



October 17, 2023

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 lewisr@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 Tuesday, October 17, 2023. 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 Resolution No. 1354-10-23 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and Kim Crisp regarding renovation of a building at 124 East Main Street to extend the timeline for completion of the renovation of the project to November 30, 2023. (Economic Development Director)
 - B. Consider approval of minutes for the October 10, 2023 Regular City Council meeting. (Deputy City Secretary)
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. Consider approval of multiple Indefinite Deliverable Indefinite Quantity contracts by and between the City of Nacogdoches and Longview Asphalt, Inc. and Texas Materials for asphalt products and limestone base material used in Public Works operations in a not-to-exceed total budgeted amount of \$250,000.00. (Assistant Director of Public Works)
 - B. **Public Hearing:** Consider approval of a Zone Change from PD, Planned Development District to R-1, Single Family for approximately 32 acres, being Lots 1, 2, 3, 4R, 5, and 6R-1, of the Timber Springs Subdivision and Timber Springs Replats. This request has been submitted by Lone Star Breeder Farms, Inc. Case File ZON2023-06. (Planning Technician)
 - C. Consider approval of an ordinance of the City of Nacogdoches, Texas regulating the collection of sewage in the City requiring pretreatment and 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. (City Engineer)
7. EXECUTIVE SESSION: Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act. Council may reconvene in open session to vote on the matter.
- A. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the appointment or employment of a public officer or employee. The subject of this executive session is the Public Works Director. (Interim City Manager)
8. ADJOURN.



Rhonda Lewis
Deputy 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, 2023 at 5:30 p.m. and remained posted until the meeting convened.

Rhonda Lewis, Deputy City Secretary



City Council Meeting

Date: October 17, 2023

Agenda Item: 5.A.

PRESENTER: Keith Kiplinger, Interim City Manager

ITEM/SUBJECT: Consider approval of Resolution No. 1354-10-23 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and Kim Crisp regarding renovation of a building at 124 East Main Street to extend the timeline for completion of the renovation of the project to November 30, 2023. (Economic Development Director)

SUMMARY/BACKGROUND: City Council entered into an agreement with Kim Crisp to support the renovation of a building located at 124 East Main Street. The approved 380 agreement called for the renovation to be completed by September 30, 2023. The project has been delayed due to material shortages and unexpected conditions discovered during renovation. Mr. Crisp has requested this timeline be extended to November 30, 2023.

FINANCIAL:

No financial impact associated with this item

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

Downtown Entertainment and Destination District, Economic Development

CITY CONTACT: Larissa Philpot-Brown, AICP
Economic Development Director & NEDCO President/CEO
lphilpot@nedco.org
(936) 554-9980

ATTACHMENTS: 1. Resolution 1354-10-23 - Wettermark Bldg Amending
2. Wettermark Crisp Amended 380 Agreement

**CITY OF NACOGDOCHES, TEXAS
RESOLUTION NO. 1354-10-23**

A RESOLUTION CREATING A CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM AND APPROVING AND AUTHORIZING AGREEMENT BY AND BETWEEN THE CITY OF NACOGDOCHES AND KIM CRISP REGARDING RENOVATING A BUILDING AT 124 EAST MAIN STREET.

WHEREAS, the City of Nacogdoches, Texas, (the “City”), possesses the legal and statutory authority under Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to make loans and grants of public funds for the purposes of promoting local economic development, helping eliminate unemployment and underemployment in the City, and stimulating and enhancing business and commercial activity within the City;

WHEREAS, the City finds that the renovation of a long vacant historic structure to provide space for a restaurant and upper floor residences assists in the development and diversification of the economy of the City by adaptively reusing a vacant historic structure, providing space for a new business to create jobs, increasing the activity level of the downtown district by adding a destination for downtown visitors, and increasing the number of downtown residents, and,

WHEREAS, Kim and Angela Crisp (the “Developer”) has agreed to renovate or cause to be renovated, the approximate 4,500 square foot building and associated park, (the “Improvements”) located at 124 East Main Street; and

WHEREAS, the City finds it appropriate to create an economic development program pursuant to Chapter 380 of the Texas Local Government Code to be called the Crisp - Wettermark Economic Development Program to provide, encourage and coordinate public and private investment in renovating 124 East Main Street, the Improvements and any future associated development; and

WHEREAS, the City finds it appropriate to leverage the investment that the Developer is willing to provide to restore the building, encourage more visitors to the downtown area, increase and promote revenue to the City from associated downtown businesses via the attached Crisp - Wettermark Chapter 380 Economic Development Agreement (“Chapter 380 Agreement”), and

WHEREAS, the City has concluded and hereby finds that the Crisp - Wettermark Economic Development Program and this Crisp – Wettermark Chapter 380 Economic Development Agreement clearly promote economic development in the City, and, as such, meet the requirements under Chapter 380 of the Texas Local Government Code and Article III, Chapter 52-a of the Texas Constitution under which the City has the authority to use public funds for public purposes of promoting economic development and stimulating business and commercial activity within the City, and further, is in the best interests of the City and

WHEREAS, the City entered into a Chapter 380 Economic Development agreement with the Developer on February 7, 2023, and renovation of the structure has commenced, however supply chain issues and availability of contractors has caused the construction period to be longer than initially anticipated; and

WHEREAS, the City and Developer now desire to amend the Agreement to allow for additional time for the Developer to obtain a Certificate of Occupancy.

WHEREAS, the City has concluded and hereby finds that amending the Crisp – Wettermark Chapter 380 Economic Development Agreement clearly promotes economic development in the City, and, as such, meets the requirements under Chapter 380 of the Texas Local Government Code and Article III, Chapter 52-a of the Texas Constitution under which the City has the authority to use public funds for public purposes of promoting economic development and stimulating business and commercial activity within the City, and further, is in the best interests of the City and Developer.

NOW, THEREFORE, be it resolved by the City Council of the City of Nacogdoches, Texas that:

1. The findings and recitations contained in the preamble of this Resolution are found and declared to be true and correct and are hereby adopted as part of this Resolution.
2. The City Council hereby approves and authorizes the Crisp - Wettermark Amended Chapter 380 Economic Development Agreement in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference.
3. The City Manager is authorized to execute such document and related documents on behalf of the City, and the City Secretary is authorized to attest to all such signatures and the City Attorney is authorized to take all action necessary to enforce all legal obligations as may arise hereunder.
4. This resolution is effective immediately upon its passage.

PASSED AND APPROVED, this the 17th day of October, 2023, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
RANDY JOHNSON, Mayor

ATTEST:

APPROVED AS TO FORM:

Rhonda Lewis, City Secretary

Jerry Baker, City Attorney

CITY OF NACOGDOCHES, TEXAS

AND

KIM AND ANGELA CRISP

AMENDED CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **AMENDED CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (hereinafter referred to as the "Amendment") is made and entered into by and between the **CITY OF NACOGDOCHES, TEXAS**, a Texas home-rule municipality (the "City"), and **Kim and Angela Crisp**, their successors and assigns ("Developer").

RECITALS:

- A.** In the original Chapter 380 Economic Development Agreement (the "Agreement"), the City and Developer agreed to renovate or cause to be renovated, the structure located at 124 East Main Street, (the "Project").
- B.** The City and Developer now desire to amend the Agreement to allow for additional time for the Developer to obtain a final Certificate of Occupancy. This amendment does not change the intent of the Agreement, expand the obligations of the Developer or increase the grant of public funds to the Developer but will aid in the orderly progress of the Project.
- C.** The City desires and agrees to enter into this Amendment with Developer in order to implement the economic development program described the Agreement and shall follow all applicable rules and procedures prescribed by the City's Charter and the laws of the State in providing Developer the economic development incentives described herein.
- D.** Developer desires and agrees to enter into this Amendment with City in order to renovate the Project described the Agreement and to create well-paying jobs and shall follow the laws of the State of Texas.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer agree as follows:

SECTION 1. RECITALS INCORPORATED.

The foregoing Recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants and consideration that bind the parties.

SECTION 2. Amended Sections

Section 4 (a)(i) is amended to read as follows:

- i. Developer shall construct or cause to be constructed the Improvements as described on Table 1 below and shall submit to the City invoices, receipts, or other similar documentation for the Qualified Expenditures in a form reasonably acceptable to the City by November 30, 2023.

Table 1

Item	Approximate Qualified Expenditure Not to Exceed
Fire Sprinkler System	\$36,336

Section 4(a)(ii) is amended to read as follows:

- ii. Developer represents that Developer has the present capacity to construct the Improvements. The Improvements shall be completed on or before November 30, 2023. Only those Improvements listed in Table 1 which are completed prior to November 30, 2023 will be considered by the City for reimbursement.

Section 4(a)(iv)

- iv. Developer shall complete all necessary improvements and obtain a Certificate of Occupancy on or before November 30, 2023.

SECTION 2. NO OTHER CHANGES.

All other portions of the Agreement are unchanged.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

CITY

CITY OF NACOGDOCHES, TEXAS

a Texas home-rule municipality

By: _____
Randy Johnson, Mayor

Date: _____

ATTEST:

Rhonda Lewis, City Secretary

APPROVED AS TO FORM:

Jerry Baker, City Attorney

DEVELOPER:

Kim and Angela Crisp

By: _____

Kim Crisp

Date: _____

By: _____

Angela Crisp

Date: _____



City Council Meeting

Date: October 17, 2023

Agenda Item: 5.B.

PRESENTER:

ITEM/SUBJECT: Consider approval of minutes for the October 10, 2023 Regular City Council meeting. (Deputy City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

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

CITY CONTACT: Rhonda Lewis, Deputy City Secretary
lewisr@nactx.us
(936) 559-2506

ATTACHMENTS: 1. City Council Meeting Minutes 10.10.23



Regular Session
Nacogdoches City Council
October 10, 2023 – 5:30 p.m.
City Council Chambers – City Hall
202 East Pilar Street

DRAFT

City Council present in person: Mayor Randy Johnson, Council Members, Chad Huckaby and Brad Maule, Kathleen Belanger and Roy Boldon

1. Called to order at 5:30 p.m.
2. Pledge of Allegiance.
3. Open Forum – There were no comments for Open Forum.
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 the September 7, 2023 City Council Work Session; the September 12, 2023, City Council Special Meeting, and the September 19, 2023 City Council Regular Meeting (Deputy City Secretary).
 - B. Consider contract award of \$47,307.37 to WorkQuest and Oak Creek Center for City park clean-up (Interim Community Services Director).
 - C. Consider contract award not to exceed \$17,341.76 to WorkQuest and Oak Creek Center for City roadside clean-up (Interim Community Services Director).
 - D. Consider approval of a minor contract amendment between the City of Nacogdoches and Mead & Hunt for hourly assistance with our Pretreatment Program (Director Public Works/City Engineer).

Council Member Huckaby made a motion to approve the Consent Agenda as presented; Council Member Boldon duly seconded the motion, and the motion carried by unanimous vote.

6. **REGULAR AGENDA:**

- A. Consider approval of a contract by and between the City of Nacogdoches and DJ Hansen Construction Corp for the Bayou Loco Dam Spillway Rehabilitation Project in a not-to-exceed amount of \$595,340.00 (Assistant Director of Public Works).

Case Opperman, Assistant Director of Public Works, stated he would like Council to consider this budget amendment ordinance. He explained that the Bayou Loco Dam Spillway provides protection downstream from the dam in cases of flooding. He also mentioned that Texas Commission on Environmental Quality (TCEQ) requires the City to maintain the Spillway in good working order. Mr. Opperman shared the costs and bids submitted for this project.

Mayor Johnson asked if the funds were in the budget. Mr. Opperman stated yes, that the funds are currently in the Utility Funds.

Council Member Maule asked if the budgeted amount of \$550,000 shown in the presentation, had a buffer amount allocated to it. Mr. Opperman explained that the project costs increased and the bids were higher than expected; therefore, additional monies are requested to complete the project.

Council Member Belanger moved to approve the Ordinance proposed in Item 6.A., the motion was duly seconded by Council Member Huckaby. The motion was approved by unanimous vote.

- B. Consider an ordinance amending Ordinance No. 1978-09-23 appropriating various amounts in accordance with the budget adopted for the ensuing fiscal year beginning October 1, 2023 and ending September 30, 2024 (Bayou Loco Dam Spillway) (Assistant Director of Public Works).

Minutes unofficial until approved by City Council

Case Opperman, Assistant Director of Public Works, presented this item to Council requesting that the lowest responsible bidder, DJ Hansen Construction, be awarded the contract.

Mayor Johnson asked if the City worked for one of the bidders mentioned in the presentation. Mr. Opperman stated, no, and that the City has not worked with any of the bidders mentioned.

Council Member Belanger asked if any of the bidders were in Nacogdoches County. Mr. Opperman stated that none of the bidders were from the Nacogdoches area.

Council Member Belanger made a motion to approve the contract as outlined in Item 6.B., Council Member Maule duly seconded the motion, and the item was approved by unanimous vote.

- C. Consider approval of a contract by and between the City of Nacogdoches and McKinney & Moore of Texas, LLC for the 2023 WWTP Clarifier Rehabilitation Project in a not-to-exceed an amount of \$1,439,472.09 (Assistant Director of Public Works).

Case Opperman, Assistant Director of Public Works, asked Council for their approval on this contract which will allow for the rehabilitation of the WWTP Clarifier Project. He explained that there are four (4) Clarifiers but Clarifier #4 has failed, with Clarifier #3 is in need of rehabilitation as well. Mr. Opperman stated that Clarifier #3 would not go under rehabilitation until Clarifier #4 is complete.

Mayor Johnson asked if the Clarifiers will be new. Mr. Opperman stated that everything inside will be new, keeping the existing outer concrete cylinders. Mayor Johnson asked where the funds would come from. Mr. Opperman stated the project will be funded by the Capital Improvements Program.

Council Member Boldon asked if all the Clarifiers run at the same time. Mr. Opperman stated yes, that they all run at the same time.

Council Member Maule asked when the Clarifier #4 failed, did the City have budgeted monies. Mr. Opperman stated that the project did have funding last year; however, the project was not at the bidding point in the process.

Mayor Johnson asked how long the project will take to repair the Clarifier. Mr. Opperman stated 90-days.

Council Member Huckaby asked Mr. Opperman to explain the Clarifier function. Mr. Opperman described the process.

Council Member Huckaby made a motion to approve Item 6.C. as presented. Council Member Boldon duly seconded the motion. The motion was approved by unanimous vote.

- D. Discussion regarding the Police Department's voluntary security camera program. (Police Chief)

Police Chief, Scott Weems, displayed a map of locations where the Police Department has utilized video footage for evidence in their cases. Chief Weems explained that camera owners who wish to share footage from their cameras is voluntary. He also stated that the project, Neighborhood Eyes, stemmed from Neighborhood Watch.

Mr. Boldon stated that some citizens in his District were not approached to participate in the program. Chief Weems said he would provide the form for camera owner's to complete so they are able to participate.

Council Member Maule asked about the timeframe in which the Police Department has to retrieve the data from the volunteer's cameras. Chief Weems indicated that the timeframe is very short, especially if a crime occurred during the weekend.

Mayor Johnson asked what the cost is for the program. Chief Weems stated there is little to no cost for the volunteer information. Chief Weems also stated that there is a need for internet at the City's different facilities to equip them with cameras.

Council Member Huckaby stated that City Staff who are knowledgeable about the subject, should prepare and present a proposal to Council.

Council Member Kathleen Belanger stated she asked Chief Weems to come to this meeting to discuss the subject in light of the recent incident at Maroney Park. She also stated that the program may encourage others to install cameras to aid the Neighborhood Eyes program.

Council Member Huckaby clarified that Chief Weems and his teams are not taking access of the citizen's camera footage, rather, the Police Department is asking those who have cameras, to voluntarily submit camera footage that may help solve crimes.

- E. Consider approval of Resolution 1352-10-23 regarding nominations for the Central Appraisal District Board of Directors (Interim City Manager).

Interim City Manager, Keith Kiplinger, informed Council of the upcoming Central Appraisal District Board of Directors appointment of a City representative to that Board. Former City Council Member Jay Anderson has been seated on the Board, and his term is expiring.

Mayor Johnson recommended Council Member Brad Maule for the Central Appraisal District Board of Directors. Council Member Belanger seconded the nomination, and Council Member Maule was appointed the representative by unanimous vote.

- F. Consider approval of Resolution No. 1353-10-23 creating a Chapter 380 Economic Development Program and authorizing an agreement by and between the City of Nacogdoches and Z Prepay Communication Services, LLC regarding the development of a multi-family apartment complex. (Economic Development Director)

Larissa Philpot-Brown, Economic Development Director, asked Council to consider and approve a 380 Agreement for this item. She explained that the developer has requested a 5-year tax rebate for an approximately 80-unit construction project. Ms. Philpot-Brown presented a site plan of the proposed project.

Council Member Boldon inquired if the units are apartments or townhomes. Ms. Philpot-Brown stated that the 380 Agreement does not specify townhomes, but does state the construction is a multi-family apartment complex.

Council Member Maule stated that the project seemed premature. He also stated that he received several letters that there is not enough information regarding the project.

Council Member Belanger said her concerns are with home ownership versus apartment rentals. She stated that home ownership rates are very low within the county. She also stated that she has no interest in incentivizing apartment owners who do not reside in the County/City of Nacogdoches. Council Member Belanger stated her concerns with flooding in the area and the need for more information on the drainage.

Council Member Huckaby stated he has received the same concerns as Council Member Belanger. He stated the City has a housing need and a need for newer apartments within the City.

Mayor Johnson stated that he is an advocate of home ownership of single-family homes. He asked Steve Bartlett, City Engineer, if the project is unique to the City. Mr. Bartlett stated that the proposed construction is planned to be built outside of the 100 year flood plain and has reviewed the drainage, access and Staff is satisfied so far with the civil engineering portion of the project.

Council Member Boldon stated that part of his concerns was with the traffic analysis that is still pending with City Staff to receive.

Council Member Huckaby asked where the discussions on including green space within the contract. Mr. Bartlett stated that the developer was amenable to adding this space within the build.

Council Member Huckaby made a motion to approve Item 6.F. on the agenda. Council Member Boldon duly seconded the motion. Mayor Johnson called for a vote, and the motion carried by a vote of 4-1, with an opposition vote from Council Member Belanger.

City Council convened into Executive Session at 6:50 p.m.

7. EXECUTIVE SESSION:

- A. Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:

1. Discuss or deliberate regarding commercial or financial information the governmental body has received from business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and

2. Deliberate the offer of financial or other incentives to business prospects described by Subdivision 1 above.

B. Consultation with City Attorney - Pursuant to Texas Government Code Section 551.071, deliberation regarding attorney's advice concerning pending or contemplated litigation or a settlement offer, or on a matter in which the duty of the attorney to the governmental body under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, clearly conflicts with this chapter. (City Attorney)

City Council reconvened into regular session at 7:24 p.m.

No action was taken in Executive Session.

8. Adjourned 7:24 p.m.

ATTEST:

Mayor Randy Johnson
City Council
City of Nacogdoches

Rhonda Lewis, Deputy City Secretary

PRESENTER: Case Opperman, Public Works Asst Director

ITEM/SUBJECT: Consider approval of multiple Indefinite Deliverable Indefinite Quantity contracts by and between the City of Nacogdoches and Longview Asphalt, Inc. and Texas Materials for asphalt products and limestone base material used in Public Works operations in a not-to-exceed total budgeted amount of \$250,000.00. (Assistant Director of Public Works)

SUMMARY/BACKGROUND: The City of Nacogdoches utilizes a number of different products in patching and paving streets, stabilizing excavations, etc., in Public Works' typical functions, spending approximately \$250,000 per year. On October 5, the City received bids for the purchase of annual asphalt products and limestone-based material.

Bidders were allowed to bid on one or all of the products and the award of low bid contracts are considered individually for each product. Bids were comprised of individual Unit Prices (per ton) with no minimum or maximum quantity guaranteed. Due to the volatility of current markets, unit prices will be agreed upon quarterly and can be escalated or de-escalated based on the Bureau of Labor Statistics' Producer Price Index. Upon completion of the one-year term of the original agreement and upon mutual agreement of both parties, the original agreement may be renewed for up to two (2) additional one (1) year renewals [three (3) years total] under the terms of the contract.

Two (2) suppliers submitted bids for these products, as follows:

Vendor	Type D Asphalt (\$/ton)	Type C Asphalt (\$/ton)	Limestone Base (\$/ton)
Longview Asphalt	105.00	105.00	46.00
Texas Materials	125.00	125.00	45.00

Due to the nature of material supply, staff recommends awarding contracts to both suppliers in case one supplier can't fulfill a specific order. Primary and secondary suppliers are identified based on best value to the City, as well as Local Government Code allowances for local consideration. As the low bidder for Type D and C asphalt, Longview Asphalt will be the primary supplier for those materials. Since they are a local supplier, they are also recommended as the primary supplier for the limestone base. Staff recommends the award of an annual unit price contract to both Longview Asphalt, Inc. and Texas Materials as our 2023-2024 asphalt product and limestone base suppliers.

FINANCIAL:

Item is budgeted:

Account No.: 01.26 620.30

Account Name: *Street Maintenance*

Amount: \$250,000

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

Infrastructure

CITY CONTACT: Case Opperman, Assistant Director of Public Works
oppermanc@nactx.us
(936) 559-2515

ATTACHMENTS:

1. Bid Tab
2. Longview Asphalt Contract
3. Texas Materials Contract
4. PowerPoint Slide



Bid Tabulation

FY 23-24 Asphalt Products & Limestone Base
Thursday, October 5, 2023 @ 2:00 PM

Vendor	Type D Hot Mix Asphaltic Concrete (\$/ton)	Type C Hot Mix Asphaltic Concrete (\$/ton)	Type A, Grade 2 Limestone Base (\$/ton)
Longview Asphalt	105.00	105.00	46.00
Texas Materials	125.00	125.00	45.00

Bid Award	Type D Hot Mix Asphaltic Concrete (\$/ton)	Type C Hot Mix Asphaltic Concrete (\$/ton)	Type A, Grade 2 Limestone Base (\$/ton)
Longview Asphalt	105.00 – Primary	105.00 – Primary	46.00 – Primary *
Texas Materials	125.00 – Secondary	125.00 – Secondary	45.00 – Secondary

*Local Government Code allows award to local bidders within 5% of the lowest bid on bids under \$500,000

City of Nacogdoches – Public Works Department

P.O. Drawer 635030 • Nacogdoches, TX 75963 • (936) 559-2580 • Fax (936) 559-2589 •
www.ci.nacogdoches.tx.us • Home of Stephen F. Austin State University • www.sfasu.edu



INVITATION TO BID

ANNUAL COMMODITY REQUIREMENTS
for
INDEFINITE DELIVERY
and
INDEFINITE QUANTITIES

Bid # 23-10-138

ASPHALT PRODUCTS
and
LIMESTONE BASE

Bids must be received before:
Thursday, October 5, 2023
2:00 PM
City Hall Conference Room 203
202 East Pilar Street
Nacogdoches, Texas 75961

Refer Inquiries To:

Case Opperman, PE – Assistant Director of Public Works
City of Nacogdoches
(936) 559-2515
Email: oppermanc@nactx.us

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INTRODUCTION

DEFINITIONS

INSTRUCTIONS to BIDDERS

STANDARD TERMS and CONDITIONS

SPECIAL TERMS and CONDITIONS

TECHNICAL SPECIFICATIONS

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CERTIFICATION and ACKNOWLEDGMENT

INTRODUCTION

Bids are solicited for **Asphalt Products and Limestone Base** with the following definitions, term and conditions of bidding. Upon award by the City, this Bid will shall become the working contract for the Parties.

A. **NOTICE**

Sealed bids are due at **2:00 PM on Thursday, October 5, 2023** after which time all qualified bids will be opened and publicly read aloud at **Conference Room 203, 202 East Pilar Street, Nacogdoches, Texas 75961**. Bids received after the specified deadline will be returned unopened.

Sealed bids shall be clearly marked with the bid number and title and addressed to the City of Nacogdoches – Engineering Department. Bids shall be delivered using one of the following:

Hand-deliver to:
202 E. Pilar St., Room 239
Nacogdoches, TX 75961

Mail to:
Attn: Case Opperman
Engineering Department
PO Box 635030
Nacogdoches, TX 75963

Ship to (FedEx, UPS, DHL):
Attn: Case Opperman
Engineering Department
202 E. Pilar St., Room 239
Nacogdoches, TX 75961

Vendors may receive notice of bids from the City of Nacogdoches from a variety of channels. Approved methods of dissemination include: City of Nacogdoches website or the City of Nacogdoches Engineering Department. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your bid non-compliant. City of Nacogdoches accepts no responsibility for the receipt or notification of solicitations through any other source.

B. **QUESTIONS and INQUIRIES**

Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

Case Opperman, PE
Assistant Director of Public Works
oppermanc@nactx.us

The deadline for written questions is **October 3, 2023 at 2:00 PM**.

C. **SCHEDULE OF IMPORTANT DATES**

The tentative schedule for this Solicitation is as follows:

Release ITB to Vendors	September 20, 2023
Advertisement Dates	September 20, 2023 September 27, 2023
Deadline for Questions and Inquiries	October 3, 2023
ITB Due Date	October 5, 2023
Earliest Award by City	October 2023

DEFINITIONS

The following definitions shall be used to identify terms throughout this invitation to bid:

A. AGREEMENT/CONTRACT

A mutually binding legal document obligating the Vendor to furnish the products specified within this solicitation and obligating the City to pay for the goods as specified. This may be an authorized purchase order or this Invitation to Bid.

B. BID/RESPONSE/OFFER/QUOTATION

A complete, properly signed response to this solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

C. BIDDER/RESPONDENT/OFFERER

The Respondent identified throughout the solicitation that they consider themselves qualified to provide the products specified herein, and are interested in making an offer to provide the goods to the City.

D. CITY

The City of Nacogdoches, located in Nacogdoches County, Texas.

E. CITY COUNCIL – The elected officials of the City of Nacogdoches, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

F. PIGGYBACK CONTRACT

A contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies that have entered (or will) into an Interlocal Agreement with the City.

G. PURCHASE ORDER

A purchase order records the financial obligation of the City to pay for products properly received; therefore, a purchase order is also required for all contracts with an expenditure of funds entered into by the City Manager or City Council.

H. SOLICITATION/INVITATION TO BID

This Solicitation document issued by the City containing terms, conditions and specifications for the products to be procured.

I. VENDOR/CONTRACTOR

Person or business enterprise providing products to the City as fulfillment of obligations arising from an agreement or purchase order.

INSTRUCTION TO BIDDERS

Qualified bidders interested in responding to this Solicitation must submit the following information as part of their bid response. Failure to provide any information requested in this Solicitation may result in disqualification of the bid response.

A. FORMS

All Responses must be submitted on the form(s) provided by the City, and accompanied by all required attachments. All figures must be written in ink or typewritten. Mistakes may be crossed out, corrections inserted adjacent thereto and initiated in ink by the person certifying the bid.

B. RECEIPT OF BIDS

Sealed bids must be received by the City prior to the date and time specified. The mere fact that the bid was dispatched will not be considered; the bidder must insure that the bid is actually delivered. Bids received after that time will be returned unopened to the Respondent. Bid responses submitted via fax or email are not acceptable.

C. CERTIFICATION

This Solicitation includes a certification page. Respondent must:

1. Furnish complete name, mailing address, telephone number and email of the individual duly authorized to execute contractual documents on behalf of the Respondent.
2. Furnish name of individual(s), along with respective telephone numbers and email addresses, who will be responsible for answering all questions.
3. Certify that they have not conspired with any other potential Respondents in any manner to attempt to control competitive pricing.
4. Certify that they are duly qualified, capable and otherwise bondable business entity not in receivership or contemplating same, and has not filed bankruptcy.

D. EXCEPTIONS

Any deviations from terms, conditions or specifications contained herein must be clearly indicated in the Response to this Solicitation in writing at or before the due date and time. Any deviations or exceptions are subject to review by the City and may deem the Response disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

E. TAX EXEMPT

Respondents bid prices must be net, exclusive of taxes. The City is exempt from State Retail Tax and Federal Excise Tax.

F. DISCLOSURE OF INTERESTED PARTIES

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission ("TEC") is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, "at the time the business entity submits the signed contract" to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

STANDARD TERMS and CONDITIONS

A. ACCEPTANCE

Acceptance is deemed to have occurred upon the latter of the following: the Vendor's signature on this Invitation to Bid or approval by the City Council, or their designee. A City of Nacogdoches Purchase Order is required prior to the delivery of any products provided to the City.

B. ABSENCE of PURCHASE ORDER or AGREEMENT

The City is not responsible for delivery of any commodities or equipment without a proper Purchase Order.

C. ADDENDA

If it becomes necessary to revise any part of this bid, prior to the due date and time, a written addendum will be provided to all Bidders. The City is not bound by any oral representations, clarifications, or changes made in the written specification by the City's employees, unless such clarification of change is provided to Bidders in written addendum form from the City.

Addenda will be transmitted to all that are known to have received a copy of the bid documents and specifications. However, it shall be the sole responsibility of the Bidder to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Bidder shall provide written acknowledgment of all addenda.

D. ADVERTISING and PUBLICITY

Vendor shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

E. ASSIGNMENTS

The Agreement shall be binding upon and inure to the benefit of the City and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Paragraph. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

F. AWARD of CONTRACT

A Contract may be awarded to either the lowest responsible bidder or the bidder who provides goods or materials at the best value for the City. In determining the best value for the City, the City may consider, but is not necessarily limited to, the following factors:

- a. conformity to specifications;
- b. the purchase price, including payment discount terms;
- c. the reputation of the bidder and of the bidder's goods or services;
- d. the quality of the bidder's goods or services;
- e. the extent to which the goods or services meet the City's needs;
- f. the bidder's past relationship with the City;
- g. the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- h. delivery terms;
- i. payment terms;
- j. availability of repair and maintenance parts;
- k. financial condition;
- l. products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- m. the total long-term cost to the City to acquire the bidder's goods or services; and
- n. any relevant criteria specifically listed in this request for bid.

Although the cost of products to be provided is an essential part of the Bid, the City is not obligated to award a contract on the sole basis of cost. The City reserves the right to award multiple contracts as it deems necessary or desirable.

Pursuant to Local Government Code 271.9051, if the bid is less than \$500,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid.

Pursuant to Local Government Code 271.905, if the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 3% of the lowest bid.

G. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

H. CANCELLATION or TERMINATION

1. Termination For Cause:

In the event of default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the City may remove the Vendor from the City's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. Termination Without Cause:

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, to the extent of funds appropriated or otherwise legally available for such purposes, for all products actually delivered and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. Non-Appropriation:

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement if, for any reason, funds are not appropriated to continue this Agreement.

4. Cancellation:

The City reserves the right to cancel the Agreement for default for all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

I. CLAIMS

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the City Attorney at PO Box 635030, Nacogdoches, TX 75963.

J. CODES, PERMITS, LICENSES

Vendor shall comply with all federal, state and local standards, codes and ordinances, as well as other authorities that have jurisdiction pertaining to the products delivered and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

K. COLLUSION

Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular bid solicitation or request.

L. COMMUNICATION

To insure the proper and fair evaluation of this bid, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Respondents and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Bid. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award of the Bid then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed as provided herein.

M. CONFIDENTIALITY

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which the City or its licensors consider confidential)(collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

N. DEFAULT

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to fully, timely and faithfully perform any of its material obligations under any agreement Vendor has with the City, (c) fails to timely pay any fees or taxes owed to the City, (d) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (e) makes a material misrepresentation in Vendor's bid, or in any report or deliverable required to be submitted by Vendor to the City.

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the products elsewhere may be charged the difference in cost of products, if any, and may not be considered in the re-advertisement of the service and may be rejected as an

irresponsible bidder and not considered in future Solicitations for the same type of service unless the scope of work is significantly modified.

O. DELAYS

The City may delay scheduled deliveries or other due dates by written notice to the Vendor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Vendor shall negotiate an equitable adjustment for costs incurred by the Vendor in the Agreement price and execute an amendment to the Agreement. The Vendor must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Process specified herein. However, nothing in this provision shall excuse the Vendor from delaying the deliveries as notified.

P. DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

Q. DISPUTE RESOLUTION

If either the Vendor or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

R. EFFECTIVE DATE and TERM

This Bid shall be effective upon approval by the City and full execution of this Invitation to Bid and issuance of a City Purchase Order, and shall continue in effect until all obligations are performed in accordance with the terms and conditions herein.

S. FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

T. FRAUD

Fraudulent statements by the Vendor on any bid or in any report or deliverable required to be submitted by the Vendor to the City shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

U. GRATUITIES

The City may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Vendor or any agent or representative of the Vendor to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performance of the Agreement. In the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

V. INDEPENDENT CONTRACTOR

Nothing in this bid is intended to be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Vendor shall not be within protection or coverage of the City's Worker Compensation Insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

W. INDEMNITY

VENDOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE CONTRACTOR UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, THE CONTRACTOR, OR ANY THIRD PARTY.

X. INFRINGEMENT

Vendor represents and warrants to the City that: (a) Vendor shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by an person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the City harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or, at its option, engage its

own separate counsel to act as co-counsel on the City's behalf. Further, Vendor agrees that the City's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under this Paragraph, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

Y. INSURANCE REQUIREMENTS

Upon request, Vendor shall provide a copy of its insurance policies to the City.

Z. INTERLOCAL AGREEMENT

Other governmental entities may be extended the opportunity to purchase from Solicitations awarded by the City, with the consent and agreement of the successful Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

AA. INTERPRETATION

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their Agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

BB. INVALIDITY

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

CC. LIABILITY

Any person, firm or corporation party to this Agreement or Purchase Order shall be liable for all damages incurred while in the performance of the Agreement. Vendor assumes full responsibility for the terms contained herein and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but

not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

DD. LIENS

Vendor shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all products delivered under this Agreement. At the City's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

EE. MANAGEMENT

Should there be a change in ownership or management, the Agreement may be canceled unless a mutual Agreement is reached with the new owner to continue the Agreement with its present terms, conditions and pricing. The Agreement is nontransferable by either party.

FF. NOTICES

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Vendor shall be sent to the address specified in the Vendor's bid or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of Nacogdoches, PO Box 635030, Nacogdoches, TX 75963 and marked to the attention of the City Manager.

GG. OVERCHARGES

Vendor hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

HH. PAYMENT TERMS

1. Tax Exempt Status:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. Invoicing Requirements:

Unless otherwise specified, all invoices shall be submitted to City of Nacogdoches, Accounts Payable, PO Box 635030, Nacogdoches, TX 75963-5030, and issued as required by the Purchase Order or Agreement. Each invoice must reference the unique Purchase Order number, and include the Vendor's complete name and remit to address. If applicable, transportation and delivery charges must be itemized on the each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable.

3. Payment Terms:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of good or materials delivered, or the day of receipt of a correct invoice, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that

permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor concerning the good delivered, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning deliveries made, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. Right To Audit:

The Vendor agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Vendor are resolved, whichever is longer. The Vendor agrees to refund to the City any overpayments disclosed by any such audit.

5. Firm Pricing:

The price shall remain firm for the duration of the Agreement, or any extension period, unless expressly approved in writing. No separate line item charges shall be permitted for either bidding or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and costs associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the bid have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6. Price Warranty:

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

7. Travel Expenses:

All travel, lodging and/or per diem expenses associated with providing the products specified must be included in the original Bid and resulting Purchase Order. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

II. PERSONAL INTEREST

No officer, employee, independent consultant or elected official of the City who is involved in the development, evaluation or decision-making process of this Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement. Any willful violation of this Paragraph shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. In the event a member of the governing body or an appointed board or commission of the City belongs to a cooperative association, the City may purchase products from the association only if no member of the governing body, board or commission will receive pecuniary benefit from the purchase, other than as reflected as in increase in dividends distributed generally to

members of the association. Any violation of this provision with the knowledge, expressed or implied, by the Vendor shall render the Agreement voidable by the City. Nevertheless, the City may obtain the products under the Agreement if a conflict of interest affidavit is filed and the Council member recuses his/herself.

JJ. PRIORITY OF DOCUMENTS

In the event there are inconsistencies between the general provisions and special (or other) terms and conditions contained herein, the latter will take precedence.

KK. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

LL. REIMBURSEMENTS

There is no expressed or implied obligation for the City of Nacogdoches to reimburse responding firms for any expenses incurred in preparing bids in response to this Invitation to Bid and the City will not reimburse responding firms for these expenses, nor will the City pay any subsequent costs associated with the provision of additional information or presentation, or to procure a contract for these products.

MM. RESERVATIONS

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in City's best interest.

NN. RESPONSES BECOME PROPERTY OF THE CITY:

Submissions received in response to a Solicitation become the sole property of the City.

OO. RIGHT TO ASSURANCES

In the event the City, in good faith, has reason to question the intent of the Vendor to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.

PP. SEVERABILITY

The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.

QQ. SURVIVABILITY OF OBLIGATIONS

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

RR. VENDOR'S OBLIGATION:

Vendor shall fully and timely provide all deliverables described in this Solicitation, Vendor's bid must be in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

SS. VENUE

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in Nacogdoches, Texas, and the venue for any action related to this Agreement shall be Nacogdoches, Texas. All issues arising from this Agreement shall be resolved in the courts of Nacogdoches County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the City's defense of sovereign immunity.

TT. WAIVER

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

UU. WITHDRAWAL

Respondents may request withdrawal of a sealed bid prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City in writing.

SPECIAL TERMS and CONDITIONS

A. TERM OF AGREEMENT

1. Original Term:

The initial term of the agreement shall become effective from date of acceptance and approval by the City of Nacogdoches. It shall remain in full force and effect for twelve (12) months.

2. Renewal Term:

Upon completion of the term of the original agreement and upon mutual agreement of both parties, the original agreement may be renewed for up to two (2) additional one (1) years [three (3) years total]. The renewal will be under the same terms and conditions as the original agreement. In the event a new agreement cannot be executed at the

anniversary date of the original term or any renewal term, the agreement may be renewed month-to-month until a new agreement is executed.

B. ESCALATION/DE-ESCALATION

The Parties agree that the supplier has based its bid on certain pricing assumptions of materials to be incorporated into the agreement. However, the market for products that are specified herein may be considered by both parties to be volatile, where sudden price increases could occur that are beyond the control of the supplier, despite its best efforts. Vendor and City shall agree quarterly on an adjusted price for the commodity or commodities. A price adjustment can be performed whereby, the initial "Bid Price" or subsequent "New Price", shall be adjusted by the percent change, up or down, as indicated by the price indices as provided by the United States Bureau of Labor Statistics for the commodity or commodities. The percent change can be adjusted by the average quarterly commodity change percent.

Supplier(s) are required to give a thirty (30) day written notice before price increases are effective.

Any agreement awarded with an escalation clause shall be subject to de-escalation provisions in the same or similar manner in the event of cost reductions.

C. BID LITERATURE

Respondents must submit with their bid the latest printed literature and detailed specifications on equipment or material the Bidder proposes to furnish. Any catalog, brand name, or manufacturer's reference used is considered to be descriptive-not restrictive and is indicative of the type and quality the City desires to purchase.

D. COMMODITIES/EQUIPMENT

1. Material Safety Data Sheets: Under the "Hazardous Communication Act," commonly known as the "Texas Right to Know Act," a Vendor must provide to the City WITH EACH DELIVERY Material Safety Data Sheets, which are applicable to hazardous substances as defined in the Act.
2. Assembly: Products provided under this Agreement shall be completely assembled, adjusted, and all equipment including standard and supplemental equipment installed, and made ready for continuous operation unless otherwise specified in bid document.
3. Goods: Products furnished shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all products offered shall be new. Unless otherwise specified, used, shopworn, demonstrator, prototype or discontinued models are not acceptable.
4. Packaging of Deliverables: Vendor must package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and the unit price. Unless otherwise provided in writing by the City, each shipping container shall be clearly and permanently marked with the Vendor's name and address, and the City's name, address and Purchase Order number. Vendor shall bear all costs of packaging. Deliverables must be suitably packed to secure lowest transportation cost, conform with requirements of common carriers and ensure safe delivery. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
5. Warranty: The products specified shall be warranted against defects in material or workmanship for a period of not less than twelve (12) months from date of acceptance by the City. If the manufacturer's warranty exceeds twelve (12) months,

then the manufacturer's warranty shall be in effect. Vendor shall furnish a copy of the manufacturer's warranty at the time of delivery.

6. No Limitation of Manufacturers' Warranties: Vendor may not limit, exclude or disclaim any warranty provided by manufacturer.
7. Special Tools and Equipment: If the price stated in the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Vendor to fulfill the Agreement, such special tooling and/or equipment and all process sheets associated thereto shall become the property of the City and shall be identified by the Vendor as such.

E. DELIVERY

1. Delivery Terms, Transportation Charges, FOB: Deliverables shall be shipped FOB point of delivery unless otherwise specified on the Purchase Order or in the Solicitation. The Vendor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship deliverables. The place of delivery shall be specified in the Purchase Order.
2. No Substitutions or Cancellations: Unless specifically permitted in writing by the City, no substitutions or cancellations shall be acceptable.
3. Notice of Delay In Delivery: If a delay in delivery is anticipated, Vendor shall give written notice to the City. The City has the right to extend the delivery time/service date, or to cancel the Purchase Order or Agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery or failure to meet specifications authorizes the City to procure the products from an alternate source and charge the full increase, if any, in cost and handling to defaulting Vendor. Default on delivery may result in legal action and recourse.
4. Delivery Location, Hours, Days, Holidays: Unless otherwise specified, all deliveries must be made to City of Nacogdoches, between the hours of 8AM and 5PM (CST), Monday through Friday except regularly observed state and federal holidays. Receipt of products does not signify acceptance. If goods are delivered to the incorrect location, Vendor is responsible for all expenses associated delivering items to their correct destination.
5. No Shipment under Reservation: Vendor is not authorized to ship deliverables under reservation and no tender of bill of lading will operate as a tender of deliverables.
6. Title/Risk of Loss: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables (no delivery, no sale).
7. Right of Inspection And Rejection: The City expressly reserves all rights under law, including but not limited to, the Uniform Commercial Code, to inspect the deliverables at delivery or at a reasonable time subsequent to delivery, and to reject defective or non-conforming deliverables. The Vendor will be notified if the products are not in compliance with the required specifications. If any products are rejected as non-compliant, the required products may be procured from an alternate source, and the Vendor may be charged the full increase in cost, if any. If the City has the right to inspect the Vendor's or the Vendor's subcontractors facilities, or the deliverables at the Vendor's or the Vendor's subcontractors premises, the Vendor shall furnish or shall cause to be furnished without additional charge all reasonable facilities and assistance to the City to facilitate such inspection.
8. Acceptance of Incomplete or Non-Conforming Goods: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept such deliverables, the City may do so. The Vendor shall pay all claims, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any

such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If discovery that the deliverables are defective or non-conforming occurs after final payment, Vendor may be required to refund such amounts to the City.

F. REGULATIONS and STANDARDS

The products provided shall meet or exceed all Federal and State of Texas safety, health, lighting, and noise regulations and standards in effect and applicable to equipment furnished at the time of manufacture.

G. SAMPLES

Samples of items shall be furnished, if requested by the City, without charge, and if not destroyed, shall upon request be returned at the bidder's expense.

H. VENDORS SALES TERRITORY

City waives any responsibility or liability for Respondents bidding products "outside" their authorized territory by manufacturer or product line. Any Respondent bidding outside an approved manufacturer line does so at his own risk and discretion. Respondents shall comply with all sales terms according to the original bid and Purchase Order regardless of claim or dispute with product line representatives.

I. WORKMANSHIP

All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment shall be furnished by the successful bidder. All parts shall conform in strength, quality, and workmanship to the accepted standards of the industry.

TECHNICAL SPECIFICATIONS

A. TYPE D HOT MIX

Texas Department of Transportation Standard Specification Item #340, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

B. TYPE C HOT MIX

Texas Department of Transportation Standard Specification #255, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

C. TYPE A, GRADE 2, BASE MATERIAL

Texas Department of Transportation Standard Specification 247, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

D. SUPPLEMENTAL MATERIALS

Please submit a list of materials offered by the Supplier with description, unit price and unit of measure. These materials may be purchased by the City during the term of this contract at the prices stipulated; however, these supplemental materials and prices will not be used in the evaluation of the bids received.

QUOTATION FORM

A. DELIVERY REQUIREMENTS

Respondent will show exact cost to load product in City vehicles.

B. DISCOUNTS

Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.

C. QUANTITIES

Quantities indicated below are estimated based upon the best available information. The City reserves the right to increase or decrease the quantities by any amount deemed necessary to meet its needs without any adjustments in the unit prices bid.

D. UNIT PRICES

Prices should be itemized. Unit prices shall be set to no more than four (4) decimal places. The City reserves the right to award by item or by total bid. If there are discrepancies between unit prices and extension, the unit price will prevail.

E. VALIDITY OF PRICING

Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties.

F. QUOTATION

All Responses must be submitted on the form(s) provided below:

<u>Item #</u>	<u>Quantity</u>	<u>UOM</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Est. 2,000 ton		Type D Hot Mix	\$ <u>105.00</u>	\$ <u>210,000.00</u>
2.	Est. 1,500 ton		Type C Hot Mix	\$ <u>105.00</u>	\$ <u>157,500.00</u>
3.	Est. 1,000 ton		Type A, Grade 2, Base Material	\$ <u>46.00</u>	\$ <u>46,000.00</u>
4.	Unknown		Supplemental Materials	Attach Price List	

G. PRODUCTION PLANT

All responses must indicate the location of the Suppliers Production Plant:

1616 S. University Dr.
Street Address

Nacogdoches, Tx 75961
City, State, Zip

CERTIFICATION and ACKNOWLEDGMENT

By submitting a Proposal in response to this solicitation, the Respondent certifies that at the time of submission, the following statements required by State of Texas purchasing laws or the Governor's executive orders are true:

1. Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

2. Respondent represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.

3. Antitrust. Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

4. Terrorism Watch List. Respondent represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

5. Convictions. Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Respondent certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.

6. COVID Vaccinations. Respondent certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Respondent's business.

7. Boycotts. (a) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Respondent verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract.

(b) To the extent this Contract has a value of \$100,000 or more and Respondent is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Respondent certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

If between the time of Proposal submission and time of award, the truthfulness of any of the foregoing changes, the Respondent will notify the City of Nacogdoches Purchasing Agent. Failure to do so may result in terminating any contract or purchase order issued pursuant to this bid.

DISCLOSURE OF INTERESTED PARTIES The law states that a governmental entity may not enter into certain contracts with a nonexempt business entity unless the business entity submits a disclosure of interested parties to the governmental entity. By submitting a Proposal in response to this solicitation, the Respondent agrees to comply with HB 1295, Government Code 2252.908. Respondent agrees to provide the City Secretary of the City of Nacogdoches, and/or requesting department, the "Certificate of Interested Parties," Form 1295 as required, within ten (10) business days from notification of pending award, renewal, amended or extended contract.

Signed By:  Title: General Manager

Typed Name: Eddie Updike Company Name: Longview Asphalt, Inc.

Phone No.: 903-758-0065 Fax No.: _____

Email: eupdike@longviewasphalt.com

Bid Address: P.O. Box 3661 Longview Tx 75606
P.O. Box or Street City State Zip

Order Address: 1616 S. University Dr Nacogdoches Tx 75961
P.O. Box or Street City State Zip

Remit Address: P.O. Box 3661 Longview Tx 75606
P.O. Box or Street City State Zip

Federal Tax ID No.: 75-1667637

DUNS No.: _____

Date: 9.26.22

FOR CITY USE ONLY

Approved By: _____ Date: _____
City Manager, City of Nacogdoches



INVITATION TO BID

ANNUAL COMMODITY REQUIREMENTS
for
INDEFINITE DELIVERY
and
INDEFINITE QUANTITIES

Bid # 23-10-138

ASPHALT PRODUCTS
and
LIMESTONE BASE

Bids must be received before:
Thursday, October 5, 2023
2:00 PM
City Hall Conference Room 203
202 East Pilar Street
Nacogdoches, Texas 75961

Refer Inquiries To:

Case Opperman, PE – Assistant Director of Public Works
City of Nacogdoches
(936) 559-2515
Email: oppermanc@nactx.us

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INTRODUCTION

Bids are solicited for **Asphalt Products and Limestone Base** with the following definitions, term and conditions of bidding. Upon award by the City, this Bid will shall become the working contract for the Parties.

A. **NOTICE**

Sealed bids are due at **2:00 PM on Thursday, October 5, 2023** after which time all qualified bids will be opened and publicly read aloud at **Conference Room 203, 202 East Pilar Street, Nacogdoches, Texas 75961**. Bids received after the specified deadline will be returned unopened.

Sealed bids shall be clearly marked with the bid number and title and addressed to the City of Nacogdoches – Engineering Department. Bids shall be delivered using one of the following:

Hand-deliver to:
202 E. Pilar St., Room 239
Nacogdoches, TX 75961

Mail to:
Attn: Case Opperman
Engineering Department
PO Box 635030
Nacogdoches, TX 75963

Ship to (FedEx, UPS, DHL):
Attn: Case Opperman
Engineering Department
202 E. Pilar St., Room 239
Nacogdoches, TX 75961

Vendors may receive notice of bids from the City of Nacogdoches from a variety of channels. Approved methods of dissemination include: City of Nacogdoches website or the City of Nacogdoches Engineering Department. The receipt of solicitations through any other means may result in the receipt of incomplete specifications or addenda which could ultimately render your bid non-compliant. City of Nacogdoches accepts no responsibility for the receipt or notification of solicitations through any other source.

B. **QUESTIONS and INQUIRIES**

Questions and inquiries about this Solicitation shall be submitted in writing to the following individual:

Case Opperman, PE
Assistant Director of Public Works
oppermanc@nactx.us

The deadline for written questions is **October 3, 2023 at 2:00 PM**.

C. **SCHEDULE OF IMPORTANT DATES**

The tentative schedule for this Solicitation is as follows:

Release ITB to Vendors	September 20, 2023
Advertisement Dates	September 20, 2023 September 27, 2023
Deadline for Questions and Inquiries	October 3, 2023
ITB Due Date	October 5, 2023
Earliest Award by City	October 2023

DEFINITIONS

The following definitions shall be used to identify terms throughout this invitation to bid:

A. AGREEMENT/CONTRACT

A mutually binding legal document obligating the Vendor to furnish the products specified within this solicitation and obligating the City to pay for the goods as specified. This may be an authorized purchase order or this Invitation to Bid.

B. BID/RESPONSE/OFFER/QUOTATION

A complete, properly signed response to this solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

C. BIDDER/RESPONDENT/OFFERER

The Respondent identified throughout the solicitation that they consider themselves qualified to provide the products specified herein, and are interested in making an offer to provide the goods to the City.

D. CITY

The City of Nacogdoches, located in Nacogdoches County, Texas.

E. CITY COUNCIL – The elected officials of the City of Nacogdoches, Texas given the authority to exercise such powers and jurisdiction of all City business as conferred by the City Charter and State Constitution and Laws.

F. PIGGYBACK CONTRACT

A contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies that have entered (or will) into an Interlocal Agreement with the City.

G. PURCHASE ORDER

A purchase order records the financial obligation of the City to pay for products properly received; therefore, a purchase order is also required for all contracts with an expenditure of funds entered into by the City Manager or City Council.

H. SOLICITATION/INVITATION TO BID

This Solicitation document issued by the City containing terms, conditions and specifications for the products to be procured.

I. VENDOR/CONTRACTOR

Person or business enterprise providing products to the City as fulfillment of obligations arising from an agreement or purchase order.

INSTRUCTION TO BIDDERS

Qualified bidders interested in responding to this Solicitation must submit the following information as part of their bid response. Failure to provide any information requested in this Solicitation may result in disqualification of the bid response.

A. **FORMS**

All Responses must be submitted on the form(s) provided by the City, and accompanied by all required attachments. All figures must be written in ink or typewritten. Mistakes may be crossed out, corrections inserted adjacent thereto and initiated in ink by the person certifying the bid.

B. **RECEIPT OF BIDS**

Sealed bids must be received by the City prior to the date and time specified. The mere fact that the bid was dispatched will not be considered; the bidder must insure that the bid is actually delivered. Bids received after that time will be returned unopened to the Respondent. Bid responses submitted via fax or email are not acceptable.

C. **CERTIFICATION**

This Solicitation includes a certification page. Respondent must:

1. Furnish complete name, mailing address, telephone number and email of the individual duly authorized to execute contractual documents on behalf of the Respondent.
2. Furnish name of individual(s), along with respective telephone numbers and email addresses, who will be responsible for answering all questions.
3. Certify that they have not conspired with any other potential Respondents in any manner to attempt to control competitive pricing.
4. Certify that they are duly qualified, capable and otherwise bondable business entity not in receivership or contemplating same, and has not filed bankruptcy.

D. **EXCEPTIONS**

Any deviations from terms, conditions or specifications contained herein must be clearly indicated in the Response to this Solicitation in writing at or before the due date and time. Any deviations or exceptions are subject to review by the City and may deem the Response disqualified or non-responsive. If no exceptions are stated, it will be understood that all general terms and conditions and specific requirements will be complied with, without exception.

E. **TAX EXEMPT**

Respondents bid prices must be net, exclusive of taxes. The City is exempt from State Retail Tax and Federal Excise Tax.

F. **DISCLOSURE OF INTERESTED PARTIES**

Contracting hereunder may require compliance with §2252.908 Texas Government Code/Disclosure of Interested Parties for contracts that (1) require an action or vote by the City Council before the contract may be signed; or (2) has a value of at least \$1 million. The law provides that a governmental entity may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity or state agency.

The process as implemented by the Texas Ethics Commission ("TEC") is as follows:

1. The disclosure of interested parties must be performed using the [Texas Ethics Commission's electronic filing application](#) listing each interested party of which the business entity is aware on Form 1295, obtaining a certification of filing number for this form from the TEC, and printing a copy of it to submit to the City.
2. The copy of Form 1295 submitted to the City must be notarized and contain the unique certification number from the TEC. The form must be filed with the City pursuant to §2252.908 Texas Government Code, "at the time the business entity submits the signed contract" to the City.

The City, in turn, will submit a copy of the disclosure form to the TEC not later than the 30th day after the date the City receives the disclosure of interested parties from the business entity.

STANDARD TERMS and CONDITIONS

A. ACCEPTANCE

Acceptance is deemed to have occurred upon the latter of the following: the Vendor's signature on this Invitation to Bid or approval by the City Council, or their designee. A City of Nacogdoches Purchase Order is required prior to the delivery of any products provided to the City.

B. ABSENCE of PURCHASE ORDER or AGREEMENT

The City is not responsible for delivery of any commodities or equipment without a proper Purchase Order.

C. ADDENDA

If it becomes necessary to revise any part of this bid, prior to the due date and time, a written addendum will be provided to all Bidders. The City is not bound by any oral representations, clarifications, or changes made in the written specification by the City's employees, unless such clarification of change is provided to Bidders in written addendum form from the City.

Addenda will be transmitted to all that are known to have received a copy of the bid documents and specifications. However, it shall be the sole responsibility of the Bidder to verify issuance of any addenda and to check all avenues of document availability prior to the opening date and time. Bidder shall provide written acknowledgment of all addenda.

D. ADVERTISING and PUBLICITY

Vendor shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

E. ASSIGNMENTS

The Agreement shall be binding upon and inure to the benefit of the City and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Paragraph. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

F. AWARD of CONTRACT

A Contract may be awarded to either the lowest responsible bidder or the bidder who provides goods or materials at the best value for the City. In determining the best value for the City, the City may consider, but is not necessarily limited to, the following factors:

- a. conformity to specifications;
- b. the purchase price, including payment discount terms;
- c. the reputation of the bidder and of the bidder's goods or services;
- d. the quality of the bidder's goods or services;
- e. the extent to which the goods or services meet the City's needs;
- f. the bidder's past relationship with the City;
- g. the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- h. delivery terms;
- i. payment terms;
- j. availability of repair and maintenance parts;
- k. financial condition;
- l. products or services that have a lesser or reduced effect on human health and the environment when compared with competing products and services that serve the same purpose. This comparison may consider raw materials acquisition, product, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service;
- m. the total long-term cost to the City to acquire the bidder's goods or services; and
- n. any relevant criteria specifically listed in this request for bid.

Although the cost of products to be provided is an essential part of the Bid, the City is not obligated to award a contract on the sole basis of cost. The City reserves the right to award multiple contracts as it deems necessary or desirable.

Pursuant to Local Government Code 271.9051, if the bid is less than \$500,000 and the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 5% of the lowest bid.

Pursuant to Local Government Code 271.905, if the City Council determines that a local bidder whose principal place of business is in the City offers the City the best combination of contract price and additional economic development opportunities for the City created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality, the city **may** award the bid to the local bidder whose bid is within 3% of the lowest bid.

G. BUSINESS PRACTICES

Minority business enterprises and/or historically underutilized businesses will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

H. CANCELLATION or TERMINATION

1. Termination For Cause:

In the event of default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the City may remove the Vendor from the City's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. Termination Without Cause:

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, to the extent of funds appropriated or otherwise legally available for such purposes, for all products actually delivered and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. Non-Appropriation:

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement if, for any reason, funds are not appropriated to continue this Agreement.

4. Cancellation:

The City reserves the right to cancel the Agreement for default for all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

I. CLAIMS

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the City Attorney at PO Box 635030, Nacogdoches, TX 75963.

J. CODES, PERMITS, LICENSES

Vendor shall comply with all federal, state and local standards, codes and ordinances, as well as other authorities that have jurisdiction pertaining to the products delivered and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

K. COLLUSION

Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all responses to that particular bid solicitation or request.

L. COMMUNICATION

To insure the proper and fair evaluation of this bid, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Respondent to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Respondents and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Bid. Ex parte communication may be grounds for disqualifying the offending Respondent from consideration or award of the Bid then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed as provided herein.

M. CONFIDENTIALITY

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which the City or its licensors consider confidential)(collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

N. DEFAULT

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) fails to fully, timely and faithfully perform any of its material obligations under any agreement Vendor has with the City, (c) fails to timely pay any fees or taxes owed to the City, (d) becomes insolvent or seeks relief under the bankruptcy laws of the United States, or (e) makes a material misrepresentation in Vendor's bid, or in any report or deliverable required to be submitted by Vendor to the City.

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the products elsewhere may be charged the difference in cost of products, if any, and may not be considered in the re-advertisement of the service and may be rejected as an

irresponsible bidder and not considered in future Solicitations for the same type of service unless the scope of work is significantly modified.

O. DELAYS

The City may delay scheduled deliveries or other due dates by written notice to the Vendor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Vendor shall negotiate an equitable adjustment for costs incurred by the Vendor in the Agreement price and execute an amendment to the Agreement. The Vendor must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Process specified herein. However, nothing in this provision shall excuse the Vendor from delaying the deliveries as notified.

P. DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

Q. DISPUTE RESOLUTION

If either the Vendor or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

R. EFFECTIVE DATE and TERM

This Bid shall be effective upon approval by the City and full execution of this Invitation to Bid and issuance of a City Purchase Order, and shall continue in effect until all obligations are performed in accordance with the terms and conditions herein.

S. FORCE MAJEURE

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

T. FRAUD

Fraudulent statements by the Vendor on any bid or in any report or deliverable required to be submitted by the Vendor to the City shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

U. GRATUITIES

The City may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or given by the Vendor or any agent or representative of the Vendor to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performance of the Agreement. In the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

V. INDEPENDENT CONTRACTOR

Nothing in this bid is intended to be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Vendor shall not be within protection or coverage of the City's Worker Compensation Insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

W. INDEMNITY

VENDOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THE WORK DONE BY THE CONTRACTOR UNDER THIS CONTRACT. SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, THE CONTRACTOR, OR ANY THIRD PARTY.

X. INFRINGEMENT

Vendor represents and warrants to the City that: (a) Vendor shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by an person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the City harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or, at its option, engage its

own separate counsel to act as co-counsel on the City's behalf. Further, Vendor agrees that the City's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under this Paragraph, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

Y. INSURANCE REQUIREMENTS

Upon request, Vendor shall provide a copy of its insurance policies to the City.

Z. INTERLOCAL AGREEMENT

Other governmental entities may be extended the opportunity to purchase from Solicitations awarded by the City, with the consent and agreement of the successful Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

AA. INTERPRETATION

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their Agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

BB. INVALIDITY

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

CC. LIABILITY

Any person, firm or corporation party to this Agreement or Purchase Order shall be liable for all damages incurred while in the performance of the Agreement. Vendor assumes full responsibility for the terms contained herein and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but

not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

DD. LIENS

Vendor shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all products delivered under this Agreement. At the City's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

EE. MANAGEMENT

Should there be a change in ownership or management, the Agreement may be canceled unless a mutual Agreement is reached with the new owner to continue the Agreement with its present terms, conditions and pricing. The Agreement is nontransferable by either party.

FF. NOTICES

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Vendor shall be sent to the address specified in the Vendor's bid or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of Nacogdoches, PO Box 635030, Nacogdoches, TX 75963 and marked to the attention of the City Manager.

GG. OVERCHARGES

Vendor hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

HH. PAYMENT TERMS

1. Tax Exempt Status:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. Invoicing Requirements:

Unless otherwise specified, all invoices shall be submitted to City of Nacogdoches, Accounts Payable, PO Box 635030, Nacogdoches, TX 75963-5030, and issued as required by the Purchase Order or Agreement. Each invoice must reference the unique Purchase Order number, and include the Vendor's complete name and remit to address. If applicable, transportation and delivery charges must be itemized on the each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable.

3. Payment Terms:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of good or materials delivered, or the day of receipt of a correct invoice, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that

permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor concerning the good delivered, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning deliveries made, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. Right To Audit:

The Vendor agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Vendor are resolved, whichever is longer. The Vendor agrees to refund to the City any overpayments disclosed by any such audit.

5. Firm Pricing:

The price shall remain firm for the duration of the Agreement, or any extension period, unless expressly approved in writing. No separate line item charges shall be permitted for either bidding or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and costs associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the bid have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6. Price Warranty:

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

7. Travel Expenses:

All travel, lodging and/or per diem expenses associated with providing the products specified must be included in the original Bid and resulting Purchase Order. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

II. PERSONAL INTEREST

No officer, employee, independent consultant or elected official of the City who is involved in the development, evaluation or decision-making process of this Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement. Any willful violation of this Paragraph shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. In the event a member of the governing body or an appointed board or commission of the City belongs to a cooperative association, the City may purchase products from the association only if no member of the governing body, board or commission will receive pecuniary benefit from the purchase, other than as reflected as in increase in dividends distributed generally to

members of the association. Any violation of this provision with the knowledge, expressed or implied, by the Vendor shall render the Agreement voidable by the City. Nevertheless, the City may obtain the products under the Agreement if a conflict of interest affidavit is filed and the Council member recuses his/herself.

JJ. PRIORITY OF DOCUMENTS

In the event there are inconsistencies between the general provisions and special (or other) terms and conditions contained herein, the latter will take precedence.

KK. PUBLIC INFORMATION

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information.

LL. REIMBURSEMENTS

There is no expressed or implied obligation for the City of Nacogdoches to reimburse responding firms for any expenses incurred in preparing bids in response to this Invitation to Bid and the City will not reimburse responding firms for these expenses, nor will the City pay any subsequent costs associated with the provision of additional information or presentation, or to procure a contract for these products.

MM. RESERVATIONS

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in City's best interest.

NN. RESPONSES BECOME PROPERTY OF THE CITY:

Submissions received in response to a Solicitation become the sole property of the City.

OO. RIGHT TO ASSURANCES

In the event the City, in good faith, has reason to question the intent of the Vendor to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.

PP. SEVERABILITY

The invalidity or unenforceability of any provision herein shall not affect the validity or enforceability of any other provision.

QQ. SURVIVABILITY OF OBLIGATIONS

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

RR. VENDOR'S OBLIGATION:

Vendor shall fully and timely provide all deliverables described in this Solicitation, Vendor's bid must be in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

SS. VENUE

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in Nacogdoches, Texas, and the venue for any action related to this Agreement shall be Nacogdoches, Texas. All issues arising from this Agreement shall be resolved in the courts of Nacogdoches County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the City's defense of sovereign immunity.

TT. WAIVER

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

UU. WITHDRAWAL

Respondents may request withdrawal of a sealed bid prior to the scheduled bid opening time, provided the request for withdrawal is submitted to the City in writing.

SPECIAL TERMS and CONDITIONS

A. TERM OF AGREEMENT

1. Original Term:

The initial term of the agreement shall become effective from date of acceptance and approval by the City of Nacogdoches. It shall remain in full force and effect for twelve (12) months.

2. Renewal Term:

Upon completion of the term of the original agreement and upon mutual agreement of both parties, the original agreement may be renewed for up to two (2) additional one (1) years [three (3) years total]. The renewal will be under the same terms and conditions as the original agreement. In the event a new agreement cannot be executed at the

anniversary date of the original term or any renewal term, the agreement may be renewed month-to-month until a new agreement is executed.

B. ESCALATION/DE-ESCALATION

The Parties agree that the supplier has based its bid on certain pricing assumptions of materials to be incorporated into the agreement. However, the market for products that are specified herein may be considered by both parties to be volatile, where sudden price increases could occur that are beyond the control of the supplier, despite its best efforts. Vendor and City shall agree quarterly on an adjusted price for the commodity or commodities. A price adjustment can be performed whereby, the initial "Bid Price" or subsequent "New Price", shall be adjusted by the percent change, up or down, as indicated by the price indices as provided by the United States Bureau of Labor Statistics for the commodity or commodities. The percent change can be adjusted by the average quarterly commodity change percent.

Supplier(s) are required to give a thirty (30) day written notice before price increases are effective.

Any agreement awarded with an escalation clause shall be subject to de-escalation provisions in the same or similar manner in the event of cost reductions.

C. BID LITERATURE

Respondents must submit with their bid the latest printed literature and detailed specifications on equipment or material the Bidder proposes to furnish. Any catalog, brand name, or manufacturer's reference used is considered to be descriptive-not restrictive and is indicative of the type and quality the City desires to purchase.

D. COMMODITIES/EQUIPMENT

1. Material Safety Data Sheets: Under the "Hazardous Communication Act," commonly known as the "Texas Right to Know Act," a Vendor must provide to the City WITH EACH DELIVERY Material Safety Data Sheets, which are applicable to hazardous substances as defined in the Act.
2. Assembly: Products provided under this Agreement shall be completely assembled, adjusted, and all equipment including standard and supplemental equipment installed, and made ready for continuous operation unless otherwise specified in bid document.
3. Goods: Products furnished shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all products offered shall be new. Unless otherwise specified, used, shopworn, demonstrator, prototype or discontinued models are not acceptable.
4. Packaging of Deliverables: Vendor must package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and the unit price. Unless otherwise provided in writing by the City, each shipping container shall be clearly and permanently marked with the Vendor's name and address, and the City's name, address and Purchase Order number. Vendor shall bear all costs of packaging. Deliverables must be suitably packed to secure lowest transportation cost, conform with requirements of common carriers and ensure safe delivery. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
5. Warranty: The products specified shall be warranted against defects in material or workmanship for a period of not less than twelve (12) months from date of acceptance by the City. If the manufacturer's warranty exceeds twelve (12) months,

then the manufacturer's warranty shall be in effect. Vendor shall furnish a copy of the manufacturer's warranty at the time of delivery.

6. No Limitation of Manufacturers' Warranties: Vendor may not limit, exclude or disclaim any warranty provided by manufacturer.
7. Special Tools and Equipment: If the price stated in the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Vendor to fulfill the Agreement, such special tooling and/or equipment and all process sheets associated thereto shall become the property of the City and shall be identified by the Vendor as such.

E. DELIVERY

1. Delivery Terms, Transportation Charges, FOB: Deliverables shall be shipped FOB point of delivery unless otherwise specified on the Purchase Order or in the Solicitation. The Vendor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship deliverables. The place of delivery shall be specified in the Purchase Order.
2. No Substitutions or Cancellations: Unless specifically permitted in writing by the City, no substitutions or cancellations shall be acceptable.
3. Notice of Delay In Delivery: If a delay in delivery is anticipated, Vendor shall give written notice to the City. The City has the right to extend the delivery time/service date, or to cancel the Purchase Order or Agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery or failure to meet specifications authorizes the City to procure the products from an alternate source and charge the full increase, if any, in cost and handling to defaulting Vendor. Default on delivery may result in legal action and recourse.
4. Delivery Location, Hours, Days, Holidays: Unless otherwise specified, all deliveries must be made to City of Nacogdoches, between the hours of 8AM and 5PM (CST), Monday through Friday except regularly observed state and federal holidays. Receipt of products does not signify acceptance. If goods are delivered to the incorrect location, Vendor is responsible for all expenses associated delivering items to their correct destination.
5. No Shipment under Reservation: Vendor is not authorized to ship deliverables under reservation and no tender of bill of lading will operate as a tender of deliverables.
6. Title/Risk of Loss: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables (no delivery, no sale).
7. Right of Inspection And Rejection: The City expressly reserves all rights under law, including but not limited to, the Uniform Commercial Code, to inspect the deliverables at delivery or at a reasonable time subsequent to delivery, and to reject defective or non-conforming deliverables. The Vendor will be notified if the products are not in compliance with the required specifications. If any products are rejected as non-compliant, the required products may be procured from an alternate source, and the Vendor may be charged the full increase in cost, if any. If the City has the right to inspect the Vendor's or the Vendor's subcontractors facilities, or the deliverables at the Vendor's or the Vendor's subcontractors premises, the Vendor shall furnish or shall cause to be furnished without additional charge all reasonable facilities and assistance to the City to facilitate such inspection.
8. Acceptance of Incomplete or Non-Conforming Goods: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept such deliverables, the City may do so. The Vendor shall pay all claims, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any

such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If discovery that the deliverables are defective or non-conforming occurs after final payment, Vendor may be required to refund such amounts to the City.

F. REGULATIONS and STANDARDS

The products provided shall meet or exceed all Federal and State of Texas safety, health, lighting, and noise regulations and standards in effect and applicable to equipment furnished at the time of manufacture.

G. SAMPLES

Samples of items shall be furnished, if requested by the City, without charge, and if not destroyed, shall upon request be returned at the bidder's expense.

H. VENDORS SALES TERRITORY

City waives any responsibility or liability for Respondents bidding products "outside" their authorized territory by manufacturer or product line. Any Respondent bidding outside an approved manufacturer line does so at his own risk and discretion. Respondents shall comply with all sales terms according to the original bid and Purchase Order regardless of claim or dispute with product line representatives.

I. WORKMANSHIP

All parts not specifically mentioned which are necessary for the unit to be complete and ready for operation or which are normally furnished as standard equipment shall be furnished by the successful bidder. All parts shall conform in strength, quality, and workmanship to the accepted standards of the industry.

TECHNICAL SPECIFICATIONS

A. TYPE D HOT MIX

Texas Department of Transportation Standard Specification Item #340, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

B. TYPE C HOT MIX

Texas Department of Transportation Standard Specification #255, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

C. TYPE A, GRADE 2, BASE MATERIAL

Texas Department of Transportation Standard Specification 247, latest edition
The material will be picked up at Suppliers plant and loaded into City vehicles.

D. SUPPLEMENTAL MATERIALS

Please submit a list of materials offered by the Supplier with description, unit price and unit of measure. These materials may be purchased by the City during the term of this contract at the prices stipulated; however, these supplemental materials and prices will not be used in the evaluation of the bids received.

QUOTATION FORM

A. DELIVERY REQUIREMENTS

Respondent will show exact cost to load product in City vehicles.

B. DISCOUNTS

Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.

C. QUANTITIES

Quantities indicated below are estimated based upon the best available information. The City reserves the right to increase or decrease the quantities by any amount deemed necessary to meet its needs without any adjustments in the unit prices bid.

D. UNIT PRICES

Prices should be itemized. Unit prices shall be set to no more than four (4) decimal places. The City reserves the right to award by item or by total bid. If there are discrepancies between unit prices and extension, the unit price will prevail.

E. VALIDITY OF PRICING

Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties.

F. QUOTATION

All Responses must be submitted on the form(s) provided below:

<u>Item #</u>	<u>Quantity</u>	<u>UOM</u>	<u>Description</u>	<u>Unit Price</u>	<u>Total Price</u>
1.	Est. 2,000 ton		Type D Hot Mix	\$ <u>125.00</u>	\$ <u>250,000</u>
2.	Est. 1,500 ton		Type C Hot Mix	\$ <u>125.00</u>	\$ <u>187,500</u>
3.	Est. 1,000 ton		Type A, Grade 2, Base Material	\$ <u>45.00</u>	\$ <u>45,000</u>
4.	Unknown		Supplemental Materials	Attach Price List	

G. PRODUCTION PLANT

All responses must indicate the location of the Suppliers Production Plant:

2406 Spence Street
Street Address
Lufkin Texas 75915
City, State, Zip

CERTIFICATION and ACKNOWLEDGMENT

By submitting a Proposal in response to this solicitation, the Respondent certifies that at the time of submission, the following statements required by State of Texas purchasing laws or the Governor's executive orders are true:

1. Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract.

2. Respondent represents and warrants that it has no actual or potential conflicts of interest in the goods and or services described in the scope of work to this contract.

3. Antitrust. Pursuant to 15 U.S.C. §1, et seq. and Tex. Bus. & Comm. Code §15.01, et seq. neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

4. Terrorism Watch List. Respondent represents and warrants that it does not do business with Iran, Sudan or a foreign terrorist organization as prohibited by Texas Government Code 2252.152. Respondent certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

5. Convictions. Under Sections 2155.006, 2155.0061 and 2261.053 of the Texas Government Code, Respondent certifies that it is not ineligible to receive the specified contract and may be terminated and payment withheld if this certification is inaccurate. These sections prohibit contracts that include proposed financial participation by an individual or business entity who has been convicted in the past five years of (a) violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by §418.004, Gov't Code, occurring after September 24, 2005; and (b) of any offense related to the direct support or promotion of human trafficking.

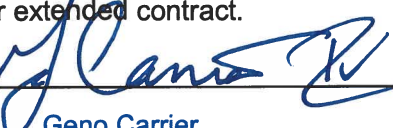
6. COVID Vaccinations. Respondent certifies that it does not require its customers to provide any documentation certifying the Customer's COVID-19 vaccination or post-transmission recovery on entry to, or to receive service from the Respondent's business.

7. Boycotts. (a) To the extent this Contract is considered a Contract for goods or services subject to § 2270.002 Texas Government Code, Respondent verifies that it: (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract.

(b) To the extent this Contract has a value of \$100,000 or more and Respondent is an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit that employs 10 or more full time employees, Respondent certifies that it: (i) does not and will not boycott energy companies during the term of the contract (*See Texas Government Code 2274.002, et seq.*); and (ii) does not and will not discriminate against a firearm entity or firearm trade association (*See Texas Government Code 2274.002, et seq.*).

If between the time of Proposal submission and time of award, the truthfulness of any of the foregoing changes, the Respondent will notify the City of Nacogdoches Purchasing Agent. Failure to do so may result in terminating any contract or purchase order issued pursuant to this bid.

DISCLOSURE OF INTERESTED PARTIES The law states that a governmental entity may not enter into certain contracts with a nonexempt business entity unless the business entity submits a disclosure of interested parties to the governmental entity. By submitting a Proposal in response to this solicitation, the Respondent agrees to comply with HB 1295, Government Code 2252.908. Respondent agrees to provide the City Secretary of the City of Nacogdoches, and/or requesting department, the "Certificate of Interested Parties," Form 1295 as required, within ten (10) business days from notification of pending award, renewal, amended or extended contract.

Signed By:  Title: Vice President / General Manager

Typed Name: Geno Carrier Company Name: Texas Materials- East Texas Area

Phone No.: 936-639-2215 Fax No.: 936-639-5250

Email: geno.carrier@texasmaterials.com

Bid Address: PO Box 151705 Lufkin Texas 75915
P.O. Box or Street City State Zip

Order Address: 2406 Spence Street Lufkin Texas 75915
P.O. Box or Street City State Zip

Remit Address: PO Box 151705 Lufkin Texas 75915
P.O. Box or Street City State Zip

Federal Tax ID No.: 58-1401466

DUNS No.: 039939236

Date: October 4, 2023

FOR CITY USE ONLY

Approved By: _____ Date: _____
City Manager, City of Nacogdoches

ASPHALT PRODUCTS AND LIMESTONE BASE BID AWARD

- Used in Public Works' operations; approx. \$250,000 annually
- Quarterly price evaluation
- One-year term, two (2) optional one-year renewals

Vendor	Type D Asphalt	Type C Asphalt	Limestone Base
Longview Asphalt	\$105.00/ ton - Primary	\$105.00/ton - Primary	\$46.00/ton - Primary
Texas Materials	\$125.00/ton - Secondary	\$125.00/ton - Secondary	\$45.00/ton - Secondary



PRESENTER: Juan Pollette, Planning Tech

ITEM/SUBJECT: Public Hearing: Consider approval of a Zone Change from PD, Planned Development District to R-1, Single Family for approximately 32 acres, being Lots 1, 2, 3, 4R, 5, and 6R-1, of the Timber Springs Subdivision and Timber Springs Replats. This request has been submitted by Lone Star Breeder Farms, Inc. Case File ZON2023-06. (Planning Technician)

SUMMARY/BACKGROUND: The request is for a zone change from PD, Planned Development District to R-1, Single Family for approximately 32 acres, being Lots 1, 2, 3, 4R, 5 and 6R-1, of the Timber Springs Subdivision and Timber Springs Replats, generally located on the south side of Maroney Drive, 160 feet west of Kenbrook Drive. The R-1, Single Family district is intended as an area for low-density single-family use. Lots in this area must be a minimum of 8,250 square feet or larger.

The proposed zone change is for approximately 32 acres out of the Timber Springs Subdivision. The portion of the PD to the east (Lot 6R-2 of the Timber Springs Subdivision Replat) is not included in the zone change request. This lot was purchased by one of the adjacent property owners in 2014, which is why it is not included in the application.

This property was zoned from R-1 to PD in the mid-2000s for a large retirement community. The development was never developed, and never purchased by the developer of the retirement community. The property owner is requesting to change the zoning back to the original R-1 designation to be more consistent with the surrounding neighborhoods. The applicant intends to sell the property to a buyer that plans on building a single family home on the property.

Adjacent Land Use & Zoning

The subject property is zoned PD, Planned Development and is currently undeveloped. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North (Across Maroney Dr)	Single Family Residential	R-1, Single Family	Undeveloped
South	Rural Development	R-1, Single Family	Undeveloped
East	Single Family Residential & Rural Development	R-1, Single Family	Single Family
West	Single Family Residential & Rural Development	B-2, General Business	Undeveloped

The surrounding properties to the north across Maroney Drive are zoned B-2, General Business, and R-1, Single Family and are mostly vacant except for the Kenbrook single family neighborhood to the north and east. The property to the west is zoned B-2, General business and is undeveloped. The property to the south is zoned R-1, Single Family and is undeveloped. The portion of the original PD (Lot 6R-2) to the east that's not included in the zone change request is also undeveloped. This tract is encumbered by steep terrain and a tributary of Lanana Creek, and was identified as a "reserve" tract on the approved PD Development Plan to be maintained as a natural area.

REVIEW CRITERIA: Per Section 118.139 of the Nacogdoches Zoning Ordinance, the following conditions shall be considered when reviewing an application for zoning change:

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 R-1, Single Family zoning district is consistent with the current zoning of the majority of the properties in the area, as well as the single family neighborhood (Kenbrook Subdivision) located to the east.

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 property is bounded the Kenbrook Subdivision to the east, Maroney Drive to the north, and by a Lanana Creek tributary to the south and west. The approval of this zone change 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 Maroney Drive, a collector road which functions as primary access for the property and adjacent subdivisions. The roadway is adequate to accommodate the nature and volume of traffic typically generated by the uses permitted under the R-1, Single Family zoning district.

The property has access to public utilities, with a 6-inch water main and 8-inch sewer main located along Maroney Drive.

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;

Future development will need to comply with current City regulations regarding driveway spacing 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;

Future development will need to comply with City regulations regarding the prevention of offensive odors, fumes, dust, noise and vibrations.

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

If the zone change request 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;

Single Family construction is not subject to commercial district landscaping requirements.

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 *Single Family Residential*. The *Single Family Residential* FLUP category is described as, “Conventional one-family detached dwellings (also includes duplexes).”

Thoroughfare Plan

Maroney Drive is a Collector road. The roadway is adequate to accommodate the nature and volume of traffic typically generated by the proposed use.

Land Use Policies, Goals & Objectives

This rezoning is a response to current needs for single family residential growth and therefore fits into the goals of the Comprehensive Plan; specifically, the goal to encourage *Growth Inward- Long-term growth in appropriate areas to achieve an efficient, diverse and balanced pattern of land uses both within the City and urbanizing portions of its extraterritorial jurisdiction*. Some of the targeted objectives include:

- Encourage infill development where appropriate (utilities, compatibility, etc.).
- Plan for mixing and/or separation of land use types based on desired, location, density and pattern of development.
- Promote growth where adequate infrastructure exists.

This request also furthers the Land Use Policies of the 2003 Comprehensive Plan, specifically:

- Compatibility with existing uses should be maintained. Well planned, mixed uses which are compatible are to be encouraged.
- Schools, parks and community facilities should be located close to or within residential neighborhoods.

Staff finds that the request is in compliance with the FLUP and the stated Goals and Objectives of the 2003 Comprehensive Plan.

NOTICES:

Staff mailed 11 notices to property owners within the 200 foot notification area. Since the time of this report, Staff has received two (2) written responses in support of the request.

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

P&Z Recommendation

The P&Z Commission heard this item on October 9, 2023 and voted unanimously (5-0) to approve the Zone Change from Planned Development to R-1, Single Family.

FINANCIAL:

No financial impact is associated with this item.

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

CITY CONTACT: Juan Pollette, Planning Technician
pollettej@nactx.us
(936) 559-2559

ATTACHMENTS:

1. Item Report 6.B Presentation
2. Response Forms
3. Ordinance
4. Exhibit A

City Council Meeting
Tuesday, October 17, 2023
5:30 p.m.

Agenda Item #5.B

Timber Springs Subdivision- Zone Change
PD Planned Development to R-1 Single Family

Aerial Map ZON 2023-06



96.8% ▼



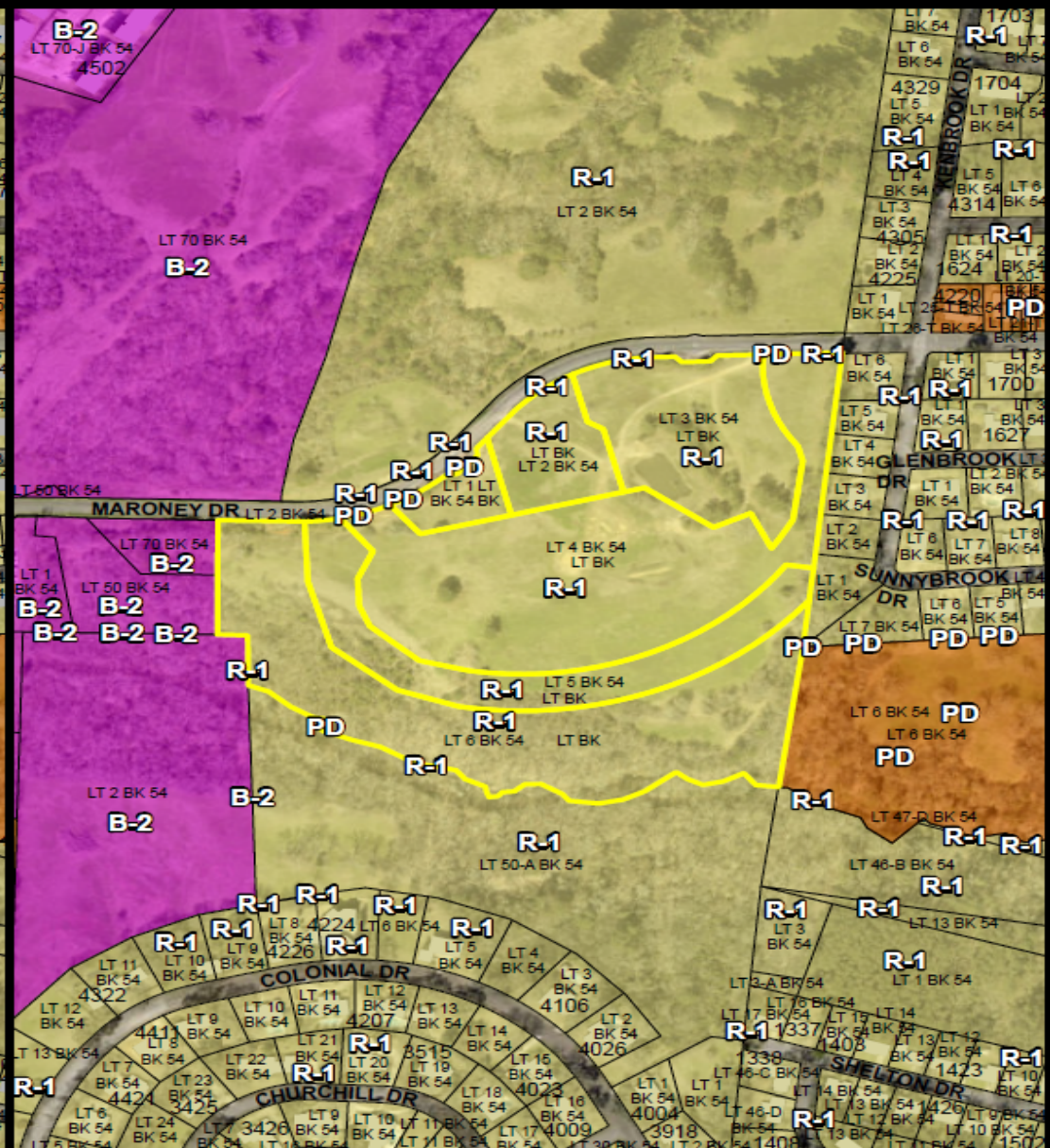
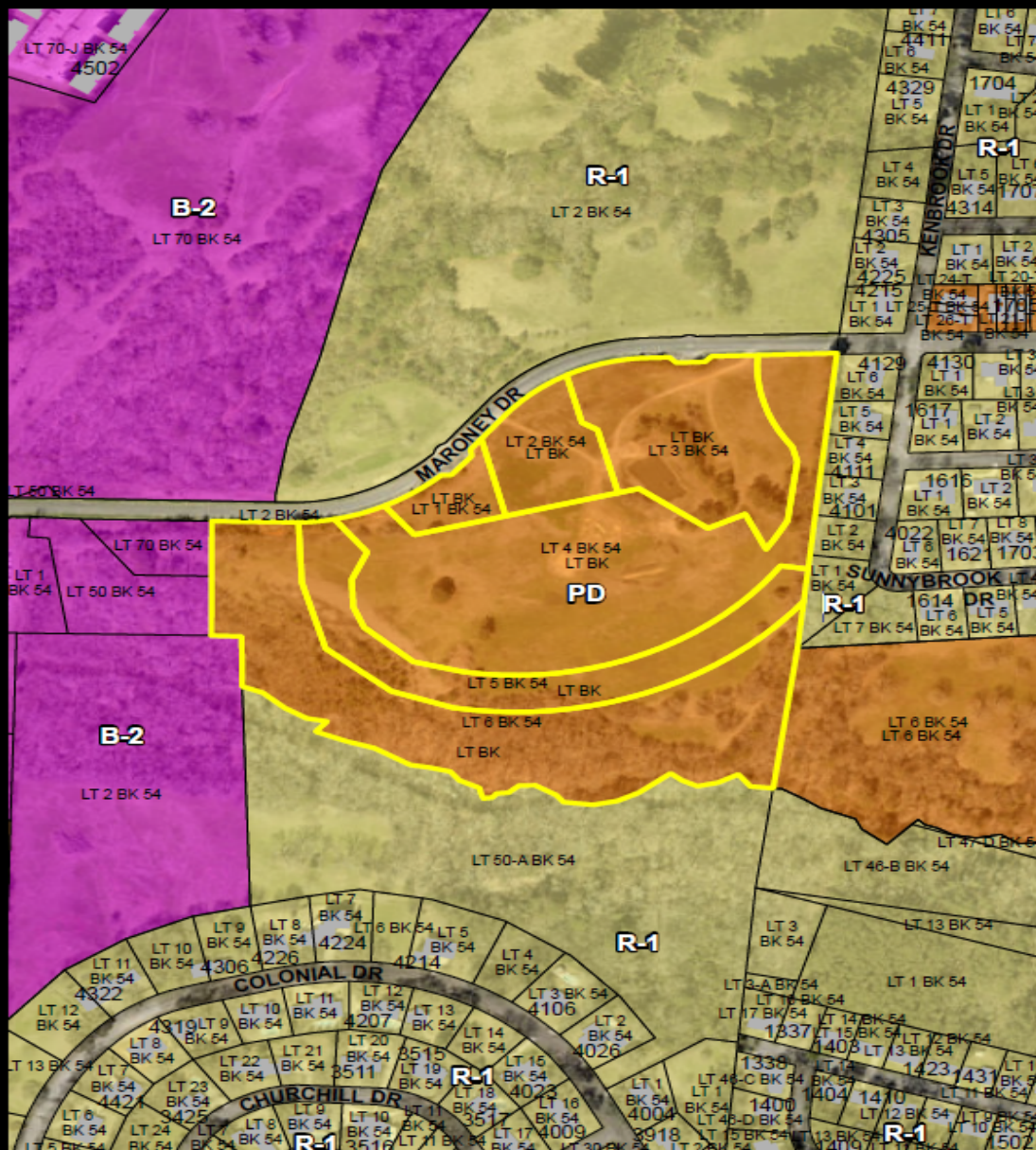
It does not represent an on-the-ground only the approximate relative location of property boundaries.

Nacogdoches
where learning makes the difference
 Engineering Department
 4000 Elm Avenue

Existing Zoning

ZON2023-06

Proposed Zoning



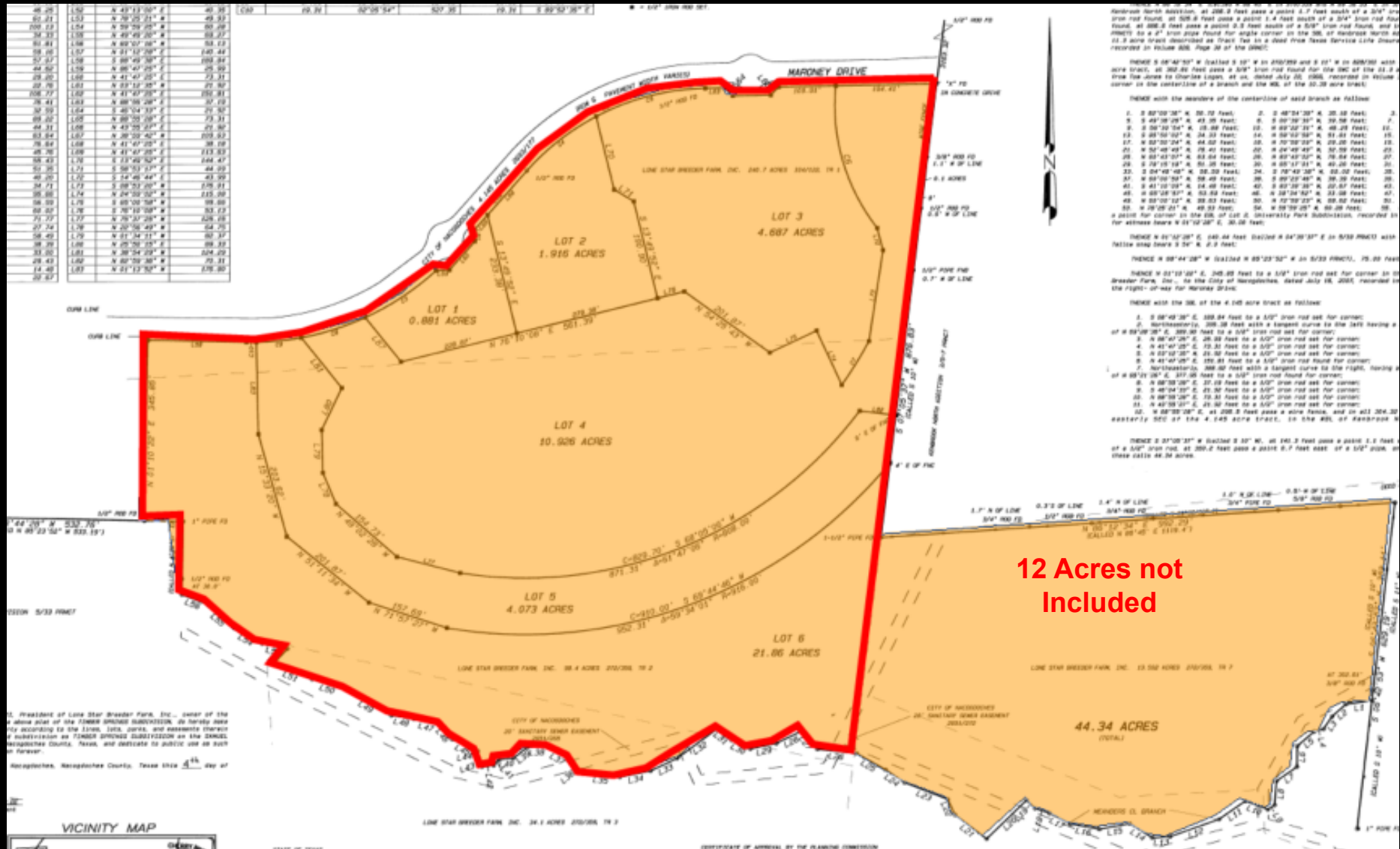
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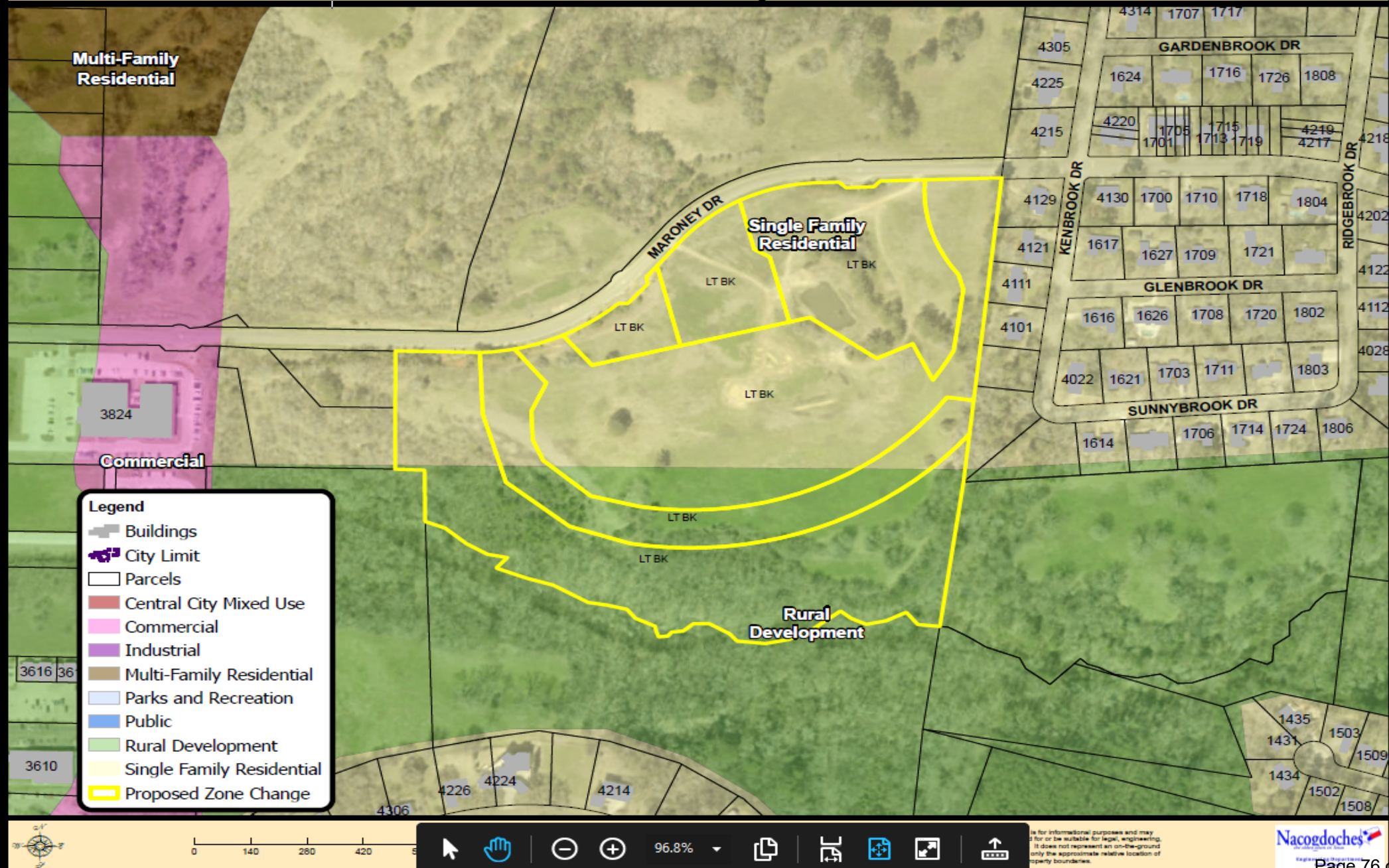
Notice: This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Nacogdoches
Engineering & Surveying
2023-2024

Timber Springs PD = 44 Acres Total



Future Land Use Map ZON 2023-06



TIMBER SPRINGS

NACOGDOCHES, TEXAS

RESTAURANT
SINGLE STORY - PHASE II

ASSISTED LIVING
20 UNITS
SINGLE STORY - PHASE II

WELLNESS CENTER/ SPA/ REHAB
SINGLE STORY - PHASE II

NURSING CENTER
SINGLE STORY - PHASE II

SENIOR APARTMENTS
4-STORY - PHASE I
144 UNITS

RESTAURANT
SINGLE STORY - PHASE III

HOME SITES
21 EXECUTIVE HOMES/
COTTAGES - PHASE I

CARPORTS



Site Photos: ZON2023-06



Street view from
Maroney Drive



Site Photos: ZON2022-02



Looking west from subject property

The Burke Center at SEC of University & Maroney



Site Photos: ZON2023-06



Looking east from subject property

Kenbrook Subdivision
to the east

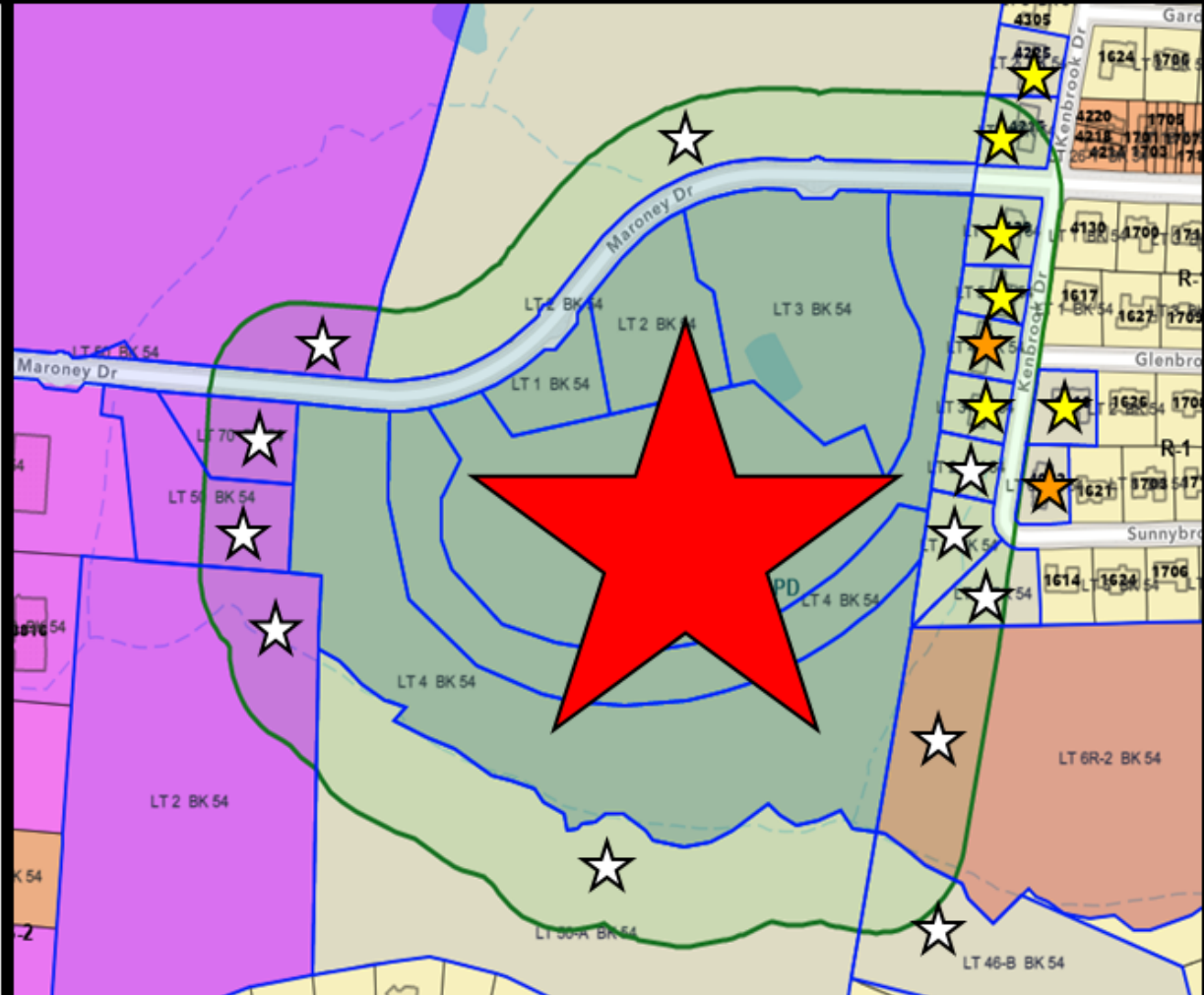


200 Foot Notification Map- ZON2023-06

Maroney Drive

Legend

-  200 Foot Buffer
-  Proposed Zone Change
-  Single Family- Rental
-  Single Family- Owner Occupied
-  Vacant/ Undeveloped

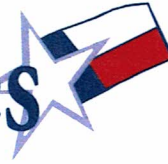


Conditions for Approval

- (1) *Compatibility*. The...use will be compatible with and not injurious to the use and enjoyment of...property in the...vicinity, nor significantly diminish...property values within the...vicinity;
- (2) *Orderly growth and development*. The...use will not impede the normal and orderly development and improvement of surrounding vacant property;
- (3) *Supporting facilities*. Adequate utilities, access roads, drainage and other necessary...facilities have been or will be provided;
- (4) *Drives and parking*. The design...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;
- (5) *Nuisances*. Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;
- (6) *Lighting*. Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;
- (7) *Landscaping*. Sufficient landscaping and screening to ensure...compatibility with adjacent property exists or will be provided; and
- (8) *Comprehensive plan*. The proposed use is in accordance with the comprehensive plan.

Nacogdoches

the oldest town in Texas



Response Form

Project Number: ZON2023-06

Maroney Drive – Timber Springs Subdivision

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. **All response forms and written protest must be submitted no later than Monday, October 9, 2023, at 12:00 p.m. Protest and responses submitted after this deadline will not be accepted.**

Please complete and return form to:

City of Nacogdoches Planning & Zoning Department
Attn: Aimee Cloutier
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Aimee Cloutier at pz@nactx.us

Project Number: ZON2023-06

Please circle one:

☒ In favor of request

☐ Opposed to request

Comments:

Signature:

AT Mast IV

Printed Name:

AT Mast IV

Street Address:

P.O. Box 635025

City, State and Zip Code:

Phone Number: *936 - 564 - 3614*

Email Address:

adlai.mast@gmail.com

Physical Address of Property within 200 Feet:

Camino Group - Parcel 33213

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

Case file ZON2022-02

2 messages

Mark Hogan <mhhogan1@gmail.com>
To: cloutiera@nactx.us

Thu, Oct 5, 2023 at 11:00 AM

Dear Commission Members,

As 27 year residents of Kenbrook Subdivision, we highly support the proposed zone change from PD to R-1. We feel R-1 is more consistent with surrounding neighborhoods.

Mark & Lynann Hogan
[1700 Maroney Drive](#)
Nac., TX 75965

Cloutier, Aimee <cloutiera@nactx.us>
To: Mark Hogan <mhhogan1@gmail.com>

Thu, Oct 5, 2023 at 11:06 AM

Good morning Mark,
We have received your response and will forward this to the Planning and Zoning Commission/ City Council.

Regards,
[Quoted text hidden]

--
Aimee Cloutier
Planning and Zoning
City of Nacogdoches
(936) 559-2574
cloutiera@nactx.us



ORDINANCE NO. 1984-10-23

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING THE BOUNDARIES OF A ZONING DISTRICT WITHIN THE CITY OF NACOGDOCHES FROM PD, PLANNED DEVELOPMENT TO R-1, SINGLE FAMILY FOR LOTS 1, 2, 3, 4R, 5, AND 6R-1, CITY BLOCK 54, OF THE TIMBER SPRINGS SUBDIVISION AND TIMBER SPRINGS REPLAT, BEING APPROXIMATELY 32 ACRES, IN NACOGDOCHES, TEXAS; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Zoning Ordinance of the City of Nacogdoches allows the City Council to amend the official zoning map; and

WHEREAS, the property described above and depicted in “**Exhibit A**” is currently zoned PD, Planned Development; and

WHEREAS, the property owner has requested the zoning classification of said property to be changed to R-1, Single Family; and

WHEREAS, the City Council of the City has conducted, in the time and manner and after the notice required by law and the Zoning Ordinance of the City, a public hearing on such request for change in zoning classification; and

WHEREAS, the City Council now deems it appropriate to grant such requested change in classification.

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 the same are deemed to be in furtherance of a public purpose.

SECTION II

Approval of Zoning Change

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a change in Zoning Classification from PD, Planned Development to R-1, Single Family is hereby approved by the City Council.

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 change in Zoning Classification 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 Deputy 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 _____, 2023, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
Randy Johnson, Mayor

ATTEST:

APPROVED AS TO FORM:

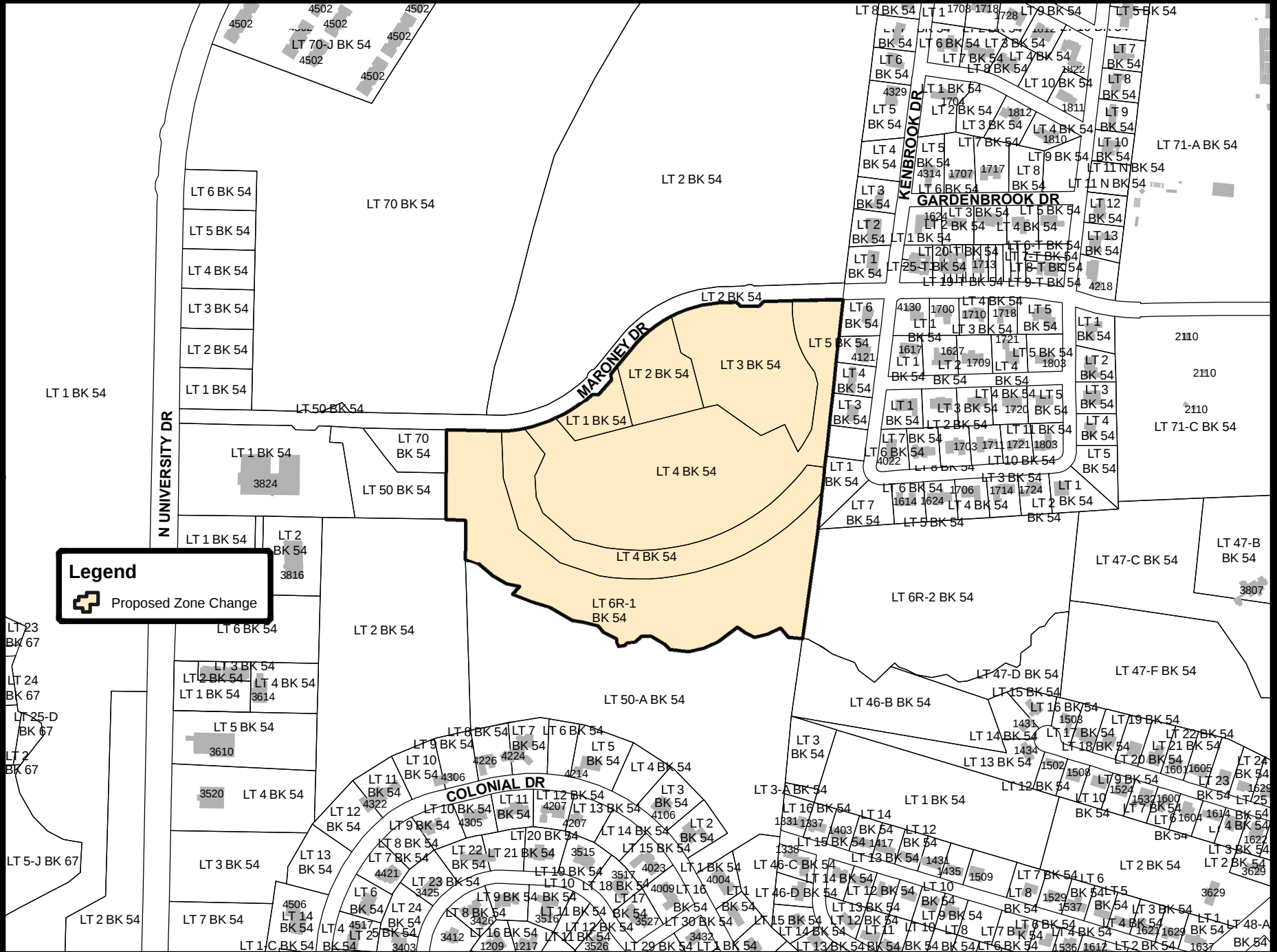
Rhonda Lewis, Deputy City Secretary

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

STEVE BARTLETT, Interim City Planner

ZON2023-06: 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.

8

0 125 250 500 Feet

Date Created: March 28, 2022 Software: ArcGIS 10.8.1

Nacogdoches
Engineering Department
City of Nacogdoches

PRESENTER: Steve Bartlett, Public Works Director

ITEM/SUBJECT: Consider approval of an ordinance of the City of Nacogdoches, Texas regulating the collection of sewage in the City requiring pretreatment and 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. (City Engineer)

SUMMARY/BACKGROUND: The City of Nacogdoches is required by its Texas Pollutant Discharge Elimination System (TPDES) permit WQ0010342004 for the City's 2A Wastewater Treatment Plant (Plant) to implement an industrial pretreatment program (Program) in accordance with the Clean Water Act and federal regulations established in Title 40 Code of Federal Regulations Part 403 (40 CFR Part 403). The purpose of the Program is to protect the City's wastewater treatment plant, the receiving stream, and the quality of sludge. The Program contains operating procedures and describes the control mechanisms that will be used by City staff to prevent the discharge of pollutants to the City's collection system from industrial users that could harm or inhibit the Plant's biological treatment processes and/or cause a violation of the City's TPDES permit.

On October 14, 2005, the Federal regulations for programs were amended. TCEQ required the City's Program to be modified to comply with the 2005 amended regulations. Modifications were made by the City to the Program documents, including the City's Sewer Use Ordinance, which gives the City the authority to implement the changes to the Program as required. TCEQ has caused the City to again make modifications to the pretreatment program, specifically to update local pollutant limits based on system wide chemical testing as well as some administrative changes to definitions and permit verbiage.

The modifications to Technically Based Local Limits (TBLL) that were made to the Ordinance are summarized below:

1. Metals and cyanide will only have daily average maximum limits, no daily composite maximum.
2. Definition change: Daily average will be defined in the Ordinance as, "Daily average maximum limit". This describes the maximum allowable discharge limit of a pollutant during a calendar month.
3. Where daily maximum limits are expressed in terms of concentration, the daily average discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that month.
4. Sampling: If only one sample is taken per month, that sample's result is the daily average concentration and will be assessed for compliance against the daily average maximum limit. If more than one sample is taken per month, the samples will be averaged, and that average will be assessed for compliance against the daily average maximum limit.

5. The new Local pollutant Limits will be noted in revised wastewater discharge permits for each Significant Industrial User.
6. The definition of Uniform allocation means the limit is the same for all Significant Industrial Users.
7. The designation of G* in the limit tables means these pollutants require grab samples or require analysis within a short time frame. Limits for these pollutants apply to each discrete grab sample. Each grab sample will be evaluated individually.
8. Limits for Lead and Zinc were modified based on Tiered flow limits where users with discharges less than 1 MGD (million gallons per day) have different limits than users over 1 MGD. This change was previously approved by City Council.
9. Industrial users will no longer need to sample for aluminum, barium, hexavalent chromium, manganese, boron, or iron.

FINANCIAL:

No financial impact associated with this item

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

Infrastructure

CITY CONTACT: Steve Bartlett, Director Public Works/City Engineer
bartletts@nactx.us
(936) 556-0945

ATTACHMENTS:

1. RED LINES
DIVISION 2. SEWER USE REGULATIONS TBLL
Mod_08.10.2023
2. 6C Presentation Sewer Use Ordinance
3. Ordinance 106 Div 2 106-66 to 106-79 Amended Final 10-17-23_rev (2)

PART II - CODE OF ORDINANCES
Chapter 106 - UTILITIES
ARTICLE II. - SEWER SYSTEM
DIVISION 2. SEWER USE REGULATIONS

DIVISION 2. SEWER USE REGULATIONS¹

¹Editor's note(s)—Ord. No. 1581-11-11, adopted Nov. 1, 2011, amended Div. 2 in its entirety to read as set out herein. Former Div. 2, §§ 106-66—106-79, pertained to similar subject matter and derived from Ord. No. 1207-6-00, adopted June 6, 2000.

Sec. 106-66. General provisions.

(a) *Purpose and policy.* This division 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 States 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 division 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 division shall apply to all users of the publicly owned treatment works. The article 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 division. 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

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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 subsections 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 means 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* means 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 66 percent rule, means a repeated violation of discharge limits for any one pollutant parameter, in which 66 percent 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.

Commented [HG1]: Moved to the Significant Noncompliance definition.

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 average concentration means the arithmetic average of all effluent samples collected within one calendar month. Where only one sample is collected during a calendar month, that one result shall be the daily average concentration for the respective month.

Commented [HG2]: Added to define new TBLL limits.

Daily discharge means 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 average maximum limit means the maximum allowable discharge limit of a pollutant during a calendar month. Where daily maximum limits are expressed in terms of a concentration, the daily average discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that month.

Commented [HG3]: Added to define new TBLL limits.

Daily maximum limit means 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 means 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 means 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

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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 means 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.

Commented [HG4]: Removed conflicting definition. See added definition for daily average maximum limit.

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 means 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 means 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.

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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:

Commented [HG5]: Updated to conform to the EPA definition.

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- (1) Chronic violations of wastewater discharge limits, (defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Maximum Allowable Discharge Limits 66-percent rule) as defined in this section.
 - (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement, including Instantaneous Maximum Allowable Discharge Limits, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH) Technical review criteria violations (33-percent 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 means any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in section 106-212 of this division. 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.

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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 33-percent rule, means a repeated violation of discharge limits for any one pollutant parameter, in which 33-percent 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.

Commented [HG6]: Moved to definition of Significant Noncompliance.

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/l each of suspended solids and CBOD, as determined by the state 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.

(Ord. No. 1581-11-11, § I, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021; Ord. No. 1935-10-22, § II, 10-18-2022)

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 subsection 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

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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.)

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- 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 subsections 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

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- (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.

(Ord. No. 1581-11-11, § II, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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

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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.*

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- (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 subsections 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 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.

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- (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 one 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:
- Transport septage, waste activated sludge, or grease trap wastes from sources within the city; or
 - 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.

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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.

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- (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:
- 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.
 - 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.
 - Grease trap wastes are delivered within 24 hours after pumpout.²
 - Inspection and treatment fees are paid according to the rate ordinance and/or the user charge ordinance.

(7) *Penalties.*

- The following may result in cancellation of the city permit and/or loss of authorization to dispose of waste at the city's facilities:
 - Failure of a transporter to maintain records, trip tickets, or other documents properly, without falsification;
 - Failure of a transporter to submit to the city's pretreatment personnel correct information on a permit application by the required due date;
 - Unauthorized discharge of waste; and
 - Failure of a transporter to maintain a current state permit and to comply with state regulations.
- The city may also take any action authorized by law to secure compliance including:
 - Assessment of administrative penalties of \$50.00 per violation per day up to \$5,000.00 maximum for the violation.
 - Seeking civil penalties as prescribed by city ordinance.

(Ord. No. 1581-11-11, § III, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

²Grease trap wastes, if disposed of at the city treatment plant, must be delivered to the plant within 24 hours after pumping from grease traps.

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 subsection 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 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 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 four-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.

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- 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
 3. 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.*

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- 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)(iii).
 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.

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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.

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- (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:
- Keep the pretreatment facilities in full operation at all times during discharge of industrial waste to the sewage works, and
 - 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.*
- Definitions.*
 - Bypass* means the intentional diversion of waste streams from any portion of an industrial user's treatment facility.
 - 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.
 - 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.
 - 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.
- Prohibition of bypass.*
 - Bypass is prohibited, and the city may take enforcement action against an industrial user for a bypass, unless;

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- 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.

(Ord. No. 1581-11-11, § IV, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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;~~
 - (43) Chlorides in excess of 250 mg/l; or
 - ~~(54) 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.

Substance	Daily Average Maximum Limit

Arsenic, total	0.22
Cadmium, total	0.003
Chromium, total	2.26
Copper, total	0.9
Cyanide, total	0.06
Mercury, total	0.00027
Nickel, total	0.26
Selenium, total	0.025
Silver, total	0.027

	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
Daily Average Maximum Limit			
Substance	Tier I ¹		Tier II ²
Lead, total	2.0		0.002
Zinc, total	2.0		0.4

	Monthly Average		Daily Composite	
Substance	Tier I ³	Tier II ⁴	Tier I ³	Tier II ⁴

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Lead	0.33	0.002	0.79	0.004
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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.

¹³ Tier I monthly daily average and daily composite maximum local limits for lead apply to users that discharge less than 1,000,000 gallons per day of sewage.

⁴² Tier II monthly daily average maximum alimitsnd daily composite local limits for lead apply to users that discharge greater than 1,000,000 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

Commented [HG7]: Bullet points deleted because they do not apply to updated TBLLS.

(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 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 waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following 12 months. All notifications must take place no later than 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 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 15 kilograms

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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 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 division, 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 ensure 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.

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- (3) *Requirements for plans.* The plans required by this subsection shall address the following as a minimum:
- Description of discharge practices, including nonroutine batch discharges;
 - Description, location, and storage facilities for stored chemicals;
 - Procedures for immediately notifying the city of any accidental or slug discharge, including names or positions of responsible personnel; and
 - 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:
- Adequacy of each existing plan for control of accidental discharges and slugs.
 - 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.

(Ord. No. 1581-11-11, § V, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021; Ord. No. 1935-10-22 , § II, 10-18-2022)

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.
- 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.
 - 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.
- Pollutants which create a fire or explosion hazard in the collection or treatment works;
 - Pollutants which will cause corrosive structural damage to the collection or treatment works;

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- (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.

(Ord. No. 1581-11-11, § VI, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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.

(Ord. No. 1581-11-11, § VII, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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.

(Ord. No. 1581-11-11, § VIII, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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.

(Ord. No. 1581-11-11, § IX, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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.

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- (2) Violations by industrial users, as listed in subsection 106-67(h).
 - (3) Any other violations of this division, 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).

(Ord. No. 1581-11-11, § X, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

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.

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(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;

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- (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;

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- 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 (V.T.C.A., 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:

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- (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.

(Ord. No. 1581-11-11, § XI, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021; Ord. No. 1935-10-22, § II, 10-18-2022)

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

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- (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.

(Ord. No. 1581-11-11, § XII, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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.

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- (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.

(Ord. No. 1581-11-11, § XIII, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

Sec. 106-79. Validity.

All ordinances or parts of ordinances in conflict herewith are hereby repealed. In particular, this division is intended to modify and replace Ordinance No. 1863-04-21 and to constitute an update of article II, division 2, 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.

(Ord. No. 1581-11-11, § XIV, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021; Ord. No. 1935-10-22 , § II, 10-18-2022)

Secs. 106-80—106-320. Reserved.

SEWER USE (PRETREATMENT) ORDINANCE

- Amends Chapter 106 Utilities, Article II, Division 2, “Sewer Use Regulations”
- Updates ordinance to allow for revised Technically Based Local Limits of pollutants
- Updates definitions, terms and procedures
- TCEQ approved



1983-10-23

**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;

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);

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 collection and treatment facilities;

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

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

Protection for the City's collection and treatment facility 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;

WHEREAS, the City has adopted various ordinances designed to meet requirements of the EPA and of the relevant state agency, including Ordinance No. 1935-10-22, adopted on October 18, 2022;

WHEREAS, Ordinance No. 1935-10-22 contained definitions of terms and procedures that needed change or clarification;

WHEREAS, Ordinance No. 1935-10-22 contained limitations on the amount of various pollutants that can be discharged in a waste stream, and such limits required reassessment and revision based on local wastewater testing; and

WHEREAS, the revisions made to Ordinance No. 1935-10-22 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 division 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 States 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 division 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 division shall apply to all users of the publicly owned treatment works. The article 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 division. 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 subsections 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 means 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* means 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.

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 average concentration means the arithmetic average of all effluent samples collected within one calendar month. Where only one sample is collected during a calendar month, that one result shall be the daily average concentration for the respective month.

Daily discharge means 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 average maximum limit means the maximum allowable discharge limit of a pollutant during a calendar month. Where daily maximum limits are expressed in terms of a concentration, the daily average discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that month.

Daily maximum limit means 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* means 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 means 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.

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 means 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 means 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, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Maximum Allowable Discharge Limits.
- (2) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement, including Instantaneous Maximum Allowable Discharge Limits, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH).

- (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* means any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in section 106-212 of this division. 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."

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/l each of suspended solids and CBOD, as determined by the state 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.

(Ord. No. 1581-11-11, § I, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021; Ord. No. 1935-10-22 , § II, 10-18-2022)

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 subsection 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 subsections 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.

(Ord. No. 1581-11-11, § II, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

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 subsections 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 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 one 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.¹
 - 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.

¹Grease trap wastes, if disposed of at the city treatment plant, must be delivered to the plant within 24 hours after pumping from grease traps.

- 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.

(Ord. No. 1581-11-11, § III, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

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 subsection 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 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 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 four-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
 3. 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.

1. 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:
- Keep the pretreatment facilities in full operation at all times during discharge of industrial waste to the sewage works, and
 - 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.*
- 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.

(Ord. No. 1581-11-11, § IV, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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) Chlorides in excess of 250 mg/l; or
- (4) 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.

Substance	Daily Average Maximum Limit
Arsenic, total	0.22
Cadmium, total	0.003
Chromium, total	2.26
Copper, total	0.9
Cyanide, total	0.06
Mercury, total	0.00027
Nickel, total	0.26
Selenium, total	0.025
Silver, total	0.027

Substance	Daily Average Maximum Limit	
	Tier I ¹	Tier II ²
Lead, total	2.0	0.002
Zinc, total	2.0	0.4

¹ Tier I daily average maximum limits apply to users that discharge less than 1,000,000 gallons per day of sewage.

² Tier II daily average maximum limits apply to users that discharge greater than 1,000,000 gallons per day of sewage.

- (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 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 waste stream discharged

during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following 12 months. All notifications must take place no later than 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 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 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 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 division, 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 ensure 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.

(Ord. No. 1581-11-11, § V, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021; Ord. No. 1935-10-22, § II, 10-18-2022)

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.

(Ord. No. 1581-11-11, § VI, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021)

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.

(Ord. No. 1581-11-11, § VII, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

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.

(Ord. No. 1581-11-11, § VIII, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

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.

(Ord. No. 1581-11-11, § IX, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

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:

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- (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 division, 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).

(Ord. No. 1581-11-11, § X, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

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 (V.T.C.A., 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.

(Ord. No. 1581-11-11, § XI, 11-1-2011; Ord. No. 1863-04-21, § II, 4-20-2021; Ord. No. 1935-10-22, § II, 10-18-2022)

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.

(Ord. No. 1581-11-11, § XII, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

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.

(Ord. No. 1581-11-11, § XIII, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021)

Sec. 106-79. Validity.

All ordinances or parts of ordinances in conflict herewith are hereby repealed. In particular, this division is intended to modify and replace Ordinance No. 1863-04-21 and to constitute an update of article II, division 2, 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.

(Ord. No. 1581-11-11, § XIV, 11-1-2011; Ord. No. 1863-04-21 , § II, 4-20-2021; Ord. No. 1935-10-22 , § II, 10-18-2022)

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 17th day of October, 2023, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches.

ATTEST:

CITY OF NACOGDOCHES

Rhonda Lewis, Deputy City Secretary

BY: _____
Randy Johnson, Mayor

APPROVED AS TO FORM:

Jerry Baker, City Attorney

APPROVED AS TO CONTENT:

Steve Bartlett, PE, City Engineer