance status of the User.
- h. Type and amount of any toxic pollutants brought into the plant, or generated within the plant, and scheduled for disposal outside the sewage works.

New sources shall provide the best practical estimates of the information noted in subitems e. and f., above. In addition, new sources shall submit the information in subitem i.

- i. Proposed method of pretreatment, if any, for meeting applicable pretreatment standards.
- j. Where the standard requires compliance with Best Management Practices, the user shall submit documentation so required by the control authority or the applicable standards to determine compliance with the standard.

In addition to subitems a—g., above; the city shall require existing sources to submit the following information:

- k. A statement, reviewed by an authorized representative of the industrial user (as defined in section 106-66) and certified to by a qualified professional, indicating:
 - 1. Whether standards and requirements are being met consistently, and if not,
 - 2. Whether additional O & M and/or pretreatment will be needed to meet the standards and requirements; and

If additional pretreatment and/or O & M is required, the shortest schedule by which the user will provide these measures. The completion date in this schedule shall not be later than the compliance date established for the applicable standard. The schedule shall be prepared according to subsection (f).

If a standard is modified for the user, either through an equivalent concentration limit or through a variance approved by the approval authority, all information in subitems i. and j. shall be based on the modified limits. If the modification occurs after the user submits the baseline report, the user shall submit amended information for subitems i. and j. within 60 days after approval of the modification.

- l. The baseline report shall be signed by an authorized representative of the user (as defined in section 106-66) and certified by a qualified professional. The authorize user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).

(2) *Initial compliance reports.*

- a. *Due date.* This report shall be submitted to the pretreatment coordinator within 90 days after the following dates:

1. For an existing source, the date for final compliance with applicable standards and requirements; or
 2. For a new source; the commencement of the introduction of industrial waste into the sewage works.
- b. *Contents.* The report shall include the following information:
1. All information listed in subsection (c)(1) above (subitems e., f., g., and j.)
 2. (For industrial users subject to equivalent mass or concentration limits established by the city) Reasonable estimate of long term production rate.
 3. (For other industrial users subject to pretreatment standards specifying pollutant quantities proportional to operation or production) Actual production during sampling period.
- c. *Certification.* The compliance report shall be signed by an authorized representative of the user: (as defined in section 106-66) and certified by a qualified professional. The authorized representative of the user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).
- (3) *Periodic compliance reports.*
- a. *Due dates.* These reports are due periodically after the initial compliance report during the months of May and November, unless required more frequently in the pretreatment standard, by the pretreatment coordinator, or by the approval authority. At the discretion of the pretreatment coordinator and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the pretreatment coordinator may agree to alter the months during which the reports are to be submitted.
- b. *Contents.*
1. Type of facility;
 2. Type of discharge;
 3. Nature and concentration (determined according to subsection (h)) of pollutants in the industrial waste which are limited by pretreatment standards and requirements.
 4. A certification statement by the industrial user indicating compliance or noncompliance with the applicable pretreatment requirements. The authorized representative of the user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).
 5. The average and maximum daily flow of:
 - i. All process units in the user's facility which are governed by the standards and requirements;
 - ii. Any other streams if necessary for use of combined formula;
 - iii. Totals for each discharge point; and
 - iv. Any other streams if required by city.

6. Production rate (long-term or for sampling period, as specified in subsection (2) above).
 7. Whether the applicable standards and requirements are being met consistently.
 8. A description of its operations and/or any changes in operations since the previous report.
 9. A description of any additional O & M modifications and/or pretreatment equipment necessary to achieve compliance for non-compliant discharges.
 10. Compliance schedules and related reports.
 11. Proof that tanks; sumps, and/or grease traps have been cleaned according to the required schedule.
 12. Proof of calibration of effluent meters and/or any other meters used for billing and/or monitoring reports
 13. A copy of the laboratory report for the required sampling and analysis.
 14. Documentation of any disposal of toxic pollutants outside the sewage works.
 15. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP), the User must submit documentation required by the control authority or the Pretreatment Standard necessary to determine the compliance status of the User.
 16. Any other items which the city may require under other provisions of this division:
- c. *Mass limitations.* The pretreatment coordinator may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by subitem b. above shall indicate the mass pollutants regulated by pretreatment standards in the industrial waste of the user.
 - d. *Certification.* The compliance report shall be signed by an authorized representative of the user (as defined in section 106-66) and certified by a qualified professional. The authorized representative of the user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).
 - e. *Waiver.* These reports may be waived to the extent that the city performs the sampling and analysis and otherwise gathers information for the reports.
- (d) *Reporting requirements - Permitted non-categorical industries.* The city shall require initial and/or periodic (monthly, quarterly, or semi-annual) self-monitoring reports from any permitted industrial user. (The reports may be waived to the extent that the city performs the sampling and analysis and otherwise gathers the information.) The information required may include any or all of the following:
- (1) Identification of the industrial user:
 - (2) List of any applicable environmental permits, including any permits related to transportation of waste materials.

- (3) A description of its operations and/or any changes in operations since the previous report.
 - (4) Process flows at all points specified by the city (average and/or daily maximum as specified by city).
 - (5) Nature and concentration (determined according to subsection (h) below) of all pollutants required by the city to be reported.
 - (6) A certification statement by the industrial user indicating compliance or non-compliance with the applicable pretreatment requirements. The authorized representative of the user shall include the certification statement specified in 40 CFR 403.6(a)(2)(ii).
 - (7) A description of any additional O & M modifications and/or pretreatment equipment necessary to achieve compliance for non-compliant dischargers.
 - (8) Compliance schedules and related reports.
 - (9) Proof that tanks, sumps, and/or grease traps have been cleaned according to the required schedule.
 - (10) Proof of calibration of effluent meters and/or any other meters used for billing and/or monitoring reports.
 - (11) A copy of the laboratory report for the required sampling and analysis.
 - (12) Type and amount of any toxic pollutants brought into the plant or generated within the plant, and scheduled for disposal outside the plant.
 - (13) Documentation of any disposal of toxic pollutants outside the sewage works.
 - (14) In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP), the User must submit documentation required by the control authority or the Pretreatment Standard necessary to determine the compliance status of the User.
- (e) *Resampling requirements.* In the event the sampling and analysis indicates non-compliance for one or more of the pollutant parameters, the industrial user shall notify the city of the violation within 24 hours after becoming aware of it. The user shall also resample for all non-compliant parameters. The repeat sampling and analysis must be completed and a report submitted to the city within 30 days after receipt of the laboratory report indicating non-compliance. The industrial user shall continue to monitor the non-compliant parameter on a 30-day schedule until compliance is achieved. The industrial user shall submit copies of all laboratory reports to the city.
- Resampling will not automatically be required if the city samples the user's effluent either monthly, or between the time of the user's sampling and the time the user receives the corresponding test results. Resampling may be required, however, on the basis of the city's test results.
- If the City performed the sampling and analysis in lieu of the Industrial User, the City will perform the repeat sampling and analysis within 30 days after receipt of the laboratory

report indicating non-compliance unless it notifies the User of the violation and requires the User to perform the repeat sampling and analysis.

- (f) *Schedule for pretreatment facilities.* In the event that any of the reports required by subsection (c) or (d) indicate the need for pretreatment facilities, the industrial user shall provide the city with a scheduled for facility installation. The following conditions shall apply to the required schedule:
 - (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards and/or requirements (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, beginning routine operation, etc.).
 - (2) No increment referred to in paragraph (1) shall exceed nine months.
 - (3) Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the pretreatment coordinator including, as a minimum, (1) whether or not it complied with the increment of progress to be met on such date and, if not, (2) the date on which it expects to comply with this increment of progress; reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the pretreatment coordinator.
- (g) *Submission-of plans.* Any industrial user required to construct pretreatment facilities shall submit to the city detailed plans for their construction and for their operating procedures. The city must approve these plans before construction begins. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this division. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the city prior to the user's initiation of the changes.
- (h) *Sampling and analysis for reports.* The reports required by subsections (c)[(1)f., (2)b.1. (referring to (1)f.), (3)b.3.], (d)(4), and (e) shall contain the results of sampling and analysis of the industrial waste, including the flow and the nature and concentration (or production and mass where applicable) of pollutants contained therein which are limited by the applicable standards. The frequency of monitoring shall be prescribed in the applicable standard (or by the city in cases of sampling due to city requirements). The nature of the sampling (grab, flow composite, or time composite), the number of samples, sample preservation, and holding time shall be as directed by the city, but in no case less stringent than required by the standard or by 40 CFR 403. Sampling locations shall be as directed by the city.

Sampling for these reports shall be conducted during the reporting period and shall be representative of daily operations and conditions occurring during that period. If any pollutant is monitored (according to the requirements of this subsection) more frequently than required by the city, the results of the additional monitoring shall be included in the report.

All sampling and analysis procedures shall be as required in subsection 106-68(d).

The laboratory report shall identify the industrial facility and show all times, dates, sampling locations, and analytical methods. The industrial user shall certify that the sampling is representative of normal work cycles and operating conditions. The report shall include documentation of the chain of custody from sampling through testing.

- (i) *Recordkeeping.* User subject to the reporting requirements of this division shall retain, and make available for inspection and copying all records of information obtained pursuant to any monitoring activities (a) required by this division or (b) undertaken by the user independent of such requirements and documentation associated with Best Management Practices. Records shall indicate the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates and by whom analyses were performed; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall automatically be extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention time by the city.
- (j) Operation of pretreatment facilities.
 - (1) *General.* Any industrial user who operates pretreatment facilities as a requirement for meeting pretreatment standards or requirements shall normally:
 - a. Keep the pretreatment facilities in full operation at all times during discharge of industrial waste to the sewage works, and
 - b. Route all designated industrial waste through such facilities prior to discharge.
 - (2) *Applicability.* This requirement shall apply only to those specific waste streams for which pretreatment is required by permit. Pretreatment operation is required only during periods of discharge of designated waste, plus such startup operations as are necessary to prevent inadequate treatment.
 - (3) *Bypass.*
 - a. *Definitions.*
 - 1. *Bypass* means the intentional diversion of waste streams from any portion of an industrial user's treatment facility.
 - 2. *Severe property damage* means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 - b. *Bypass not violating applicable pretreatment standards or requirements.* An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (c) and (d) of this section.
 - c. *Notice.* If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the city, if possible at least ten days before the date of the bypass.

- (4) *Notice of bypass.* An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the city within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The city may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- a. *Prohibition of bypass.*
1. Bypass is prohibited, and the city may take enforcement action against an industrial user for a bypass, unless;
 - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
 - iii. The industrial user submitted notices as required under paragraph (3) of this section.
 - b. The city may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the three conditions listed in paragraph (d)(1) of this section.
- (k) *Public notification by city.* The city shall annually publish in a newspaper of general circulation that provides meaningful public notice with the jurisdiction served by the City of Nacogdoches, a list of industrial users in significant noncompliance with the city's pretreatment program (as defined in [section] 106-66) for the preceding 12-month period. The city may at its discretion publish information on permit violations, including any corrective or remedial measures by the violator, at any time.
- (l) *Annual inspection.* The city shall inspect each significant industrial user which holds an active permit at least once per year. The city shall, in conjunction with the inspection, sample all waste streams containing industrial waste. Minor industries shall be inspected at least once every three years; although sampling need not be performed unless applicable to the permit.

All records relating to compliance with pretreatment standards shall be made available to officials of the EPA or approval authority upon request.

Sec. 106-70. - Prohibited or limited discharges.

- (a) *Infiltration/inflow sources.* No person shall discharge any stormwater, ground water, roof runoff, foundation drains, subsurface drainage, downspouts, yard drains, ponds, or lawn sprays into any sanitary sewer, or into any building sewer or industrial sewer connected thereto. Stormwater and all other unpolluted drainage shall be discharged into storm sewers or to natural outlets approved by the city.

All building drains, building sewers, industrial sewers; and sanitary sewers leading to the public sewers, including connections thereto, shall be constructed and maintained so as to exclude any ground or surface water from entering the sewer. The city shall require the owner of any of these facilities to correct at his own expense any leaks or other conditions allowing the entry of groundwater or surface water into the sewage works. This provision shall apply to all such leaks or conditions whether they exist prior to the effective date of this division or occur at a later date.

The requirements of the plumbing ordinance, where applicable, shall govern the construction of these facilities. All sewer repairs shall be inspected by the city in the same manner as new facilities. Unpolluted industrial process water (if not returned to a process) may be discharged into storm sewers, natural outlets, or the sewage works, as agreed on by the user, the city, and any applicable state or federal regulatory agencies. Any new discharge of such water into the sewage works shall require the written approval of the water utilities manager and/or the pretreatment coordinator. The city may require written justification for any existing or proposed discharge of unpolluted water, based on factors such as economic considerations and regulatory requirements for direct dischargers. In the case of cooling water, the city may require cooling before discharge to the sewage works or otherwise.

- (b) *Prohibited discharges.*

- (1) *General prohibitions.* No user shall discharge or otherwise introduce into the sewage works any pollutant or sewage which causes pass through or interference. This prohibition applies to all industrial and nonindustrial users (regardless of whether they are subject to categorical standards, pretreatment requirements, and/or permitting) and also to all waste haulers.
- (2) *Specific.* No person shall discharge either directly or indirectly any of the following described substances, materials, waters or waste:
 - a. Pollutants which create a fire or explosive hazard in the sewage works, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degree Fahrenheit (60 degrees Centigrade) using the test methods specified in 40 CFR 261.21;
 - b. Any waters or wastes having a pH lower than 5.5 or higher than 9.5 or having any corrosive property capable of causing damage or hazards to structures, equipment, or personnel of the sewage treatment plant;
 - c. Any solids, slurries, or viscous substances of such character and amounts as to be capable of obstructing the flow in sewers, or otherwise interfering with the proper operation of the sewage works, such as ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, hair

and fleshlings, entrails, lime slurry, lime residues, slops, chemical residues, paint residues, grease trap cleanings, or bulk solids;

- d. Pollutants, including oxygen demanding pollutants (CBOD, etc.), discharged at a flow rate and/or pollutant concentration which, either, singly or by interaction with other pollutants, will cause interference;
- e. Any liquid having a temperature higher than 150 degrees Fahrenheit (65 degrees Centigrade), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case any sewage which raises the temperature at the upstream end of the treatment plant above 104 degrees Fahrenheit (40 degrees Centigrade);
- f. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the sewage works in a quantity that may cause acute worker health and safety problems;
- h. Trucked or hauled pollutants, except for those wastes authorized in subsection 106-68(i) of this division, and then only at the treatment plant according to subsection 106-68(i);
- i. Any water or waste which contain wax, grease, or oil, plastic or other substance that will solidify or become discernibly viscous at temperatures between 32 degrees to 150 degrees Fahrenheit;
- j. Any garbage except properly shredded garbage as defined in section 106-66;
- k. Any noxious or malodorous substance, which either singly or by interaction with other substances is capable of causing objectionable odors, or hazard to life; or forms solids in concentrations exceeding limits established in subsections (c), (d), and (e); or creates any other condition deleterious to structures or treatment processes; or requires unusual provisions, alteration, or expense to handle such material; or can prevent entry into the sewers for maintenance and repair;
- l. Any wastes or waters containing suspended or dissolved solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant or in the public sewage works;
- m. Any waters or wastes containing a toxic or poisonous substance such as plating or heat treating wastes in sufficient quantity to injure or interfere with any sewage treatment process, to constitute a hazard to persons or animals, or to create any hazard in the receiving stream of the sewage treatment plant;
- n. Any materials causing excessive discoloration to the treatment plant effluent, unusual or immediate biochemical oxygen demand, or hydrogen sulfide concentrations sufficient to cause explosion hazards or structural corrosion;
- o. Any antibiotics, bactericidal solutions, or bacteriostatic solutions, unless rendered ineffective by pretreatment;
- p. Sludges, screenings, or other residues from the pretreatment of industrial wastes;

- q. Medical wastes, unless specifically authorized in a permit;
 - r. Sewage causing alone or in conjunction with other substances, the treatment plant effluent to fail a toxicity test; or
 - s. Detergents, surface-active agents, or other substances which may cause excessive foaming in the treatment plant
- (c) *Limited discharges (general)*. Except in concentrations, or with provisions stipulated herein, no person shall discharge either directly or indirectly to the sewer works waters or wastes containing any of the following:
- (1) Free or emulsified oil and/or grease exceeding 100 ppm if, in the opinion of the city, it appears probable that such wastes:
 - a. Can deposit grease and oil in the sewer lines in such a manner as to clog the sewers;
 - b. Can overload skimming and grease handling equipment;
 - c. Are not amenable to bacterial action and will therefore pass to the receiving waters without being affected by normal sewage treatment processes; or
 - d. Can have deleterious effects on the treatment process due to the excessive quantities;
 - (2) Any radioactive wastes greater than the allowable releases as specified by current United States Bureau of Standards handbooks dealing with the handling and release of radioactivity;
 - (3) Cyanides or cyanogen compounds capable of liberating hydrocyanic gas on acidification in excess of 0.5 ppm by weight as CN in the wastes from any outlet into the public sewers;
 - (4) Chlorides in excess of 250 mg/l; or
 - (5) Substances causing an excessive chemical oxygen demand.
- (d) *Technically based local limits*. The allowable concentrations of specified substances in mg/l, determined on the basis of individual sampling in accordance with "standard methods," are as follows. These limits are approved by the approval authority as being technically based local limits, derived according to procedures specified or approved by the EPA for protection of the receiving stream, the treatment process, and the city's sludge disposal method. These limits may not be modified without the approval of the approval authority.

	Not To Exceed		
Substance	Monthly Average	Daily Average	Daily Composite
Aluminum	—	2.9	2.9

Arsenic	—	0.3	0.3
Cadmium	—	0.025	0.05
Chromium (total)	—	3.4	3.4
Chromium (hexavalent)	—	0.0012 ¹	0.0012 ¹
Copper	0.9	—	2
Cyanide	—	0.1	0.25
Mercury	—	0.000 ²	0.000 ²
Nickel	—	1.5	3.1
Silver	—	0.25	0.5
Zinc	0.65	—	0.7

	Monthly Average		Daily Composite	
Substance	Tier I ³	Tier II ⁴	Tier I ³	Tier II ⁴
Lead	0.33	0.002	0.79	0.004

¹For Hexavalent Chromium, permit compliance determinations will be based on the MAL (minimum analytical level). Monitored discharge concentrations measured as less than the MAL shall be deemed to be compliant with the limit.

²For mercury, permit compliance/noncompliance determinations will be based on the minimum analytical level of 0.0002 mg/L. Monitored discharge concentrations measured as less than 0.0002 mg/L shall be deemed to be compliant with the mercury limit. Mercury concentrations measured below that value shall be reported as "<0.0002 mg/L" and shall be interpreted as zero values for compliance purposes.

³Tier I monthly average and daily composite Local Limits for lead apply to Users that discharge less than one million gallons per day of sewage.

⁴Tier II monthly average and daily composite Local Limits for lead apply to Users that discharge greater than one million gallons per day of sewage.

- (e) *Other hazardous metals.* The allowable concentrations of hazardous metals in mg/l, determined on the basis of individual sampling in accordance with "Standard methods," are:

	NOT TO EXCEED		
Metal	Average	Daily Composite	Grab Sample
Barium	1	2	4
Manganese	1	2	3
Selenium	0.05	0.1	0.2

- (f) *Other hazardous materials*

- (1) Any User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharged more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. The notification requirement in this Section does not apply to pollutants already reported by Users subject to categorical Pretreatment Standards.
- (2) Dischargers are exempt from the requirements of paragraph 1, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.
- (3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the control authority, the EPA Regional Waste

Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

- (4) In the case of any notification made under this Section, the User shall certify that it has a program in place to reduce the volume of toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

(g) *Accidental discharges.*

- (1) *General.* Each user as specified in subsection (2) below shall provide protection from (a) accidental discharge of materials prohibited or regulated by this division and (b) slug discharges. The user shall provide and maintain the necessary facilities at his own expense.

Detailed plans showing facilities and operating procedures to provide this protection (as specified in subsection (3) below) shall be submitted to the city for review, and shall be approved by the city before construction of the facility. No new user shall be permitted to introduce pollutants into the system until accidental discharge procedures have been approved by the city.

Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify his facility as necessary to meet the requirements of this division.

In the case of an accidental discharge; it is the responsibility of the user to immediately telephone and notify the city of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and corrective actions.

Within five days following an accidental discharge, the user shall submit to the pretreatment coordinator a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the treatment plant, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties; or other liability which may be imposed by this division or other applicable law.

A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous discharge.

Employers shall insure that all employees who may cause or suffer such a dangerous discharge to occur are advised of the emergency notification procedure. Such notice shall be replaced promptly by updated notices as issued by the city.

- (2) *Applicability.* The requirements of this subsection shall apply to each industrial user and also to each commercial (non-industrial) user, including dry industries, which the city has reason to believe may have the potential for accidental discharges of prohibited

or regulated materials. Each existing user which the city determines to be subject to the requirements of this subsection shall submit the necessary plans upon 90 days' notice by the city. In lieu of the required plans, any user may provide verification to the satisfaction of the city that such plans are inapplicable.

- (3) *Requirements for plans.* The plans required by this subsection shall address the following as a minimum:
 - a. Description of discharge practices, including nonroutine batch discharges;
 - b. Description, location, and storage facilities for stored chemicals;
 - c. Procedures for immediately notifying the city of any accidental or slug discharge, including names or positions of responsible personnel; and
 - d. Procedures and facilities to prevent adverse impact from any accidental or slug discharge. Such measures include, but are not limited to inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
- (4) *Periodic evaluation by city.* At least every two years the city shall perform the following evaluations:
 - a. Adequacy of each existing plan for control of accidental discharges and slugs.
 - b. Possible need for such plans for users who have previously verified the inapplicability of such plans, or who have not previously been identified as needing them.
- (5) Notification of facility changes affecting potential slug discharge.

Sec. 106-71. - Establishment of standards.

- (a) *National pretreatment standards.* Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts, 405-471.
 - (1) Each existing national pretreatment standard (with any authorized local modification) shall be binding on those industrial users covered by that standard. Any new industrial users who are covered by one or more standards, or existing users who become covered by such standard(s) because of new or changed operations, shall be governed by the pretreatment standards in the same manner as existing users. If the EPA should subsequently revise any existing standards or promulgate new standards, these revisions or new standards shall automatically be binding in the same manner as existing standards.
 - (2) When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, water utilities manager shall impose an alternate limit in accordance with 40 CFR 403.6(e).
- (b) *Modification of pretreatment standards.* If the city's treatment works is found to achieve consistent partial removal of one or more pollutants limited by national pretreatment standards, the city may apply to the approval authority for modification of specific limits in

the standards. Upon approval of the approval authority, the city may modify one or more pollutant discharge limits in the pretreatment standards. These modified limits shall be binding upon all industrial users subject to the specific standards which have been modified. The modified limits shall remain in effect as long as the approval authority does not withdraw the authorization for the modification or revise the extent of modifications.

- (c) *Local pretreatment requirements.* The city may develop specific limits for the following prohibited discharges and may incorporate such limits into this division or may publish them as a separate ordinance.

- (1) Pollutants which create a fire or explosion hazard in the collection or treatment works;
- (2) Pollutants which will cause corrosive structural damage to the collection or treatment works;
- (3) Solid or viscous pollutants amounts which will obstruct the flow in sewers or otherwise interfere with the operation of the sewage treatment plant;
- (4) Any pollutant; including oxygen demanding pollutants, released in a discharge of such volume and strength as to cause interference in the sewage treatment plant; and
- (5) Heat in amounts which will inhibit biological activity in the sewage treatment plant or raises the temperature of the treatment plant influent above 104°F.

The city may develop other local pretreatment requirements not covered by pretreatment standards if it is found necessary to prevent interference with the treatment process, overloading of the sewage treatment plant, interference with sludge disposal, or stream pollution. These pretreatment requirements shall be incorporated into this division or shall be published as a separate ordinance.

- (d) *Termination or revision of local modifications.* If the approval authority should:

- (1) Withdraw its approval of any local modifications to national pretreatment standards, or
- (2) Revise the extent of such modifications,

The pretreatment standards with any remaining modifications shall become binding on all users covered by those standards. The users will be required to achieve compliance within the time schedule specified by the approval authority.

- (e) *City's right of revision.* The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the sewage works.

- (f) *Notification of industries.* The city shall promptly notify all affected industries in writing of:

- (1) Any pretreatment standards which are in effect on the effective date of this division;
- (2) Any new pretreatment standards or requirements, or any revisions to existing standards or requirements;
- (3) Any local modifications to national pretreatment standards;
- (4) Termination or revision of any local modifications to pretreatment standards;

- (5) Any applicable state pretreatment standards.
 - (6) Any new or revised sampling, monitoring, or reporting requirements;
 - (7) Reclassification of industry as significant industrial user or otherwise;
 - (8) Reclassification of industry as subject to pretreatment standards or otherwise; or
 - (9) Any changes in permit status, such changing to active or inactive status.
 - (10) The required notice to industries shall include any appropriate schedules of compliance as specified by the approval authority or by the city.
- (g) *Uniform application.* Any limitation on quantity, concentration, or discharge rate of a specific pollutant shall be applied uniformly to all new or existing discharges within any industrial category. This applies to national pretreatment standards or any local modifications thereto; limitations on prohibited discharges as listed in subsection (c); any state pretreatment standards; and any other local pretreatment requirements.

Sec. 106-72. - Protection from damage.

No unauthorized person shall maliciously, willfully, or negligibly break, damage, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the city sewage works. The city may pursue all criminal and civil penalties to which it is entitled under authority of statutes and ordinances against a person violating this section of the division.

Sec. 106-73. - Substances not discharged into sewage works.

- (a) No person may discharge any substances, whether normal domestic sewage, admissible industrial waste, prohibited substances, or unpolluted water, into the sewage works except through a building sewer or industrial sewer as authorized by the city. This provision shall not apply to city forces or contractors in the course of performing construction, maintenance, cleaning, or testing of the sewage works. This provision shall also not apply to liquid waste delivered to the treatment plant and accepted by the operating staff according to subsection 106-68(i) of this division.
- (b) The city may require information from any industry within the city regarding the type and amount of toxic pollutants scheduled for disposal outside the city sewage works. This requirement shall apply to all industries whether dry industries or subject to permitting as industrial users.
- (c) The city shall require documentation of the time and method of transportation and disposal of toxic pollutants outside the sewage works within ten days after removal from the plant, unless otherwise specified in the applicable discharge permit.

Sec. 106-74. - User charges.

The following user charges shall be assessed and collected as prescribed by the rate ordinance and/or the user charge ordinance:

- (1) Collection and treatment charges for-normal domestic sewage and for industrial wastes.
- (2) Pretreatment fees for industrial users subject to mandatory pretreatment of wastes.

- (3) Treatment charges for septage, waste activated sludge, and grease trap wastes.
- (4) Surcharges for parameters outside allowable values, or for grease trap violations.

Sec. 106-75. - Billing.

- (a) *Billing procedure.* All user charges for normal domestic sewage and industrial waste, including pretreatment fees, as well as all surcharges, shall be assessed and collected according to provisions of the rate ordinance and/or the user charge ordinance.
- (b) *Grounds for disconnection.* Any of the following violations shall be sufficient reason to disconnect any and all water and/or sanitary sewer service provided by the city, after the prescribed notification and hearing process is carried out:
 - (1) Failure to pay monthly bills for city services when due, including all user charges for the sewage works.
 - (2) Violations by industrial users, as listed in subsection 106-67(h).
 - (3) Any other violations of this ordinance, when termination of services is prescribed by injunction according to subsection 106-76(d).

Before terminating water and/or sanitary sewer services for nonpayment, the city shall notify the user of its intention and shall allow a minimum of ten days to show cause why such services shall not be terminated.

[(c)] *Restoration of service.* Reconnection shall be made only after:

- (1) Payment of:
 - a. All outstanding charges for city services;
 - b. Any charge for late payment which may be provided in the city ordinance prescribing user charges;
 - c. Any lawfully assessed fines and damages; and
 - d. Disconnection and reconnection expenses.
- (2) Evidence satisfactory to the pretreatment coordinator that restoration of service will not result in hazardous discharges to the sewage works (if applicable).
- (3) Reinstatement of the user's discharge permit (if applicable).

Sec. 106-76. - Enforcement powers.

- (a) *Access.* Authorized personnel (from the city, the approval authority, or the EPA) bearing credentials and identification shall be permitted to gain ready access (within 15 minutes) at all reasonable times to such properties as may be necessary for the purpose of inspection, observation, measurement, sampling, testing, calibration, examining, and copying records in accordance with provisions of this division. When a user has security measures requiring proper identification and clearance before entry into its premises, the user shall arrange with its security guards for the pretreatment coordinator to enter without delay upon presenting suitable identification.

Properties to which such access must be granted include, but are not limited to, effluent sources, pretreatment systems, monitoring facilities, flow meters (when used for billing and/or monitoring purposes), control manholes, and any areas where records are kept to satisfy federal,

state, or local requirements to assure compliance with pretreatment standards. The city, the approval authority, or the EPA shall also have a right to install such devices upon a user's property as are necessary to conduct sampling inspection, compliance monitoring, and/or metering operations.

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user (at his own expense) at the written or verbal request of the pretreatment coordinator and shall not be replaced.

(b) *Search warrants.* If the pretreatment coordinator has been refused access to a building, structure or property, or any part thereof, and can demonstrate:

- (1) Probable cause to believe that there may be a violation of this division, or
- (2) The need to inspect and/or sample as part of a routine inspection and sampling program of the city designed (a) to verify compliance with this division or any permit or order issued hereunder, or (b) to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from the appropriate city or state court.

(c) *Minimum procedures in event of violation.*

- (1) *General.* Any person discovered to be violating this division shall, at a minimum, be subject to the following enforcement proceedings. (In cases of emergency, as defined in section 106-66, section 106-77 will apply. Severe or recurring violations may result in measures listed in subsections (d) through (f) below.)

Except in an emergency, the city shall not terminate water and/or sewer service without due process of law as provided in this section or in subsection 106-75(b).

- a. Upon identification of an industrial user's permit violation, the city shall notify the violating user by telephone and/or letter of the violation and request corrective action.
- b. If additional monitoring indicates that the violation has not been corrected, the city shall provide a written notice of violation to the industrial user, indicating that it is in violation of its permit. The notice of violation shall require the violating user to submit to the city a written report explaining the cause of the violation, describing corrective measures, and specifying a compliance schedule under which it will implement said corrective measures.
- c. If the industrial user fails to respond within 30 days after the notice of violation, or if the city finds its response inadequate, the city shall attempt to meet with the management of the user to develop corrective actions and a compliance schedule.
- d. If the industrial user fails to agree to adequate corrective actions and a compliance schedule within 90 days after the notice of violation or fails to implement corrective actions in accordance with its compliance schedule, the city shall:
 1. Assess an administrative penalty against the user and/or
 2. Initiate legal action to assess a fine against the user.

If the violation creates a potential health hazard or an upset condition at the city's sewage works, the city shall also initiate action to discontinue water and/or sewer service to the user.

2. *Flexibility of action.* The city [may] at its option shorten the time frames listed above within this subsection, and/or skip one or more steps in cases where deemed necessary or appropriate by the water utilities manager and/or the pretreatment coordinator. Such cases include, but are not limited, to significant violators (as defined in section 106-66); incidents of harm to the treatment works and/or the environment; obvious failure to undertake corrective action; failure to respond to communications from the city; falsification of information provided to the city; and users with a history of serious, prolonged, or recurring noncompliance.
 3. *Significant violations.* All significant violators (as defined in section 106-66) shall incur at the minimum an administrative fine, a stipulated penalty, and/or legal action to assess a fine, in addition to requirements for correcting and/or remediating the violation(s). Notice shall be served on the user within 30 days after identification of significant violation.
 4. *Stipulated penalties.* The provisions of this subsection shall not prevent the city from assessing any stipulated penalties and/or surcharges specified in other portions of this division, in the rate ordinance, or in the users permit.
- (d) *Injunctive relief.* The city shall have the right to seek injunctive relief against violators of this division in such city, county, state, or federal courts as may be deemed appropriate, where such action is necessary to achieve compliance. Injunctive relief may include:
- (1) Specific performance of the division with respect to discharge standards, reporting requirements, payment of user charges; access to industrial properties, repair of private sewer leaks; or other provisions;
 - (2) Termination of service where necessary for compliance;
 - (3) Liquidated damages for any illegal discharges which result in:
 - a. Damage to the sewage works;
 - b. Excessive treatment costs; and/or
 - c. Fines for stream pollution;
 - (4) Civil penalties designed to recover any economic benefits which the user may have received through noncompliance, including avoided or delayed costs for compliance; and/or
 - (5) Environmental remediation if needed.
- A petition for injunctive relief shall not be a barrier against, or a prerequisite for, taking any other action against a user.
- (e) *Miscellaneous remedies.* The city may take any or all of the following actions where such action is necessary to achieve compliance. None of these actions shall be a barrier against, or a prerequisite for, taking any other action against a user.

- (1) Administrative penalties not to exceed \$1,000.00 per violation or \$2,000.00 per administrative order. These penalties will be assessed by the pretreatment coordinator along with an administrative order citing the applicable violations. The user shall have the right of appeal to the water utilities manager, then (if unsuccessful) in city court.
- (2) Consent orders or similar documents establishing a judicially enforceable agreement with a user.
- (3) Show cause hearings in the appropriate city, county, or state court in which the user must show cause why a proposed enforcement action should not be taken. The city shall serve any authorized representative of the user (as defined in section 106-66) with a notice stating the time and place for the hearing; the proposed enforcement action, the reasons for such action, and an opportunity to show cause why the action should not be taken. The notice shall be served personally or by registered or certified mail at least three days before the hearing.
- (4) Compliance orders or administrative orders imposing a schedule for compliance and, if appropriate, specific measures designed to assure compliance. The order may state that sewer service will be discontinued if compliance is not achieved within the specified time.
- (5) Cease and desist orders requiring immediate compliance even to the extent of halting operations.
- (6) The requirement of a performance bond as a prerequisite for permit issuance or renewal in an amount determined by the city as necessary to assure consistent compliance.
- (7) Issuance of a permit with a duration less than the standard duration.
- (8) Referral to the approval authority for further enforcement action.
- (f) *Severe violations.* The city may seek injunctive relief or may assess a fine not to exceed \$2,000.00 per day per violation against persons falling in the following categories:
 - (1) Willful violators of any provisions of this division;
 - (2) Persons refusing access or placement of equipment under the provisions of subsection (a);
 - (3) Persons not complying promptly with duly issued notices or agreements to correct violations;
 - (4) Persons discharging pollutants which can:
 - a. Cause structural damage to the sewage works;
 - b. Obstruct the collection lines;
 - c. Interfere with the treatment process;
 - d. Create fire or explosion hazard; or
 - e. Cause a violation of stream standards.
 - (5) Persons not complying with emergency notices issued by the city under section 106-77 of this division;

- (6) Persons failing to comply with reporting or notification requirements; or
- (7) Persons making false or fraudulent statements in connection with their sewer use.

For violations of a monthly average permit limit, each day of discharged during the month may be considered a day of violation.

- (g) *Limits of inquiry.* No person acting for the city under subsection (a) may inquire into the processes of any industrial user beyond that point having a direct bearing on the type and source of discharge into the sewage works.
- (h) *Staying of enforcement pending ordinance modifications.* The enforcement procedures listed in this section of the division shall be stayed to the extent that the requirements in question are covered by the city-issued compliance schedule specified in subsection 106-67(d)(3) of this division as long as the industrial user remains in compliance with such compliance schedule.
- (i) *Act of God defense.*
 - (1) The act of God defense constitutes a statutory affirmative defense [Texas Water Code §7.251] in an action brought in municipal or state court. If a person can establish that an event that would otherwise be a violation of a pretreatment ordinance, or a permit issued under the ordinance, was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of the ordinance or permit.
 - (2) An industrial user who wishes to establish the act of God affirmative defense shall demonstrate through relevant evidence that:
 - a. An event that would otherwise be a violation of a pretreatment ordinance or a permit issued under the ordinance occurred, and the sole cause of the event was an act of God, war, strike, riot, or other catastrophe; and
 - b. The industrial user has submitted the following information to the pretreatment coordinator within 24 hours of becoming aware of the event that would otherwise be a violation of a pretreatment ordinance or a permit under the ordinance (if this information is provided orally, a written submission must be provided within five days):
 - 1. A description of the event, and the nature and cause of the event;
 - 2. The time period of the event, including exact dates and times or, if still continuing, the anticipated time the event is expected to continue; and
 - 3. Steps being taken or planned to reduce, eliminate and prevent recurrence of the event.
 - (3) *Burden of proof.* In any enforcement proceeding, the industrial user seeking to establish the act of God affirmative defense shall have the burden of providing, by a preponderance of the evidence, that an event that would otherwise be a violation of a pretreatment ordinance, or a permit under the ordinance, was caused solely by an act of God, war, strike, riot or other catastrophe.
- (j) *Affirmative defense for prohibited discharge standards.* A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the prohibitions

in subsections 106-75(b)(1) and 106-75(b)(2) (items c. through g.) of this division if it can prove that:

- (1) It did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference; and
- (2) Either:
 - a. Limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
 - b. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city's treatment plant was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.
- (k) *Uniform application.* All provisions of this division shall be impartially enforced for all users, or for all users within a specific category when applicable. No distinction shall be made between existing and new dischargers, or between existing and new haulers of septage, waste-activated sludge, and/or grease trap wastes.

All retail users of the sewage works, whether located inside or outside the city, shall be subject to the provisions of this division. In the event that any user outside the extraterritorial jurisdiction of the city requests services, the city shall require the execution of any necessary service contracts to ensure compliance with the provisions of this division.

(l) *Criminal prosecution.*

- (1) A user who willfully or negligently violates any provision of this division, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$2,000.00 per violation, and each day that the violation continues shall constitute a distinct and separate offense.
- (2) A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a maximum fine of up to \$2,000.00. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law. Each day that the violation continues shall constitute a distinct and separate offense.
- (3) A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this division, individual wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this division shall, upon conviction, be punished by a fine of not more than \$2,000.00 per violation. Each day that the violation continues shall constitute a distinct and separate offense.
- (4) Nothing in this section shall limit in any manner the authority of the city to seek any injunctive or other civil relief available under state or federal law.

Sec. 106-77. - Emergency procedures.

- (a) *Severe emergencies.* The city shall take immediate action to stop any actual or imminent discharge of corrosive, flammable, toxic, organic, or other substances which can cause:
- (1) Rapid deterioration of the sewage works;
 - (2) Major fire or explosion hazards; and/or
 - (3) Severe danger to the health or welfare of persons.

In the event of actual or imminent discharge as described in this subsection, the city shall, if necessary, shutoff any or all water and/or sewer services immediately. The city shall make all possible efforts to notify the affected user prior to shutting off services, so that the user may begin shutdown operations so as to minimize damage to his property. The water utilities manager and/or the pretreatment coordinator may, at his discretion, notify the user to take immediate action to stop or prevent such discharges in lieu of immediate shutoff of city services, provided such action is effective in eliminating the hazards described above. If the user fails to eliminate the hazard immediately and effectively, the city shall proceed at once to shut off water and/or sewer services.

- (b) *Less severe emergencies.* The city shall notify a user immediately if an actual or imminent discharge from that user contains corrosive, toxic, viscous, organic, or other substances which can cause:
- (1) Severe blockage of major collection lines, or
 - (2) Severe interference with the treatment process. Non-compliance with ordinance or permit for facilities subject to Best Management Practices.

The required notice shall inform the user of the nature of his violation and of the actual and potential consequences to the sewage works, the treatment process, and/or the environment. Such notice shall require the user to take immediate action to stop the discharge of substances described above, even to the extent of shutting down his operation if necessary. If the user fails to take immediate action, or if the action taken is ineffective, the city shall shut off water and/or sewer service.

- (c) *Restoration of service.* If water and/or sewer service to any user is shut off by the city under subsection (a) or (b) of this section, the city shall not restore the service until the water utilities manager and/or the pretreatment coordinator is satisfied that restoration of service will not result in hazardous discharges to the sewage works. The water utilities manager and/or the pretreatment coordinator may at his discretion restore partial service to the extent required for cleanup and repair operations, withholding full service until the industrial process can be resumed without resulting in hazardous discharges.

Any disconnection and reconnection performed under this section of the ordinance shall be at the expense of the user.

- (d) *Penalties.* If additional damages to the sewage works, to the environment, or to the health and welfare of persons results because the city:
- (1) Allows a user to stop a hazardous discharge by his own procedures, or
 - (2) Restores all or part of city services to facilitate cleanup, the fact that the city took such discretionary action will not relieve the user of any applicable civil or criminal penalties for such additional damages.

Sec. 106-78. - Penalties.

- (a) *Violation of state and federal statutes.* If any person violates any provision of this division, and thereby violates a state or federal statute or injunction, the city may seek prosecution of that person in the appropriate state or federal court, and may seek such penalties as are prescribed by that statute or injunction.
- (b) *Fines.* If any person violates any provision of this division and the violation is not punishable in state or federal courts, that person shall be guilty of a misdemeanor upon conviction in the city court. Each offense shall be punished by a fine not to exceed \$2,000.00. Each day of such violation shall be deemed a separate offense. For violations of a monthly average permit, each day of discharge during the month may be considered a day of violation.
- (c) *Damages.* Any person violating any of the provisions of this division shall become liable to the city for any expense, loss, or damage incurred by the city by reason of such violation. Such recoverable expenses shall include, but not be limited to, reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses.
- (d) *Federal or state prosecution.* Any penalties imposed under this division, including penalties imposed by state or federal courts, shall not relieve the violator from further state or federal prosecution.

Sec. 106-79. - Validity.

All ordinances or parts of ordinances in conflict herewith are hereby repealed. In particular, this ordinance is intended to modify and replace Ordinance No. 1863-04-21 and to constitute an update of section 31, article II, sewer use provisions of the Nacogdoches Code. If any section or provision of this division, or the application of same to any person or set of circumstances is invalidated or rendered unenforceable by a court of competent jurisdiction, such judgment shall not affect the validity of any remaining parts of the division which can be given effect without the invalidated part or parts, or their application to other persons or sets of circumstances.

Secs. 106-80—106-320. - Reserved.

SECTION III

Severability. If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end provisions of this Ordinance are declared to be severable.

SECTION IV

Continuation. All provisions of Chapter 106 of the Code of Ordinances existing prior to the date of passage of this Ordinance remain in full force and effect.

SECTION V

Repeal. This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this ordinance shall not operate to repeal or affect any such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with provisions of this ordinance, in which such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION VI

Effective Date. This Ordinance shall take effect ten (10) days from its passage and publication as may be required by governing law.

SECTION VII

Proper Notice & Open Meeting. It is hereby officially found and determined the meeting at which this Ordinance was passed was open to the public as required and public notice of time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION IX

Official Public Records. The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches.

PASSED AND APPROVED this the ____ day of _____, 2022, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches.

ATTEST:

CITY OF NACOGDOCHES

Jan Vinson, City Secretary

BY: _____
Jimmy Mize, Mayor

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Steven Kirkland, City Attorney

Steve Bartlett, PE, City Engineer

SEWER USE (PRETREATMENT) ORDINANCE

- Amends Chapter 106 Utilities, Article II, Division 2, “Sewer Use Regulations”
- Updates ordinance to allow for revised levels of lead in an industry’s waste stream
- Redistribution of allowable limits between industries
- Total lead allowed to the treatment plant does not increase
- Will help several industrial facilities be compliant



PRESENTER: Mario Canizares, City Manager

ITEM/SUBJECT: Discussion regarding upcoming Capital Improvement Plan meetings scheduled for late October and early November. (City Manager)

SUMMARY/BACKGROUND: Council Member Belanger requested that staff bring forward an agenda item providing a general overview of the Capital Improvement Plan (CIP), and for City Council to discuss and ask questions regarding the upcoming CIP work sessions scheduled for October 27th and November 10th. These upcoming work sessions were a result of the citizen petition that stopped the Certificates of Obligation efforts.

There are health-life-safety concerns that need to be addressed for fire stations 2 and 5, parks facilities, and drainage. At the October 27th meeting there will be a discussion with the City Council to identify which of those infrastructure projects are the most concerning and the potential funding sources to address them. Staff will be seeking direction on how to proceed with these efforts. No formal action is needed.

At the November 10th meeting, the agenda will begin discussions regarding a future bond program. This will include reviewing a proposed schedule of deadlines and critical paths, the need to engage consultants for assistance, is there a desire to commission a bond committee, the scope of the committee's role in determining projects, and when to get started. While no formal action is requested, staff would like to know where we are headed in this important endeavor.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Infrastructure

CITY CONTACT: Mario Canizares, City Manager
canizaresm@nactx.us
936-559-2501

ATTACHMENTS:

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider approval of a resolution supporting the possible transfer of a portion of the water distribution system in the Central Heights Area to the Angelina Neches River Authority. (Public Works Director)

SUMMARY/BACKGROUND: The City took over the operations of the Central Heights Water Supply Corporation in 2000 to save the failing water system. As part of the agreement, the City pledged to invest over \$2 million dollars in the repair and upgrade of the distribution facilities. The service area is primarily located along US 259 with over half of the system extending outside the Extraterritorial Jurisdiction of the City. The Central Heights water system has always purchased treated water from the City.

Since 2000, over \$3.8 million has been spent on upgrades and repairs in the Central Heights area. In 2021, an engineering study was performed on the water system which showed that most of the distribution lines were as much as 800% over capacity. Since that time, the City has issued a general moratorium on new taps for subdivisions and commercial properties until capacity improvements can be made. The current CIP describes needed water system upgrades of more than \$4.5 million, but other critical repairs to lines inside the City continue to take priority. The ability to fund significant water system projects in the Central Heights area is not anticipated in the near future.

The City was recently approached by the Angelina Neches River Authority (ANRA) about taking over operations of the Central Heights water system. ANRA is a government entity created by the state legislature under the authorization of the Texas State Constitution. It is recognized as an independent governmental agency authorized to construct, maintain, and operate any and all works necessary for the purpose of controlling, storing, and preserving water resources. ANRA currently owns and operates other water and sewer systems in the East Texas region.

Details of the transfer are not yet fully developed, but it is anticipated that the components of the agreement will include a delineation of the area for the agreement, rates for wholesale water purchase from the City, funds from ANRA for the upfront capital purchase, and the transition logistics for customer billing. The time frame to complete the process is unknown and depends on negotiations, regulatory agency approvals, and legislative actions. The process will most likely take several months or more to complete.

Upon a successful transition, ANRA intends to immediately sell bonds to make over \$3 million in system improvements that will allow them to lift the new tap moratorium. ANRA is targeting customer growth to 750 meters, nearly twice the current connections. It is probable that ANRA will need to make significant increases in water rates to service the debt from the bonds. Even if the City retained the Central Heights Water System and made no improvements, significant rate increases would be necessary to cover the increasing cost of serving this area with water.

Next steps include: 1) negotiating a final draft term sheet, 2) preparing a wholesale water agreement, 3) investigating regulatory, legal and legislative issues, and 4) bringing final agreements to the Council for approval. ANRA and City Staff have had preliminary meetings with State Representative Clardy, State Senator Nichols, the Nacogdoches County Judge and the Central Heights School Superintendent. Future meetings include the local VFD, a public workshop at the Central Heights School Board meeting, and a public meeting in Central Heights in November.

This resolution recognizes support for the concept of transferring the water system to ANRA and authorizes the City Manager to pursue negotiations about the terms and conditions for the transfer to be brought to the Council for final approval.

FINANCIAL:

No financial impact associated with this item at this time.

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Infrastructure

CITY CONTACT: Steve Bartlett, Public Works Director
bartletts@nactx.us
936-559-2522

ATTACHMENTS: 1. Resolution
2. PowerPoint Presentation

RESOLUTION NO: 1314-10-22

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS
RELATING TO THE TRANSFER AND CONSOLIDATION OF
THE CENTRAL HEIGHTS WATER SYSTEM FROM
THE CITY OF NACOGDOCHES WATER SYSTEM**

WHEREAS, the City of Nacogdoches ["City"] was designated a pueblo by the king of Spain in 1779, incorporated in 1837 by the Republic of Texas and currently operates as a Home Rule City pursuant to Article XI, Section [5](#), of the Texas Constitution and the adoption of a Charter by election on 5-6-1995; and,

WHEREAS, the Angelina & Neches River Authority (the "Authority") was created by the Texas Legislature pursuant to authorization in Article 16, Sec. 59 of the Texas Constitution, by Acts 1939, Special Laws, p. 1080, Acts 1945, Ch. 287, Acts 1977, Ch. 394, Acts 1989, Ch. 1278, and Acts 2003, Ch. 1277, for several purposes, including the conservation and development of the State's water resources for the benefit of the lands and territory within the Authority's territory, and further whereby the Authority is granted rights, powers, privileges, and functions under Chapters, 11, 12, 26, and 49 of the Texas Water Code; and

WHEREAS, the City desires to Transfer, to the Authority, the assets and the service area of the portion of the City's water system that serves approximately 400 customers, collectively referred to as the Central Heights Water System, that lies immediately north of the interchange of US Highway 59 and US Highway 259; and

WHEREAS, the Authority is a political subdivision of the State of Texas, and has the statutory authority to provide regional water and sewer services, and has overlapping jurisdiction with the City; and

WHEREAS, the City desires to sell wholesale water and sewer services to the Authority, for the use and benefit of the Central Heights community and surrounding areas; and

WHEREAS, the Authority has the financial, managerial and technological means to assume all aspects of ownership, operations and to make future capital improvements to the Central Heights Water System; and

WHEREAS, the Authority is the holder of retail water Certificate of Convenience and Necessity NO. 12303 ("Authority Water CCN") and retail sewer Certificate of Convenience and Necessity No. 20820 ("Authority Sewer CCN") as recognized by the Public Utility Commission; and

WHEREAS, the Authority agrees to accept the financial, managerial, and technological duties, which are the current responsibility of the City; and

WHEREAS, the Transfer of the Central Heights Water System, and its subsequent Consolidation into the Authority, would be beneficial to the Central Heights community and surrounding areas as a direct result of significant infrastructure improvements to the water system; and

WHEREAS, the Transfer of the Central Heights Water System, and its subsequent Consolidation into the Authority, would be beneficial to the City and its citizens by relieving the burden for making significant infrastructure improvements to a portion of the water system that lies outside the City's corporate limits and Extra Territorial Jurisdiction; and

WHEREAS, the Board of Directors for the Authority seeks to cooperate, by any legal means available, with the City to acquire, own, manage and operate the assets, infrastructure, territory and service area of the Central Heights Water System; and

WHEREAS, Section 13.301 of the Texas Water Code requires approval by the Public Utility Commission (PUC) for the sale, merger, or transfer of facilities or assets owned by an entity that is required by law to possess a water utility CCN; and

WHEREAS, the City Council now desires to resolve that the City Manager of the City and his designees, shall be empowered and authorized to pursue negotiations for the Transfer of the Central Heights Water System and the Consolidation of its assets, infrastructure and territory into the Authority, and is allowed such methods and means as necessary to accomplish this directive and goal for the final approval of the City Council..

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES THAT:

1. The above recitals are true and correct and are incorporated into this Resolution for all intents and purposes.
2. If negotiations are successful, and with the agreement of both parties, it is the intent of the City that the Central Heights Water System shall be Transferred, and the assets, infrastructure and territory shall be Consolidated into the Authority as specified below:
 - a. The geographic territory of the Central Heights Water System shall removed from the City's CCN and be incorporated into the CCN of the Authority.
 - b. The customers and property owners of the Central Heights Water System shall be subject to all rates, fees and charges of the Authority.
 - c. The records, and customer records shall be incorporated into the Authority.
 - d. All real property, permits, water transmission and treatment systems, appurtenances, their conveyance systems, fee title to the real estate, and all easements, designated rights-of-way shall be incorporated into the Authority.

3. The City Manager of the City and his designees, are hereby authorized to employ legal counsel and/or consultants necessary to assist with the investigation and negotiation for the possible Transfer and Consolidation; to cooperate and collaborate with the Authority to accomplish the intent of this resolution; and to present to the City Council all final documents, contracts, and agreements as necessary to fulfill the above delineated tasks.
4. A certified copy of this resolution shall be provided to all persons interested in the subject matter hereof.

PASSED AND APPROVED this 18th day of October 2022.

Mr. Jimmy Mize, Mayor
City Council

ATTEST:

Jan Vinson, City Secretary

(SEAL)

Central Heights Area Water System



- Acquired by City in 2000
- City sole water source
- Outside City limits
- Portions outside ETJ
- Currently 350 connections
- \$3.8 million spent on improvements
- Frequent maintenance
- Improvements needed
- Significant non-compliance

Central Heights Water System Capacity

<i>Water Distribution Line</i>	<i>Current Pipe Diameter</i>	<i># of Connections</i>	<i>Connection Capacity</i>	<i>Replacement Pipe Diameter</i>
US Highway 259 (Pump Station to Echo Ln)	4"	117	117%	6"
US Highway 259 (West side across N Village Ln)	1.5"	8	800%	4"
CR 102	2"	9	90%	-
FM 698	4"	86	86%	*6"
FM 698	1.5"	5	500%	4"
Geldmeier Rd (CR 104)	2"	37	370%	4"
US Highway 259 (Pump Station to Grammar Ln)	4"	13	13%	-
US Highway 259 (Pump Station to Old Henderson Hwy)	4"	151	151%	6"
US Highway 259 (East side across Steve Lilly Rd)	1.5"	8	800%	6"
Old Henderson Hwy (CR 915) (South side)	1.5"	3	300%	2"
US Highway 259 (Old Henderson Hwy to Coats Rd)	2"	12	120%	4"
US Highway 259 (West side across Coats Rd)	1"	2	200%	4"

Jeremy Orr, PE - KSA Engineers

Central Heights Water System

Angelina Neches River Authority

- Angelina Neches River Authority (ANRA) is interested in taking over operations of Central Heights area water system
- ANRA is a government entity authorized to construct, maintain, and operate any and all works necessary for the purpose of controlling, storing, and preserving water resources
- ANRA currently owns and operates other water and sewer systems in the East Texas region

Central Heights Water System

Angelina Neches River Authority

- ANRA will make over \$3 million in system improvements
- ANRA targeting 2X growth to 750 meters
- ANRA will need to make increases in water rates to service debt from bonds.
- If City retained the water system (no improvements), significant rate increases would still be necessary
- Proposal benefits City residents and Central Heights residents

Central Heights Water System Angelina Neches River Authority

This resolution recognizes support for the concept of transferring the water system to ANRA and authorizes the City Manager to pursue negotiations about the terms and conditions for the transfer, to be brought to the Council for final approval.