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## CITY COUNCIL AGENDA

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Notice is hereby given that the Rockport City Council will hold a regular meeting on Tuesday, May 10, 2016, at 6:30 p.m. The meeting will be held at Rockport City Hall, 622 E. Market, Rockport, Texas. The matters to be discussed and acted upon are as follows:

### Opening Agenda

1. Call meeting to order.
2. Pledge of Allegiance.
3. Citizens to be heard.  
At this time, comments will be taken from the audience on any subject matter that is not on the agenda. To address the Council, please sign the speaker's card located on the table outside the Council Chamber and deliver to the City Secretary before the meeting begins. Please limit comments to three (3) minutes. In accordance with the Open Meetings Act, Council may not discuss or take action on any item that has not been posted on the agenda.
4. Presentation of Certificates of Election to newly-elected Mayor, official for Ward 2 and official for Ward 4.  
*(Presentación de los certificados de elección para recién elegido alcalde, oficial de Barrio 2 y oficial de Barrio 4.)*
5. Administration of Oath of Office to newly-elected Mayor, official for Ward 2 and official for Ward 4.  
*(Administración de juramento del cargo de alcalde electo, el recién elegido oficial de Barrio 2 y oficial de Barrio 4.)*
6. Deliberate and act on election by Council of Mayor Pro-Tem.

### Consent Agenda

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

7. Deliberate and act on approval of City Council Workshop Minutes and Regular Meeting Minutes of April 26, 2016, and Special Meeting Minutes of May 2, 2016.
8. Deliberate and act on 2<sup>nd</sup> quarter report from Rockport Center for the Arts for Fiscal Year 2015-2016 marketing expenditures.
9. Deliberate and act on approval of Performance Modification No. 2 for the Water Improvements grant 713411 (West Terrace First Time Water Project).

### Regular Agenda

10. *Tabled April 26, 2016* - Deliberate and act on Resolution amending Resolution 2016-06 authorizing certification of a cultural district to be named Rockport Cultural Arts District.

11. Deliberate and act on second and reading of an Ordinance amending City of Rockport Code of Ordinances Chapter 54 Health and Sanitation, Article II, Food Establishments.
12. Deliberate and act on second and final reading of an Ordinance authorizing the closing, vacating and abandonment of a 20-foot wide alleyway lying between Lots 1 and 9, in Block 107, Manning Addition; and a 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas; providing for the terms and conditions of such vacation and abandonment; authorizing the Mayor to execute a Quitclaim Deed for the said alleyways to be closed, vacated and abandoned; and providing for an effective date.
13. Deliberate and act on first reading of an Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. "Erosion and Sediment Control" with a Stormwater Ordinance.
14. Reports from Council.  
At this time, the City Council will report/update on all committee assignments, which may include the following: Aransas Pathways Steering Committee; Building and Standards Commission; Coastal Bend Bays and Estuaries Program; Coastal Bend Council of Government; Environmental Committee for Water Issues; Park & Leisure Services Advisory Board; Planning & Zoning Commission; Rockport Heritage District Board; Rockport-Fulton Chamber of Commerce; Aransas County Storm Water Management Advisory Committee; Swimming Pool Operations Advisory Committee; Tourism Development Council; Tree & Landscape Committee; YMCA Development Committee; Texas Maritime Museum, Fulton Mansion, Rockport Center for the Arts, Aransas County, Aransas County Independent School District, Aransas County Navigation District, Town of Fulton, and Texas Municipal League. No formal action can be taken on these items at this time.

### **Executive Session**

City Council will hold an executive session pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

15. Section 551.071(1)(A) and Section 551.071(2) Consultation with Attorney: Pending or contemplated litigation: (A) Bay Education Center, (B) Manning, (C) Pena/Dack, and (D) Texaz Construction and AZ Southwest Properties.
16. Section 551.071(2) Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.
17. Section 551.072 Deliberation regarding real property - deliberate the purchase, exchange, lease, or value of real property: (A) Project Red Fish, (B) 1100 block of East North Street, between Austin Street and Water Street.
18. Section 551.087 Deliberation Regarding Economic Development Negotiations: Project Cardinal.

### **Open Session**

City Council will reconvene into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any actions necessary related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.

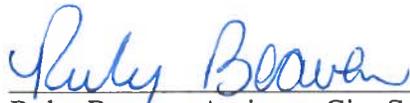
19. Deliberate and act on an agreement with Rockport Art Association for the lease of the 1100 block of East North Street.
20. Adjournment.

**Special Accommodations**

This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (361) 729-2213, ext. 225 or FAX (361) 790-5966 or email [citysec@cityofrockport.com](mailto:citysec@cityofrockport.com) for further information. Braille is not available. The City of Rockport reserves the right to convene into executive session under Government Code §§ 551.071-551.074 and 551.086.

**Certification**

I certify that the above notice of meeting was posted on the bulletin board at City Hall, 622 E. Market Street, Rockport, Texas on Friday, May 6, 2016, by 5:00 p.m. and on the City's website at [www.cityofrockport.com](http://www.cityofrockport.com). I further certify that the following News Media were properly notified of this meeting as stated above: *The Rockport Pilot*, *Coastal Bend Herald*, and *Corpus Christi Caller Times*.



Ruby Beaven, Assistant City Secretary

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

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**AGENDA ITEM: 4**

Presentation of Certificates of Election to newly-elected Mayor, official for Ward 2 and official for Ward 4.

*(Presentación de los certificados de elección para recién elegido alcalde, oficial de Barrio 2 y oficial de Barrio 4.)*

**SUBMITTED BY:** City Secretary Teresa Valdez *(Secretario de ciudad Teresa Valdez)*

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** Texas Election Code §67.016 requires that, after the completion of a canvass, the presiding officer of the local canvassing authority shall prepare a certificate of election for each candidate who is elected to an office for which the official result is determined by that authority's canvass.

*(De la Elección de Tejas §67.016 Código requiere que después de la terminación de un sondeo, el oficial presidente de la autoridad local que solicita preparará un certificado de elección para cada candidato que es elegido a una oficina para que el resultado oficial es determinado por el sondeo de esa autoridad.)*

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**FISCAL ANALYSIS:** N/A

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**STAFF RECOMMENDATION:** Staff recommends presentation of Certificates of Election to newly-elected Mayor by Mayor Pro-Tem Pat Rios and newly-elected officers by Mayor C.J. Wax, as presented.

*(El personal recomienda presentación de Certificados de Elección al recién elegido alcalde por alcalde Pro-Tem Pat Rios y recién elegidos oficiales por el Alcalde C. J. Wax.)*

# *Certificate of Election*



*IN THE NAME AND BY THE AUTHORITY OF  
THE STATE OF TEXAS*

*This to certify that*

*Charles Joseph (C.J.) Wax*

*was duly elected*

*Mayor*

*of the City of Rockport, Texas*

*pursuant to the City of Rockport Resolution No. 2016-05 canceling  
the unopposed election that was scheduled to be held on*

*May 7, 2016.*

*In testimony whereof, I have hereunto signed my name and caused the  
Seal of Rockport to be affixed, this the 10<sup>th</sup> day of May 2016.*

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*Patrick (Pat) Ríos, Mayor Pro-Tem*

# *Certificate of Election*



*IN THE NAME AND BY THE AUTHORITY OF  
THE STATE OF TEXAS*

*This to certify that*

*Joe David (J.D.) Villa*

*was duly elected*

*Council Member Ward 2*

*of the City of Rockport, Texas*

*pursuant to the City of Rockport Resolution No. 2016-05 canceling  
the unopposed election that was scheduled to be held on*

*May 7, 2016.*

*In testimony whereof, I have hereunto signed my name and caused the  
Seal of Rockport to be affixed, this the 10<sup>th</sup> day of May 2016.*

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*Charles J Wax, Mayor*

# *Certificate of Election*



*IN THE NAME AND BY THE AUTHORITY OF  
THE STATE OF TEXAS*

*This to certify that*

*Barbara E. Gurtner*

*was duly elected*

*Council Member Ward 4*

*of the City of Rockport, Texas*

*pursuant to the City of Rockport Resolution No. 2016-05 canceling  
the unopposed election that was scheduled to be held on*

*May 7, 2016.*

*In testimony whereof, I have hereunto signed my name and caused the  
Seal of Rockport to be affixed, this the 10<sup>TH</sup> day of May 2016.*

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*Charles J Wax, Mayor*

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

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**AGENDA ITEM: 5**

Administration of Oath of Office to newly-elected Mayor, official for Ward 2 and official for Ward 4.

*(Presentación de los Certificados de Elección para recién elegido alcalde, oficial de Barrio 2 y oficial de Barrio 4.)*

**SUBMITTED BY:** City Secretary Teresa Valdez *(Secretario de ciudad Teresa Valdez)*

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** Article XVI §1, Texas Constitution prescribes an oath that all officers must take before they enter upon the duties of their offices.

*(El artículo XVI §1, Constitución de Tejas prescribe un juramento que todos los oficiales deben tomar antes que entren sobre los deberes de sus oficinas.)*

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**FISCAL ANALYSIS:** N/A

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**STAFF RECOMMENDATION:** Staff recommends Oaths of Office be administered to newly-elected Mayor and City Council Members for Ward 2 and Ward 4, as presented.

*(El personal recomienda juramentos de oficina se administrará a recién elegido Alcalde y miembros del Consejo de la ciudad de Barrio 2 y Barrio 4).*

In the name and by the authority of

# The State of Texas

## OATH OF OFFICE

I, Charles J. "C.J." Wax, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Mayor of the City of Rockport, of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

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Charles J. "C.J." Wax

SWORN TO and subscribed before me by affiant on this 10<sup>th</sup> day of May 2016.

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Richard Bianchi  
County Court at Law Judge

In the name and by the authority of

# The State of Texas

## OATH OF OFFICE

I, Barbara Gurtner, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of City Council Member Ward 4 of the City of Rockport, of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

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Barbara Gurtner

SWORN TO and subscribed before me by affiant on this 10<sup>th</sup> day of May 2016.

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Charles J. Wax, Mayor  
City of Rockport, Texas

In the name and by the authority of

# The State of Texas

## OATH OF OFFICE

I, J.D. Villa, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of City Council Member Ward 2 of the City of Rockport, of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

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J.D. Villa

SWORN TO and subscribed before me by affiant on this 10<sup>th</sup> day of May 2016.

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Charles J. Wax, Mayor  
City of Rockport, Texas

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

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**AGENDA ITEM: 6**

Deliberate and act on election by Council of Mayor Pro-Tem.

**SUBMITTED BY:** City Secretary Teresa Valdez

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** Section 3.04 of the City of Rockport Home Rule Charter (below) states the Mayor Pro-Tem shall be a Councilperson elected by the City Council at the first regular meeting after each election of Council Member and/or Mayor.

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**Sec. 3.04 - Mayor and Mayor Pro-Tem.**

- (1) The Mayor shall be the official head of the City Government. He shall be the chairman and shall preside at all meetings of the City Council. The Mayor shall have the same right to vote, as do other Council Members. He shall, when authorized by the City Council, sign all official documents; such as, ordinances, resolutions, conveyances, official plats and bonds. He shall perform such other duties consistent with this Charter as may be imposed upon him by the City Council.**
  - (2) The Mayor Pro-Tem shall be a Councilperson elected by the City Council at the first regular meeting after each election of Council Member and/or Mayor. The Mayor Pro-Tem shall act as Mayor during the disability or absence of the Mayor and in this capacity shall have the rights conferred upon the Mayor.**
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**FISCAL ANALYSIS:** N/A

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**STAFF RECOMMENDATION:** Staff recommends election of a Mayor Pro-Tem.

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

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**AGENDA ITEM: 7**

Deliberate and act on approval of City Council Workshop and Regular Meeting Minutes of April 26, 2016, and Special Meeting Minutes of May 2, 2016.

**SUBMITTED BY:** City Secretary Teresa Valdez

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** Please see the accompanying minutes of the Workshop and Regular Meetings of April 26, 2016, and Special Meeting of May 2, 2016.

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**FISCAL ANALYSIS:** N/A

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**RECOMMENDATION:** Staff recommends Council approve the Minutes, as presented.

# CITY OF ROCKPORT

## MINUTES

### CITY COUNCIL WORKSHOP MEETING

**1:30 p.m., Tuesday, April 26, 2016**

**Rockport City Hall, 622 East Market Street**

On the 26<sup>th</sup> day of April 2016, the City Council of the City of Rockport, Aransas County, Texas, convened in Workshop Session at 1:30 p.m., at the regular meeting place in City Hall, and notice of meeting giving time, place, date and subject was posted as described in V.T.C.A., Government Code § 551.041.

#### **CITY COUNCIL MEMBERS PRESENT**

Mayor Charles J. Wax  
 Mayor Pro-Tem Pat Rios, Ward 3  
 Council Member Rusty Day, Ward 1  
 Council Member J. D. Villa, Ward 2  
 Council Member Barbara Gurtner, Ward 4

#### **CITY COUNCIL MEMBER(S) ABSENT**

#### **PARK & LEISURE SERVICES ADVISORY BOARD MEMBERS PRESENT**

Kate Catlow  
 Ty Brisgill  
 Leo Villa  
 Debra Corpora  
 Jeanette Larson

#### **STAFF MEMBERS PRESENT**

City Manager Kevin Carruth  
 City Secretary Teresa Valdez  
 Public Works Director Mike Donoho  
 Finance Director Patty Howard  
 Police Chief Tim Jayroe  
 Park & Leisure Services Director Tom Staley  
 Environmental Specialist Kendra Baird  
 Information Technology Director Brian Jacobs

#### **ELECTED OFFICIALS PRESENT**

#### **Opening Agenda**

##### **1. Call to Order.**

With a quorum of the Council Members present, the Workshop Session of the Rockport City Council was called to order by Mayor Wax at 1:32 p.m. on Tuesday, April 26, 2016, in the Council Chambers of the Rockport City Hall, 622 E. Market Street, Rockport, Texas.

## **Joint Workshop Agenda**

### **2. Call to Order – Rockport Park & Leisure Services Advisory Board**

At 1:32 p.m., with a quorum of the Rockport Park & Leisure Services Advisory Board Members present, Mayor Wax called the Joint Workshop to order.

### **3. Hear and deliberate with Park & Leisure Services Advisory Board on goals and objectives for park planning for the new property at 1501-1505 Broadway.**

Park & Leisure Services Director Tom Staley addressed the Council. Mr. Staley stated the Park & Leisure Services Advisory Board was given direction by the City Council to develop a plan for development of the newly acquired property at 1501-1505 Broadway. Mr. Staley said the 8.85 acres includes a cluster of wind-sculptured live oak trees and an active, federally protected great blue heron/great egret rookery. Mr. Staley informed the Council that at the March 28, 2016, Park & Leisure Services Advisory Board meeting, members were divided over development strategy for the property and requested direction from the City Council. Mr. Staley added that the Board is divided on the question of “naturalness” versus “social enhancements” desired.

Park & Leisure Services Advisory Board Member Jeanette Larson addressed the Council. Ms. Larson stated she understood that the whole purpose of the City purchasing this property was to protect it from development, preservation of the rookery and natural preservation. Ms. Larson said the next step could be for the Park & Leisure Services Advisory Board to find out what can be done so people could come and watch the birds and enjoy the natural environment. Ms. Larson asked if the City required certain amenities in a park or could this park be like the Zachary Taylor Park.

Park & Leisure Services Advisory Board Member Ty Brisgill addressed the Council. Mr. Brisgill stated when the City was planning the community center, there were focus groups and surveys to collect information on what the citizens of Rockport had in mind. Mr. Brisgill said this is what he had in mind for this property since there are so many people interested. Mr. Brisgill added they are the Park & Leisure Services Advisory Board and he could not see excluding the park aspect. Mr. Brisgill recommended including the whole citizenship of Rockport and Aransas County before decisions are made.

Park & Leisure Services Advisory Board Member Debra Corpora addressed the Council. Ms. Corpora stated that everyone should remember that whatever is decided, the City still has to follow the federal migratory regulations to protect the birds.

Park & Leisure Services Advisory Board Member Kat Catlow addressed the Council. Ms. Catlow stated she was concerned about safety if the City focuses on a child centered park; children running across the road to jump into the water. Ms. Catlow recommended a more natural setting for the park land.

Park & Leisure Services Advisory Board Member Leo Villa addressed the Council. Mr. Villa stated he was concerned because the City paid an extreme amount of money to purchase the property and

the citizens/taxpayers should be able to use that park. Mr. Villa added that he hoped the Council would decide the right thing to do.

Kay Adams addressed the Council. Ms. Adams stated she is the President of the newly formed Rockport-Fulton Wings Rescue Center, which has 20 members and is a 501(c)3 organization. Ms. Adams informed the Council that as of now, they are working under the permits of the Texas SeaLife Center until they can receive their own permits. Ms. Adams said they are working out of their cars and homes and they are hoping to get support from Rockport to help them find a central location to keep their nets and crates and a place to work. Ms. Adams added that there is a building on the far north side of the property that could serve as a temporary staging area for them. Ms. Adams then distributed a picture and article on pelicans that had been rescued.

Sally Mitchell addressed the Council. Ms. Mitchell stated she had sent a letter to the Mayor, City Council and Park & Leisure Services Advisory Board, recommending the property be kept as natural as possible. Ms. Mitchell said she thinks the rookery and trees are important and she is not opposed to other things, but thinks the City should take time and involve consultants who are experts in all fields to study the unique property and its essence. Ms. Mitchell added that this is a unique park that can provide enjoyment to people and a plan should be developed that is unique to our area.

Phil Wildfang addressed the Council. Mr. Wildfang thanked the Council for their wisdom displayed in purchasing this property. Mr. Wildfang stated he supports the idea of keeping the property natural.

Mayor Wax stated that when the Council moved as quickly as they did on this purchase, the primary reason was not to obtain another municipal park necessarily but rather to protect that piece of property, the windswept oaks, and the visual image of Rockport. Mayor Wax said those trees have been the identity of this community for a very long time. Mayor Wax said the City has also moved very quickly with the fencing in order to prevent improper uses of the park, especially as we approach the summer season, Memorial Day, Independence Day and so forth. Mayor Wax added that he would share his personal opinion, which is that the entrance should be moved around to Maple Street and put a small parking lot in that area that would permit the City to put a path in on that side entrance underneath the trees. Mayor Wax expressed that he is personally opposed to barbecue pits, playground equipment and things along that line. Mayor Wax added that the importance of the oaks is what the community responded to, to the point of creating a 501(C)3 of collecting dollars and making contributions for the purchase of the property. Mayor Wax stated he agrees that the City needs to know the municipal responsibilities of federally protected species of birds that are located on the property, which also limits what can be done with that piece of property during the rookery season; that has to be part of the plan. Mayor Wax said that as far as talking with experts, that is always a smart thing to do and the City does not need to made a decision quickly on this piece of property except to protect it.

Council Member Day stated he appreciated everyone's opinion. Mr. Day said it behooves the City to take care of this property and the wildlife that is located there, but the City did pay a good penny for the property and we cannot just rope it off and not allow anybody to go onto the property. Mr. Day said it was purchased as a park and we have to find some balance between public use and natural use. Mr. Day added that he is willing to talk to anybody who is an expert on how best to do that. Mr. Day

stated he knows that has been done in the past and the City of Rockport is not the first one to step into these shoes.

Council Member Villa said he agreed with Council Member Day that it should not be roped off or be for one group; it should be for the whole entire City and County as well to use. Mr. Villa said it could be a scenic area where people could see the birds but not have access, and in the front where there are no trees and just a view, he thinks there should not be playground equipment and things like that, but people should be able to go over there and have a picnic and enjoy the view of the bay.

Mayor Pro-Tem Rios stated that his whole intention when this first came up was to protect the trees; the property was so iconic to Rockport. Mr. Rios said he knows it is a rookery and he is sure we can find a solution to address all the issues. Mr. Rios added that there is timing issue here when the area around the tress has to be off-limits for pretty much everybody. Mr. Rios stated that once the City gets clear with the federal law and dates, the City has to make that area off-limits. Mr. Rios said something could be done on the Broadway side as Council Member Villa said, where people can go out there and throw a blanket down, take pictures and have lunch. Mr. Rios added that he is sure that property is big enough to have areas for public access because they are the ones paying for it.

Council Member Gurtner stated she agreed with that also, there is no reason to limit access to the property, maybe except for the numbers at a certain time, but it needs to be available to the citizens. Ms. Gurtner said we do not need barbecue pits in order to have a picnic. Ms. Gurtner added that her feelings when this property was purchased were to keep it as natural as possible or in fact take it back to more natural than it is now. Ms. Gurtner stated she has talked to some plant experts and to some bird people who are in the business of restoring habitat; they take properties that have been used by humans and changed and bring them back to native, which also means less upkeep. Ms. Gurtner said she does want to protect the rookery and her idea was not a fence around it necessarily, but maybe that is what has to be done to protect it. Ms. Gurtner expressed that she wanted the property to be kept as natural as possible because it is an icon and it is the only place left that people come by to take pictures.

Mayor Wax gave a summary of what the Council had said in providing guidance to the Park & Leisure Services Advisory Board. Mayor Wax said the Council has made a few decisions thus far: 1) purchase the property; 2) fence the property; 3) block entrance from Broadway; 4) move entry from Broadway side to Maple Street side; and 5) recognized the fact that it is a federally protected rookery for which the City has some responsibilities. Mayor Wax stated the Council would like to have a long-range plan, which is that the portion where the bent oaks are today needs to be protected as well as it can be, and providing access from the Maple Street side possibly to a designated picnic area or something along that line down toward the palms where the bay is much more visible. Mayor Wax added that as to the long-range plan where a path might be or a park might be or when the rookery would need to be fenced off or patrolled or anything like that, those decisions have not been made. Mayor Wax expressed that the City had to move quickly in order to purchase the property and will have to move quickly to protect it. Mayor Wax said that as far as a long-range plan on how to exactly utilize the property, that decision has not been made and he would encourage the Park & Leisure Services Advisory Board to take under advisement everything they just heard from the five Council Members, and we will need to find out exactly what our municipal limits are under law. Mayor Wax stated that if there is a particular expert whom someone knows, the Park & Leisure

Services Board would love to hear from them, and Park & Leisure Services Director Tom Staley will be the point of contact. Mayor Wax added that the Council is not intending to come to any kind of final decision in the next week or two; the only thing they intend to do is protect this area for this particular summer period.

Council Member Villa said the main thing is that we do not want any knee-jerk actions and the next thing we are asking ourselves “why did we do that.”

Mayor Pro-Tem Rios reinforced that the City has not come to any decisions other than the ones stated by Mayor Wax.

Mayor Pro-Tem Rios stated he did have a question for Ms. Adams. Mr. Rios asked Ms. Adams if they had been working with the Aransas County Navigation District and he was under the impression that the Navigation District had offered them some space.

Jeanette Larson said the Navigation District had offered some space by Cove Harbor but that space was not suitable.

Mayor Wax stated that the Council, the City Manager, and the Police Department have all been through the houses on the property and the little shed in the back where he fell through the floor. Mayor Wax requested the Park and Leisure Services Advisory Board take a look at the buildings on the property because a decision will have to be made on whether to keep any or all or none of those buildings, and if the decision is to knock them down, that creates a problem because that entails heavy equipment and the timing on that is critical. Mayor Wax asked that the Park and Leisure Services Advisory Board bring a recommendation to Council for what to do with each building except the small shed in the back.

Ty Brisgill asked if any of the bond money for the community center be used for this.

Mayor Wax answered that the bond money is fully committed and cannot be used for this.

Jeannette Larson asked if there was any money left in the money allocated for the purchase that could be used for additional things on this property.

Mayor Wax stated there was not enough left.

Kay Adams stated that one of the houses had been previously occupied and was livable.

Sally Mitchell reminded everyone that picnics draw trash and food waste and gulls that are predators of baby chicks.

Mayor Wax reiterated that this may be one of those rare municipal facilities that has very critical timing associated with it and that will be driven by the law.

Leo Villa asked if the money allocated for the community center was committed to another project, the YMCA, and how did that meet the criteria for a City project.

Mayor Wax answered Mr. Villa that the YMCA was a City project but discussion should not be held regarding this because this was not a posted agenda item.

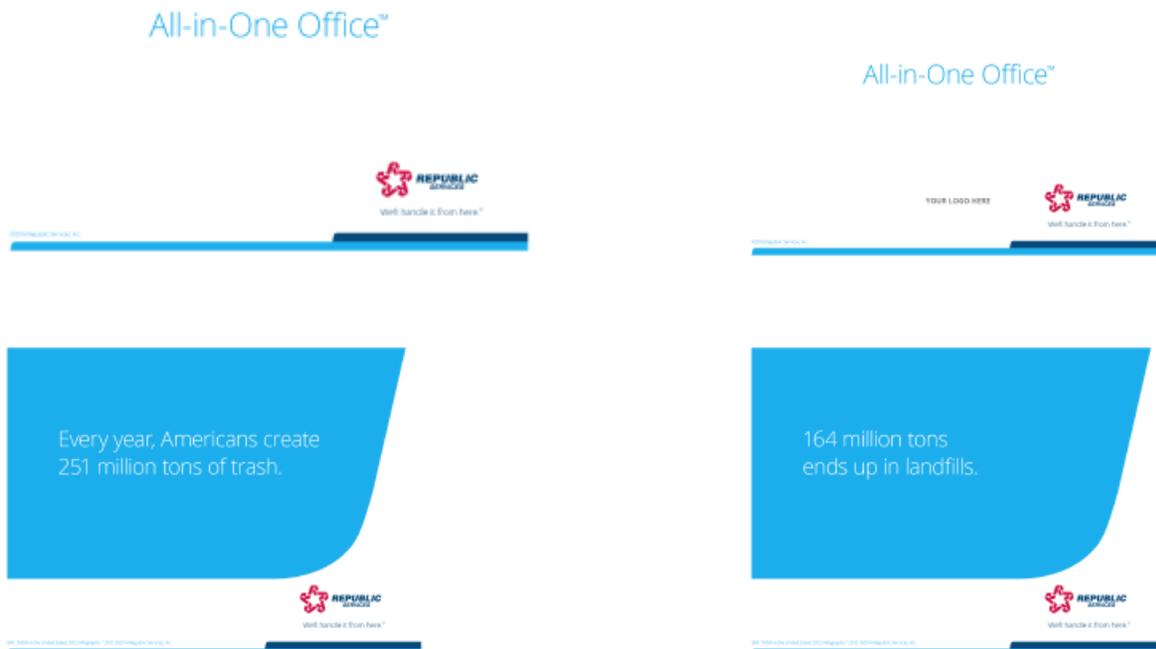
**4. Adjourn – Rockport Park & Leisure Services Advisory Board.**

At 2:10 p.m., the Rockport Park & Leisure Services Advisory Board adjourned Joint Workshop session with the Rockport City Council.

**Regular Agenda**

**5. Hear and deliberate on presentation by Republic Services concerning options for sanitation services.**

Republic Services Municipal Services Manager Mike Reeves addressed the Council. Mr. Reeves stated that last year Republic Services had approached the City Council in regard to changing to automated sanitation collection. Mr. Reeves said a lot has changed and he was going to be giving an updated presentation (below) concerning options for sanitation services.



But it doesn't have to...



**All-in-One Office®**

New in-office recycling program

Effortlessly make a difference

Promote environmental sustainability

Provided by All-in-One Recycling™ from Republic Services

### How it works

Place all your recyclables in the containers – no sorting necessary



### How it works

New recycling containers are located around the office



### Additional materials

Look for these materials around the office – they'll help promote this new program



### Quick Facts

- Paper accounts for more than half of all recyclables collected in the US\*
- An aluminum can is recycled and remade in just 60 days!
- Making glass from recycled material cuts related water pollution by 50%!
- One ton of paper recycled saves the energy equivalent of 165 gallons of gasoline!
- Americans throw away about 28 billion bottles and jars every year!



Let's work together to make the planet better.



**Automation...it's for you!**

REPUBLIC SERVICES

**Mike Reeves**  
361-549-3097

**REPUBLIC SERVICES**

**Municipal Services Manager**  
**Coastal Bend & South Texas**

**Automated Collection of Waste and Recyclables**

**Topics to Cover**

- Proposed options of service
- Challenges with Manual Collection
- Next Steps

**Options to Consider**

- Option A- 1X week waste/EOW recycling
- Option B- 1X week waste/1X week recycling

REPUBLIC SERVICES

**Challenges**

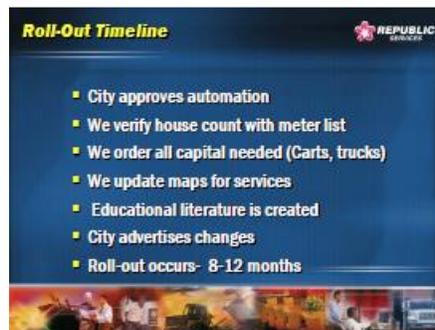
REPUBLIC SERVICES

**Estimated Pricing**

- Option A- 1X waste, EOW recycle- Flat
- Option B- 1X waste, 1X recycle- \$2 more

**Next Steps**

- Determine needs
- Discuss any concerns
- Take Action
- Timeline of roll-out



Mr. Reeves stated that Republic Services had received approval to purchase new compressed natural gas trucks for this area. Mr. Reeves said that the City of Rockport is the only city left in this area that has rear-load sanitation collection.

Discussion was held among Council and Mr. Reeves in regard to the proposal for automated sanitation collection.

Mayor Wax asked that Mr. Reeves talk to the homeowners associations in Rockport to get a response from them on locating a dumpster in their areas. Mayor Wax commented this is a problem that needs a solution.

## **6. Hear and deliberate on level of service and contract terms for sanitation services.**

City Manager Kevin Carruth stated that the City's current agreement with Republic Services (formerly Allied Waste) began on August 1, 2007, with an initial term of five years and two five-year renewal options. Mr. Carruth said the agreement was amended in 2012 to allow for unlimited five-year renewal options. Mr. Carruth informed the Council that notice not to renew the agreement for another five year term must be given a minimum of 120 days prior to expiration of the current term, which is April 3, 2017. Mr. Carruth added that if Council desires to make changes to the level of service, intends not to renew, or consider other changes, staff needs direction in order to give Council adequate lead time for consideration.

Brief discussion was held among Council and Mr. Carruth.

**7. Hear and deliberate on a presentation of a Stormwater Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. Erosion and Sediment Control.**

Public Works Director Mike Donoho stated Environmental Specialist Kendra Baird will present a review of the proposed stormwater ordinance that would replace the current City Erosion and Sediment Control Ordinance.

Environmental Specialist Kendra Baird addressed the Council. Ms. Baird read the following:

“In 2010, the City Council adopted the Erosion and Sediment Control Ordinance governing only erosion and sedimentation loss from construction sites, at which time I began doing inspections of Best Management Practices on construction sites every 7-10 days. That was an excellent starting point as evident by the many Best Management Practices being utilized throughout the City, especially the all-time favorite, silt fence. As with most things, through use, one will find areas of needed improvement. In this case, I was finding areas in the ordinance that would contradict themselves or were not specific enough. I also realized that we didn’t have an ordinance governing stormwater quality in general. At that point, I began doing a lot of research, primarily reading other cities’ ordinances. I was able to put together a stormwater ordinance that pretty much governs all things stormwater, including construction sites. Although we are not a regulated MS4 at this time, it is anticipated that we will be a Phase II MS4 in the near future and to my knowledge, the proposed ordinance would meet the requirement for a stormwater ordinance. One of the specific prohibitions under Section 42-124 is introduction of yard waste into the MS4. Yard waste is defined as leaves, grass clippings, yard and garden debris and brush that results from landscaping maintenance and land clearing operations, which I know has been discussed by the Environmental Committee quite a bit. Under Section 42-126 stormwater discharges from construction activities, all construction sites in the city limits will be regulated, which is more strict than the TCEQ’s requirements. As with the TCEQ Construction General Permit, there are a few differences in the regulations at 1 acre and again at 5+ acres. The new ordinance spells out the requirements of Section 42-126 more clearly than the current ordinance, including a Section 42-126A6 requiring final stabilization. This is very important because it is starting to become common practice for the contractor to leave landscaping out of the project total given to the customer. So the contractor gets the house built, pulls his silt fence, and leaves with no grass planted. That would not be allowed. In fact, it states that until final stabilization is established and inspected, the City may deny approval required to assume occupancy or an additional use permit for any premises constructed on the site. Actually, there are several times throughout Section 42-126 that authorizes the city to withhold the issuance of permits until the requirements of this ordinance are met. I have already spoken with Frank Truitt in the Building Department and he is in agreement that our departments work together on this. I believe that passing this new ordinance would not only be beneficial for the environment, but it would be a huge asset to the department.”

*NOTE: Regulated MS4 Requirements – Phase II MS4 applies to urbanized areas greater than 50,000 or you can be a designated MS4 with a population of 10,000 or more. Regulated MS4’s are required to develop, implement and enforce a stormwater management program. Stormwater Management Practices requires public education and outreach; public participation; construction site runoff control; pollution prevention and good housekeeping. Cities are required to have an ordinance requiring the implementation of proper erosion and sediment controls; have procedures*

*for site plan review; have procedures for site inspections and enforcement of control measures (EPA would like to see inspections on 100% of construction sites.)*

Discussion was held among Council, Mr. Donoho and Ms. Baird.

City Manager Kevin Carruth stated the first reading of the proposed ordinance will be on the May 10, 2016, City Council agenda.

## **8. Adjournment**

At 3:00 p.m., Council Member Villa moved to adjourn. Motion was seconded by Mayor Pro-Tem Rios and carried unanimously.

**APPROVED:**

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Charles J. Wax, Mayor

**ATTEST:**

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Teresa Valdez, City Secretary

# CITY OF ROCKPORT

## MINUTES

### CITY COUNCIL REGULAR MEETING 6:30 p.m., Tuesday, April 26, 2016 Rockport City Hall, 622 East Market Street

On the 26<sup>th</sup> day of March 2016, the City Council of the City of Rockport, Aransas County, Texas, convened in Regular Session at 6:30 p.m., at the regular meeting place in City Hall, and notice of meeting giving time, place, date and subject was posted as described in V.T.C.A., Government Code § 551.041.

#### CITY COUNCIL MEMBERS PRESENT

Mayor Charles J. Wax  
Mayor Pro-Tem Pat Rios, Ward 3  
Council Member Rusty Day, Ward 1  
Council Member J. D. Villa, Ward 2  
Council Member Barbara Gurtner, Ward 4

#### CITY COUNCIL MEMBER(S) ABSENT

#### STAFF MEMBERS PRESENT

City Manager Kevin Carruth  
City Attorney Terry Baiamonte  
City Secretary Teresa Valdez  
Finance Director Patty Howard  
Police Chief Tim Jayroe  
Public Works Director Mike Donoho  
Park & Leisure Services Director Tom Staley

#### ELECTED OFFICIALS PRESENT

#### Opening Agenda

##### **1. Call to Order.**

With a quorum of the Council Members present, the Regular Meeting of the Rockport City Council was called to order by Mayor Wax at 6:30 p.m. on Tuesday, April 26, 2016, in the Council Chambers of the Rockport City Hall, 622 E. Market Street, Rockport, Texas.

##### **2. Pledge of Allegiance.**

Council Member Villa led the Pledge of Allegiance to the U.S. and Texas flags.

##### **3. Citizens to be heard.**

At this time comments will be taken from the audience on any subject matter that is not on the agenda. To address the Council, please sign the speaker's card located on the table outside the Council Chamber and deliver to the City

Secretary before the meeting begins. Please limit comments to three (3) minutes. In accordance with the Open Meetings Act, Council may not discuss or take any action on any item that has not been posted on the agenda.

There were no citizen comments.

### **Consent Agenda**

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

- 4. Deliberate and act on approval of Regular Meeting Minutes of April 12, 2016.**
- 5. Deliberate and act on request from Texas Maritime Museum for: 1) closure of Chamber Street, from Loop 70 to Navigation Circle on Thursday, May 26, 2016, from 2:00 p.m. to 12:00 a.m., and on Saturday, May 28, 2016, from 8:00 a.m. to 12:00 a.m., and on Sunday, May 29, 2016, from 8:00 a.m. to 12:00 a.m.; 2) Use of Festival Site for parking; and 3) Permission for beer and wine consumption on the grounds of the Texas Maritime Museum, for the 20<sup>th</sup> Annual Festival of Wines and Food.**
- 6. Deliberate and act on Resolution amending Resolution 2016-06 authorizing certification of a cultural district to be named Rockport Arts District.**
- 7. Deliberate and act on Resolution replacing Resolution No. 2016-04 authorizing the Rockport Police Department to apply for and operate a Local Border Security Program Grant.**
- 8. Deliberate and act on Resolution finding that AEP Texas Central Company's application for approval of a distribution cost recovery factor to increase distribution rates within the City should be denied; and finding that the City's reasonable rate case expenses shall be reimbursed by the Company.**

Mayor Wax called for requests to remove any item from the Consent Agenda for separate discussion.

Mayor Wax requested Item 6 be removed from the Consent Agenda for separate discussion.

Mayor Wax called for a motion to approve the Consent Agenda minus Item 6.

**MOTION:** Council Member Villa moved to adopt the Consent Agenda Items as presented minus Item 6. Mayor Pro-Tem Rios seconded the motion. Motion carried unanimously.

**ITEM #6: Deliberate and act on Resolution amending Resolution 2016-06 authorizing certification of a cultural district to be named Rockport Arts District.**

Mayor Wax stated he had read the Resolution and he did not understand the name changes. Mayor Wax asked why "cultural" does not appear and why "heritage" was taken out.

Jennifer Day addressed the Council. Ms. Day stated she is chairing the governing board requesting creation of a cultural arts district. Ms. Day explained that at the time of the Resolution submission to the City, the arts district initiative intended to use the name Rockport Heritage and Arts District; however, since that time the arts district sponsor, Rockport Heritage District Association, has officially changed their name with the State of Texas to Rockport Heritage and Arts District. Therefore, the arts district initiative has changed their name to Rockport Arts District (dropping “Heritage and”) and the change needs to be reflected on the City Resolution that will be submitted with the Texas Commission on the Arts application.

Mayor Wax asked why “cultural” was dropped.

Ms. Day answered that the group wanted a cool acronym RAD, Rockport Arts District. Ms. Day said it was brought to her attention last Friday that there was an issue with the name request.

Anita Diebel addressed the Council. Ms. Diebel stated she is an artist and downtown merchant and has been involved since the 1980’s. Ms. Diebel said that people ask her questions about this and she has not been able to answer them. Ms. Diebel expressed that this is very confusing since the Rockport Center for the Arts is also known as RCA. Ms. Diebel added that the Rockport Center for the Arts should not be shadowed in anyway and if “cultural” were added to the name of the arts district that may help eliminate some confusion.

Jean Giesey addressed the Council. Ms. Giesey stated she is a board member of the Rockport Center for the Arts. Ms. Giesey said that everyone here loves our community and the world of art and she appreciates the work everyone is doing, but she is concerned about the name for the arts district. Ms. Giesey expressed that the Rockport Center for the Arts has worked many years for recognition and they would like the art district to consider another name that would not infringe on the Rockport Center for the Arts.

Terry Baiamonte addressed the Council. Ms. Baiamonte stated she is a board member of the Rockport Center for the Arts and she is concerned about the confusion of Rockport Center for the Arts known as Rockport Arts Center (RAC) and Rockport Arts District (RAD). Ms. Baiamonte said she had researched several art district names and almost all of them contain the word “cultural.” Ms. Baiamonte urged the arts district organization to use something with the word “cultural.” Ms. Baiamonte added that the Rockport Center for the Arts Board did not know anything about the name for the arts district until it appeared on the Council Agenda.

Discussion was held among Council.

Ms. Day stated that the initiative is for a cultural arts district and since this issue has come up, the group needs to look at the name, which has caused confusion that was not intended, revisit it as a group, and comply with the intent of being collaborative and inclusive.

Mayor Wax stated he echoed Ms. Day’s comment. Mayor Wax said the goal of Council is not only to support the arts district but downtown as well.

**MOTION:** Mayor Wax moved that this item be tabled until the May 10, 2016, City Council Meeting. Council Member Villa seconded the motion. Motion carried unanimously.

### **Regular Agenda**

#### **9. Deliberate and act on first reading of an Ordinance amending City of Rockport Code of Ordinances Chapter 54 Health and Sanitation, Article II, Food Establishments.**

City Manager Kevin Carruth stated this is primarily a housekeeping issue according to Aransas County Environmental Health. Mr. Carruth stated they are requesting that our Ordinance be revised to match changes in state statutes and removal of the fee schedule so it can be done by referencing the County's annual fee schedule. Mr. Carruth called the Council's attention to a memorandum from James S. Jackson, Aransas County Environmental Health, included in the packet.

Discussion was held among Council and Mr. Carruth.

**MOTION:** Council Member Villa moved to approve the first reading of an Ordinance amending City of Rockport Code of Ordinances Chapter 54 Health and Sanitation, Article II, Food Establishments. Council Member Gurtner seconded the motion. Motion carried unanimously.

#### **10. Deliberate and act on first reading of an Ordinance authorizing the closing, vacating and abandonment of a 20-foot wide alleyway lying between Lots 1 and 9, Block 107, Manning Addition, and a 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas; providing for the terms and conditions of such vacation and abandonment; authorizing the Mayor to execute a Quitclaim Deed for the said alleyways to be closed, vacated and abandoned; and providing for an effective date.**

City Manager Kevin Carruth stated he had met with Steve Pham and they had discussed Mr. Pham's plans for 16 cottages. Mr. Carruth said that as a condition of the sale of the alleyways, Mr. Pham agreed to add at least 40 percent of the total value \$345,613 within four years.

Mr. Pham addressed the Council. Mr. Pham stated he started on this project in November 2015. Mr. Pham said he first visited the Building and Planning Department and was told he would need to visit the City Secretary. Mr. Pham expressed that he visited the City Secretary and she had informed him that the process for vacating City property can take quite some time, probably three or more months. Mr. Pham stated that it is coming up on five to six months now and he has started breaking ground and he is spending more on this project than he thought.

Council Member Villa asked Mr. Pham if he was satisfied with all the numbers stated in the Ordinance.

Mr. Pham answered that he was satisfied with the numbers stated in the Ordinance.

Mayor Pro-Tem Rios asked Mr. Pham when he anticipated starting on the first house.

Mr. Pham replied: “tomorrow.”

**MOTION:** Council Member Villa moved to approve the first reading of an Ordinance authorizing the closing, vacating and abandonment of a 20-foot wide alleyway lying between Lots 1 and 9, Block 107, Manning Addition, and a 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas; according to the plat of record in Volume 1, Page 7, Plat Records of Aransas County, Texas; providing for the terms and conditions of such vacation and abandonment; authorizing the Mayor to execute a Quitclaim Deed with conditions and reversionary clause for the three (3) 20-foot alleys to be closed, vacated and abandoned; for the said alleyways to be closed, vacated and abandoned; and providing for an effective date. Council Member Day seconded the motion. Motion carried unanimously.

**11. Deliberate and act on a Resolution finding an imminent threat to public health and safety and public property due to shoreline erosion along Bayshore Drive between Curlew Drive and Albatross Lane.**

City Manager Kevin Carruth stated the high tide and high winds on April 17-18, 2016, accelerated erosion of the shoreline on Bayshore Drive, between Curlew Drive and Albatross Lane. Mr. Carruth informed the Council that some sections of the shoreline retreated by approximately two feet in those two days. Mr. Carruth said Coast and Harbor Engineering has prepared specifications for a temporary measure to halt the erosion that is within the US Army Corps of Engineers national permit 13 but the cost is above the \$50,000 mandatory bid threshold. Mr. Carruth added that the imminent destruction of public and private utilities and sections of Bayshore Drive as well as the start of the 2016 hurricane season in 35 days do not provide enough time to complete the competitive bid or proposal process that would normally be required. Mr. Carruth stated that Section 252.022(a)(2) of the Local Government Code exempts municipalities from competitive bids or proposals in order to preserve or protect the public health or safety of the municipality’s residents, and Section 252.022(a)(3) also exempts municipalities from competitive bids or proposals due to unforeseen damage to public property. Mr. Carruth said the engineer has contracted three vendors, trying to get the best price.

Mayor Wax asked what AEP had said about the electrical switch box located in that area.

Public Works Director Mike Donoho said that AEP had visited the site and stated that underneath the switch box there is four to six feet of concrete and that box is made to be in the bay. Mr. Donoho stated that AEP said it was a protected switch box and their engineers are comfortable with what we are doing.

Aaron Horan, Project Manager for Coast and Harbor Engineering addressed the Council. Mr. Moran stated the progression of erosion has been extremely rapid. Mr. Horan said that two years ago when Coast & Harbor Engineering had done a study for the Key Allegro Home Owners Association, it had been noted in the report that several locations had exposed geotextile. Mr. Horan added that it is continuing to get worse.

**MOTION:** Mayor Wax moved to adopt a Resolution finding an imminent threat to public health and safety and public property due to shoreline erosion along Bayshore Drive between Curlew Drive and Albatross Lane. Mayor Pro-Tem Rios seconded the motion. Motion carried unanimously.

**12. Deliberate and act on authorizing emergency repairs to halt and/or correct shoreline erosion along segments of Bayshore Drive between Curlew Drive and Albatross Lane.**

City Manager Kevin Carruth informed the Council that Coast and Harbor Engineering has prepared specifications for a temporary measure to halt the erosion that is within the US Army Corps of Engineers national Permit 13, at a preliminary estimated 30% design cost of \$161,750.00. Mr. Carruth stated Coast and Harbor Engineering has provided the preliminary 30% design drawings. Mr. Carruth said the engineer's opinion of probable cost was included in the agenda packet and the total is \$161,759.00, which does not include the previous engineering costs approved by Council.

Discussion was held among Council, Mr. Horan, Project Manager for Coast and Harbor Engineering, City Manager Kevin Carruth and Public Works Director Mike Donoho.

**MOTION:** Mayor Pro-Tem Rios moved to authorize emergency repairs to halt and/or correct shoreline erosion along segments of Bayshore Drive between Curlew Drive and Albatross Lane. Council Member Villa seconded the motion. Motion carried unanimously.

**13. Reports from Council.**

At this time, the City Council will report/update on all committee assignments, which may include the following: Aransas Pathways Steering Committee, Building and Standards Commission; Coastal Bend Bays and Estuaries Program; Coastal Bend Council of Government; Environmental Committee for Water Issues; Parks & Leisure Services Advisory Board; Planning Zoning Commission; Rockport Heritage Board; Rockport-Fulton Chamber of Commerce; Aransas County Storm Water Management Advisory Committee; Swimming Pool Operations Advisory Committee; Tourism Development Council; Tree & Landscape Committee; YMCA Development Committee; Texas Maritime Museum; Fulton Mansion; Rockport Center for the Arts; Aransas County; Aransas County Independent School District; Aransas County Navigation District; Town of Fulton; and Texas Municipal League. No formal action can be taken on these items at this time.

Council Member Villa stated the Aransas County Leadership Class has completed a couple of projects at Spencer Park.

Mayor Wax stated the City has received 178 responses for the Texas Municipal League Region 11 meeting being hosted by Rockport on Thursday, April 28<sup>th</sup>.

**Executive Session**

**City Council will hold an executive session pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:**

14. **Section 551.071(1)(A) Consultation with Attorney on pending or contemplated litigation: (A) Bay Education Center, (B) Manning, (C) Pena/Dack, and (D) Texaz Construction and AZ Southwest Properties.**
15. **Section 551.071(2) Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.**
16. **Section 551.072 Deliberation about Real Property: Deliberate the purchase, exchange, lease, or value of real property: (A) Project Red Fish, and (B) 1100 block of East North Street, between Austin Street and Water Street.**
17. **Section 551.087 Deliberation Regarding Economic Development Negotiations: Project Cardinal.**
18. **Section 551.074 Personnel Matters: Appeal of Termination – Laura Clark.**

At 7:12 p.m., Mayor Wax convened the Rockport City Council into an executive session pursuant to provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in Section 551.071910(A) Consultation with Attorney on pending or contemplated litigation: (A) Bay Education Center, (B) Manning, (C) Pena/Dack, and (D) Texaz Construction and AZ Southwest Properties; Section 551.071(2) Consultation with Attorney on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas clearly conflicts with the chapter; Section 551.072 Deliberation about Real Property: Deliberate the purchase, exchange, lease, or value of real property: (A) Project Red Fish, and (B) 1100 block of East North Street, between Austin Street and Water Street; Section 551.087 Deliberation Regarding Economic Development Negotiations: Project Cardinal; and Section 551.074 Personnel Matters: Appeal of Termination – Laura Clark.

### **Open Session**

19. **City Council will reconvene into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any actions necessary related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.**

At 8:02 p.m., Mayor Wax reconvened the Rockport City Council into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any necessary actions related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.

**MOTION:** Mayor Wax moved that the City Council deny Laura Clark's appeal of termination. Council Member Villa seconded the motion. Motion carried unanimously.

**20. Adjournment**

At 8:03 p.m., Council Member Villa moved to adjourn. Motion was seconded by Mayor Pro-Tem Rios and carried unanimously.

**APPROVED:**

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Charles J. Wax, Mayor

**ATTEST:**

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Teresa Valdez, City Secretary

# CITY OF ROCKPORT

## MINUTES

### CITY COUNCIL SPECIAL MEETING 1:00 p.m., Monday, May 2, 2016 Rockport City Hall, 622 East Market Street

On the 2<sup>nd</sup> day of May 2016, the City Council of the City of Rockport, Aransas County, Texas, convened in Special Session at 1:00 p.m., at the regular meeting place in City Hall, and notice of meeting giving time, place, date and subject was posted as described in V.T.C.A., Government Code § 551.041.

#### **CITY COUNCIL MEMBERS PRESENT**

Mayor Charles J. Wax  
Mayor Pro-Tem Pat Rios, Ward 3  
Council Member Rusty Day, Ward 1  
Council Member Barbara Gurtner, Ward 4

#### **CITY COUNCIL MEMBER(S) ABSENT**

Council Member J. D. Villa, Ward 2

#### **STAFF MEMBERS PRESENT**

City Manager Kevin Carruth  
City Secretary Teresa Valdez

#### **ELECTED OFFICIALS**

#### **Opening Agenda**

##### **1. Call to Order.**

With a quorum of the Council Members present, the Special Meeting of the Rockport City Council was called to order by Mayor Wax at 1:00 p.m. on Monday, May 2, 2016, in the Council Chambers of the Rockport City Hall, 622 E. Market Street, Rockport, Texas.

#### **Regular Agenda**

##### **2. Deliberate and act on authorizing Denton Navarro Rocha Bernal Hyde and Zech to provide legal services.**

Mayor Wax stated that at the conclusion of the last Council meeting the Council had tasked the City Manager with reviewing legal services for contemplated litigation.

City Manager Kevin Carruth said that City Attorney Terry Baiamonte had asked Texas Municipal League General Counsel Scott Houston for recommendations for this type of work and Mr. Houston had recommended Denton Navarro Rocha Bernal Hyde and Zech.

Mayor Wax stated the Council would further discuss this in Executive Session.

### Executive Session

City Council will hold an executive session pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

3. **Section 551.071(1)(A) Consultation with Attorney on pending or contemplated litigation: Texaz Construction and AZ Southwest Properties.**
4. **Section 551.072 Deliberation about Real Property: Deliberate the purchase, exchange, lease, or value of real property: 1100 block of East North Street, between Austin Street and Water Street.**

At 1:02 p.m., Mayor Wax convened the Rockport City Council into an executive session pursuant to provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in Section 551.071(1)(A) Consultation with Attorney on pending or contemplated litigation: Texaz Construction and AZ Southwest Properties; and Section 551.072 Deliberation about Real Property-Deliberate the purchase, exchange, lease, or value of real property: 1100 block of East North Street, between Austin Street and Water Street.

### Open Session

5. **City Council will reconvene into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any actions necessary related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.**

At 1:42 p.m., Mayor Wax reconvened the Rockport City Council into open session pursuant to the provisions of Chapter 551 of the Texas Government Code to take any necessary actions related to the executive sessions noted herein, or regular agenda items, noted above, and/or related items.

**MOTION:** In reference to Agenda Item #2, Mayor Wax moved that the City Council authorize the City Manager to pursue a contractual agreement with Denton Navarro Rocha Bernal Hyde and Zech to provide legal services in relation to Executive Session Item #3 – Consultation with Attorney on pending or contemplated litigation: Texas Construction and AZ Southwest Properties. Mayor Pro-Tem Rios seconded the motion. Motion carried unanimously.

**MOTION:** Mayor Wax moved that City Council authorize the City Manager to obtain the latest draft of the lease agreement with the Rockport Art Association, Inc. and provide it to the Executive Director of the Rockport Center for the Arts in order to move forward in reference to Executive Session Item #4 – Deliberation regarding real property – Deliberate the purchase, exchange, lease, or value of real property: 1100 block of East North Street, between Austin Street and Water Street. Mayor Pro-Tem Rios seconded the motion. Motion carried unanimously.

City Manager asked if the Council wanted to schedule a Special Meeting to address the lease agreement before the May 9, 2016 Rockport Art Association escrowed contract deadline.

It was the consensus of the Council to schedule two Special Meetings; May 6<sup>th</sup> at 10:30 a.m. and May 9<sup>th</sup> at 1:00 p.m.

**6. Adjournment**

At 1:47 p.m., Council Member Day moved to adjourn. Motion was seconded by Mayor Pro-Tem Rios and carried unanimously.

**APPROVED:**

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Charles J. Wax, Mayor

**ATTEST:**

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Teresa Valdez, City Secretary

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

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**AGENDA ITEM: 8**

Deliberate and act on 2<sup>nd</sup> quarter report from Rockport Center for the Arts for Fiscal Year 2015-2016 marketing expenditures.

**SUBMITTED BY:** City Secretary Teresa Valdez

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** The Rockport Center for the Arts has been allocated \$109,700 in Fiscal Year 2015-2016 Hotel Occupancy Tax (HOT) funds, of which \$2,500 is designated for Rockport Rotary Club Film Festival leaving \$107,200. According to our agreement with Rockport Center for the Arts, HOT funds are paid in advance and a report of the previous quarter's expenditures is required. See the accompanying 2<sup>nd</sup> Quarter HOT Expenditure Report for additional information.

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**FISCAL ANALYSIS:** Charged to account 6602040. The Rockport Center for the Arts has already received \$2,500 for the 2015 Film Festival. YTD expenses are \$35,147.62 out of \$107,200 budgeted.

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**RECOMMENDATION:** Staff recommends approval of Rockport Center for the Arts Fiscal Year 2015-2016 Hotel Occupancy Tax funds 2<sup>nd</sup> Quarter expenditures and authorization to disburse 3<sup>rd</sup> Quarter funds in the amount of \$26,800.00, as presented.



## Rockport Center for the Arts

*Hotel Occupancy Tax, Period January – March, 2016  
Report of Quarterly Activities for **the City of Rockport***

### OUR MISSION

*Rockport Center for the Arts' mission is to be the catalyst and epicenter for opportunities to explore the creative arts.*

*Explore. Discover. Express.*

*47 years in operation*

### OUR PROMISES

*To provide a facility that is free and open to the public six days a week, year-round.*

*To provide free summer art education programming to local area students.*

*To provide a space where cultural enrichment is available to the community and visitors alike.*

*To conduct activities that attract cultural tourism.*

## Rockport Center for the Arts Report for the City of Rockport Highlights of Tourism Activities, January through March 2016

➤ Total visitors to the **Art Center** for the October to December period was **5,561**, as compared to **4,160** for the same quarter in 2015 (**25% increase**).

➤ Visitor attendance is on the rise since last year. 2016 visitor attendance to the Art Center during the quarter is up considerably in every month as compared to 2015:

<b>2015</b>	<b>January</b>	<b>695</b>	<b>February</b>	<b>1,623</b>	<b>March</b>	<b>1,842</b>
<b>2016</b>	<b>January</b>	<b>1,421</b>	<b>February</b>	<b>1,899</b>	<b>March</b>	<b>2,241</b>
<b>% Increase</b>		<b>105%</b>		<b>17%</b>		<b>22%</b>

➤ The % of the visitors that came from **outside of 70 miles** of Rockport-Fulton **over the 3 month period** is as follows:

**January 78.70%    February 73.20%    March 86.00%**

➤ There was a **significant increase in visitors** to the Art Center from **outside of 70 miles** during the month of **March** that can be attributed to PR and marketing activities to promote **Rising Eyes of Texas** Exhibit in external markets.

➤ In January **38.10% of visitors** came from outside the State of Texas.

➤ In February **42.00% of visitors** came from outside the State of Texas.

➤ In March **30.70% of visitors** came from outside the State of Texas.

➤ Percentage of visitors to the Art Center that came from major **Texas metropolitan** areas:

**January 21.20%    February 18.10%    March 39.90%**

➤ The most **robust market** during the quarter was **Houston** (as compared to **Austin last quarter**). Visitors from the **Houston** market demonstrated **double digit** attendance during the months of January and March.

# Rockport Center for the Arts

## Report for the City of Rockport

Highlights of Tourism Activities, Raw Data (provision of zip code for visitors at the Art Center is optional)  
January through March 2016

Visitor Data at the Art Center	Jan-16	Feb-16	Mar-16	Quarter Total
Total Attendance (n)	1421	1899	2241	5561
Visitor Data	Jan-16	Feb-16	Mar-16	
Outside of 70 Miles*	78.70%	73.20%	86.00%	
Local**	21.30%	26.80%	14.00%	
Total	100.00%	100.00%	100.00%	
*Highlights of Tourism outside of 70 miles, major metropolitan areas in Texas				
Austin	6.30%	4.40%	9.20%	
Dallas / Ft. Worth	2.25%	3.80%	2.90%	
Houston*	10.40%	4.10%	14.40%	*Most Robust
San Antonio*	2.25%	5.80%	13.40%	*Most Robust
Total major metro areas	21.20%	18.10%	39.90%	
Tourism from outside of Texas	38.10%	42.00%	30.70%	
Rural tourism beyond 70 miles	19.40%	13.10%	15.40%	
Total tourism from beyond 70 miles	78.70%	73.20%	86.00%	
**Local Area Visitors				
Rockport-Fulton	11.60%	17.50%	4.50%	
Corpus Christi	3.70%	5.20%	5.90%	
Rural Areas	6.00%	4.10%	3.60%	
Total	21.30%	26.80%	14.00%	

## January 2016 Exhibits in the Main Gallery and the Garden Gallery



### CURRENTS- All Members Exhibition

**History :** In 2015 Currents celebrated its 30<sup>th</sup> edition of this show.

Currents is the annual [All Members Show](#) at the Art Center

**Juror:** [Joe Peña](#) is Assistant Professor of Painting at [Texas A&M University Corpus Christi](#)

**Winners:** Will exhibit in the Merit Artists show to be held in August 2016

[Robert Pate](#), [Ken Reese](#), [Elena Rodriguez](#),  
[Clementina Rivera](#), [Taylor Starkey](#), [Bob Rhodes](#)

**CURRENTS** WHICH OPENED IN DECEMBER, CONTINUED IN THE MAIN GALLERY AND THE GARDEN GALLERY THROUGH JANUARY 15, 2016. THE GALLERY WAS CLOSED THE REST OF THE MONTH FOR MAINTENANCE AND REPAIRS TO WALLS.

**Admission is always Free of Charge and Open to the Public**

## February 2016 Exhibits in the Main Gallery and the Garden Gallery



V. CHIN

**CLAY EXPO BRINGS THE BEST IN CERAMICS TO ROCKPORT, INCLUDING SEABROOK ARTIST V. CHIN FOR MAIDEN SOLO SHOW.**

Born in Thailand, Chin moved to Japan at an early age, where he graduated from the Kyoto Institute of Technology. He trained as an apprentice with prominent Japanese ceramic artists before moving to the United States in 1980. Chin was selected as 2016 Clay Expo **best of show**. He sold 30 pieces during the course of the exhibit.

**Admission is always Free of Charge and Open to the Public**

## RENATE KASPER

**GARDEN GALLERY HOSTS BASTROP'S RENATE KASPER'S REALIST AND ILLUSTRATIVE WORKS.**

Kasper's work is more illustrative than painterly but there is always an element of abstraction in the work. She often places subjects in unnatural settings, with no background, or on clean stark surfaces.



**Opening Reception Attendance  
February 6th: 263**

**On Exhibit Through March 5, 2016**

## March 2016 Exhibits in the Main Gallery



1. Abilene Christian University
2. Glassell School of Art, Museum of Fine Arts Houston (HM)
3. Houston Baptist University (2<sup>nd</sup> Prize, HM)
4. Houston Community College
5. Steven F. Austin State University, Nacogdoches
6. Texas A&M Corpus Christi
7. Texas A&M Commerce
8. Texas State University, San Marcos
9. Texas Tech University, Lubbock (1<sup>st</sup> Prize)
10. University of Houston (3<sup>rd</sup> Prize)
11. University of Houston, Clear Lake
12. University of North Texas, Denton
13. University of Texas, Arlington (HM)
14. University of Texas Rio Grande Valley
15. University of Texas, San Antonio
16. University of the Incarnate Word, San Antonio



Opening Reception Attendance  
March 12th: 301

Thirty three artists representing sixteen universities across the State of Texas in the Main Gallery for the highest attendance on record since this exhibition started 9 years ago. Art Center awarded \$1,000 in cash prizes to winners.

Through April 4, 2016, Free Admission

## March 2016 Exhibits in the Garden Gallery

### *Tying Art to Education and Encouraging Enrollment to University through Scholarship*

ROCKPORT-FULTON HIGH SCHOOL STUDENTS RECEIVED **\$3,000** IN COLLEGE SCHOLARSHIPS AND CASH PRIZES.

### THE SUSIE LOVE SCHOLARSHIP THE BILL HILDEBRAND MEMORIAL SCHOLARSHIP THE HUDSON AWARD

*"The purpose of the scholarship is to encourage the pursuit of a career in the arts by encouraging enrollment in a college or university level art program."* Susie Love

← The **\$2,000 Susie Love Scholarship** was awarded to Claire Hartman a graduating senior.



The \$500 **Bill Hildebrand Memorial Scholarship** was awarded to Kyrie Davenport.

The \$300 **Hudson Award** was created by Sheryl and Gerald Hudson and the 2016 recipient is Abigail Spears.



Additional **Cash Awards and Prizes:**

*\$100 for first prize, Hannah Horton;*

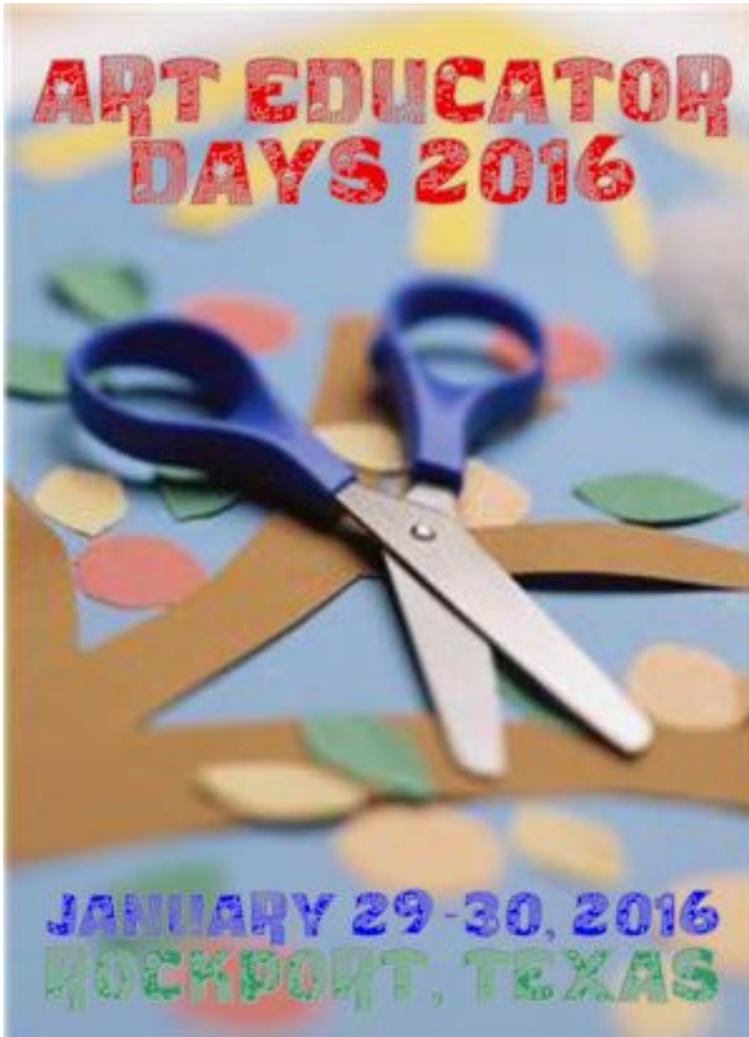
*\$75 for second prize, Drew Scott;*

*\$50 for third prize, Chance Nichols; and*

*three honorable mentions to Natalie Brake, Wesley Gonzalez, and Isabella King.*

## January 2016 Educational Programming at the Art Center

### *Art Educator Days 2016, Reaching out Across the State through Art Education In-services & CEU Training*



The annual **Art Educator Days** program encourages fellow art educators from **across the State of Texas to come to Rockport** to explore new ideas & strategies for the classroom, develop new skills, exchange effective lesson plans and build relationships within the field.

***Share ideas  
Participate in hands-on activities  
Network***

This year, **41 art educators** participated in the program from the following **15 school districts**:

Aransas County ISD, Boling ISD, Bay City ISD, Corpus Christi ISD,  
Diocese of Corpus Christi, Diocese of Victoria,  
Edinburg Consolidated ISD, Ingleside ISD, Karnes City ISD,  
Laredo ISD, London ISD, Round Rock ISD, San Antonio ISD,  
Tuloso-Midway ISD, Victoria ISD

## January through March 2016 Workshops, Classes and Educational Programming at the Art Center



### WINTER 2016 COURSE CATALOG

Rockport Center for the Arts  
902 Navigation Circle, Rockport, TX 78382  
www.rockportartcenter.com  
(361) 729-5519

**Free Family Saturdays** encourages family engagement through a hands-on art activity with children or grandchildren. A different project is planned each Saturday. There is **NO pre-registration** requirement. Families are encouraged to stop by anytime between **10 am and 4 pm**. Supplies are provided **free of charge** to all participants.

This program is made possible through a generous contribution from **The Nystrom Family Foundation** which was extended in 2016 and allowed us to **increase the number of contact hours per week from 4 to 6**.



### Workshops for Winter 2016, more theme diversity than ever:

*Fused Glass*

*Still Life*

*Guitar*

*Pottery*

*Mixed Media Transfers*

*Watercolor*

*Digital Photography*

*Pastels*

*Open Studio Practice*

*Photo Editing*

*Figure drawing*

*Abstract Painting*

*Ceramics*

*Landscape Painting*

*Zendoodle*

*Metal Jewelry*

*Plein Air*

*Painting Parties and More...*

## Sculpture Garden: New Acquisitions

### *Drawing Tourism to Rockport through the Sculpture Garden Collection*

#### *14 Significant Sculptural Works of Art*

A sculptural triptych by nationally-recognized San Antonio artist Danville Chadbourne has been installed and is due to be dedicated in the next quarter. The three ceramic and stone sculptures stand tall on Navigation Circle on the north end of the Art Center. Entitled *The Inevitable Question*, *The Lure of Simple Inclinations*, and *The False Shadow of Transformation*, the sculptures are representative of Chadbourne's impulses towards abstraction. The largest work is 8 feet, 3 inches tall.

The triptych was acquired by the Art Center through a substantial, private contribution. The works are made of high fired ceramics and stone.

The San Antonio market is an excellent source for tourism for Aransas County. The selection of Chadbourne, a nationally recognized Texas sculptor, will be a boon for tourism from that market and adds prestige to the Sculpture Garden collection.

*Moroles Ullberg Surls Chadbourne Umlauf Osborne DeDecker*

## Sculpture Garden: New Acquisitions

### *Drawing Tourism to Rockport through the Sculpture Garden Collection*

**Chadbourne's work in significant corporate collections:**

American Airlines  
San Antonio Museum of Art  
University of Houston  
Gallaudet University, Washington, DC  
Lowe Enterprises  
Albuquerque Zoo

*"Formally, I use relatively simple sculptural images, sometimes static, like monuments, other times active, dynamic forms that suggest some usage, often ritualistic. I also tend to use materials and processes that imply cultural attitudes that are harmonious with nature and the passage of time."*

**Danville Chadbourne**



## City of Rockport - Hotel Occupancy Tax Grant – Fiscal Year 2016 Expenditures Detail per Quarter

	Approved Budget Expense	1 <sup>st</sup> Quarter	2 <sup>nd</sup> Quarter	3 <sup>rd</sup> Quarter	4 <sup>th</sup> Quarter	Total
		Oct-Dec	Jan-Mar	Apr-Jun	Jul-Sep	Expenditures
		2015	2016	2016	2016	by Line Item
<b>Advertising</b>	\$ 25,000.00	\$ 1,211.00	\$ 2,000.00			\$ 3,211.00
<b>Tour of Homes</b>	\$ 8,000.00	\$ -	\$ 2,957.07			\$ 2,957.07
<b>Art Festival</b>	\$ 25,000.00	\$ -	\$ -			\$ -
<b>Exhibitions</b>	\$ 26,000.00	\$ 5,881.89	\$ 3,833.80			\$ 9,715.69
<b>Workshops &amp; Classes</b>	\$ 12,000.00	\$ 6,857.38	\$ 4,408.64			\$ 11,266.02
<b>Sculpture Garden</b>	\$ 11,200.00	\$ 6,362.84	\$ 1,635.00			\$ 7,997.84
<b>Total Funds Used</b>		\$ 20,313.11	\$ 14,834.51			\$ 35,147.62
Total Requested / Approved	\$ 107,200.00	\$ 26,800.00	\$ 26,800.00	\$ 26,800.00	\$ 26,800.00	

## Rockport Center for the Arts (Administrative Expenses) Budget Projection vs. YTD Actual FY 2016

			Source: QuickBooks FY 2016 Budget vs. Actual Report
Description of Administrative Expenses	Current Fiscal Year Administrative Expenses- Projection (from 2016 Budget)	Fiscal Year Administrative Expenses- YTD Actual	% of Fiscal Year Projections
Bad Debt		0.00	
Advertising & Promotion	1,900.00	1,384.00	72.84%
Awards, Honorariums & Gifts	700.00	125.44	17.92%
Bank Service Charges	750.00	85.48	11.4%
Cash (Over) Short		11.89	
Contract services	100.00	0.00	0.0%
Credit Card Fees	9,361.00	1,856.24	19.83%
Depreciation Expense	48,308.00	11,756.70	24.34%
Dues and Subscriptions	1,600.00	743.78	46.49%
Insurance	31,330.00	6,973.69	22.26%
Licenses, Fees and Permits	220.00	2.14	0.97%
Maintenance & Repairs	18,332.00	2,950.36	16.09%
Food & Beverage	2,500.00	450.39	18.02%
Miscellaneous Expense		0.00	
Payroll Expenses	132,087.00	37,254.95	28.21%
Postage and Delivery	2,200.00	614.15	27.92%
Printing and Reproduction	2,500.00	0.00	0.0%
Professional Fees	20,460.00	6,590.00	32.21%
Rental	6,024.00	1,258.93	20.9%
Scholarships		0.00	
Security	504.00	252.00	50.0%
Staff Training & Development	0.00	109.00	100.0%
Supplies & Materials	4,200.00	1,491.32	35.51%
Taxes	648.00	-0.12	-0.02%
Telephone	3,240.00	822.25	25.38%
Transportation	960.00	436.65	45.48%
Travel	1,000.00	0.00	0.0%
Utilities	15,700.00	2,858.30	18.21%
<b>Total Expense</b>	<b>304,624.00</b>	<b>78,027.54</b>	<b>25.61%</b>
<b>FY 2016 YTD as of April 21, 2016</b>			



## Rockport Center for the Arts

*Hotel Occupancy Tax, Period January – March, 2016*  
*Report of Quarterly Activities for **the City of Rockport***

**Thank you for your support**  
**City of Rockport**

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

---

**AGENDA ITEM: 9**

Deliberate and act on approval of Performance Modification No. 2 for the Water Improvements grant 713411 (West Terrace First Time Water Project).

**SUBMITTED BY:** City Manager Kevin Carruth

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** The City of Rockport is requesting a revision to the Performance Statement to revise the first-time single unit rehab activity. A reduction to the number of beneficiaries is being sought to reflect the number of households eligible to receive a grand funded service line.

During the review of the Project Completion Report, the Texas Department of Agriculture (TDA) concluded that the first time water service provided to 713 S Terry was not eligible to be grant funded because the property was vacant at the time of project completion. The contractor inadvertently connected the property and, although the occupants are eligible beneficiaries, did not occupy the home at the time and under Texas Community Development Block Grant (TxCDBG) rules they cannot be counted.

In order to move forward with the project closeout, the City needs to execute a Performance Statement modification to revise the number of beneficiaries to the 14A Rehab: Single unit Water activity. Please see the accompanying TxCDBG Contract Amendment/Modification Request – Form A1101 for additional detail.

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**FISCAL ANALYSIS:** The contract modification is budget neutral. TDA is not requiring the City to repay the \$931.07 in grant funds for this address because the City has exceeded its match requirement by \$5,262.93.

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**RECOMMENDATION:** Staff recommends Council approve Performance Modification No. 2 for the Water Improvements grant 713411 (West Terrace First Time Water Project), as presented.



# TxCDBG Contract Amendment/Modification Request - Form A1101

Grant Recipient Name: City of Rockport Contract No 713411 Region CBCOG  
 Modification No. 2 Start Date 11/12/2013 End Date 11/11/2015 Contract Amount \$300,000.00

Check all contract provisions to be amended/modified (additional questions appear for some selections):

- Exhibit A Performance Statement     Exhibit B Budget     Contract Period (extension)     Special Conditions  
 Other \_\_\_\_\_

What changes are proposed for the contract? Reduction of original project scale

Why are the proposed revisions requested for this contract?

The City of Rockport is requesting a revision to the Performance Statement to revise the first-time single unit rehab activity. A reduction to the number of beneficiaries is being sought to reflect the number of households eligible to receive a grant funded service line.

Is the contract on hold for non-compliance with audit, monitoring, or programmatic requirements?  No  TDA concur

## For Performance Statement Amendment/Modification Requests

Do the proposed revisions address the same problem identified in the current Performance Statement? (Select One)

Yes, same activity addressing the same problem

Do the proposed revisions change the beneficiaries of the contract? (Select One)

Yes, the beneficiaries indicated in the Performance Statement will decrease by less than 25%.

Do the proposed revisions change the locations as described in the Performance Statement? (Select One)

No, the locations described in the Performance Statement are accurate.

How significant are the proposed revisions? (Select One)

For project with target area benefit: all work within same target area.

Is a previously conducted Environmental Review still valid? (Select One)

Yes, the Review has been re-evaluated and remains valid. *TDA concur*

Are all clearances previously submitted for contract Special Conditions still valid? (Select One)

Yes, the clearances have been re-evaluated and remain valid.

How will the proposed improvements be completed? (Select One)

Included in existing construction contract as awarded.

Will the project be completed by the contract end date? (Select One)

Yes

Provide any other appropriate information about this request in the space below:

[Empty text box]

Supporting Documents Attached (if applicable):

- Revised Exhibit A (using track changes)     Revised Exhibit B (using track changes)     Resolution and Notice of Public Hearing
- Engineer's letter     Revised Project Map     Revised Implementation Schedule
- Other [Empty text box]

**By my signature, I certify that the above is true and accurate and hereby request the contract change:**

Signature of Authorized Signator	Title	Date
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**Notifications:**

Mailing Address [622 East Market Street, Rockport 78382]

Email Address for Grant Recipient [mayor@cityofrockport.com]

Other Email Address (list address for persons to be included in notification) [citysec@cityofrockport.com, ahide@grantworks.net]

**TDA Action:**

Notes Attached

Contract Specialist	TxCDBG Manager	TxCDBG Director	ORA Administrator
[Empty box]	[Empty box]	[Empty box]	[Empty box]

Date [Empty box]	Date [Empty box]	Date [Empty box]	Date [Empty box]
------------------	------------------	------------------	------------------

**Modification 2**  
**EXHIBIT A**

**PERFORMANCE STATEMENT**

**CITY OF ROCKPORT**

All activities funded with TxCDBG funds must meet one of the CDBG program’s National Objectives: benefit low- and moderate-income persons, aid in the prevention or elimination of slums or blight, or meet community development needs having a particular urgency.

Contractor shall carry out the following activities in the target area identified in the Application. The Contractor shall ensure that the amount of funds expended for each activity described does not exceed the amount specified for such activity in the Budget.

**CURRENT NEED**

The City of Rockport has neighborhoods that have households that either do not have public water service or are served by deteriorated and undersized water lines, resulting in residents having shallow wells and residents who experience low water pressure and frequent disruptions in service.

The Contractor certifies that the activity (ies) carried out under this contract will meet the National Objective of benefitting low- and moderate-income persons with at least 51% of the beneficiaries qualifying as low- to moderate-income.

**ACTIVITIES**

Water Improvements Contractor shall install and replace water lines to provide first-time water access and to improve water pressure and prevent frequent disruptions in service in the West Terrace and Doughty–Terry Street neighborhoods. Contractor shall install approximately seven thousand two hundred nine linear feet (7,209 l.f.) of six-inch (6”) to eight-inch (8”) water line, ten (10) hydrants, valves and fittings, service reconnections, pavement and driveway, and all associated appurtenances. Construction shall take place in the following locations:

<b>STREET</b>	<b>FROM</b>	<b>TO</b>
Plover	Teal	Mallard
Egret	Teal	Mallard
Warbler	Teal	Approximately 190 linear feet north
Raven	Mallard	Approximately 295 linear feet south
Teal	Plover	Warbler
Mallard	Access road of SH 35	Warbler
Warbler	Mallard	Approximately 90 linear feet north
Doughty	James	Corpus Christi
Terry	James	Corpus Christi
Corpus Christi	Alley between Doughty and Terry	Terry
King	Doughty	Alley between Doughty and Kossuth
Mallard	Raven	Approximately 233 linear feet east

These activities shall benefit ninety-eight (98) persons, of which seventy-three (73) persons or seventy-four percent (74%) are of low- to moderate-income.

Rehabilitation: Single-Unit Water Service Contractor shall provide first-time water service to twenty ~~one (2+20)~~ households in the West Terrace and Doughty–Terry Street neighborhoods. Contractor shall install twenty ~~one (2+20)~~ water yard service lines and all associated appurtenances. TxCDBG funds shall not fund a water yard service line on

private property to a household that does not qualify as low-to-moderate income. Construction shall take place in the following locations:

STREET	FROM	TO
Doughty	James	Corpus Christi
Terry	James	Corpus Christi
Egret	Teal	Mallard
Plover	Teal	Mallard
Warbler	Teal	Approx 190 linear feet north
Raven	Mallard	Approximately 295 linear feet south

These activities shall benefit ~~fifty-three~~forty-nine (5349) persons, of which ~~fifty-three~~forty-nine(5349) persons or one hundred percent (100%) are of low- to moderate-income.

**Engineering**

Contractor shall ensure that the amount of Department funds expended for all eligible project-related engineering services, including preliminary and final design plans and specifications, all interim and final inspections, and all special services does not exceed the amount specified for engineering in the Budget.

**General Administration**

Contractor shall ensure that the amount of Department funds expended for all eligible project-related administration activities, including the required annual program compliance and fiscal audit does not exceed the amount specified for administration in the Budget.

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

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**AGENDA ITEM: 10**

*Tabled April 26, 2016* - Deliberate and act on Resolution amending Resolution 2016-06 authorizing certification of a cultural district to be named Rockport Cultural Arts District.

**SUBMITTED BY:** City Manager Kevin Carruth

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** At the March 8, 2016, City Council Meeting, the City Council received a presentation on the creation of a cultural arts district. The Council voted to adopt Resolution No. 2016-06 support the creation of Rockport Heritage and Arts District.

At the time of the Resolution submission to the City, the arts district initiative intended to use the name Rockport Heritage and Arts District, however, since that time the arts district sponsor, Rockport Heritage District Association, has officially changed their name with the State of Texas to Rockport Heritage and Arts District. Therefore, the arts district initiative has changed their name to Rockport Arts District (dropping “Heritage and”) and the change needs to be reflected on the City Resolution that will be submitted with the Texas Commission on the Arts application.

In addition to that requested change, there has been a request to changed Section 4 of the Resolution to read: “Will appoint a City official to represent the City on the advisory board of said cultural district.” The reason for this requested change is that Jennifer Day is chairing the governing board and City Council Member Rusty Day is the appointed City official, creating a potential conflict of interest on approval of agenda items.

At the April 26, 2016, Council meeting the resolution was tabled following a discussion about including “Cultural” in the District’s name. Since that meeting the name has been revised to “Rockport Cultural Arts District” and the resolution has been changed accordingly.

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**FISCAL ANALYSIS:** N/A

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**RECOMMENDATION:** Staff recommends Council approve the Resolution, as presented.

RESOLUTION NO. ~~2016--06~~\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROCKPORT AMENDING RESOLUTION NO. 2016-06 WHICH AUTHORIZED CERTIFICATION OF A CULTURAL DISTRICT FOR AT LEAST TEN (10) YEARS TO BE NAMED ROCKPORT ~~HERITAGE AND CULTURAL~~ ARTS DISTRICT.**

**WHEREAS**, a cultural district has been designated to assist the district and community to develop a public-private partnership to support said district, and,

**WHEREAS**, the goals of the cultural district include attracting artists and cultural enterprises to the community, encouraging business and job development, addressing specific needs of our community, establishing tourism destinations, preserving and reusing historic buildings, enhancing property values, and fostering local cultural development, and

**WHEREAS**, Charles J. Wax, Mayor, City of Rockport, has signed ~~a~~Resolution No. 2016-06 of support for said cultural district and,

**WHEREAS**, the Texas Commission on the Arts will be petitioned to designate said cultural district and,

WHEREAS, Resolution No. 2016-06 listed the name of the Cultural District as Rockport Heritage and Arts District wherein is should be shown as Rockport Cultural Arts District.

Whereas, Section 4 of Resolution No. 2016-06 will also be changed to state that the City Council will appoint an official to serve on the advisory board of said Rockport Cultural Arts District.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROCKPORT THAT THE CITY:**

- Section 1.** Endorses the submission of this application and agrees to participate in the development and financial support of said cultural district.
- Section 2.** Endorses the goal of economic development of said cultural district within the context of preservation and rehabilitation of our historic buildings.
- Section 3.** Endorses the goal of tourism development of said cultural district within the context of contributing to the overall visitor development goals of the City.
- Section 4.** Will appoint a City official to represent the City on the governing advisory board of said cultural district.
- Section 5.** By this action, directs City staff to actively support and cooperate with governing board to develop and maintain said cultural district.
- Section 6.** By this action, requests all residents of city/county and especially those citizens who own property or businesses within said district to support, promote and help maintain activities and events in said district.
- Section 7.** Directs the Mayor to sign and submit such Resolution on creation of said Cultural District.

PASSED and APPROVED this the 8<sup>th</sup> 10<sup>th</sup> day of ~~March~~ April 2016.

Formatted: Superscript

CITY OF ROCKPORT, TEXAS

~~Patrick (Pat) Rios~~ Charles J. Wax, Mayor

Pro-Tem

ATTEST:

Teresa Valdez, City Secretary

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

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**AGENDA ITEM: 11**

Deliberate and act on second and final reading of an Ordinance amending City of Rockport Code of Ordinances Chapter 54 Health and Sanitation, Article II. Food Establishments.

**SUBMITTED BY:** City Manager Kevin Carruth

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** The City of Rockport has an interlocal agreement with Aransas County to perform health and sanitation inspections for food services. Aransas County Environmental Health is requesting that our ordinance be revised to match changes in state statutes. The other substantive change is taking the fee schedule out and referencing the County's annual fee schedule. This will eliminate the need to revise the City's ordinance whenever the County changes its fees. The proposed changes will match the County's regulations. A representative from Environmental Health will be available to answer any questions.

See the accompanying memo from Environmental Health for additional detail.

City Council approved the first reading at the April 26, 2016 City Council meeting.

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**FISCAL ANALYSIS:** The proposed changes have no impact on the fee schedule, which is revised from time to time by Commissioners Court. The service is supported through customer fees paid directly to Aransas County. There is no impact on the City's budget.

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**STAFF RECOMMENDATION:** Staff recommends approval of second and final reading of an Ordinance amending City of Rockport Code of Ordinances Chapter 54 Health and Sanitation, Article II. Food Establishments, as presented.

# Memorandum

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**To:** City of Rockport  
**CC:** James S Jackson  
**From:** Aransas County Environmental Health  
**Date:** 04/21/2016  
**Re:** New Food Service Ordinance

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In Ordinance 1168 Article II Section 54-26(a), the City of Rockport adopted the Texas Food Establishment Rules which were cited as 25 TAC §229; however, the current regulations as amended in October 2015 by the State of Texas changed the chapter citations to 25 TAC §228. As such, to reflect the current regulations as adopted by the State of Texas we have proposed a change in Article II of all §229 citations to read §228.

The fees for food establishments are approved yearly by Aransas County Commissioners' Court. Thus, the fee schedule previously in place in Section 54-28 (c) has been deleted and updated to mirror the language within the Aransas County food establishment order. Also within that above mentioned section, the proposed ordinance states all permit fees must be submitted on or before December 31 rather than the last working day of January, this change is being put into place to prevent permit expiration.

In Ordinance 1168 Article II Section 54-34 Food Service Education, has been removed due to its inclusion in 25TAC §228.



36 **Sec. 54-27. Permits and exemptions.**

37 (a) A person may not operate a food establishment without a permit issued by the regulatory  
38 authority. Permits are not transferable from one ~~period~~ person to another or from one location to  
39 another location, except as otherwise permitted by this Ordinance. A valid permit must be posted  
40 in or on every food establishment regulated by this Ordinance.

41 (b) A food establishment operated solely by a nonprofit organization is exempt from the  
42 permitting requirements of this Ordinance, but is not exempt from compliance with state rules.  
43 The regulatory authority may require any information necessary to determine whether an  
44 organization is nonprofit for purposes of this exemption.

45 (Ord. No. 1168, § 2, 22-28-00)

46 **Sec. 54-28. Application for permit and fees.**

47 (a) Any person desiring to operate a food establishment must make a written application for a  
48 permit on forms provided by the regulatory authority. The application must contain the name  
49 and address of each applicant, the location and type of the proposed food establishment and the  
50 applicable fee. An incomplete application will not be accepted. Failure to provide all required  
51 information, or falsifying information required may result in denial or revocation of the permit.  
52 Renewals of permits are required on an annual basis and the same information is required for a  
53 renewal permit as for an initial permit.

54 (b) Prior to the approval of an initial permit or the renewal of an existing permit, the regulatory  
55 authority shall inspect the proposed food establishment to determine compliance with state laws  
56 and rules. A food establishment that does not comply with state laws and rules will be denied a  
57 permit or the renewal of a permit.

58 ~~(c) The following fee schedule applies to permits issued under this article:~~

<i>Permit Type</i>	<i>Fee</i>
<del>Daycare/Nursing Homes Inspections, License Renewal</del>	<del>\$50.00</del>
<del>Food Handler Commercial Permit</del>	<del>5.00</del>
<del>Foster Home Inspection</del>	<del>20.00</del>
<del>Food Service and Bar/Lounge Permit</del>	<del>-</del>
<del>—0–3 Employees/Establishment</del>	<del>50.00</del>
<del>—4–6 Employees/Establishment</del>	<del>100.00</del>
<del>—7–9 Employees/Establishment</del>	<del>200.00</del>
<del>—10–15 Employees/Establishment</del>	<del>300.00</del>
<del>—16 and Over Employees/Establishment</del>	<del>400.00</del>
<del>Temporary Events – Carnivals, Festivals, 14 days only</del>	<del>25.00</del>
<del>Mobile Vendors, Annual/per vehicle</del>	<del>50.00</del>

59 (c) Fees applicable to permits issued for food establishments are approved on a yearly basis by  
60 Aransas County Commissioners' Court.

61 (d) Permits are required for all temporary events such as carnivals, festivals or other related  
62 events if they sell food or beverages to the public. The regulatory authority does not differentiate  
63 between full-time and part-time employees. All food-service permits are required and must be  
64 paid prior to the last working day in January.

65 (Ord. No. 1168, § 2, 22-28-00)

66 **Sec. 54-29. Review of plans.**

67 (a) In addition to any other regulatory requirements and review by other local, state or federal  
68 agencies, ~~W~~ whenever a food establishment is constructed or extensively remodeled and  
69 whenever an existing structure is converted to use as a food establishment, properly prepared  
70 plans and specifications for such construction, remodeling or conversion shall be submitted to  
71 the city regulatory authority for review before work is begun. Extensive remodeling means that  
72 20 percent or greater of the area of the food establishment is to be remodeled. The plans and  
73 specifications shall indicate the proposed layout, equipment arrangement, mechanical plans and  
74 construction of materials of work areas, and the type and model of proposed fixed equipment  
75 and facilities. ~~The city will approve~~ The plans and specifications will be approved by the  
76 regulatory authority if they meet the requirements of the rules adopted by this Ordinance. The  
77 approved plans and specifications must be followed in construction, remodeling or conversion.

78 (b) Failure to follow the approved plans and specifications will result in a permit denial,  
79 suspension, or revocation.

80 (Ord. No. 1168, § 2, 22-28-00)

81 **Sec. 54-30. Suspension of permit.**

82 (a) The regulatory authority may, without warning, notice, or hearing suspend any permit to  
83 operate a food establishment if the operation of the food establishment constitutes an imminent  
84 hazard to public health. Suspension is effective upon service of the notice required by paragraph  
85 (b) of this section. When a permit is suspended, food operations shall immediately cease.  
86 Whenever a permit is suspended, the holder of the permit shall be afforded an opportunity for a  
87 hearing within 20 days of receipt of a request for a hearing.

88 (b) Whenever a permit is suspended, the holder of the permit or the person in charge shall be  
89 notified in writing that the permit is, upon service of the notice, immediately suspended and that  
90 an opportunity for a hearing will be provided if a written request for a hearing is filed with the  
91 regulatory authority by the holder of the permit within ten days. If no written request for hearing  
92 is filed within ten days, the suspension is sustained. The regulatory authority may end the  
93 suspension at any time if reasons for suspension no longer exist.

94 (Ord. No. 1168, § 2, 22-28-00)

95

96 **Sec. 54-31. Revocation of permit.**

97 (a) The regulatory authority may, after providing opportunity for a hearing, revoke a permit  
98 for serious or repeated violations of any of the requirements of these rules or for interference  
99 with the regulatory authority in the performance of its duties. Prior to revocation, the regulatory  
100 authority shall notify the holder of the permit or the person in charge, in writing, of the reason  
101 for which the permit is subject to revocation and that the permit shall be revoked at the end of  
102 the ten days following service of such notice unless a written request for a hearing is filed with  
103 the regulatory authority by the holder of the permit within such ten-day period.

104 (b) If no request for hearing is filed within the ten-day period, the revocation of the permit  
105 becomes final.

106 (Ord. No. 1168, § 2, 22-28-00)

107 **Sec. 54-32. Administrative process.**

108 (a) A notice as required in these rules is properly served when it is delivered to the holder of  
109 the permit or the person in charge, or when it is sent by registered or certified mail, return receipt  
110 requested, to the last known address of the holder of the permit. A copy of the notice shall be  
111 filed in the records of the regulatory authority.

112 (b) ~~The hearings provided for in these rules shall be conducted by~~ The regulatory authority  
113 ~~shall conduct the hearings provided for in these rules~~ at a time and place designated by it. Based  
114 upon the recorded evidence of such hearing, the regulatory authority shall make final findings,  
115 and shall sustain, modify or rescind any notice or order considered in the hearing. A written  
116 report of the hearing decision shall be furnished to the holder of the permit by the regulatory  
117 authority.

118 (Ord. No. 1168, § 2, 22-28-00)

119 **Sec. 54-33. Remedies.**

120 (a) Any person who violates a provision of these rules and any person who is the permit holder  
121 of or otherwise operates a food service establishment that does not comply with the requirements  
122 of these rules and any responsible officer of that permit holder or those persons ~~shall be guilty~~  
123 ~~of a class C misdemeanor and~~ shall be ~~punished by a fine not exceeding~~ fined not more than  
124 \$500.00.

125 (b) The regulatory authority may seek to enjoin violations of these rules.

126 (Ord. No. 1168, § 2, 22-28-00)

127 ~~**Sec. 54-34. Food service education.**~~

128 ~~The food service sanitation course (two hour course), food service manager's sanitation course~~  
129 ~~and food service manager's refresher course shall be required for all employees, owners or~~  
130 ~~managers of any food service operation respectively. The city will contract with the Aransas~~

131 ~~County Environmental Health Office by interlocal agreement to provide and arrange food service~~  
132 ~~education classes. Upon completion of the course the student shall receive a certificate of~~  
133 ~~completion. Where possible, the food service permit shall indicate whether the manager or owner~~  
134 ~~has completed the appropriate course.~~

135 (Ord. No. 1168, § 2, 22-28-00)

136 **Sec. 54-35. Examination and condemnation of food.**

137 The authorized agent or employee may examine food as often as necessary for the enforcement  
138 of this article and the state laws and rules. The authorized agent may, upon written notice to the  
139 owner or person in charge, place a hold order on any food, which it believes is in violation of  
140 any state laws. A written notice must specify the reason for the hold order. The authorized agent  
141 shall tag, label, or otherwise identify any food subject to the hold order. No food subject to the  
142 hold order shall be used, served or moved from the establishment. The authorized agent shall  
143 permit storage of the food under conditions specified in the hold order, unless storage is not  
144 possible without risk to the public health, in which case immediate destruction shall be ordered  
145 and accomplished.

146 (Ord. No. 1168, § 2, 22-28-00)

147 **Secs. 54-36—54-55. Reserved.**

148  
149

150 **SECTION 2: REPEALER**

151

152 Any previously adopted ordinances, and any subsequent amendments to them, which are in  
153 conflict with this ordinance, are hereby repealed .

154

155 **SECTION 3: SEVERABILITY**

156

157 If at any provision, section, sentence, clause or phrase of this ordinance, or the application of same  
158 to any person or set of circumstances is, for any reason held to be unconstitutional, void, or  
159 invalid, the validity of the remaining portions of this ordinance shall not be affected thereby, it  
160 being the intent of the City Council in adopting this ordinance that no portion hereof, or provisions  
161 or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality  
162 of any other portion hereof, and all provisions of this ordinance are declared severable for that  
163 purpose.

164

165 **SECTION 4: EFFECTIVE DATE**

166

167 This ordinance shall become effective immediately upon adoption by second and final reading.  
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173 **APPROVED and PASSED** on first reading this \_\_\_\_\_ day of April 2016.

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**CITY OF ROCKPORT**

\_\_\_\_\_  
Charles J. Wax, Mayor

**ATTEST:**

\_\_\_\_\_  
Teresa Valdez, City Secretary

**APPROVED, PASSED and ADOPTED** on second and final reading this \_\_\_\_\_ day of May 2016.

**CITY OF ROCKPORT**

\_\_\_\_\_  
Charles J. Wax, Mayor

**ATTEST:**

\_\_\_\_\_  
Teresa Valdez, City Secretary

**CITY COUNCIL AGENDA**  
**Regular Meeting: Tuesday, May 10, 2016**

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**AGENDA ITEM: 12**

Deliberate and act on second and final reading of an Ordinance authorizing the closing, vacating and abandonment of a 20-foot wide alleyway lying between Lots 1 and 9, in Block 107, Manning Addition, and a 20-foot wide alleyway lying between Lots 15-16 and 7-8 in Block 108, Manning Addition, Rockport, Aransas County, Texas, aka 1803 Young Street; providing for the terms and conditions of such vacation and abandonment; authorizing the Mayor to execute a Quitclaim Deed for the said alleyways to be closed, vacated and abandoned; and providing for an effective date.

**SUBMITTED BY:** City Manager Kevin Carruth

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** On December 11, 2015, the City received a Petition from Mr. Steve Pham for closure, abandonment, and vacating of a 20-foot wide alleyway lying between Lots 1 and (, in Block 107, Manning Addition, and a 20-foot wide alleyway lying between Lots 15-16 and 7-8 in Block 108, Manning Addition, Rockport, Aransas County, Texas, aka 1803 Young Street. Mr. Pham owns property abutting both alleyways. The Public Works and Building and Development Departments have evaluated the request and state that granting the petition will have no negative impact on current or expected future utilities, transportation needs, or development.

City Ordinance 1092 which established the policy and procedure for the permanent closure of streets requires the following:

1. A petition for closure listing all of the abutting property owners.
2. Payment of an administrative fee (\$50 for the first 100 linear feet and \$10 for each 35 feet thereafter).
3. A survey of the street segment to be closed.
4. Review by city staff.
5. Notice of public hearing published 15-30 days prior to the public hearing.
6. Appraisal conducted by the City.
7. Conduct a public hearing.
8. Passage of the ordinance closing the street by a  $\frac{3}{4}$  super majority (i.e. four votes).

Items 1, 2, 3, 4, 5, 6, and 7 have been completed. The City received payment from Mr. Pham for the administrative fee as well as the cost of the survey. The public hearing was conducted prior to this agenda item at the February 9, 2016, City Council Meeting.

The City Manager met with Mr. Pham and his plans are for:

1. 16 Cottages at 600 sq. ft. each
2. Construction schedule of 2-3 per year, completion within 5 years
3. Cost of \$490/sq.ft. or \$54,000/unit

4. Total development cost of \$864,032

As a condition of sale, Mr. Pham agreed to adding at least 40 percent of the total value within four years, i.e. \$345,613.

See the accompanying request from Mr. Pham, aerial map, appraisal report, Ordinance 1092, and the quitclaim deed for more detail.

City Council approved the first reading of the Ordinance at the April 26, 2016 Council Meeting and there have been no changes to form or content.

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**FISCAL ANALYSIS:** An appraisal by Lynch Appraisal Services has determined the fair market value of the property to be \$2,250.00.

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**RECOMMENDATION:** Staff recommends approval of the Ordinance on second and final reading, as presented.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE CLOSING, VACATING AND ABANDONMENT OF A 20-FOOT WIDE ALLEYWAY, APPROXIMATELY 0.06887 LYING BETWEEN LOTS 1 AND 9, IN BLOCK 107, MANNING ADDITION, AND A 20-FOOT WIDE ALLEYWAY LYING BETWEEN LOTS 15-16 AND 7-8, IN BLOCK 108, MANNING ADDITION, ROCKPORT, ARANSAS COUNTY, TEXAS; ACCORDING TO THE PLAT OF RECORD IN VOLUME 1, PAGE 7, PLAT RECORDS OF ARANSAS COUNTY, TEXAS; PROVIDING FOR THE TERMS AND CONDITIONS OF SUCH VACATION AND ABANDONMENT; AUTHORIZING THE MAYOR TO EXECUTE A QUITCLAIM DEED WITH CONDITIONS AND REVERSIONARY CLAUSE FOR THE THREE (3) 20-FOOT ALLEYS TO BE CLOSED, VACATED AND ABANDONED; AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, the City of Rockport, Texas is a Home-Rule City incorporated and operating under the laws of the State of Texas, which has the authority under its Charter and Chapters 282 and 253 of the Local Government Code, as amended, to close, vacate and abandon municipal rights-of-way, streets or alleys, by ordinance, when such action is in the best interest of and serves the public purpose; and

**WHEREAS**, the City of Rockport has received a request from the abutting property owner Steve Pham, for the City to close, vacate and abandon a 20-foot wide alleyway lying between Lots 1 and 9, in Block 107, Manning Addition, and a 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas, for a total of approximately 0.06887 acre; and

**WHEREAS**, the property owners are the sole property owners abutting the Right-of-Way, such that there are no other abutting property owners to be notified of the vacation and abandonment; and

**WHEREAS**, the City Manager and Public Works Department have reviewed the requested vacation and abandonment of the 20-foot wide alleyway lying between Lots 1 and 9, in Block 107, Manning Addition, and the 20-foot alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas; and the sale of said 20-foot alleyways to Steve Pham and Stephanie Pham; and the City Council now finds that the drainage easements and utilities currently existing, or that will exist in the future, if any, in the area of the unopened street and/or public right-of-way will be sufficiently protected by existing easements, or by being either relocated or placed into easements, and that the utility companies serving the

area including and surrounding the right-of-way have determined that their utilities, if existing, will also be sufficiently protected by the same means; and

**WHEREAS**, the City of Rockport did cause to be published a Notice in the official newspaper of the City on Saturday, January 23, 2016, advising of a Public Hearing to be held on Tuesday, February 9, 2016, at 6:30 p.m. at the Rockport City Hall; and

**WHEREAS**, the City Council of the City of Rockport, Texas, finds and declares that it is in the best interest of all citizens of the City of Rockport, Texas that the 20-foot wide alleyway lying between Lots 1 and 9, in Block 107, Manning Addition, and the 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas, be vacated and abandoned and sold, with conditions, to Steve Pham and Stephanie Pham for fair market value and deposited in the street maintenance fund, as required by state law.

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

**Section 1:** That the identified 20-foot wide alleyway, or approximately 0.06887 acre, lying between Lots 1 and 9, in Block 107, Manning Addition, and the 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas, on Exhibit "B," attached hereto and made a part of this Ordinance for all purposes, be, and the same is hereby closed, abandoned and vacated insofar as the right, title or interest of the public is concerned.

**Section 2:** That said alleyways are not needed for public roadway purposes and it is in the public interest of the City of Rockport to close, abandon and vacate said described portion of the street and/or public right-of-way for use as roads and roadways.

**Section 3:** That said alleyways to be closed, abandoned and vacated, as shown by the survey and metes and bounds attached hereto as Exhibit "A" and made a part hereof for all purposes, be deeded by quitclaim deed to Steve Pham and Stephanie Pham, said quitclaim to include reversionary and development conditions;

**Section 4:** That the Mayor is hereby authorized and directed to convey and transfer by quitclaim deed, with conditions, the 20-foot wide alleyway, of approximately 0.06887 acre, lying between Lots 1 and 9, in Block 107, Manning Addition, and the 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas; and is to be closed, abandoned and vacated for the fair market value of the street, which is the interest of the City of Rockport, Texas, in and to the said streets and/or public rights-of-ways, except for any past, present, or future utility easement or drainage easement previously granted to or belonging to the City.

**Section 5:** That the closing, vacation, abandonment and transfer provided for herein shall extend only to the public right and title in and to the tract of land described in this Ordinance, and shall be construed only to that interest the governing body of the City of Rockport may legally and lawfully close, abandon, vacate and convey.

**Section 6:** That the consideration for said transfer to Steve Pham and Stephanie Pham shall be deposited in the street maintenance fund of the City of Rockport as is required by provisions of the state law as set forth in the Local Government Code, Section 253.001, as amended.

**Section 7:** Any previously adopted ordinances, and any subsequent amendments to them that are in conflict with this Ordinance are all hereby repealed.

**Section 8:** If any provision, section, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof, or provisions or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this Ordinance are declared severable for that purpose.

**Section 9:** This ordinance shall become effective upon adoption on second reading by the Rockport City Council.

**APPROVED** on first reading, this \_\_\_ day of April 2016.

**CITY OF ROCKPORT, TEXAS**

\_\_\_\_\_  
Charles J. Wax, Mayor

**ATTEST:**

\_\_\_\_\_  
Teresa Valdez, City Secretary

**APPROVED, PASSED and ADOPTED** on second and final reading, this \_\_\_\_\_ day of \_\_\_\_\_ 2016.

**CITY OF ROCKPORT, TEXAS**

\_\_\_\_\_  
Charles J. Wax, Mayor

**ATTEST:**

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Teresa Valdez, City Secretary



1. Grantee shall develop the above described property [Lots 1, 7, 8, 9, 15, and 16, Fourth St. and the alley] by building single family homes, architecturally harmonious with the neighborhood, with a minimum square footage of six hundred (600) square feet, excluding garage;
2. Grantee shall add a minimum *ad valorem* value of \$345,613 and have completed and received a certificate of occupancy for at least six (6) homes within four (4) years of the execution of this agreement;
3. Grantee shall not sell, or otherwise transfer any portion of the adjoining property currently owned by GRANTEE, which adjoins said 0.06887 acre alleyway, described herein until conditions number 1 and 2 have been met.

**In the event any of the above conditions are violated, the 0.06887 acre of property transferred herein, together with any improvements thereon, shall revert to the City of Rockport, free and clear of any claims of the GRANTEE.**

**TO HAVE AND TO HOLD** for said purposes together with all and singular the rights, privileges, and appurtenances thereto in any manner that does not interfere with the City’s access to and use of any public easements belonging unto Grantee forever.

**SAVE AND EXCEPT FOR** any past, present, or future utility easements or drainage easements located above, on or below said property, belonging to the City of Rockport, Aransas County, Texas.

IN WITNESS WHEREOF, this instrument is executed on this the \_\_\_\_ day of April, 2016.

GRANTOR:  
CITY OF ROCKPORT

GRANTEE:  
STEVE AND STEPHANIE PHAM

\_\_\_\_\_  
Charles J. Wax, Mayor

\_\_\_\_\_  
Steve Pham

\_\_\_\_\_  
Stephanie Pham

STATE OF TEXAS                   §  
  §  
COUNTY OF ARANSAS           §

BEFORE ME, the undersigned authority, on this day personally appeared **Mayor Charles J. Wax**, of Rockport, Texas, and being known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said municipality, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_ 2016

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS §

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COUNTY OF ARANSAS §

BEFORE ME, the undersigned authority, on this day personally appeared **Steve Pham**, Rockport, Texas, and being known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_ 201

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

STATE OF TEXAS §

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COUNTY OF ARANSAS §

BEFORE ME, the undersigned authority, on this day personally appeared **Stephanie Pham**, Rockport, Texas, and being known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the \_\_\_\_ day of \_\_\_\_\_ 201

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_



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## PUBLIC HEARING

### Rockport City Council

**NOTICE** is hereby given that the Rockport City Council will hold a Public Hearing on Tuesday, February 9, 2016, at 6:30 p.m., Rockport City Hall, 622 E. Market, Rockport, Texas, to consider a request from Steve Pham for permanent closure/abandonment/vacation of: 1) a 20-foot wide alleyway lying between Lots 1 and 9, in Block 107, Manning Addition; and 2) a 20-foot wide alleyway lying between Lots 15-16 and 7-8, in Block 108, Manning Addition, Rockport, Aransas County, Texas.

The City encourages citizens to participate and make their views known at this Public Hearing. For further information on this request please contact the City Secretary at (361) 729-2213. This facility is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's office at (361) 729-2213 ext. 225 or FAX (361) 790-5966 or e-mail [citysec@cityofrockport.com](mailto:citysec@cityofrockport.com) for further information. Braille is not available.

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**POSTED:** this the 18<sup>th</sup> day of January 2016, by 5:00 p.m., on the bulletin board at Rockport City Hall, 622 E. Market Street, Rockport, Texas and on the webpage [www.cityofrockport.com](http://www.cityofrockport.com).

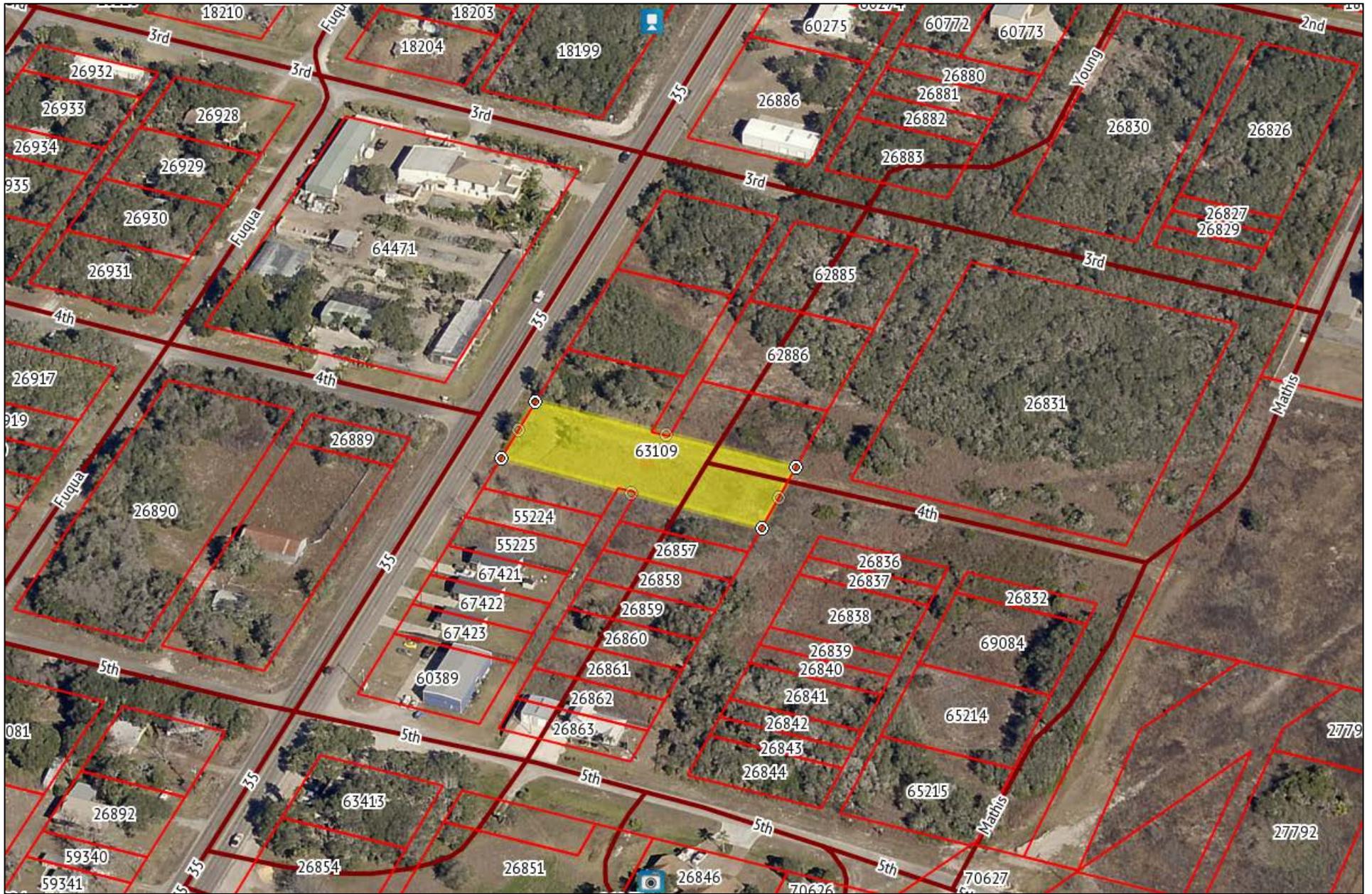
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**PUBLISHED:** in *The Rockport Pilot* in the Saturday, January 23, 2016, Edition, in accordance with the City of Rockport Code of Ordinances.

**CITY OF ROCKPORT, TEXAS**

  
Teresa Valdez, City Secretary

# 1803 Young Street



12-11-15  
(Date)

The Honorable Mayor and City Council  
c/o Mr. Kevin Carruth, City Manager  
City of Rockport  
622 E. Market Street  
Rockport, TX 78382

RE: Petition for closure, abandonment and vacating of EASEMENT ALLEY

Dear Mayor and Council Members:

We, the undersigned petitioners, respectfully request that the undeveloped

EASEMENT BETWEEN LOT 15 & 7, LOT 16 & 8 Block 108. AND EASEMENT BETWEEN LOT 9 & 10 Block 10  
(description of property to be vacated, closed, abandoned)

be closed, abandoned, and vacated. The requested section to be closed is more particularly described in the attached survey. The petitioners are the only property owners abutting the requested closure.

If approved, this request will 16 VACATION COTTAGES  
(describe reason for request and how it will benefit petitioners)

The closure will  will not affect any existing utilities.  
(select one)

**Petitioner No. 1**

STEVE PHAM  
(Printed Name of Owner)

[Signature]  
(Signature of Owner)

12-11-15  
(Date Signed)

**Physical Address of Property:**

BRONTE ST  
Rockport, TX 78382

**Mailing Address of Owner:**

2322 PATTON ST  
ROCKPORT TX 78382

361-739-5175

**Petitioner No. 2**

\_\_\_\_\_  
(Printed Name of Owner)

\_\_\_\_\_  
(Signature of Owner)

\_\_\_\_\_  
(Date Signed)

**Physical Address of Property:**

\_\_\_\_\_  
Rockport, TX 78382

**Mailing Address of Owner:**

\_\_\_\_\_  
\_\_\_\_\_

## Exhibit "A"

### FIELD NOTE DESCRIPTION

BEING THE DESCRIPTION OF A 20-FOOT WIDE ALLEYWAY LYING BETWEEN LOTS 1 AND 9, IN BLOCK ONE HUNDRED SEVEN (107), MANNING ADDITION, ARANSAS COUNTY, TEXAS, ACCORDING TO THE PLAT RECORDED IN VOLUME 1, PAGE 7, PLAT RECORDS OF ARANSAS COUNTY, TEXAS, WITH SAID 20-FOOT WIDE ALLEYWAY BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGIN at the Southwest corner of Lot 1, Block 107, Manning Addition and being the **SOUTHEAST** corner and also the **PLACE OF BEGINNING** of this description;

THENCE, North 20°00'00" East along and with the West boundary line of Lot 1, of said Block 107 a distance of 50.00 feet to the Northwest corner of Lot 1, and being the **NORTHEAST** corner of this description;

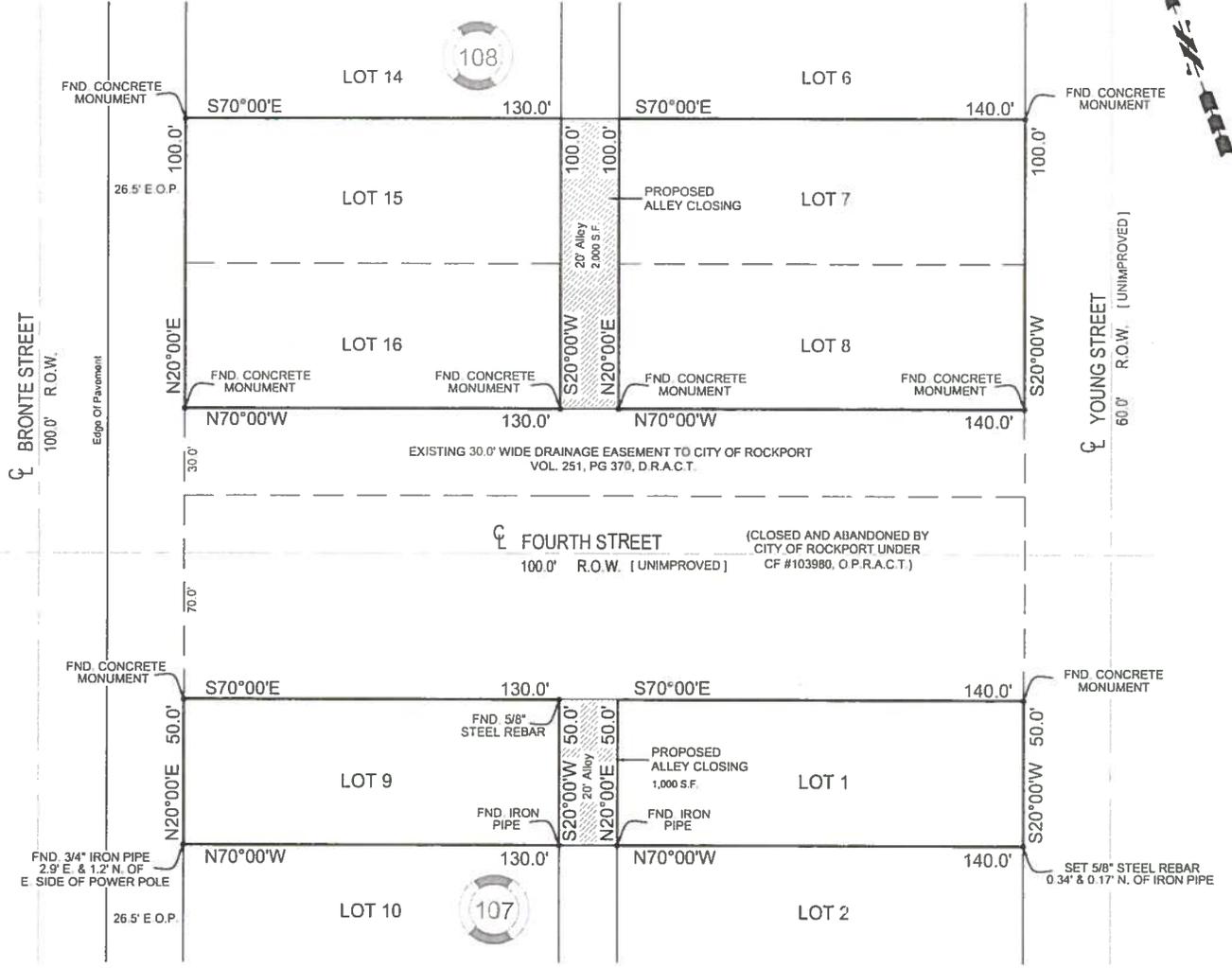
THENCE, North 70°00'00" West a distance of 20.00 feet along the South Right of Way of Fourth Street, that was closed and abandoned by the City of Rockport under CF #103980, Official Public Records of Aransas County to a point being the Northeast corner of Lot 9 and being the **NORTHWEST** corner of this description;

THENCE, South 20°00'00" West along and with the West boundary line of Lot 9, of said Block 107 a distance of 50.00 feet to the common corner of Lots 9 and 10, and being the **SOUTHWEST** corner of this description;

THENCE, South 70°00'00" East a distance of 20.00 feet to the Southwest corner of said Lot 1, Block 107 and also being the **PLACE OF BEGINNING** and containing **1,000 square feet** of land more or less.

NOTE: Property has not been surveyed on the ground.

151218dm2fn



NOTE: SURVEY REVISED 12-16-15 TO SHOW REQUEST FOR ALLEY CLOSINGS.

NOTES

1. Plat bearing used for directional control unless otherwise shown.
2. This survey is in violation of "Copyright Laws" if not accompanied by original seal and signature.

LEGAL DESCRIPTION

LOTS 1 AND 9, BLOCK 107, AND LOTS 7, 8, 15, AND 16, BLOCK 108, MANNING ADDITION, ARANSAS COUNTY, TEXAS, VOLUME 1, PAGE 7, PLAT RECORDS OF ARANSAS COUNTY, TEXAS.

Scale: 1" = 40'      April 14, 2004

FLOOD DATA

This is to certify that I have consulted the Federal Flood Hazard Map dated 3-4-1985, and found that the property described herein, is (or) is not  located in a "Special Flood Hazard Area".

Zone B & C  
 Base Elevation N/A  
 Panel No. 0003D  
 Community No. 485504

CURRENT PARTY

Prepared For: Steve Pham  
 1511 Bluebird Lane  
 Rockport, Tx. 78382  
 361-739-5175

COPYRIGHT NOTICE

This survey is being provided solely for use of the current parties and that no license has been created, expressed or implied, to copy the survey except as is necessary in conjunction with the original transaction, which shall take place within six (6) months from the date of this survey.

Copyright      April 14, 2004

SURVEYOR CERTIFICATION

I, J. L. Brundrett, Jr., a Registered Professional Land Surveyor in the State of Texas, do hereby certify that this plat correctly shows a survey on the ground of the foregoing property and that there are no intrusions or protrusions (except as shown hereon.)

J. L. Brundrett, Jr., R.P.L.S.  
 Reg. No. 8131

FIRM NAME & ADDRESS

**GRIFFITH & BRUNDRETT**  
 Surveying & Engineering  
 P. O. Box 2322  
 Rockport, Texas 78382  
 Phone: (361) 729-6479  
 Fax: (361) 729-7933

FILE NAME: 040414DT2

**ORDINANCE NO. 1092**

**AN ORDINANCE ESTABLISHING A POLICY AND PROCEDURE FOR CITIZENS TO REQUEST THE ABANDONING, ALTERING, CLOSING OR VACATING OF STREETS, ALLEYS AND OTHER PUBLIC WAYS OR PORTIONS THEREOF; ESTABLISHING ADMINISTRATIVE FEES TO BE PAID BY PETITIONERS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

- WHEREAS,** the City Council of the City of Rockport, Texas, has the power to establish, construct, alter, close, vacate and abandon public streets, alleys and other public ways to the City; and
- WHEREAS,** the City Council of the City of Rockport, Texas, deems it reasonable and proper to establish a policy and a procedure whereby persons may initiate, by petition, a request for the City to proceed in the exercise of said powers by the City where such is not deemed necessary for future use; and
- WHEREAS,** the City Council of the City of Rockport, Texas, deems it reasonable and proper that any person or persons requesting by petition that the City consider and exercise said powers regarding street, alleys and other public ways, should give notice of such request, provide certain other documents, and pay the expenses associated with the request:

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

**Section 1. AMENDMENT AND ADDITION OF POLICY TO CHAPTER 86**

Article IV of Chapter 86, "Streets, Sidewalks and Other Public Places," is amended by creating "Division 1. - Generally" from existing Sections 86-76 through 86-80; and by adding "Division 2. - Public Ways Closure Policy," Sections 86-85 through 86-95, as follows:

**ARTICLE IV. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

**DIVISION 1. GENERALLY**

(No change to §§ 86.76 through 86-80)

**DIVISION 2. PUBLIC WAY CLOSURE POLICY**

**Sec. 86-85. Policy.** No street, alley or other public way, or portion thereof, shall ever be closed, narrowed or vacated if doing so would result in a violation of or be in conflict with the City of Rockport's land development codes, or otherwise be contrary to the best interest of the public, considering all reasonable future use of such street, alley or other public way. Any petitioner requesting a street, alley or other public way, or portion thereof, be closed, narrowed or vacated must comply with all the following sections of this policy, but such shall constitute only a request and not be permitted except pursuant to the provisions hereof.

**Sec. 86-86. Petition Required.** Any person or persons (herein "petitioner") desiring to have the City Council exercise its powers regarding the closing, narrowing or vacating of streets, alleys or other public ways, or portions thereof, must file with the City Secretary a petition, on a form acceptable by the City, directed to the City Council requesting that such action be taken. The petition must be signed and acknowledged by all current owners of property abutting the street, alley or public way or portion thereof sought to be closed. The petitioner may not rely solely on the most recent county certified tax rolls to determine the current names

and addresses of all abutting property owners. A list of the owners' names and addresses of all property abutting the street, alley, public way or portion thereof that is the subject of the petition must be attached to the petition. The City may require the petitioner to provide copies of documents filed in the Aransas County Deed Records to evidence the current abutting owners. The petition shall not be accepted unless and until all requirements of this policy have been met and the City is satisfied that all current abutting property owners have signed the petition. Upon acceptance, the City Secretary shall provide copies of the petition to the City Manager and all other City staff or officials whom the City Manager directs.

**Sec. 86-87. Fee.** Upon the filing of a petition with the City Secretary, an administration fee shall be paid to the City in an amount equal to Fifty and No/100 Dollars (\$50.00) for the first one hundred feet (100') linear length of affected property and Ten and No/100 Dollars (\$10.00) for each thirty-five feet (35') of affected length, or portion, thereafter.

**Sec. 86-88. Survey Required.** For a petition to be accepted, petitioner must provide a survey or plat, together with a typed legal description, of the street, alley or other public way, or portion thereof, sought to be abandoned, altered, closed or vacated and the property abutting thereon, prepared by a licensed land surveyor. The costs of the survey or plat shall be paid by the petitioner.

**Sec. 86-89. Review by City Staff.** The City staff shall review the request as to the impact on utilities, drainage and/or the future traffic needs and circulation, and shall issue a report to the City Secretary and City Manager, outlining the staff's findings and its recommendation for consideration by the City Council. A staff report finding no objection to the request shall not bind the City Council to grant the petition, and is as such only advisory upon the Council.

**Sec. 86-90. Notice of Public Hearing on the Petition.** After receipt of the staff report, the City Secretary shall cause a public hearing to be set on this petitioner's request. Notice of such public hearing on the petition must be given by publication in the official newspaper of the City no more than thirty (30) days nor fewer than fifteen (15) days proceeding the date of that set for public hearing on the proposed request. Such notice shall fairly state the action requested giving a description of the property or street affected.

**Sec. 86-91. Appraisal.** The City Manager or the City Council may, at any time, request and obtain an independent appraisal of the value of the property sought by petitioner to be closed, narrowed or abandoned. Such appraisal may be used to determine what consideration, if any, may be required to be paid by petitioner or anyone else to be benefited by the petitioner's request, should final action be taken by the City Council pursuant to this policy.

**Sec. 86-92. Public Hearing.** The City Council shall hear evidence as to the reasons why such street, alley, public way or portion thereof should or should not be abandoned, altered, vacated or closed. The City Council may adjourn or continue the public hearing as it alone deems necessary and in the best interest of the public. Upon close of the public hearing, the Council shall either grant or deny the request by petitioner. Such petition, if not acted upon at the meeting at which it appears on the agenda for public hearing, may at such time be passed, tabled or continued on the agenda to any subsequent City Council meeting.

**Sec. 86-93. Passage of Ordinance.** The Council may grant the petition only by adoption of an ordinance, pursuant to its Charter. However, a three-fourths (3/4) majority of votes of the City Council shall be necessary to adopt an ordinance to abandon, alter, vacate or close the street, alley, public way or portion thereof.

**Sec. 86-94. Conditions Precedent to Granting of Petition.**

- a) The Council shall determine what consideration, if any, shall be paid by the abutting property owners, pursuant to Chapter 272 of the Local Government Code, which may be equal to or less than the fair market value as determined by recent City appraisal obtained pursuant to this policy.
- b) The Council may retain utility and/or drainage easements across those portions of the street, alley or other public way, or portion thereof, if it deems such reservation necessary.
- c) The Council may require written verification from any or all franchised utilities, including but not limited to electric, gas, telephone or cable, evidencing such utilities' current or

anticipated future use of the street, alley or other public way sought to be closed, narrowed or vacated.

- d) Prior to granting the petition, the Council may require all the abutting property owners to execute with the City a written agreement accepting any and all Council-imposed conditions required pursuant to this section.
- e) Prior to granting the petition, the Council may require all abutting property owners to execute with the City a written agreement between themselves, stating what interest each claims or will claim, if any, in the underlying fee simple, should the petition be later granted.

**Sec. 86-95. City May Act Without Petition.** Nothing herein shall be construed so as to limit the City of Rockport's right to close, narrow or abandon any dedicated street, alley, public way or portion thereof in the valid exercise of its police power.

**Section 2. REPEALER**

Any previously adopted ordinances, and any subsequent amendments to them, that are in conflict with this ordinance are all hereby repealed.

**Section 3. NO RETROACTIVE EFFECT**

The adoption of this policy shall not alter or affect any previous acts or actions that may have been taken by the City Council of the City of Rockport regarding prior street or alleyway closures, it being intended that such policy be prospective and operate only as to future requests made to the City of Rockport to close narrow or abandon any street, alley or other public way.

**Section 4. SEVERABILITY**

If any provision, section, sentence, clause or phrase of this ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof, or provisions or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this ordinance are declared severable for that purpose.

**Section 5. EFFECTIVE DATE**

This ordinance shall be in full force and effect as soon as all necessary publication requirements have been met.

**PASSED AND APPROVED** on first reading this 13<sup>th</sup> day of JULY 1999.

**CITY OF ROCKPORT, TEXAS**

  
Glenda Burdick, Mayor

**ATTEST:**

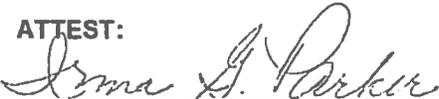
  
Irma G. Parker, City Secretary

PASSED, APPROVED AND ADOPTED on second and final reading this 27<sup>th</sup> day of JULY 1999.

CITY OF ROCKPORT, TEXAS

  
Glenda Burdick, Mayor

ATTEST:

  
Irma G. Parker, City Secretary

**APPRAISAL OF  
THE PROPERTY LOCATED AT**

Highway 35 South

Rockport, TX 78382

**as of**

02/22/2016

**for**

City of Rockport  
622 E Market St  
Rockport, TX  
78382

**by**

Lynch Appraisal Services

506 South Live Oak  
Rockport, TX 78382

February 22, 2016

City of Rockport  
622 East Market St  
Rockport, TX 78382

Re: Two properties located to on either side of Fourth Street and between State Highway 35 on the West side and Young Street on East, City of Rockport, Aransas County, Texas. The properties are:

SITE 1: LOTS 1 AND 9, Block 107, Manning Addition, City of Rockport, Aransas County, Texas.

SITE 2: LOTS 7, 8, 15 AND 16, Block 108 Manning Addition, City of Rockport, Aransas County, Texas.

In accordance with your request, I have prepared an appraisal of the two properties described above. All of the land is unimproved and the only frontage is on Highway 35.

Attached please find the Summary Report which describes certain data gathered during our investigation of the property. The methods of approach and reasoning in the valuation of the various physical and economic factors of the subject property are contained in this report.

An inspection of the property and a study of the pertinent factors, including valuation trends and an analysis of the neighborhood data, led the appraiser to the conclusion that the market value, as of February 22, 2016, is:

SITE 1	\$750.00
SITE 2	\$1,500.00
TOTAL	\$2,250.00

The opinion of value expressed in this report is contingent upon the Limiting Conditions attached to this report.

It has been a pleasure to assist you. If I may be of further service to you in the future, please let me know.

Respectfully submitted,

  
Francis L. Lynch  
State Certified General Appraiser.

LAND APPRAISAL REPORT

File No. **D-01-45**

**IDENTIFICATION**

Owner City of Rockport Census Tract 007-9505 Map Reference N/A

Property Address Highway 35 South

City Rockport County Aransas State TX Zip Code 78382

Legal Description Lots 1 & 9, Block 107 and Lots 7, 8, 15 & 16, Block 108, Manning Addition. See attached Field Notes.

Sale Price \$N/A Date of Sale N/A Property Rights Appraised  Fee  Leasehold  De Minimis PUD

Actual Real Estate Taxes \$N/A (yr.)

Client City of Rockport Address 622 E Market St, Rockport, TX, 78382

Occupant Vacant Appraiser Francis L. Lynch Instructions to Appraiser Market Value

Intended User: City of Rockport Intended Use: Closing of subject alleys.

**NEIGHBORHOOD**

Location	<input checked="" type="checkbox"/> Urban	<input type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Employment Stability	<input type="checkbox"/> Good	<input checked="" type="checkbox"/> Avg	<input type="checkbox"/> Fair	<input type="checkbox"/> Poor
Built Up	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25% to 75%	<input type="checkbox"/> Under 25%	Convenience to Employment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Growth Rate	<input type="checkbox"/> Fully Dev.	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Steady	Convenience to Shopping	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Property Values	<input type="checkbox"/> Increasing	<input checked="" type="checkbox"/> Stable	<input type="checkbox"/> Declining	Convenience to Schools	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Demand/Supply	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Over Supply	Adequacy of Public Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing Time	<input type="checkbox"/> Under 3 Mos.	<input checked="" type="checkbox"/> 4-8 Mos.	<input type="checkbox"/> Over 8 Mos.	Recreational Facilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Present Land Use	<u>40</u> % 1 Family	<u>5</u> % 2-4 Fam	<u>15</u> % Apts.	Adequacy of Utilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<u>0</u> % Industrial	<u>0</u> % Vacant	<u>20</u> % Vacant	Property Compatibility	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Change in Present Land Use	<input checked="" type="checkbox"/> Not Likely	<input type="checkbox"/> Likely (*)	<input type="checkbox"/> Taking Place (*)	Protection from Detrimental Conditions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Predominant Occupancy	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<input type="checkbox"/> % Vacant	Police and Fire Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Single Family Price Range	<u>\$ 75,000</u> to <u>\$ 400,000</u>		Predominant Value <u>\$ 175,000</u>	General Appearance of Properties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Single Family Age	<u>New</u> yrs. to <u>60</u> yrs.		Predominant Age <u>30</u> yrs.	Appeal to Market	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, noise) The subject is located in the southern part of Rockport on the east side of Highway 35 along Sixth Street. The area along the highway is primarily commercial with residential properties back off either side of Hwy 25. Distance to schools, shopping and employment is average.

**SITE**

Dimensions Site #1: 20 x 50 Site #2: 20 x 100 = Site 1: 1000 sf Site 2: 2000 sf  Corner Lot

Zoning Classification B-1: General Business Present Improvements  do  do not conform to zoning regulations

Highest and best use:  Present use  Other (specify) As proposed-Residential

Elec.	<input checked="" type="checkbox"/> Public	Street Access:	<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Private	Topo	<u>Level</u>
Gas	<input type="checkbox"/>	Surface	<u>Unopened alley-dirt</u>		Size	<u>Small - alley</u>
Water	<input type="checkbox"/>	Maintenance:	<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Private	Shape	<u>Rectangular</u>
San. Sewer	<input type="checkbox"/>	<input type="checkbox"/> Storm Sewer	<input type="checkbox"/> Curb/Gutter	<input type="checkbox"/> Street Lights	View	<u>Residential</u>
	<input type="checkbox"/> Underground Elect. & Tel.	<input type="checkbox"/> Sidewalk			Drainage	<u>Appears Adequate</u>

is the property located in a HUD identified Special Flood Hazard Area?  No  Yes

Comments (favorable or unfavorable including any apparent adverse easements, encroachments or other adverse conditions) Typical utility easements. All easements, restrictions, etc. are considered acceptable. Site size is from the Aransas County Appraisal District and assumed accurate. Sizes are from a survey dated April 14, 2004. The only road frontage on either of the properties is on Highway 35 S. Young St and Fourth St are not open. See attached Field Notes.

The undersigned has recalled three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.

For the Market Data Analysis  See grid below.  See narrative attachment.

**MARKET DATA ANALYSIS**

ITEM	Subject Property	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address	Highway 35 South Rockport, TX 78382	1611 Ruby Allen Rockport, TX 78382	2201 Fort Worth Rockport, TX 78382	1003 S Kossuth Rockport, TX 78382
Proximity to Subj.		0.76 miles W	1.24 miles SW	0.43 miles NW
Sales Price	\$ N/A	\$ 15,000	\$ 14,000	\$ 16,200
Price	\$ N/A	\$ 0.52/sf	\$ 1.00/sf	\$ 0.77/sf
Data Source	Inspection	MLS#124127	MLS#121643	MLS#123054
Date of Sale and Time Adjustment	DESCRIPTION 01/31/2016	DESCRIPTION 12/2/2015	DESCRIPTION 9/25/2015	DESCRIPTION 3/9/2015
Location	Average	Average	Average	Average
Site/View	Average/Average	Average/Average	Average/Average	Average/Average
Site Area	3000 sf	29000 sf	14000 sf	21000 sf
Water/Sewer	None	None	None	None
Sales or Financing Concessions			Conventional None	Cash None
Net Adj. (Total)		Plus Minus \$	Plus Minus \$	Plus Minus \$
Indicated Value of Subject		Gross 0.0% Net 0.0% \$ 15,000	Gross 0.0% Net 0.0% \$ 14,000	Gross 0.0% Net 0.0% \$ 16,200

Comments on Market Data: The per square foot data from the comparable sales was analyzed to extract a unit value for the subject. The mean of the three sales was \$0.76 per square foot. This was rounded to \$0.75 per square foot. See addendum for analysis.

**RECONCILIATION**

Comments and Conditions of Appraisal: The appraisal is subject to the attached Certification and Contingent and Limiting Conditions.

Final Reconciliation: The Sales Comparison Approach is the only approach to value used and is considered the best for vacant land. In reconciliation equal weight was placed on all sales.

ADDITIONAL COMMENTS

Intended User	City of Rockport						
Property Address	Highway 35 South						
City	Rockport	County	Aransas	State	TX	Zip Code	78382
Client	City of Rockport						

**COMMENTS ON MARKET DATA ANALYSIS:**

Site 1: 1000 sf x \$0.75 = \$750

Site 2: 2000 sf x \$0.75 = \$1,500

**TOTAL: \$2,250**

This appraisal report is subject to the scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment.

**SCOPE OF WORK:** The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

**STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
3. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
4. The appraiser has noted in this appraisal report any adverse conditions (such as the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing this appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent deficiencies or adverse conditions of the property (such as, but not limited to, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.

**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the subject property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
9. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale of the subject property.
10. I have knowledge and experience in appraising this type of property in this market area.
11. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
12. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
13. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
14. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
15. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
16. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
17. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event.
18. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
19. I identified the client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.
20. I am aware that any disclosure or distribution of this appraisal report by me or the client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.
21. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

**SUPERVISORY APPRAISER'S CERTIFICATION:** The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

**APPRAISER**

Signature *Francis L. Lynch*  
 Name Francis L. Lynch  
 Company Name Lynch Appraisal Services  
 Company Address 506 South Live Oak  
Rockport, TX 78382  
 Telephone Number 361-729-1309  
 Email Address \_\_\_\_\_  
 Date of Signature and Report 02/22/2016  
 Effective Date of Appraisal 02/22/2016  
 State Certificatop # TX-1321356-G  
 or State License # \_\_\_\_\_  
 or Other \_\_\_\_\_ State # \_\_\_\_\_  
 State TX  
 Expiration Date of Certification or License 06/30/2017

ADDRESS OF PROPERTY APPRAISED  
Highway 35 South  
Rockport, TX 78382  
 APPRAISED VALUE OF SUBJECT PROPERTY \$ 2,250  
 CLIENT  
 Name \_\_\_\_\_  
 Company Name City of Rockport  
 Company Address 622 E Market St  
Rockport, TX 78382  
 Email Address \_\_\_\_\_

**SUPERVISORY APPRAISER (ONLY IF REQUIRED)**

Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Company Address \_\_\_\_\_  
 Telephone Number \_\_\_\_\_  
 Email Address \_\_\_\_\_  
 Date of Signature \_\_\_\_\_  
 State Certification # \_\_\_\_\_  
 or State License # \_\_\_\_\_  
 State \_\_\_\_\_  
 Expiration Date of Certification or License \_\_\_\_\_

**SUBJECT PROPERTY**

Did not inspect subject property  
 Did inspect exterior of subject property from street  
 Date of Inspection \_\_\_\_\_  
 Did inspect interior and exterior of subject property  
 Date of Inspection \_\_\_\_\_

**COMPARABLE SALES**

Did not inspect exterior of comparable sales from street  
 Did inspect exterior of comparable sales from street  
 Date of Inspection \_\_\_\_\_

DISCLOSURE ADDENDUM

Intended User	City of Rockport		
Property Address	Highway 35 South		
City	Rockport	County	Aransas
		State	TX
Client	City of Rockport		
		Zip Code	78382

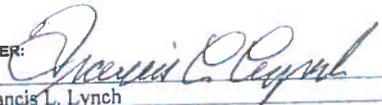
DEFINITION OF INSPECTION:

The term "Inspection", as used in this report, is not the same level of inspection that is required for a "Professional Home Inspection". The appraiser does not fully inspect the electrical system, plumbing system, mechanical systems, foundation system, floor structure, or subfloor. The appraiser is not an expert in construction materials and the purpose of the appraisal is to make an economic evaluation of the subject property. If the client needs a more detailed inspection of the property, a home inspection, by a Professional Home Inspector, is suggested.

DIGITAL SIGNATURES:

The signature(s) affixed to this report, and certification, were applied by the original appraiser(s) or supervisory appraiser and represent their acknowledgements of the facts, opinions and conclusions found in the report. Each appraiser(s) applied his or her signature electronically using a password encrypted method. Hence these signatures have more safeguards and carry the same validity as the individual's hand applied signature. If the report has a hand-applied signature, this comment does not apply.

**APPRAISER:**

Signature: 

Name: Francis L. Lynch

Date Signed: 02/22/2016

State Certification #: TX-1321356-G

or State License #: \_\_\_\_\_

State: TX

Expiration Date of Certification or License: 06/30/2017

**SUPERVISORY APPRAISER (ONLY IF REQUIRED):**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date Signed: \_\_\_\_\_

State Certification #: \_\_\_\_\_

or State License #: \_\_\_\_\_

State: \_\_\_\_\_

Expiration Date of Certification or License: \_\_\_\_\_

Did  Did Not Inspect Property

USPAP Compliance Addendum

File No. D-01-45

Borrower/Client City of Rockport  
 Property Address Highway 35 South  
 City Rockport County Aransas State TX Zip Code 78382  
 Lender/Client City of Rockport

APPRAISAL AND REPORT IDENTIFICATION

This Appraisal Report is one of the following types:

- Appraisal Report This report was prepared in accordance with the requirements of the Appraisal Report option of USPAP Standards Rule 2-2(a).
- Restricted Appraisal Report This report was prepared in accordance with the requirements of the Restricted Appraisal Report option of USPAP Standards Rule 2-2(b). The intended user of this report is limited to the identified client. This is a Restricted Appraisal Report and the rationale for how the appraiser arrived at the opinions and conclusions set forth in the report may not be understood properly without the additional information in the appraiser's workfile.

ADDITIONAL CERTIFICATIONS

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The report analyses, opinions, and conclusions are limited only by the reported assumptions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- This appraisal report was prepared in accordance with the requirements of Title XI of FIRREA and any implementing regulations.

PRIOR SERVICES

- I have NOT performed services, as an appraiser or in any other capacity, regarding the property that is the subject of the report within the three-year period immediately preceding acceptance of this assignment.
- I HAVE performed services, as an appraiser or in another capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment. Those services are described in the comments below.

PROPERTY INSPECTION

- I have NOT made a personal inspection of the property that is the subject of this report.
- I HAVE made a personal inspection of the property that is the subject of this report.

APPRAISAL ASSISTANCE

Unless otherwise noted, no one provided significant real property appraisal assistance to the person signing this certification. If anyone did provide significant assistance, they are hereby identified along with a summary of the extent of the assistance provided in the report.

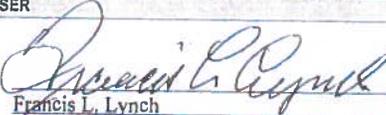
ADDITIONAL COMMENTS

Additional USPAP related issues requiring disclosure and/or any state mandated requirements:

MARKETING TIME AND EXPOSURE TIME FOR THE SUBJECT PROPERTY

- A reasonable marketing time for the subject property is 3-6 months day(s) utilizing market conditions pertinent to the appraisal assignment.
- A reasonable exposure time for the subject property is 3-6 months day(s).

APPRAISER

Signature   
 Name Francis L. Lynch  
 Date of Signature 02/22/2016  
 State Certification # TX-1321356-G  
 or State License # \_\_\_\_\_  
 State TX  
 Expiration Date of Certification or License 06/30/2017

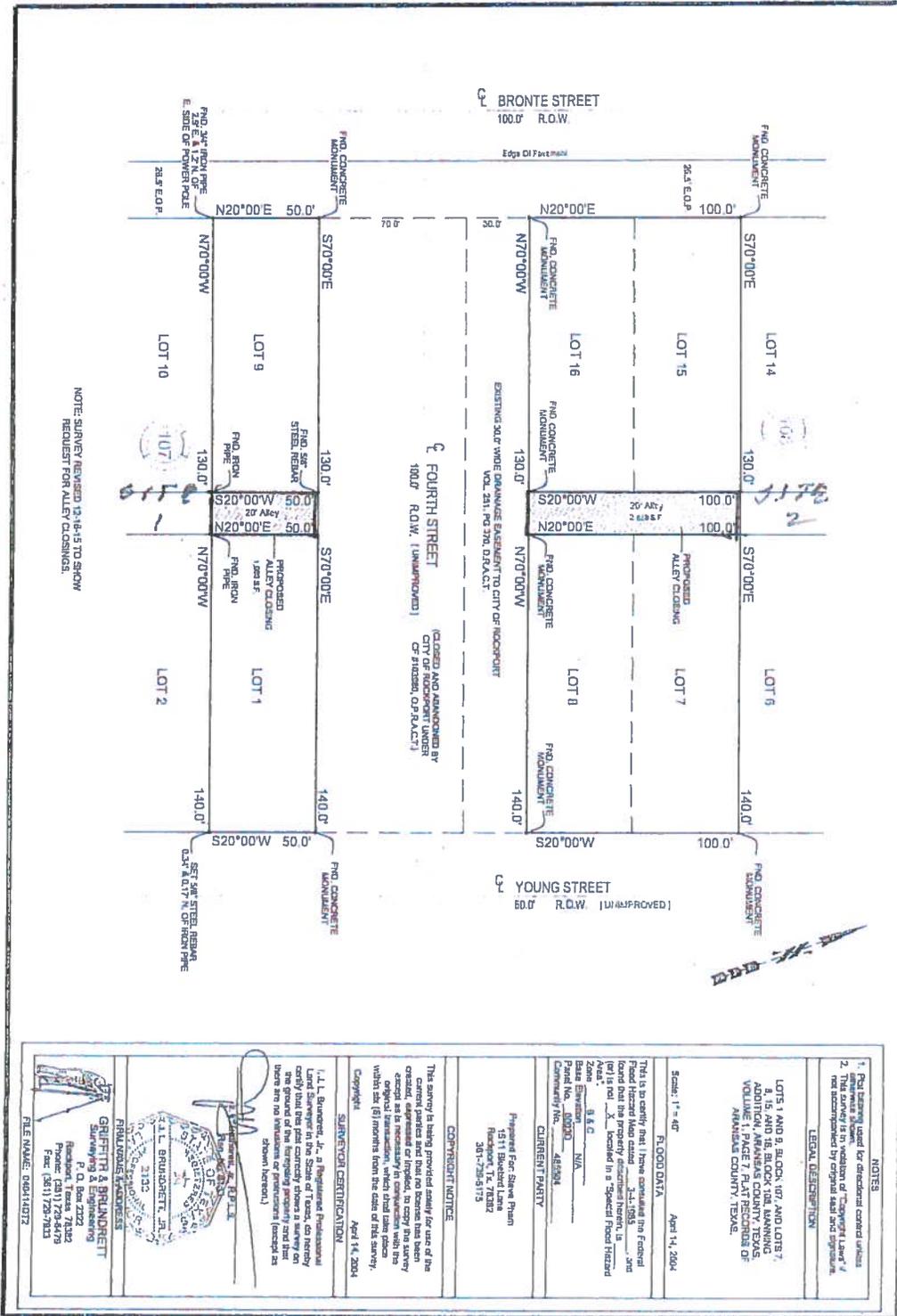
SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature \_\_\_\_\_  
 Name \_\_\_\_\_  
 Date of Signature \_\_\_\_\_  
 State Certification # \_\_\_\_\_  
 or State License # \_\_\_\_\_  
 State \_\_\_\_\_  
 Expiration Date of Certification or License \_\_\_\_\_

Effective Date of Appraisal 02/22/2016

Supervisory Appraiser Inspection of Subject Property:  
 Did Not  Exterior-only from Street  Interior and Exterior





NOTE: SURVEY REVIEWED 12-18-15 TO SHOW REQUEST FOR ALLEY CLOSINGS.

BRONTE STREET  
100.0' R.O.W.

FOURTH STREET  
100.0' R.O.W. (UNIMPROVED)

YOUNG STREET  
60.0' R.O.W. (UNIMPROVED)

NOTES

1. Red line items used for detection control unless otherwise noted.
2. This survey is in violation of "Surveyor Law" if not accompanied by original seal and signature.

LEGAL DESCRIPTION

LOTS 1 AND 9, BLOCK 107 AND LOTS 7, 8, 15 AND 16, BLOCK 108, LAMMING ADDITION, ARWING'S COUNTY, TEXAS, VOLUME 11, PAGE 7, PLAT RECORDS OF ARWING'S COUNTY, TEXAS.

Scale: 1" = 40'

April 14, 2004

FLOOD DATA

This is to certify that I have consulted the Federal Flood Hazard Map dated 3-24-1983 and that the area shown on the map is not in a Special Flood Hazard Area. Zone: X Risk: N/A Panel No. 0000 Community No. 487004

CURRENT PARTY

Prepared For: Shalee Pagan  
1511 Bluestem Lane  
Richardson, TX 75082  
972-255-1175

COPYRIGHT NOTICE

This survey is being provided solely for use of the current parties and that no license has been granted to any other party. It is not to be used for any other purpose without the express written consent of the surveyor. Any unauthorized use of this survey, which shall mean reproduction, distribution, or other use, within six (6) months from the date of this survey, is prohibited.

Copyright

April 14, 2004

SURVEYOR CERTIFICATION

I, J.L. Brundrett, Jr., a Registered Professional Land Surveyor in the State of Texas, do hereby certify that the data correctly describe and show the ground of the foregoing property and that there are no encumbrances or restrictions (except as shown hereon).

J.L. BRUNDRETT, JR.  
2132

GRIFFIT & BRUNDRETT  
SURVEYING & ENGINEERING  
P.O. Box 522  
Richardson, TX 75082  
Phone: (972) 726-4475  
Fax: (972) 726-7833  
FILE NAME: 00414072

**PHOTOGRAPH ADDENDUM**

Intended User **City of Rockport**

Property Address **Highway 35 South**

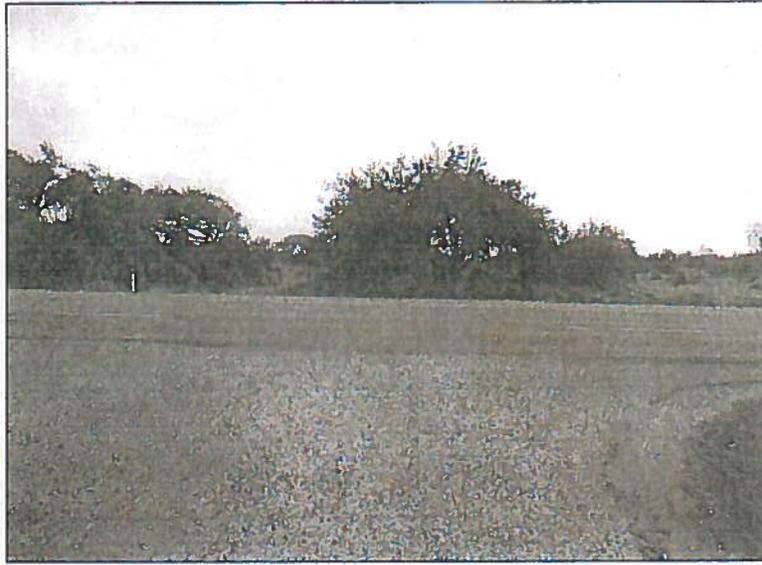
City **Rockport**

County **Aransas**

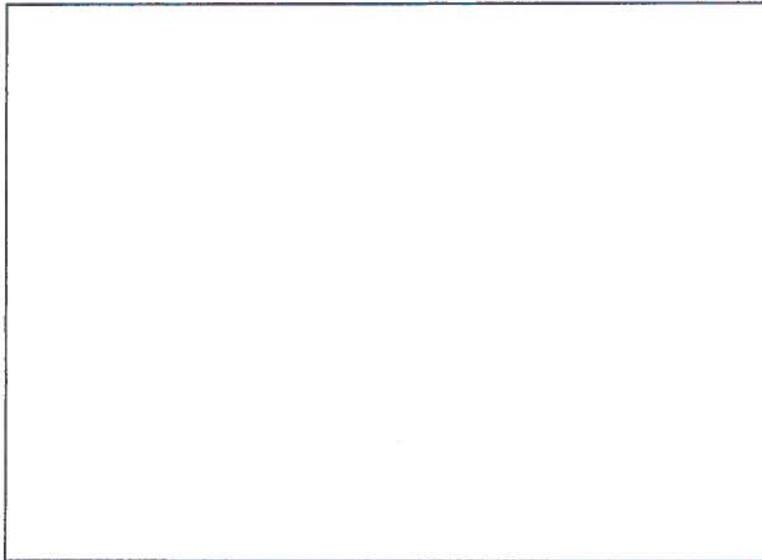
State **TX**

Zip Code **78382**

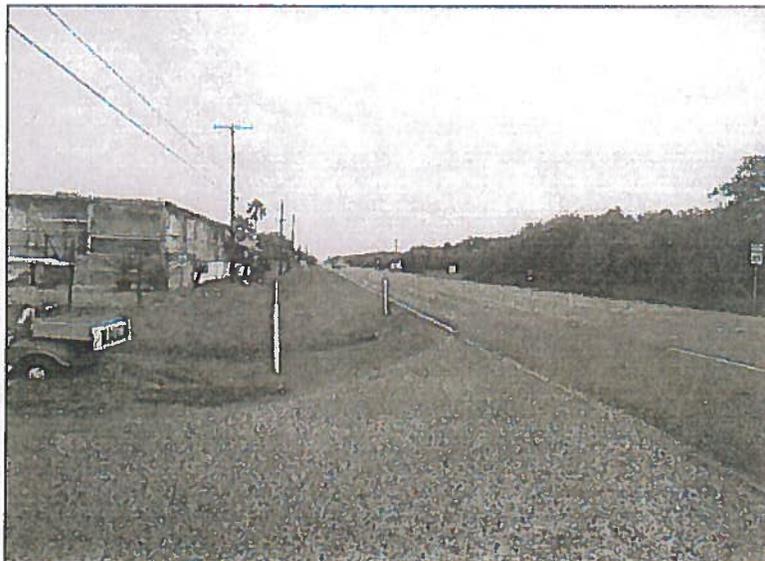
Client **City of Rockport**



**FRONT VIEW OF  
SUBJECT PROPERTY**



**REAR VIEW OF  
SUBJECT PROPERTY**



**STREET SCENE OF  
SUBJECT PROPERTY**

**PHOTOGRAPH ADDENDUM**

Intended User	City of Rockport		
Property Address	Highway 35 South		
City	Rockport	County	Aransas
		State	TX
		Zip Code	78382
Client	City of Rockport		



**COMPARABLE #1**

1008 S Ann St  
Rockport, TX 78382

Price \$13,000  
Price/SF 2.60/sf  
Date 12/3/2013  
Living Area 5000 sf

Value Indention \$2.60/sf



**COMPARABLE #2**

829 Young St  
Rockport, TX 78382

Price \$33,000  
Price/SF 2.00/sf  
Date 7/24/2015  
Living Area 16500 sf

Value Indention \$2.00/sf



**COMPARABLE #3**

704 S Mathis St  
Rockport, TX 78382

Price \$38,500  
Price/SF 2.57/sf  
Date 7/15/2015  
Living Area 15000 sf

Value Indention \$2.57/sf

RESUME OF FRANCIS L. LYNCH  
 LYNCH APPRAISAL SERVICES, INC.  
 506 SOUTH LIVE OAK  
 ROCKPORT, TX 78382  
 PHONE: 361-729-1309  
 FAX: 361-729-9086  
 email: lynchapp@swbell.net

#### EDUCATION:

1. Brooklyn Technical High School - 1952
2. Manhattan College - November 1952 through January 1954
3. United States Air Force - November 1954, Flight Training
4. Del Mar College - Accounting and Business Law - 1976
5. American College of Real Estate, Sales License - 1978
6. Society of Real Estate Appraisers - Course 101, Introduction To Appraising Real Property & Applied Residential Property Valuation - 1985
7. The Appraisal Institute:
  - 3-91: Capitalization Theory and Techniques - A
  - 4-91: Capitalization Theory and Techniques - B
  - 10-91: Case Studies in Real Estate Valuation
  - 10-91: Report Writing & Valuation Analysis
  - 2-04: Fifteen Hour USPAP Course
  - 3-2009: Seven Hour USPAP Update Course

#### EMPLOYMENT EXPERIENCE:

1. United States Air Force from November 1954 to July 1976.
2. Full time Real Estate Sales from 1978 to 1982.
3. April 1982 - Established Lynch Appraisal Services

#### PROFESSIONAL

1. State Certified General Real Estate Appraiser - State of Texas. Certificate Number TX-1321356-G.
2. State of Texas, Real Estate Broker. License No. 0245870
3. Affiliate Member, The Appraisal Institute
4. Rockport Area Board of Realtors
5. San Patricio County Board of Realtors.

#### TYPES OF PROPERTIES APPRAISED:

Residential, office buildings, retail stores, warehouses, shopping centers, mobile home parks, vacant land both rural and urban.

#### REPRESENTATIVE LIST OF CLIENTS:

Banks, Mortgage Companies, Governmental Agencies, Estates, Attorneys, Relocation Companies, Developers and Individuals.

**Texas Appraiser Licensing and Certification Board**

P.O. Box 12188 Austin, Texas 78711-2188

**Certified General Real Estate Appraiser**Number: **TX 1321356 G**Issued: **06/30/2015**Expires: **06/30/2017**Appraiser: **FRANCIS LAWRENCE LYNCH**

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Texas Occupations Code, Chapter 1103, is authorized to use this title, Certified General Real Estate Appraiser.



Douglas E. Oldmixon  
Commissioner

**CITY COUNCIL AGENDA**  
**Workshop Meeting: Tuesday, April 26, 2016**

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**AGENDA ITEM: 13**

Deliberate and act on first reading of an Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. "Erosion and Sediment Control" with a Stormwater Ordinance.

**SUBMITTED BY:** Public Works Director Michael S. Donoho Jr.

**APPROVED FOR AGENDA:** PKC

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**BACKGROUND:** At the April 26, 2016 City Council Workshop, Environmental Compliance Officer Kendra Baird presented a review of the proposed stormwater ordinance to replace the current City Erosion and Sediment Control Ordinance. Please see the accompanying proposed ordinance for detail.

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**FISCAL ANALYSIS:**

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**STAFF RECOMMENDATION:** Staff recommends approval on first reading of an Ordinance replacing City of Rockport Code of Ordinances Chapter 42 Article V. "Erosion and Sediment Control" with a Stormwater Ordinance, as presented.



- 47 (4) To encourage recycling of used motor oil and safe disposal of other hazardous  
48 consumer products.  
49
- 50 (5) To facilitate compliance with state and federal standards and permits by owners  
51 and operators of industrial and construction sites within the City.  
52
- 53 (6) To enable the City to comply with all federal and state laws and regulations  
54 applicable to stormwater discharges.  
55

56 **Sec. 42-122. Definitions and abbreviations.**

57  
58 Unless a provision explicitly states otherwise, the following terms and phrases, as used in this  
59 Ordinance, shall have the meanings hereinafter designated.  
60

61 *Best management practices (BMP)* means the schedule of activities, prohibitions of practices,  
62 maintenance procedures, and other management practices to prevent or reduce the pollution of  
63 waters of the United States. BMPs also include treatment requirements, operating procedures, and  
64 practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage  
65 from raw material storage.  
66

67 *City* means the City of Rockport, Texas, or the City Council of Rockport.  
68

69 *City Inspector(s)* means the DPW or CEA who go on site to determine if the provisions of  
70 this ordinance are being met.  
71

72 *Code Enforcement Administrator (CEA)* means the person appointed by the City Manager to  
73 enforce City codes or his/her duly authorized representative.  
74

75 *Commencement of construction* means the disturbance of soils associated with clearing, grading,  
76 or excavating activities or other construction activities.  
77

78 *Commercial* means any business, trade, industry, or other activity engaged in for profit.  
79

80 *Director of Public Works (DPW)* means the person appointed by the City Manager to manage  
81 field operations and provide environmental education, or his/her duly authorized representative.  
82

83 *Discharge* means any addition or introduction of any pollutant, stormwater, or any other substance  
84 whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United  
85 States.  
86

87 *Discharger* means any person, who causes, allows, permits, or is otherwise responsible for, a  
88 discharge, including, without limitation, any operator of a construction site or industrial facility.  
89

90 *Domestic sewage* means human excrement, gray water (from home clothes washing, bathing,  
91 showers, dishwashing, and food preparation), other wastewater from household drains, and  
92 waterborne waste normally discharged from the sanitary conveniences of dwellings (including

93 apartment houses and hotels), office buildings, factories, and institutions, that is free from  
94 industrial waste.

95

96 *Environmental Protection Agency (EPA)* means the United States Environmental Protection  
97 Agency, the regional office thereof, any federal department, agency, or commission that may  
98 succeed to the authority of the EPA, and any duly authorized official of EPA or such successor  
99 agency.

100

101 *Extremely hazardous substance* means any substance listed in the Appendices to 40 CFR Part  
102 355, Emergency Planning and Notification.

103

104 *Facility* means any building, structure, installation, process, or activity from which there is or  
105 may be a discharge of a pollutant.

106

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

113

114

115 *Final stabilization* means the status when all soil disturbing activities at a site have been  
116 completed, and a uniform perennial vegetative cover with a density of seventy (70%) percent  
117 of the cover for unpaved areas and areas not covered by permanent structures has been established,  
118 or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles)  
119 have been employed.

120

121 *Fire Department* means the Fire Department of the City of Rockport, or any duly authorized  
122 representative thereof.

123

124 *Fire protection water* means any water, and any substances or materials contained therein,  
125 used by any person other than the Fire Department to control or extinguish a fire.

126

127 *Garbage* means putrescible animal and vegetable waste materials from the handling, preparation,  
128 cooking, or consumption of food, including waste materials from markets, storage facilities, and  
129 the handling and sale of produce and other food products.

130

131 *Harmful quantity* means the amount of any substance that will cause pollution of water in the  
132 State.

133

134 *Hazardous household waste (HHW)* means any material generated in a household (including  
135 single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters,  
136 camp grounds, picnic grounds, and day use recreational areas) by a consumer which, except for  
137 the exclusion provided in 40 CFR § 261.4(b)(1), would be classified as a hazardous waste  
138 under 40 CFR Part 261.

139  
140 *Hazardous substance* means any substance listed in Table 302.4 of 40 CFR Part 302.  
141  
142 *Hazardous waste*. Any substance identified or listed as a hazardous waste by the EPA pursuant to  
143 40 CFR Part 261.  
144  
145 *Hazardous waste treatment, disposal, and recovery facility* means all contiguous land, and  
146 structures, other appurtenances and improvements on the land, used for the treatment, disposal, or  
147 recovery of hazardous waste.  
148  
149 *Herbicide* means a substance or mixture of substances used to destroy a plant or to inhibit plant  
150 growth.  
151  
152 *Industrial waste* means any waterborne liquid or solid substance that results from any process  
153 of industry, manufacturing, mining, production, trade, or business.  
154  
155 *Motor vehicle fuel* means any vehicle crankcase oil, antifreeze, transmission fluid, brake fluid,  
156 differential lubricant, gasoline, diesel fuel, gasoline/alcohol blend, and any other fluid used in a  
157 motor vehicle.  
158  
159 *Municipal landfill (or landfill)* means an area of land or an excavation in which municipal solid  
160 waste is placed for permanent disposal, and which is not a land treatment facility, a surface  
161 impoundment, an injection well, or a pile (as these terms are defined in regulations promulgated  
162 by the Texas Water Commission).  
163  
164 *Municipal separate storm sewer system (MS4)* means the system of conveyances (including  
165 roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made  
166 channels, or storm drains) owned and operated by the City and designed or used for collecting  
167 or conveying stormwater, and which is not used for collecting or conveying sewage.  
168  
169 *Municipal solid waste* means solid waste resulting from or incidental to municipal, community,  
170 commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street  
171 cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.  
172  
173 *NPDES General Permit for Stormwater Discharges Associated with Industrial Activity (or*  
174 *Industrial General Permit)* means the Industrial General Permit issued by EPA on August 27,  
175 1992, and published in Volume 57 of the Federal Register at page 41304 on September 9, 1992,  
176 and any subsequent modifications or amendments thereto.  
177  
178 *NPDES General Permit for Stormwater Discharges from Construction Sites (or Construction*  
179 *General Permit)* means the Construction General Permit issued by EPA on August 27, 1992, and  
180 published in Volume 57 of the Federal Register at page 41217 on September 9, 1992, and any  
181 subsequent modifications or amendments thereto.  
182  
183 *NPDES permit* means a permit issued by EPA (or by the State under authority delegated pursuant  
184 to 33 USC § 1342(b)), as amended, that authorizes the discharge of pollutants to waters of the

185 United States, whether the permit is applicable on an individual, group, or general area-wide basis.  
186

187 *Non-point source* means any source of any discharge of a pollutant that is not a "point source."  
188

189 *Notice of Intent (NOI)* means the Notice of Intent that is required by either the Industrial General  
190 Permit or the Construction General Permit.  
191

192 *Notice of Termination (NOT)* means the Notice of Termination that is required by either the  
193 Industrial General Permit or the Construction General Permit.  
194

195 *Oil* means any kind of oil in any form, including, but not limited to, petroleum, fuel oil, crude oil  
196 or any fraction thereof which is liquid at standard conditions of temperature and pressure,  
197 sludge, oil refuse, and oil mixed with waste.  
198

199 *Operator* means the person or persons who meet either of the following two criteria: (1) they have  
200 operational control over the facility specifications (including the ability to make modifications in  
201 specifications); and (2) they have the day-to-day operational control over those activities at the  
202 facility necessary to ensure compliance with pollution prevention requirements and any permit  
203 conditions.  
204

205 *Owner* means the person who owns a facility or part of property.  
206

207 *Person* means any individual, partnership, co-partnership, firm, company, corporation,  
208 association, joint stock company, trust, estate, governmental entity, or any other legal entity; or  
209 their legal representatives, agents, or assigns. This definition includes all federal, state, and local  
210 governmental entities.  
211

212 *Pesticide* means a substance or mixture of substances intended to prevent, destroy, repel, or  
213 mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator,  
214 defoliant, or desiccant (as these terms are defined in Section 76.001 of the Texas Agriculture  
215 Code, as amended).  
216

217 *Petroleum product* means a petroleum product that is obtained from distilling and processing  
218 crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or  
219 aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene,  
220 distillate fuel oil, and # 1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-  
221 type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of  
222 that manufacturing.  
223

224 *Petroleum storage tank (PST)* means any one or combination of aboveground or underground  
225 storage tanks that contain petroleum products and any connecting underground pipes.  
226

227 *Point source* means any discernable, confined, and discrete conveyance, including but not  
228 limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,  
229 concentrated animal feeding operation, landfill leachate collection system, vessel or other floating  
230 craft from which pollutants are or may be discharged. This term does not include return flows

231 from irrigated agriculture or agricultural stormwater runoff.

232

233 *Pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge,  
234 munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded  
235 equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into  
236 water. The term "pollutant" does not include tail water or runoff water from irrigation or  
237 rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

238

239 *Pollution* means the alteration of the physical, thermal, chemical, or biological quality of, or the  
240 contamination of, any water in the State that renders the water harmful, detrimental, or injurious  
241 to humans, animal life, vegetation, or property, or to the public health, safety, or welfare, or  
242 impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

243

244 *Qualified personnel* means persons who possess the appropriate competence, skills, and ability  
245 (as demonstrated by sufficient education, training, experience, and/or, when applicable, any  
246 required certification or licensing) to perform a specific activity in a timely and complete manner  
247 consistent with the applicable regulatory requirements and generally- accepted industry standards  
248 for such activity.

249

250 *Registered landscape architect (RLA)* means a person who has been duly licensed and registered  
251 to practice landscape architecture by the Texas Board of Architectural Examiners.

252 *Registered professional engineer (RPE)* means a person who has been duly licensed and  
253 registered by the State Board of Registration for Professional Engineers to engage in the practice of  
254 engineering in the State of Texas.

255

256 *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,  
257 injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer  
258 system (MS4) or the waters of the United States.

259

260 *Reportable quantity (RQ)* means for any "hazardous substance," the quantity established and  
261 listed in Table 302.4 of 40 CFR Part 302, as amended; for any "extremely hazardous substance,"  
262 the quantity established in 40 CFR Part 355, as amended, and listed in Appendix A thereto.

263

264 *Rubbish* means nonputrescible solid waste, excluding ashes, that consist of (A) combustible waste  
265 materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard  
266 trimmings, leaves, and similar materials; and (B) noncombustible waste materials, including  
267 glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn  
268 at ordinary incinerator temperatures (1600 to 1800 degrees Fahrenheit).

269

270 *Sanitary sewer (or sewer)* means the system of pipes, conduits, and other conveyances which  
271 carry industrial waste and domestic sewage from residential dwellings, commercial buildings,  
272 industrial and manufacturing facilities, and institutions, whether treated or untreated, to the City  
273 sewage treatment plant (and to which stormwater, surface water, and groundwater are not  
274 intentionally admitted).

275

276 *Septic tank waste* means any domestic sewage from holding tanks such as vessels, chemical toilets,

277 campers, trailers, and septic tanks.

278

279 *Service station* means any retail establishment engaged in the business of selling fuel for motor  
280 vehicles that is dispensed from stationary storage tanks.

281

282 *Sewage (or sanitary sewage)* means the domestic sewage and/or industrial waste that is  
283 discharged into the City sanitary sewer system and passes through the sanitary sewer system to  
284 the City sewage treatment plant for treatment.

285

286 *Site* means the land or water area where any facility or activity is physically located or conducted,  
287 including adjacent land used in connection with the facility or activity.

288

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

293

294 *State* means the State of Texas.

295

296 *Stormwater* means stormwater runoff, snow melt runoff, and surface runoff and drainage.

297

298 *Stormwater discharge associated with industrial activity* means the discharge from any  
299 conveyance which is used for collecting and conveying stormwater and which is directly related  
300 to manufacturing, processing, or raw materials storage areas at an industrial plant which is within  
301 one of the categories of facilities listed in 40 CFR § 122.26(b)(14), as amended, and which is not  
302 excluded from EPA's definition of the same term.

303

304 *Stormwater pollution prevention plan (SWPPP)* means a plan required by either the Construction  
305 General Permit or the Industrial General Permit and which describes and ensures the  
306 implementation of practices that are to be used to reduce the pollutants in stormwater discharges  
307 associated with construction or other industrial activity at the facility.

308

309 *Uncontaminated* means not containing a harmful quantity of any substance.

310

311 *Used oil (or used motor oil)* means any oil that has been refined from crude oil or synthetic oil  
312 that, as a result of use, storage, or handling, has become unsuitable for its original purpose  
313 because of impurities or the loss of original properties but that may be suitable for further use  
314 and is recyclable in compliance with State and federal law.

315

316 *Water in the State (or water)* means any groundwater, percolating or otherwise, lakes, bays, ponds,  
317 impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf  
318 of Mexico, inside the territorial limits of the State, and all other bodies of surface water, natural or  
319 artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and  
320 banks of all water courses and bodies of surface water, that are wholly or partially inside or  
321 bordering the State or inside the jurisdiction of the State.

322

323 *Water quality standard* means the designation of a body or segment of surface water in the State  
 324 for desirable uses and the narrative and numerical criteria deemed by the State to be necessary  
 325 to protect those uses, as specified in Chapter 307 of Title 31 of the Texas Administrative Code,  
 326 as amended.

327  
 328 *Waters of the United States* means all waters which are currently used, were used in the past,  
 329 or may be susceptible to use in interstate or foreign commerce, including all waters which are  
 330 subject to the ebb and flow of the tide; all interstate waters, including interstate wetlands; all other  
 331 waters the use, degradation, or destruction of which would affect or could affect interstate or  
 332 foreign commerce; all impoundments of waters otherwise defined as waters of the United States  
 333 under this definition; all tributaries of waters identified in this definition; all wetlands adjacent  
 334 to waters identified in this definition; and any waters within the federal definition of "waters of  
 335 the United States" at 40 CFR § 122.2, as amended; but not including any waste treatment  
 336 systems, treatment ponds, or lagoons designed to meet the requirements of the federal Clean Water  
 337 Act.

338  
 339 *Wetland* means an area that is inundated or saturated by surface or groundwater at a frequency and  
 340 duration sufficient to support, and that under normal circumstances does support, a prevalence  
 341 of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include  
 342 swamps, marshes, bogs, and similar areas.

343  
 344 *Yard waste* means leaves, grass clippings, yard and garden debris, and brush that results from  
 345 landscaping maintenance and land-clearing operations.

346

347 **Sec. 42-123. General prohibition**

348

349 (a) No person shall introduce or cause to be introduced into the municipal separate storm  
 350 sewer system (MS4) any discharge that is not composed entirely of stormwater.

351

352 (b) It is an affirmative defense to any enforcement action for violation of subsection (a)  
 353 of this section that the discharge was composed entirely of one or more of the following  
 354 categories of discharges:

355

356 (1) water line flushing (excluding discharges of hyperchlorinated water, unless  
 357 the water is first dechlorinated and discharges are not expected to  
 358 adversely affect aquatic life);

359

360 (2) runoff or return flow from landscape irrigation, lawn irrigation, and other  
 361 irrigation utilizing potable water, groundwater, or surface water sources  
 362 **Runoff from irrigation systems using potable water is prohibited by  
 363 Ordinance 1619, Drought Contingency and Emergency Plan.;**

364

365 (3) discharges from potable water sources;

366

367 (4) diverted stream flows;

368

- 369 (5) rising ground waters and springs;  
 370  
 371 (6) uncontaminated ground water infiltration;  
 372  
 373 (7) uncontaminated pumped ground water;  
 374  
 375 (8) foundation and footing drains;  
 376  
 377 (9) air conditioning condensation;  
 378  
 379 (10) water from crawl space pumps;  
 380  
 381 (11) individual residential vehicle washing;  
 382  
 383 (12) flows from wetlands and riparian habitats;  
 384  
 385 (13) dechlorinated swimming pool discharges;  
 386  
 387 (14) street wash water;  
 388  
 389 (15) discharges or flows from fire-fighting activities;  
 390  
 391 (16) other allowable non-stormwater discharges listed in 40 CFR  
 392 122.26(d)(2)(iv)(B)(1), as amended;  
 393  
 394 (17) non-stormwater discharges that are specifically listed in the TPDES Multi  
 395 Sector General Permit (MSGP) or the TPDES Construction General permit  
 396 (CGP);  
 397  
 398 (18) a discharge from a temporary car wash sponsored by a civic group school  
 399 religious or nonprofit organization where only soap and water are used and  
 400 where efforts are made to minimize pollutants in the discharge.  
 401  
 402 (19) and, other similar occasional incidental non-stormwater discharges, unless  
 403 the TCEQ develops permits or regulations addressing these discharges.  
 404  
 405 (c) No affirmative defense shall be available under Subsection (b) of this section if the  
 406 discharge or flow in question has been determined by the DPW to be a source of a pollutant  
 407 or pollutants to the waters of the United States or to the MS4, written notice of such  
 408 determination has been provided to the discharger, and the discharge has occurred more  
 409 than fourteen (14) calendar days beyond such notice. The correctness of the DPW's  
 410 determination that a discharge is a source of a pollutant or pollutants may be reviewed  
 411 in any administrative or judicial enforcement proceeding.  
 412

413 **Sec. 42-124. Specific prohibitions and requirements**  
 414

- 415 (a) The specific prohibitions and requirements in this section are not necessarily inclusive  
 416 of all the discharges prohibited by the general prohibition in section 42- 123.  
 417
- 418 (b) No person shall introduce or cause to be introduced into the MS4 any discharge that  
 419 causes or contributes to causing the City to violate a water quality standard, the City's  
 420 NPDES permit, or any state-issued discharge permit for discharges from its MS4.  
 421
- 422 (c) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose,  
 423 or otherwise introduce or cause, allow, or permit to be introduced any of the following  
 424 substances into the MS4:  
 425
- 426 (1) Any industrial waste;
  - 427
  - 428 (2) Any used motor oil,
  - 429
  - 430 (3) Any hazardous waste, including hazardous household waste;
  - 431
  - 432 (4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  - 433
  - 434 (5) Any release from a petroleum storage tank (PST), or any leachate or runoff from soil  
 435 contaminated by a leaking PST, or any discharge of pumped, confined, or treated  
 436 wastewater from the remediation of any such PST release, unless the discharge  
 437 satisfies all of the following criteria:  
 438
- 439 a. Compliance with all state and federal standards and requirements; and
  - 440
  - 441 b. No discharge containing a harmful quantity of any pollutant.
  - 442
  - 443
- 444 (d) No person shall intentionally dump, spill, leak, pump, pour, emit, empty, discharge,  
 445 leach, dispose, or introduce any of the following substances into the MS4 and all persons  
 446 shall to the maximum extent practicable under prevailing circumstances employ control  
 447 measures to prevent the following substances from entering into the MS4:  
 448
- 449 (1) Any motor oil, antifreeze, or any other motor vehicle fluid;
  - 450
  - 451 (2) Any garbage, rubbish, or yard waste;
  - 452
  - 453 (3) Any wastewater from a commercial carwash facility; from any vehicle washing,  
 454 cleaning, or maintenance at any new or used automobile or other vehicle dealership,  
 455 rental agency, body shop, repair shop, or maintenance facility; or from any washing,  
 456 cleaning, or maintenance of any business or commercial or public service vehicle,  
 457 including a truck, bus, or heavy equipment, by a business or public entity;
  - 458
  - 459 (4) Any wastewater from a commercial mobile power washer or from the washing  
 460 or other cleaning of a building exterior that contains any soap, detergent,

- 461 degreaser, solvent, or any other harmful cleaning substance;  
 462  
 463 (5) Any wastewater from floor, rug, or carpet cleaning;  
 464  
 465 (6) Any wastewater from the wash-down or other cleaning of pavement that contains  
 466 any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant,  
 467 or any other harmful cleaning substance; or any wastewater from the wash-down  
 468 or other cleaning of any pavement where any spill, leak, or other release of oil,  
 469 motor fuel, or other petroleum or hazardous substance has occurred, unless all  
 470 harmful quantities of such released material have been previously removed;  
 471  
 472 (7) Any effluent from a cooling tower, condenser, compressor, emissions scrubber,  
 473 emissions filter, or the blow down from a boiler;  
 474  
 475 (8) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro  
 476 mulch material, or from the cleaning of commercial vehicles or equipment  
 477 containing, or used in transporting or applying, such material;  
 478  
 479 (9) Any runoff or wash-down water from any animal pen, kennel, or fowl or livestock  
 480 containment area;  
 481  
 482 (10) Any filter backwash from a swimming pool, fountain, or spa;  
 483  
 484 (11) Any swimming pool water containing any harmful quantity of chlorine, muriatic  
 485 acid or other chemical used in the treatment or disinfection of the swimming pool  
 486 water or in pool cleaning;  
 487  
 488 (12) Any discharge from water line disinfection by super chlorination or other means if  
 489 it contains any harmful quantity of chlorine or any other chemical used in line  
 490 disinfection;  
 491  
 492 (13) Any water from a water curtain in a spray room used for painting vehicles or  
 493 equipment;  
 494  
 495 (14) Any contaminated runoff from a vehicle wrecking yard;  
 496  
 497 (15) Any substance or material that will damage, block, or clog the MS4;  
 498  
 499 (e) No person shall introduce or cause to be introduced into the MS4 any harmful quantity  
 500 of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation  
 501 or other construction activities, or associated with landfilling or other placement or disposal  
 502 of soil, rock, or other earth materials, in excess of what could be retained on site or  
 503 captured by employing sediment and erosion control measures to the maximum extent  
 504 practicable under prevailing circumstances.  
 505  
 506 (f) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the

507 MS4, or allow such a connection to continue.

508

509 (g) No person shall cause or allow any pavement wash water from a service station to be  
510 discharged into the MS4 unless such wash water has passed through a properly functioning  
511 and maintained, grease, oil, and sand interceptor before discharge into the MS4.

512

513 (h) No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose,  
514 or otherwise introduce or cause, allow, or permit to be introduced harmful levels of  
515 pesticides, herbicides and fertilizers into the MS4 . All persons shall to the maximum  
516 extent practicable under prevailing circumstances employ control measures to minimize  
517 pesticides, herbicides and fertilizers from entering the MS4. This includes the following:

518

519 (1) Applying products according to manufacture recommendations.

520

521 (2) Applying products according to all state and federal laws.

522

523 (3) Proper storage and disposal.

524

525 **Sec. 42-125. Release and reporting and cleanup**

526

527 (a) The person in charge of any facility, vehicle, or other source of any spilling,  
528 leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping,  
529 disposing, or any other release of any of the following quantities of any of the following substances  
530 that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United  
531 States, shall immediately telephone and notify the DPW concerning the incident:

532

533 (1) An amount equal to or in excess of a reportable quantity of any hazardous  
534 substance, as established under 40 CFR Part 302, as amended;

535

536 (2) An amount equal to or in excess of a reportable quantity of any extremely  
537 hazardous substance, as established under 40 CFR Part 355, as amended;

538

539 (3) An amount of oil that either (a) violates applicable water quality standards,  
540 or (b) causes a film or sheen upon or discoloration of the surface of the  
541 water or an adjoining shoreline or causes a sludge or emulsion to be  
542 deposited beneath the surface of the water or upon an adjoining shoreline;  
543 or

544

545 (4) Any harmful quantity of any pollutant.

546

547 (b) The immediate notification required by subsection (a) shall include the following  
548 information:

549

550 (1) The identity or chemical name of the substance released, and whether the  
551 substance is an extremely hazardous substance;

552

- 553 (2) The exact location of the release, including any known name of the waters  
554 involved or threatened and any other environmental media affected;  
555  
556 (3) The time and duration (thus far) of the release;  
557  
558 (4) An estimate of the quantity and concentration (if known) of the substance  
559 released;  
560  
561 (5) The source of the release;  
562  
563 (6) Any known or anticipated health risks associated with the release and,  
564 where appropriate, advice regarding medical attention that may be  
565 necessary for exposed individuals;  
566  
567 (7) Any precautions that should be taken as a result of the release;  
568  
569 (8) Any steps that have been taken to contain and/or clean up the released  
570 material and minimize its impacts; and  
571 (9) The names and telephone numbers of the person or persons to be contacted  
572 for further information.  
573  
574 (c) Within fourteen (14) calendar days following such release, the responsible person  
575 in charge of the facility, vehicle, or other source of the release shall, unless waived  
576 by the DPW, submit a written report containing each of the items of information  
577 specified above in subsection (b), as well as the following additional information:  
578  
579 (1) The ultimate duration, concentration, and quantity of the release;  
580  
581 (2) All actions taken to respond to, contain, and clean up the released  
582 substances, and all precautions taken to minimize the impacts;  
583  
584 (3) Any known or anticipated acute or chronic health risks associated with the  
585 release;  
586  
587 (4) Where appropriate, advice regarding medical attention necessary for  
588 exposed individuals;  
589  
590 (5) The identity of any governmental/private sector representatives responding  
591 to the release; and  
592  
593 (6) The measures taken or to be taken by the responsible person(s) to prevent  
594 similar future occurrences.  
595  
596 (d) The notifications required by subsections (b) and (c) above shall not relieve the  
597 responsible person of any expense, loss, damage, or other liability which may be  
598 incurred as a result of the release, including any liability for damage to the City, to

599 natural resources, or to any other person or property; nor shall such notification  
 600 relieve the responsible person of any fine, penalty, or other liability which may be  
 601 imposed pursuant to this Ordinance or to state or federal law.

602  
 603 (e) Any person responsible for any release as described in subsection (a) above shall  
 604 comply with all state, federal, and any other local law requiring reporting, cleanup,  
 605 containment, and any other appropriate remedial action in response to the release.

606  
 607 (f) Any person responsible for a release described in subsection (a) above shall  
 608 reimburse the City for any cost incurred by the City in responding to the release.

609  
 610

611 **Sec. 42-126. Stormwater discharges from construction activities**

612

613 (a) General Requirements

614

615 (1) All operators of construction sites shall use best management practices to  
 616 control and reduce the discharge, to the MS4 and to waters of the United States, of  
 617 sediment, silt, earth, soil, and other material associated with the clearing, grading,  
 618 excavation, and other construction activities to the maximum extent practicable  
 619 under the circumstances. Such best management practices may include, but not  
 620 be limited to, the following measures:

621

622 a. Ensuring that existing vegetation is preserved where possible and that  
 623 disturbed portions of the site are stabilized as soon as practicable in  
 624 portions of the site where construction activities have temporarily or  
 625 permanently ceased. Stabilization measures may include: temporary  
 626 seeding, permanent seeding, mulching, geotextiles, sod stabilization,  
 627 vegetative buffer strips, protection of trees, preservation of mature  
 628 vegetation, and other appropriate measures;

629

630 b. Use of structural practices to divert flows from exposed soils, store flows,  
 631 or otherwise limit runoff and the discharge of pollutants from the site to  
 632 the extent feasible;

633

634 c. Minimization of the tracking of sediments off-site by vehicles, the  
 635 generation of dust, and the escape of other windblown waste from the site;

636

637 d. Prevention of the discharge of building materials, including cement, lime,  
 638 concrete, and mortar, to the MS4 or waters of the United States;

639

640 e. Providing general good housekeeping measures to prevent and contain spills  
 641 of paints, solvents, fuels, septic waste, and other hazardous chemicals  
 642 and pollutants associated with construction, and to assure proper cleanup  
 643 and disposal of any such spills in compliance with state, federal, and local  
 644 requirements;

- 645
- 646 f. Implementation of proper waste disposal and waste management
- 647 techniques, including covering waste materials and minimizing ground
- 648 contact with hazardous chemicals and trash;
- 649
- 650 g. Timely maintenance of vegetation, erosion and sediment control measures,
- 651 and other best management practices in good and effective operating
- 652 condition; and
- 653
- 654 h. Installation of structural measures during the construction process to control
- 655 pollutants in stormwater discharges that will occur after construction
- 656 operations have been completed. Structural measures should be placed on
- 657 upland soils to the degree attainable. Such installed structural measures
- 658 may include, but not be limited to, the following: stormwater detention
- 659 structures (including wet ponds); stormwater retention structures; flow
- 660 attenuation by use of open vegetative swales and natural depressions;
- 661 other velocity dissipation devices; infiltration of runoff on site; and
- 662 sequential systems which combine several practices. Operators of
- 663 construction sites are only responsible for the installation and maintenance
- 664 of stormwater management measures prior to final stabilization of the
- 665 site, and are not responsible for maintenance after stormwater discharges
- 666 associated with construction activity have terminated.
- 667
- 668 (2) The DPW may require any plans and specifications that are prepared for the
- 669 construction of site improvements to illustrate and describe the best management
- 670 practices required by section 42-126 (a) (1) above that will be implemented at the
- 671 construction site. The City may deny approval of any building permit, grading
- 672 permit, or any other City approval necessary to commence or continue construction,
- 673 or to assume occupancy, on the grounds that the management practices described
- 674 in the plans or observed upon a site inspection by the DPW are determined not to
- 675 control and reduce the discharge of sediment, silt, earth, soil, and other materials
- 676 associated with clearing, grading, excavation, and other construction activities to
- 677 the maximum extent practicable under the circumstances.
- 678
- 679 (3) All contractors wishing to receive a building permit from the City shall sign a copy
- 680 of the following certification statement before receiving said permit:
- 681
- 682 *I certify under penalty of law that I understand the terms and conditions of*
- 683 *the National Pollutant Discharge Elimination System (NPDES) permit that*
- 684 *authorizes the stormwater discharges associated with industrial activity*
- 685 *from the construction site identified as part of this certification, with the*
- 686 *Stormwater Ordinance of the City of Rockport and for the construction site*
- 687 *for which I am responsible.*
- 688
- 689 (4) The certification must include the name and title of the person providing the signature;
- 690 the name, address, and telephone number of the contracting firm; the address (or other

identifying description) of the site; and the date the certification is made.

- 691  
692  
693 (5) Qualified personnel (provided by the operator of the construction site) shall  
694 inspect disturbed areas of any construction site that have not been finally  
695 stabilized, areas used for storage of materials that are exposed to precipitation,  
696 structural control measures, and locations where vehicles enter or exit the site,  
697 at least once every seven calendar days and within twenty-four (24) hours of the  
698 end of a storm that is 0.5 inches or greater. All erosion and sediment control  
699 measures and other identified best management practices shall be observed in  
700 order to ensure that they are operating correctly and are effective in preventing  
701 significant impacts to receiving waters and the MS4. Based on the results of the  
702 inspection, best management practices shall be revised as appropriate, and as soon  
703 as is practicable.  
704
- 705 (6) Upon final stabilization of the construction site, the owner (or the duly authorized  
706 representative thereof) shall submit written certification to the DPW that the site has  
707 been finally stabilized. (See definition of final stabilization in this Ordinance.) The  
708 City may deny the approval required to assume occupancy or an additional use  
709 permit for any premises constructed on the site until such certification of final  
710 stabilization has been filed and the DPW has determined, following any appropriate  
711 inspection, that final stabilization has, in fact, occurred and that any required  
712 permanent structural controls have been completed.  
713
- 714 (7) Any owner of a site of construction activity, whether or not he/she is an operator,  
715 is jointly and severally responsible for compliance with the requirements in section  
716 42-126 (a).  
717
- 718 (8) Any contractor or subcontractor on a site of construction activity, who is  
719 not an owner or operator, but who is responsible under his/her contract or  
720 subcontract for implementing a best management practices control measure, is  
721 jointly and severally responsible for any willful or negligent failure on his/her part  
722 to adequately implement that control measure if such failure causes or contributes  
723 to causing the City to violate a water quality standard, the City's NPDES permit,  
724 or any State-issued discharge permit for discharges from its MS4.  
725
- 726 (b) One – up to Five Acre Disturbances.  
727
- 728 (1) All operators of sites of construction activity, including clearing, grading, and  
729 excavation activities, that result in the disturbance of one or more acres of total  
730 land area but less than five acres of total land area, or that are part of a common plan  
731 of development or sale within which one or more but less than five acres of total  
732 land area are disturbed, or who are required to obtain an NPDES permit for  
733 stormwater discharges associated with construction activity, shall comply with the  
734 following requirements (in addition to those in section 42-126 (a)):  
735  
736 a. Any operator who intends to obtain coverage for stormwater discharges

737 from a construction site under the NPDES General Permit for  
 738 Stormwater Discharges From Construction Sites ("the Construction  
 739 General Permit") shall submit a signed copy of its Construction Site  
 740 Notice (CSN) to the DPW at least two (2) days prior to the  
 741 commencement of construction activities. A signed copy of the CSN  
 742 shall be posted at the construction site as well. If the construction  
 743 activity is already underway upon the effective date of this Ordinance,  
 744 the CSN shall be submitted within thirty (30) days.

- 745
- 746 b. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared  
 747 and implemented in accordance with the requirements of the  
 748 Construction General Permit or any individual or group NPDES permit  
 749 issued for stormwater discharges from the construction site, and with  
 750 any additional requirement imposed by or under this Ordinance and  
 751 any other city ordinance.
- 752
- 753 c. The SWPPP shall be completed prior to the submittal of the CSN to the  
 754 DPW and, for new construction, prior to the commencement of  
 755 construction activities. The SWPPP shall be updated and modified as  
 756 appropriate and as required by the Construction General Permit and  
 757 this Ordinance.
- 758
- 759 d. The DPW may require any operator who is required by section 42-126  
 760 (b) (1) (b) to prepare a SWPPP to submit the SWPPP, and any  
 761 modifications thereto, to the DPW for review. Such submittal and  
 762 review of the SWPPP may be required by the DPW prior to  
 763 commencement of or during construction activities at the site.
- 764
- 765 e. Upon the DPW's review of the SWPPP and any site inspection that  
 766 he/she may conduct, the City may deny approval of any building  
 767 permit, grading permit, or any other City approval necessary to  
 768 commence or continue construction, or to assume occupancy, on the  
 769 grounds that the SWPPP does not comply with the requirements of the  
 770 Construction General Permit, any individual or group NPDES permit  
 771 issued for stormwater discharge from the construction site, or any  
 772 additional requirement imposed by or under this Ordinance. Also, if at  
 773 any time the DPW determines that the SWPPP is not being fully  
 774 implemented, the City may similarly deny approval of any building  
 775 permit, grading permit, subdivision plat, site development plan or any  
 776 other City approval necessary to commence or continue construction,  
 777 or to assume occupancy, at the site.
- 778
- 779 f. All contractors and subcontractors identified in a SWPPP shall sign a  
 780 copy of the following certification statement before conducting any  
 781 professional service identified in the SWPPP:  
 782

783 *I certify under penalty of law that I understand the terms and*  
784 *conditions of the National Pollutant Discharge Elimination System*  
785 *(NPDES) permit that authorizes the stormwater discharges associated*  
786 *with industrial activity from the construction site identified as part of*  
787 *this certification, with the Stormwater Ordinance of the City of*  
788 *Rockport, and with those provisions of the Stormwater Pollution*  
789 *Prevention Plan (SWPPP) for the construction site for which I am*  
790 *responsible.*

- 791
- 792 g. The certification must include the name and title of the person  
793 providing the signature; the name, address, and telephone number of  
794 the contracting firm; the address (or other identifying description) of  
795 the site; and the date the certification is made.
- 796
- 797 h. The SWPPP, and the certifications of contractors and subcontractors  
798 required by section 42-126 (b) (1) (f), and with any modifications  
799 attached, shall be retained at the construction site from the date of  
800 commencement of construction through the date of final stabilization.
- 801
- 802 i. The operator shall make the SWPPP and any modification thereto  
803 available to the DPW upon request (as well as to EPA and State  
804 inspectors).
- 805
- 806 j. The DPW may notify the operator at any time that the SWPPP does not  
807 meet the requirements of the Construction General Permit, any  
808 applicable individual or group NPDES permit issued for stormwater  
809 discharges from the construction site, or any additional requirement  
810 imposed by or under this Ordinance. Such notification shall identify  
811 those provisions of the permit or Ordinance which are not being met  
812 by the SWPPP, and identify which provisions of the SWPPP require  
813 modifications in order to meet such requirements. Within seven (7)  
814 days of such notification from the DPW (or as otherwise provided by  
815 the DPW), the operator shall make the required changes to the SWPPP  
816 and shall submit to the DPW a written certification that the requested  
817 changes have been made.
- 818
- 819 k. The operator shall amend the SWPPP whenever there is a change in  
820 design, construction, operation, or maintenance, which has a  
821 significant effect on the potential for the discharge of pollutants to the  
822 MS4 or to the waters of the United States, and which has not otherwise  
823 been addressed in the SWPPP, or if the SWPPP proves to be  
824 ineffective in eliminating or significantly minimizing pollutants, or in  
825 otherwise achieving the general objective of controlling pollutants in  
826 stormwater discharges associated with construction activity. In  
827 addition, the SWPPP shall be amended to identify any new contractor  
828 and/or subcontractor that will implement a measure in the SWPPP.

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1. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWPPP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

As an alternative to the above-described inspection schedule of once every fourteen (14) calendar days and within twenty-four (24) hours of a storm event of 0.5 inches or greater, the SWPPP may be developed to require that these inspections will occur at least once every seven (7) calendar days. If this alternative schedule is developed, then the inspection must occur on a specifically defined day, regardless of whether or not there has been a rainfall event since the previous inspection. The inspections may occur on either schedule provided that the SWPPP reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of one time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWPPP (e.g., end of “dry” season and beginning of “wet” season).

- m. Based on the results of the inspections required by section 42-126 (b)(1), the site description and/or the pollution prevention measures identified in the SWPPP shall be revised as appropriate, but in no case later than seven (7) calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the SWPPP within seven (7) calendar days following the inspection.

- n. A report summarizing the scope of any inspection required by section 42-126 (b) (1) (l), and the name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with section 42-126 (b) (1) (m) above shall be made and retained as part of the SWPPP for at least three (3) years

875 from the date that the site is finally stabilized. Such report shall  
 876 identify any incidence of noncompliance. Where a report does not  
 877 identify any incidence of noncompliance, the report shall contain a  
 878 certification that the facility is in compliance with the SWPPP, the  
 879 facility's NPDES permit, and this Ordinance. The report shall be  
 880 certified and signed by the person responsible for making it.

- 881
- 882 o. The operator shall retain copies of any SWPPP and all reports required  
 883 by this Ordinance or by the NPDES permit for the site, and records of  
 884 all data, for a period of at least three (3) years from the date that the  
 885 site is finally stabilized.
- 886
- 887 p. Upon final stabilization of the construction site, the owner (or the duly  
 888 authorized representative thereof) shall submit written certification to  
 889 the DPW that the site has been finally stabilized. (See definition of  
 890 final stabilization in this Ordinance.) The City may deny the  
 891 approval required to assume occupancy or an  
 892 additional use permit for any premises constructed on the site until  
 893 such certification of final stabilization has been filed and the DPW has  
 894 determined, following any appropriate inspection, that final  
 895 stabilization has, in fact, occurred and that any required permanent  
 896 structural controls have been completed.

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899 (c) Five-Acre Disturbances.

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- 901 (1) All operators of sites of construction activity, including clearing, grading, and  
 902 excavation activities, that result in the disturbance of five or more acres of total  
 903 land area, or that are part of a common plan of development or sale within which  
 904 five or more acres of total land area are disturbed, or who are required to obtain  
 905 an NPDES permit for stormwater discharges associated with construction activity,  
 906 shall comply with the following requirements (in addition to those in section 42-  
 907 126 (a)):
- 908
- 909 a. Any operator who intends to obtain coverage for stormwater discharges  
 910 from a construction site under the NPDES General Permit for  
 911 Stormwater Discharges From Construction Sites shall submit a Notice of  
 912 Intent NOI with the Texas Commission of Environmental Quality in  
 913 accordance with the Construction General Permit.
- 914
- 915 b. A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared  
 916 and implemented in accordance with the requirements of the  
 917 Construction General Permit or any individual or group NPDES permit  
 918 issued for stormwater discharges from the construction site, and with  
 919 any additional requirement imposed by or under this Ordinance and  
 920 any other city ordinance.

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- c. The SWPPP shall be completed prior to the submittal of the NOI to the DPW and, for new construction, prior to the commencement of construction activities. The SWPPP shall be updated and modified as appropriate and as required by the Construction General Permit and this Ordinance.
- d. A copy of any NOI that is required by section 42-126 (c) (1) (a) shall be submitted to the City in conjunction with any application for a building permit, grading permit, site development plan approval, and any other City approval prior to the commencement of construction at the site.
- e. The DPW may require any operator who is required by section 42-126 (c) (1) (b) to prepare a SWPPP to submit the SWPPP, and any modifications thereto, to the DPW for review. Such submittal and review of the SWPPP may be required by the DPW prior to commencement of or during construction activities at the site.
- f. Upon the DPW's review of the SWPPP and any site inspection that he/she may conduct, the City may deny approval of any building permit, grading permit, or any other City approval necessary to commence or continue construction, or to assume occupancy, on the grounds that the SWPPP does not comply with the requirements of the Construction General Permit, any individual or group NPDES permit issued for stormwater discharge from the construction site, or any additional requirement imposed by or under this Ordinance. Also, if at any time the DPW determines that the SWPPP is not being fully implemented, the City may similarly deny approval of any building permit, grading permit, subdivision plat, site development plan or any other City approval necessary to commence or continue construction, or to assume occupancy, at the site.
- g. All contractors and subcontractors identified in an SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP:

*I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the stormwater discharges associated with industrial activity from the construction site identified as part of this certification, with the Stormwater Ordinance of the City of Rockport, and with those provisions of the Stormwater Pollution Prevention Plan (SWPPP) for the construction site for which I am responsible.*

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- h. The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
  - i. The SWPPP, and the certifications of contractors and subcontractors required by section 42-126 (c) (1) (g), and with any modifications attached, shall be retained at the construction site from the date of commencement of construction through the date of final stabilization.
  - j. The operator shall make the SWPPP and any modification thereto available to the DPW upon request (as well as to EPA and State inspectors).
  - k. The DPW may notify the operator at any time that the SWPPP does not meet the requirements of the Construction General Permit, any applicable individual or group NPDES permit issued for stormwater discharges from the construction site, or any additional requirement imposed by or under this Ordinance. Such notification shall identify those provisions of the permit or Ordinance which are not being met by the SWPPP, and identify which provisions of the SWPPP require modifications in order to meet such requirements. Within seven (7) days of such notification from the DPW (or as otherwise provided by the DPW), the operator shall make the required changes to the SWPPP and shall submit to the DPW a written certification that the requested changes have been made.
  - l. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWPPP, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges associated with construction activity. In addition, the SWPPP shall be amended to identify any new contractor and/or subcontractor that will implement a measure in the SWPPP.
  - m. Qualified personnel (provided by the operator of the construction site) shall inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within twenty-four (24) hours of the end of the storm that is 0.5 inches or greater. Disturbed areas and areas used for storage of

1013 materials that are exposed to precipitation shall be inspected for  
 1014 evidence of, or the potential for, pollutants entering the drainage  
 1015 system. Erosion and sediment control measures identified in the  
 1016 SWPPP shall be observed to ensure that they are operating correctly.  
 1017 Where discharge locations or points are accessible, they shall be  
 1018 inspected to ascertain whether erosion control measures are effective in  
 1019 preventing significant impacts to receiving waters or the MS4.  
 1020 Locations where vehicles enter or exit the site shall be inspected for  
 1021 evidence of off-site sediment tracking.

1022  
 1023 As an alternative to the above-described inspection schedule of once  
 1024 every fourteen (14) calendar days and within twenty-four (24) hours of  
 1025 a storm event of 0.5 inches or greater, the SWPPP may be developed  
 1026 to require that these inspections will occur at least once every seven (7)  
 1027 calendar days. If this alternative schedule is developed, then the  
 1028 inspection must occur on a specifically defined day, regardless of  
 1029 whether or not there has been a rainfall event since the previous  
 1030 inspection. The inspections may occur on either schedule provided that  
 1031 the SWPPP reflects the current schedule and that any changes to the  
 1032 schedule are conducted in accordance with the following provisions:  
 1033 the schedule may be changed a maximum of one time each month, the  
 1034 schedule change must be implemented at the beginning of a calendar  
 1035 month, and the reason for the schedule change must be documented in  
 1036 the SWPPP (e.g., end of “dry” season and beginning of “wet” season).

1037  
 1038 n. Based on the results of the inspections required by section 42-126 (c)  
 1039 (1) (m), the site description and/or the pollution prevention measures  
 1040 identified in the SWPPP shall be revised as appropriate, but in no case later than  
 1041 seven (7) calendar days following the inspection. Such modifications shall  
 1042 provide for timely implementation of any changes to the SWPPP within seven  
 1043 (7) calendar days following the inspection.

1044  
 1045 o. A report summarizing the scope of any inspection required by section  
 1046 42-126 (c) (1) (m), and the name(s) and qualifications of personnel  
 1047 making the inspection, the date(s) of the inspection, major  
 1048 observations relating to the implementation of the SWPPP, and actions  
 1049 taken in accordance with section 42-126 (c) (1) (n) above shall be  
 1050 made and retained as part of the SWPPP for at least three (3) years  
 1051 from the date that the site is finally stabilized. Such report shall  
 1052 identify any incidence of noncompliance. Where a report does not  
 1053 identify any incidence of noncompliance, the report shall contain a  
 1054 certification that the facility is in compliance with the SWPPP, the  
 1055 facility's NPDES permit, and this Ordinance. The report shall be  
 1056 certified and signed by the person responsible for making it.

- 1059 p. The operator shall retain copies of any SWPPP and all reports required  
 1060 by this Ordinance or by the NPDES permit for the site, and records of  
 1061 all data for a period of at least three (3) years from the date that the  
 1062 site is finally stabilized.  
 1063  
 1064 q. Where a site has been finally stabilized and all stormwater discharges  
 1065 from construction activities that are authorized by this Ordinance and  
 1066 by the NPDES permit for those construction activities are eliminated,  
 1067 or where the operator of all stormwater discharges at a facility changes,  
 1068 the operator of the construction site shall submit to the DPW a Notice  
 1069 of Termination (NOT) in accordance with the Construction General  
 1070 Permit.  
 1071  
 1072 r. Upon final stabilization of the construction site, the owner (or the duly  
 1073 authorized representative thereof) shall submit written certification to  
 1074 the DPW that the site has been finally stabilized. (See definition of  
 1075 final stabilization in this Ordinance.) The City may deny the  
 1076 approval required to assume occupancy or an  
 1077 additional use permit for any premises constructed on the site until  
 1078 such certification of final stabilization has been filed and the DPW has  
 1079 determined, following any appropriate inspection, that final  
 1080 stabilization has, in fact, occurred and that any required permanent  
 1081 structural controls have been completed.  
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1083 **Sec. 42-127. Compliance monitoring**  
 1084

- 1085 (a) Right of Entry: Inspection and Sampling. City Inspectors shall have the right to enter the  
 1086 premises of any person reasonably suspected by the City of discharging pollutants into the  
 1087 municipal separate storm sewer system (MS4) or to waters of the United States to determine  
 1088 if the discharger is complying with all requirements of this Ordinance, and with any state  
 1089 or federal discharge permit, limitation, or requirement. Dischargers shall allow the City  
 1090 Inspectors ready access to all parts of the premises for the purposes of inspection, sampling,  
 1091 records examination and copying, and for the performance of any additional duties.  
 1092 Dischargers shall make available to the City Inspector, upon request, any SWPPPs,  
 1093 modifications thereto, self-inspection reports, monitoring records, compliance evaluations,  
 1094 Notices of Intent, and any other records, reports, and other documents related to  
 1095 compliance with this Ordinance and with any state or federal discharge permit.  
 1096  
 1097 (1) Where a discharger has security measures in force which require proper  
 1098 identification and clearance before entry into its premises, the discharger shall  
 1099 make necessary arrangements with its security guards so that, upon presentation  
 1100 of suitable identification, the City Inspector will be permitted to enter without  
 1101 unreasonable delay for the purposes of performing his/her responsibilities.  
 1102  
 1103 (2) The City Inspector shall have the right to set up on the discharger's property, or  
 1104 require installation of, such devices as are necessary to conduct sampling and/or

- 1105 metering of the discharger's operations.  
 1106  
 1107 (3) When pollutants have been discharged the DPW may require any discharger to  
 1108 the MS4 or waters of the United States to conduct specified sampling, testing,  
 1109 analysis, and other monitoring of its stormwater discharges, and may specify the  
 1110 frequency and parameters of any such required monitoring.  
 1111  
 1112 (4) The DPW may require that discharger to install monitoring equipment as necessary  
 1113 at the discharger's expense. The facility's sampling and monitoring equipment  
 1114 shall be maintained at all times in a safe and proper operating condition by the  
 1115 discharger at its own expense. All devices used to measure stormwater flow and  
 1116 quality shall be calibrated to ensure their accuracy.  
 1117  
 1118 (5) Any temporary or permanent obstruction to safe and easy access to the facility  
 1119 to be inspected and/or sampled shall be promptly removed by the discharger at the  
 1120 written or verbal request of the City Inspector and shall not be replaced. The costs  
 1121 of clearing such access shall be borne by the discharger.  
 1122  
 1123 (6) Unreasonable delays in allowing the City Inspector access to the discharger's  
 1124 premises shall be a violation of this Ordinance.  
 1125  
 1126 (b) Search Warrants. If the City Inspector has been refused access to any part of the premises  
 1127 from which stormwater is discharged, and he/she is able to demonstrate probable cause to  
 1128 believe that there may be a violation of this Ordinance or any state or federal discharge  
 1129 permit, limitation, or requirement, or that there is a need to inspect and/or sample as part  
 1130 of a routine inspection and sampling program of the City designed to verify compliance  
 1131 with this Ordinance or any order issued hereunder, or to protect the overall public health,  
 1132 safety, and welfare of the community, then the City Inspector may seek issuance of a  
 1133 search warrant from any court of competent jurisdiction.  
 1134

1135 **Sec. 42-128. Publication**  
 1136

- 1137 (a) Publication of Dischargers in Significant Noncompliance. The DPW may periodically  
 1138 publish, in a daily newspaper generally distributed within the City, a list of owners and  
 1139 operators of discharges to the MS4 or waters of the United States from sites of  
 1140 construction and industrial activity which, during the previous three (3) months, were in  
 1141 significant noncompliance with the requirements of this Ordinance. The term "significant  
 1142 noncompliance" shall mean:  
 1143  
 1144 (1) Introducing or causing to be introduced into the waters of the United States  
 1145 any discharge that violates a water quality standard;  
 1146  
 1147 (2) Introducing or causing to be introduced into the MS4 any discharge that causes  
 1148 or contributes to causing the City to violate a water quality standard, the City's  
 1149 NPDES permit, or any state-issued discharge permit for discharges from the City's  
 1150 MS4;

- 1151  
1152 (3) Any connection of a line conveying sanitary sewage, domestic or industrial, to  
1153 the MS4, or allowing any such connection to continue;  
1154
- 1155 (4) Any discharge of pollutants to the MS4 or waters of the United States that has  
1156 caused an imminent or substantial endangerment to the health or welfare of  
1157 persons or to the environment, or has resulted in the DPW's exercise of his/her  
1158 emergency authority to halt or prevent such a discharge;  
1159
- 1160 (5) Any violation that has resulted in injunctive relief, civil penalties, or criminal fine  
1161 being imposed as a judicial remedy under section 42-131 of this Ordinance; or  
1162
- 1163 (6) Any other violation(s) which the DPW determines to be chronic or especially  
1164 dangerous to the public or to the environment.  
1165
- 1166 (7) Any failure to comply with a compliance schedule, whether imposed by the City  
1167 or by a court.  
1168

1169 **Sec. 42-129. Administrative enforcement remedies**  
1170

- 1171 (a) Warning Notice. When the DPW finds that any person has violated, or continues to violate,  
1172 any provision of this Ordinance, or any order issued hereunder, the DPW may serve  
1173 upon that person a written Warning Notice, specifying the particular violation believed to  
1174 have occurred and requesting the discharger to immediately investigate the matter and to  
1175 seek a resolution whereby any offending discharge will cease. Investigation and/or  
1176 resolution of the matter in response to the Warning Notice in no way relieves the alleged  
1177 violator of liability for any violations occurring before or after receipt of the Warning  
1178 Notice. Nothing in this subsection shall limit the authority of the DPW to take any  
1179 action, including emergency action or any other enforcement action, without first issuing a  
1180 Warning Notice.  
1181
- 1182 (b) Notification of Violation. When the DPW finds that any person has violated, or continues  
1183 to violate, any provision of this Ordinance, or any order issued hereunder, the CEA may  
1184 serve upon that person a written Notice of Violation. Within ten (10) days of the receipt  
1185 of this notice, the violator shall take corrective action to bring the violation into  
1186 compliance. If the alleged violator denies that any violation occurred and/or contends  
1187 that no corrective action is necessary, an explanation of the basis of any such denial or  
1188 contention shall be submitted to the CEA within ten (10) days of receipt of the notice.  
1189 Submission of an explanation and/or plan in no way relieves the alleged violator of liability  
1190 for any violations occurring before or after receipt of the Notice of Violation. Nothing in  
1191 this section shall limit the authority of the CEA to take any action, including emergency  
1192 action or any other enforcement action, without first issuing a Notice of Violation.  
1193
- 1194 (c) Consent Orders. The CEA may enter into Consent Orders, assurances of voluntary  
1195 compliance, or other similar documents establishing an agreement with any person  
1196 responsible for noncompliance with any provision in this Ordinance or any order issued

1197 hereunder. Such documents may include specific action to be taken by the person to  
 1198 correct the noncompliance within a time period specified by the document. Such  
 1199 documents shall have the same force and effect as the administrative orders issued  
 1200 pursuant to sections 42-129 (e), (f) and (g) this Ordinance and shall be judicially  
 1201 enforceable.

1202  
 1203 (d) Show Cause Hearing. The CEA may order any person who has violated, or continues  
 1204 to violate, any provision of this Ordinance, or any order issued hereunder, to appear before  
 1205 the CEA and show cause why a proposed enforcement action should not be taken. Notice  
 1206 shall be served on the alleged violator specifying the time and place for the hearing, the  
 1207 proposed enforcement action, the reasons for such action, and a request that the alleged  
 1208 violator show cause why the proposed enforcement action should not be taken. The notice  
 1209 of the hearing shall be served personally or by registered or certified mail (return receipt  
 1210 requested) at least ten (10) days prior to the hearing. Such notice may be served on any  
 1211 authorized representative of the alleged violator. The hearing shall be conducted pursuant  
 1212 to the rights and procedures specified in section 42-130 (a) (7) of this Ordinance. A show  
 1213 cause hearing shall not be a bar against, or prerequisite for, taking any other action against  
 1214 the alleged violator.

1215  
 1216 (e) Compliance Orders. When the CEA finds that any person has violated, or continues to  
 1217 violate, any provision of this Ordinance, or any order issued hereunder, the CEA may  
 1218 issue an order to the violator directing that the violator come into compliance within a  
 1219 specified time limit. Compliance orders also may contain other requirements to address  
 1220 the noncompliance, including additional self-monitoring, and management practices  
 1221 designed to minimize the amount of pollutants discharged to the MS4 and waters of the  
 1222 United States. A compliance order may not extend the deadline for compliance established  
 1223 by a state or federal standard or requirement, nor does a compliance order relieve the person  
 1224 of liability for any violation, including any continuing violation. Issuance of a  
 1225 compliance order shall not be a bar against, or a prerequisite for, taking any other action  
 1226 against the violator.

1227  
 1228 (f) Remediation, Abatement, and Restoration Orders. When the CEA finds that a person has  
 1229 violated, or continues to violate, any provision of this Ordinance, or any order issued  
 1230 hereunder, and that such violation has adversely affected the MS4, the waters of the  
 1231 United States or any other aspect of the environment, the CEA may issue an order to the  
 1232 violator directing him/her to undertake and implement any appropriate action to remediate  
 1233 and/or abate any adverse effects of the violation upon the MS4, the waters of the United  
 1234 States, or any other aspect of the environment, and/or to restore any part of the MS4, the  
 1235 waters of the United States, or any other aspect of the environment that has been  
 1236 harmed. Such remedial, abatement, and restoration action may include, but not be limited  
 1237 to: monitoring, assessment, and evaluation of the adverse effects and determination of  
 1238 the appropriate remedial, abatement, and/or restoration action; confinement, removal,  
 1239 cleanup, treatment, and disposal of any discharged or released pollution or contamination;  
 1240 prevention, minimization, and/or mitigation of any damage to the public health, welfare,  
 1241 or the environment that may result from the violation; restoration or replacement of City  
 1242 property or natural resources damaged by the violation. The order may direct that the

1243 remediation, abatement, and/or restoration be accomplished on a specified compliance  
 1244 schedule and/or be completed within a specified period of time. An order issued under  
 1245 this Subsection does not relieve the violator of liability for any violation, including any  
 1246 continuing violation. Issuance of an order under this Subsection shall not be a bar against,  
 1247 or a prerequisite for, taking any other action against any responsible party.

1248  
 1249 (g) Emergency Cease and Desist Orders. When the CEA finds that any person has violated,  
 1250 or continues to violate, any provision of this Ordinance, or any order issued hereunder,  
 1251 or that the person's past violations are likely to recur, and that the person's violation(s)  
 1252 have caused or contributed to an actual or threatened discharge to the MS4 or waters of  
 1253 the United States which reasonably appears to present an imminent or substantial  
 1254 endangerment to the health or welfare of persons or to the environment, the CEA may  
 1255 issue an order to the violator directing it immediately to cease and desist all such violations  
 1256 and directing the violator to:

- 1257  
 1258 (1) Immediately comply with all Ordinance requirements; and  
 1259  
 1260 (2) Take such appropriate preventive action as may be needed to properly address  
 1261 a continuing or threatened violation, including immediately halting operations and/or  
 1262 terminating the discharge.

1263  
 1264 Any person notified of an emergency order directed to it under this Subsection  
 1265 shall immediately comply and stop or eliminate its endangering discharge. In the  
 1266 event of a discharger's failure to immediately comply voluntarily with the  
 1267 emergency order, the CEA may take such steps as deemed necessary to prevent or  
 1268 minimize harm to the MS4 or waters of the United States, and/or endangerment to  
 1269 persons or to the environment, including immediate termination of a facility's  
 1270 water supply, sewer connection, or other municipal utility services. The CEA may  
 1271 allow the person to recommence its discharge when it has demonstrated to the  
 1272 satisfaction of the CEA that the period of endangerment has passed, unless further  
 1273 termination proceedings are initiated against the discharger under this Ordinance.  
 1274 A person that is responsible, in whole or in part, for any discharge presenting  
 1275 imminent endangerment shall submit a detailed written statement, describing the  
 1276 causes of the harmful discharge and the measures taken to prevent any future  
 1277 occurrence, to the CEA within two days of receipt of the emergency order. Issuance  
 1278 of an emergency cease and desist order shall not be a bar against, or a prerequisite  
 1279 for, taking any other action against the violator.

1280  
 1281 (h) "Red Tags". Whenever the CEA finds that any operator of a construction site has violated,  
 1282 or continues to violate, any provision of this Ordinance, or any order issued thereunder, the  
 1283 CEA may order that a "Red Tag" be issued to the operator, posted at the construction site,  
 1284 and distributed to all City departments and divisions whose decisions affect any activity  
 1285 at the site. Unless express written exception is made by the CEA, the "Red Tag" shall  
 1286 prohibit any further construction activity at the site and shall bar any further inspection or  
 1287 approval by the City associated with a building permit, grading permit, subdivision plat  
 1288 approval, site development plan approval, or any other City approval necessary to

1289 commence or continue construction or to assume occupancy at the site. Issuance of a "Red  
1290 Tag" order shall not be a bar against, or a prerequisite for, taking any other action against  
1291 the violator.

1292

1293 **Sec. 42-130. Right to reconsideration, hearing, and appeal**

1294

1295 (a) Reconsideration and Hearing

1296

1297 (1) Any person subject to a Compliance Order under section 42-129 (e), a  
1298 Remediation, Abatement, or Restoration Order under section 42-129 (f), an  
1299 Emergency Cease and Desist Order under section 42-129 (g), or a Red Tag Order  
1300 under section 42-129 (h) of this Ordinance may petition the CEA to reconsider  
1301 the basis for his/her order within thirty (30) days of the affected person's notice of  
1302 issuance of such an order.

1303

1304 (2) Failure to submit a timely written petition for reconsideration shall be deemed  
1305 to be a waiver of any further right to administrative reconsideration or review of  
1306 the order.

1307

1308 (3) In its petition, the petitioning party must indicate the provisions of the order  
1309 objected to, the reasons for the objection(s), any facts that are contested, the  
1310 evidence that supports the petitioner's view of the facts, any alternative terms of an  
1311 order that the petitioner would accept, and whether the petitioning party requests a  
1312 hearing on its petition.

1313

1314 (4) The effect of any Compliance Order under section 42-129 (e), Remediation,  
1315 Abatement, or Restoration Order under section 42-129 (f), and any Red Tag Order  
1316 under section 42-129 (h) shall be stayed pending the CEA's reconsideration of the  
1317 petition, and any hearing thereon, unless the CEA expressly makes a written  
1318 determination to the contrary. The effectiveness of any Emergency Cease and  
1319 Desist Order under section 42- 1 2 9 (g) shall not be stayed pending the CEA's  
1320 reconsideration, or any hearing thereon, unless the CEA expressly and in writing  
1321 stays his/her emergency order.

1322

1323 (5) Within ten (10) days of the submittal of a petition for reconsideration, the CEA  
1324 shall either (1) grant the petition and withdraw or modify the order accordingly;  
1325 (2) deny the petition, without hearing if no material issue of fact is raised; or (3) if  
1326 a hearing has been requested and a material issue of fact has been raised, set a hearing  
1327 on the petition.

1328

1329 (6) Written notice of any hearing set by the CEA pursuant to section 42-130  
1330 (a) (5) above shall be served on the petitioning party personally or by  
1331 registered or certified mail (return receipt requested) at least ten (10) days prior to  
1332 the hearing. Such notice may be served on any authorized representative of the  
1333 petitioning party.

1334

- 1335 (7) The CEA may himself/herself conduct the hearing and take evidence, or he/she  
 1336 may designate any employee of the City or any specially-designated attorney or  
 1337 engineer to:
- 1338
- 1339 a. issue in the name of the City notices of hearing requesting the  
 1340 attendance and testimony of witnesses and the production of  
 1341 evidence relevant to any matter involved in the hearing;  
 1342
- 1343 b. take evidence;  
 1344
- 1345 c. transmit a report of the evidence and hearing, including transcripts  
 1346 and other evidence, together with recommendations to the CEA for  
 1347 action thereon. At any hearing held pursuant to this Subsection,  
 1348 testimony taken shall be under oath and recorded. Any party is  
 1349 entitled to present his/her case or defense by oral or documentary  
 1350 evidence and to conduct such cross- examination as may be required  
 1351 for a full and true disclosure of the facts. A transcript will be  
 1352 made available to any party to the hearing upon payment of the  
 1353 usual charges thereof.  
 1354
- 1355 (8) After the CEA has reviewed the evidence, he/she shall either (1) grant the petition;  
 1356 (2) deny the petition; or (3) grant the petition in part and deny it in part. The CEA  
 1357 may modify his/her order as is appropriate based upon the evidence and arguments  
 1358 presented at the hearing and his/her action on the petition. Further orders and  
 1359 directives as are necessary and appropriate may be issued.  
 1360
- 1361 (b) Appeal  
 1362
- 1363 (1) Any person whose petition for reconsideration by the CEA has not been  
 1364 granted in its entirety and who remains adversely affected by the CEA's order, or  
 1365 who is subject to an order of the CEA issued following a Show Cause Hearing  
 1366 under section 42-129 (d), may appeal the action of the CEA to the City Council by  
 1367 filing a written appeal with the City Council within ten (10) days of the person's  
 1368 notice of the CEA's adverse action on the petition for reconsideration, or within  
 1369 ten (10) days of the person's notice of the issuance of the order following the Show  
 1370 Cause Hearing, as the case may be.  
 1371
- 1372 (2) Failure to submit a timely written appeal to the City Council shall be deemed  
 1373 to be a waiver of further administrative review.  
 1374
- 1375 (3) In its written appeal to the City Council, the appealing party shall indicate the  
 1376 particular provisions of the order objected to, the particular determinations of the  
 1377 CEA that are contested, the reasons that the CEA's order and/or determinations  
 1378 are contested, and any alternative order that the appealing party would accept.  
 1379
- 1380 (4) The effect of the CEA's order, as issued or modified, shall not be stayed pending

the appeal to the City Council, unless the City Council expressly so states.

- 1381  
1382  
1383 (5) Within thirty (30) days of the submittal of a written appeal to the City Council,  
1384 the City Council shall hear and consider the appeal in open meeting. The  
1385 appellant shall be notified at least three (3) days in advance of the date and time of  
1386 the City Council meeting at which the appeal will be heard and considered.  
1387  
1388 (6) The appellant shall have the right to public appearance before the City Council  
1389 to present oral and written statements in support of his/her appeal. If the City  
1390 Council wishes to consider testimony of witnesses or other evidence beyond that  
1391 in the record of any hearing before the CEA the City Council may remand the  
1392 matter to the CEA for the taking of additional testimony or other evidence.  
1393  
1394 (7) Upon consideration of any written and oral statements made to the City Council,  
1395 as well as the record made before the CEA, the City Council shall act on the appeal  
1396 by affirming, vacating, or modifying the order of the CEA, and/or by remanding  
1397 the matter to the CEA for further action.  
1398  
1399 (8) Following final action by the City Council on the appeal, any adversely affected  
1400 party may challenge such action by the City Council in an appropriate court of  
1401 competent jurisdiction.  
1402  
1403

1404 **Sec. 42-131. Judicial enforcement remedies**

1405  
1406 (a) Civil Remedies  
1407

- 1408 (1) Whenever it appears that a person has violated, or continues to violate, any provision  
1409 of this Ordinance that relates to:  
1410  
1411 a. the preservation of public safety, relating to the materials or methods used  
1412 in construction of any structure or improvement of real property;  
1413 b. the preservation of public health or to the fire safety of a building or other  
1414 structure or improvement;  
1415 c. the establishment of criteria for land subdivision or construction of buildings,  
1416 including street design;  
1417 d. dangerously damaged or deteriorated structures or improvements;  
1418 e. conditions caused by accumulations of refuse, vegetation, or other matter  
1419 that creates breeding and living places for insects and rodents; or  
1420 f. point source effluent limitations or the discharge of a pollutant, other  
1421 than from a non-point source, into the MS4. The City may invoke Sections  
1422 54.011 - 54.017 of the Texas Local Government Code, as amended, and  
1423 petition the State district court or the county court at law of Aransas County,  
1424 through the City Attorney, for either the injunctive relief specified in  
1425 section 42-131 (a) (2) or the civil penalties specified in section 42-131 (a)  
1426 (3) below, or both the specified injunctive relief and civil penalties.

- 1427  
1428 (2) Pursuant to Section 54.016 of the Texas Local Government Code, as amended,  
1429 the City may obtain against the owner or the operator of a facility a temporary  
1430 or permanent injunction, as appropriate, that:  
1431  
1432 a. prohibits any conduct that violates any provision of this Ordinance that  
1433 relates to any matter specified in sections 42-131 (a) (1) (a)-(f) above; or  
1434  
1435 b. compels the specific performance of any action that is necessary for  
1436 compliance with any provision of this Ordinance that relates to any matter  
1437 specified in sections 42-131 (a) (1) (a)-(f) above.  
1438  
1439 (3) Pursuant to Section 54.017 of the Texas Local Government Code, as amended,  
1440 the City may recover a civil penalty of not more than one thousand dollars  
1441 (\$1,000) per day for each violation of any provision of this Ordinance that relates  
1442 to any matter specified in sections 42-131 (a)  
1443 (1) (a)-(e) above, and a civil penalty of not more than five thousand  
1444 (\$5,000) per day for each violation of any provision of this Ordinance that  
1445 relates to any matter specified in section 42-131 (a) (1) (f) above, if the  
1446 City proves that:  
1447  
1448 a. the defendant was actually notified of the provisions of the  
1449 Ordinance; and  
1450  
1451 b. after the defendant received notice of the Ordinance provisions, the  
1452 defendant committed acts in violation of the Ordinance or failed to  
1453 take action necessary for compliance with the Ordinance.  
1454  
1455 (b) Criminal Penalties  
1456  
1457 (1) Any person, who has violated any provision of this Ordinance, or any order  
1458 issued hereunder, shall be strictly liable for such violation regardless of the presence  
1459 or absence of a culpable mental state, except as expressly provided herein, and  
1460 shall, upon conviction, be subject to a fine of not more than two thousand dollars  
1461 (\$2000.00) per violation, per day, or any greater fine authorized by State statute.  
1462  
1463 (2) Any person who has knowingly made any false statement, representation, or  
1464 certification in any application, record, report, plan, or other documentation filed,  
1465 or required to be maintained, pursuant to this Ordinance, or any order issued  
1466 hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate  
1467 any monitoring device or method required under this Ordinance shall, upon  
1468 conviction, be subject to a fine of not more than two thousand dollars (\$2000.00)  
1469 per violation, per day, or any greater fine authorized by State statute.  
1470  
1471  
1472  
1473 (3) In determining the amount of any fine imposed hereunder, the court shall take into

1474 account all relevant circumstances, including, but not limited to, the extent of harm  
 1475 caused by the violation, the magnitude and duration of the violation, any economic  
 1476 benefit gained through the violation, corrective actions by the violator, the  
 1477 compliance history of the violator, the knowledge, intent, negligence, or other  
 1478 state of mind of the violator, and any other factor as justice requires.  
 1479

1480 (c) Civil Suit Under the Texas Water Code. Whenever it appears that a violation or threat of  
 1481 violation of any provision of Section 26.121 of the Texas Water Code, as amended, or any  
 1482 rule, permit, or order of the Texas Water Commission, has occurred or is occurring  
 1483 within the jurisdiction of the City of Rockport, exclusive of its extraterritorial jurisdiction,  
 1484 the City, in the same manner as the Texas Water Commission, may have a suit instituted  
 1485 in a state district court through its City Attorney for the injunctive relief or civil penalties  
 1486 or both authorized in Subsection (a) of Section 26.123 of the Texas Water Code, as  
 1487 amended, against the person who committed or is committing or threatening to commit  
 1488 the violation. This power is exercised pursuant to Section 26.124 of the Texas Water Code,  
 1489 as amended. In any suit brought by the City under this section 42-131 (c), the Texas Water  
 1490 Commission is a necessary and indispensable party.  
 1491

1492 (d) Remedies Nonexclusive. The remedies provided for in this Ordinance are not exclusive  
 1493 of any other remedies that the City may have under state or federal law or other City  
 1494 ordinances. The City may take any, all, or any combination of these actions against a  
 1495 violator. The City is empowered to take more than one enforcement action against any  
 1496 violator. These actions may be taken concurrently.  
 1497

#### 1498 **Sec. 42-132. Supplemental Enforcement Action**

1500  
 1501 (a) Performance Bonds. The CEA may, by written notice, order any owner or operator of a  
 1502 source of stormwater discharge associated with construction or industrial activity to file  
 1503 a satisfactory bond, payable to the City, in a sum not to exceed a value determined by  
 1504 the CEA to be necessary to achieve consistent compliance with this Ordinance, any  
 1505 order issued hereunder, any required Best Management Practice, and/or any SWPPP  
 1506 provision, and/or to achieve final stabilization of the site. The City may deny approval  
 1507 of any building permit, grading permit, subdivision plat, site development plan, or any  
 1508 other City permit or approval necessary to commence or continue construction or any  
 1509 industrial activity at the site, or to assume occupancy, until such a performance bond has  
 1510 been filed.  
 1511

1512 (b) Liability Insurance. The CEA may, by written notice, order any owner or operator of a  
 1513 source of stormwater discharge associated with construction or industrial activity to  
 1514 submit proof that it has obtained liability insurance, or other financial assurance, in an  
 1515 amount not to exceed a value determined by the CEA, that is sufficient to remediate,  
 1516 restore, and abate any damage to the MS4, the waters of the United States, or any other  
 1517 aspect of the environment that is caused by the discharge.  
 1518

1519 (c) Public Nuisances. A violation of any provision of this Ordinance, or any order issued

1520 hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed  
1521 by the CEA. Any person(s) creating a public nuisance shall be subject to the provisions of  
1522 the City Code governing such nuisances, including reimbursing the City for any costs  
1523 incurred in removing, abating, or remedying said nuisance.  
1524

1525

1526 **SECTION 3. REPEALER**

1527

1528 Any previously adopted ordinances, and any subsequent amendments to them, which are in conflict  
1529 with this Ordinance, are all hereby repealed.

1530

1531 **SECTION 3. SEVERABILITY**

1532

1533 If any provision, section, sentence, clause or phrase of this Ordinance, or the application of same to  
1534 any person or set of circumstances is, for any reason held to be unconstitutional, void, or invalid,  
1535 the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the  
1536 intent of the City County in adopting this Ordinance that no portion hereof, or provisions or  
1537 regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality  
1538 of any other portion hereof, and all provisions of this Ordinance are declared severable for that  
1539 purpose.

1540

1541 **SECTION 4. EFFECTIVE DATE**

1542

1543 This Ordinance shall become effective immediately upon adoption by second and final reading.

1544

1545

1546

1547 **APPROVED** on first reading on this the 10<sup>th</sup> day of May 2016.

1548

1549

1550

1551

**CITY OF ROCKPORT, TEXAS**

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\_\_\_\_\_  
Charles J. Wax, Mayor

1556

1557

1558 **ATTEST:**

1559

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1561

\_\_\_\_\_  
Teresa Valdez, City Secretary

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1564

1565

1566  
1567 **APPROVED, PASSED and ADOPTED** on second and final reading this the \_\_\_\_\_ day of May  
1568 2016.

1570  
1571 **CITY OF ROCKPORT, TEXAS**

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1573  
1574 \_\_\_\_\_  
1575 Charles J. Wax, Mayor  
1576

1577  
1578 **ATTEST:**

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1580  
1581 \_\_\_\_\_  
1582 Teresa Valdez, City Secretary  
1583

DRAFT 04/26/16

## Current City of Rockport Ordinance

### ARTICLE V. EROSION AND SEDIMENT CONTROL

#### **Sec. 42-120. Responsibility.**

It shall be joint duty and responsibility of the directors of public works and building and development or their authorized representatives to administer, implement and enforce the provisions of this article.

(Ord. No. 1460, § 1, 8-11-09)

#### **Sec. 42-121. Applicability.**

Only erosion and sedimentation from a construction site which impacts public property and public rights-of-way are governed by this article. It is not a violation of this article if erosion and sediment loss from a construction site occurs upon private property and is deposited upon private property unless the flow travels through the MS4.

(Ord. No. 1460, § 1, 8-11-09)

#### **Sec. 42-122. Definitions and abbreviations.**

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this article, shall have the meaning hereinafter designated. Any terms not defined by this article are understood to be defined by the Texas Construction General Permit TXR150000 or its successor.

*Best management practice (BMP) or control measure* means the schedule of activity, prohibition, maintenance procedures, structural controls, and other management practices meant to prevent or reduce the discharge of pollutants. BMPs or control measures also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, waste disposal, or drainage from raw material storage areas.

*City of Rockport Erosion and Sediment Control Manual* means a document prepared by the City of Rockport that contains details on the use and maintenance of erosion and sediment controls.

*Clearing or commencement of construction* means the initial disturbance of soils associated with clearing, grading, or excavation, activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition).

*Common plan of development* is defined by the Texas Construction General Permit TXR150000 or its successor.

*Construction general permit (CGP)* means the Texas Construction General Permit TXR150000, its successor or any other state regulation to control runoff from construction sites issued by the Texas Commission on Environmental Quality (TCEQ) or the state regulatory authority.

## Current City of Rockport Ordinance

*Construction sites(s)* means any clearing, grading, and excavating that results in land disturbance. A construction site also includes but not limited to any stockpiling or other activity that result in exposed soils. This includes the construction of pools and installation and maintenance and the installation of and maintenance of public utilities such as telephone, gas, electric, telecommunications, etc. This excludes the disturbance of soils for emergency activities that are immediately necessary for the protection of life, property, or natural resources.

*CSN* means construction site notice as defined by the Construction General Permit TXR150000 or its successor.

*Control measure* see best management practice (BMP) above.

*Director* means the director of public works and/or the director of building and development or their authorized representatives.

*Drainage way or conveyance* means curbs, gutters, manmade channels and ditches, drains, pipes, and other constructed features designed or used for flood control or to otherwise transport stormwater runoff.

*Erosion control* means a measure that minimizes erosion to the maximum extent practicable.

*Erosion and sediment control* submittal packet means documents, including a set of plans prepared by or under the direction of the owner or operator of the construction site that indicate the specific measures and sequencing to be used to control erosion and sediment on a construction site during and after construction and supporting documents as specified by the City of Rockport Erosion and Control Manual.

*Final stabilization* means all soil disturbing activities at the site have been completed and a uniform (i.e. evenly distributed, without large bare areas) perennial vegetative cover with a density of a least 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geo-textiles) have been employed. These conditions are applicable to all construction sites, including individual residential lot construction sites.

*Grading* means changing elevation of a parcel of land by means of moving earthen material including excavation or fill of material, including the resulting conditions thereof.

*Multi-sector general permit (MSGP)* means the Texas Multi-Sector General Permit, TXR050000, its successor, or any other state regulation to control runoff from industrial sites issued by the Texas Commission on Environmental Quality (TCEQ) or the state regulatory authority.

*Municipal separate storm sewer system (MS4)* means the separate storm sewer system owned and operated by the city. The MS4 includes all drainage ways, stormwater conveyances, bar ditches, swales, and streets owned and operated by the city or any private drainage way that drains to or

## Current City of Rockport Ordinance

contributes flow to the public drainage system and conveys stormwater discharges to the surface water of the state.

*NOC* means notice of change as defined by the Construction General Permit TXR150000 or its successor.

*NOI* means notice of intent as defined by the Construction General Permit TXR150000 or its successor.

*NOT* means notice of termination as defined by the Construction General Permit TXR150000 or its successor.

*Operator* means the person or persons who, either individually or taken together, meet either of the following two criteria: (1) has operational control over the facility specifications (including the ability to make or direct modifications in specifications); or (2) has day-to-day operational control over those activities at the facility necessary to ensure compliance with pollution prevention requirements and any permit conditions.

*Owner* means the person who owns a facility or part of a facility.

*Perimeter control* means a form of erosion control that prevents sediment from leaving the site.

*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.

*Pollutant* means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, sediment, and industrial, municipal, and agricultural waste discharged into surface water of the state.

*Sediment control* means measures that minimize eroded sediment from leaving the site to the maximum extent practicable.

*Secondary containment* means a structure designed to capture spills or leaks, as from a container or tank, and has the capacity to hold 110 percent of the original container.

*Site* means a parcel of land or a contiguous combination thereof, where grading is performed as a single unified operation.

*Surface water in the state* as defined by the Construction General Permit TXR150000 or its successor.

*Texas Surface Water Quality Standards* means the standards set forth in Title 30, Chapter 307 of the Texas Administrative Code.

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*Temporary stabilization* means a condition where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. Temporary stabilization may include BMPs listed in the integrated stormwater management (ISWM) manual produced by the council of governments or subsequent similar documents (i.e. temporary seeding, geo-textiles, mulches, perimeter controls, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place.)

*Waters of the United States* as defined by the Construction General Permit TXR150000 or its successor.

(Ord. No. 1460, § 1, 8-11-09)



### **Sec. 42-123. Applicability of article and compliance requirements.**

(a) This article shall apply to all construction sites within the city limits of the City of Rockport.

(b) *Requirements for sites disturbing less than one acre or within a common plan of development that is disturbing less than one acre.*

(1) All construction sites disturbing less than one acre of land or within a common plan of development that is disturbing less than one acre of land shall comply with all sections of this article except as otherwise noted.

(2) Any construction site disturbing less than one acre may be required, if directed by director of public works, to comply with this article.

(c) *Requirements for sites disturbing more than one acre or within a common plan of development that is disturbing more than one acre:*

(1) All construction sites disturbing more than one acre of land or within a common plan of development that is disturbing more than one acre of land shall comply with all sections of this article.

(2) The owner or operator shall ensure that copies of the notice of intent (NOI), notice of change (NOC), notice of termination (NOT), and construction site notice (CSN) are provided to the city when appropriate.

(d) *Requirement for all construction sites.*

(1) All sites shall comply with the requirements of the current construction general permit (CGP), when appropriate based upon the acreage of the construction site.

(2) *Inspections:*

i. All construction sites shall be inspected or cause to be inspected by the owner or operator of the site for evidence of or potential for violations of this article.

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Construction sites subject to the CGP shall be inspected at frequency required by the CGP or more frequently if directed by the director of public works.

ii. All construction sites shall be inspected or caused to be inspected by the owner or operator within 24 hours after all rain events exceeding two inches in addition to inspection requirements in this section. Rain events are determined by the measurement documented by the city.

iii. All owners or operators of a construction site disturbing more than one acre of land or within a common plan of development that is disturbing more than one acre of land shall document inspections. When such a project is released for construction by the city, as described in this article, the city will provide the applicant with a number and access code for that job on the website. The applicant shall:

a. Within ten working days of receipt of the permit number and access code, enter the website and create and/or confirm a list of erosion and sediment control practices that are proposed on the approved plan.

b. Within ten working days of the actual start of work - enter the website and document that the practices have been installed in accordance with the approved plan.

c. Provide an electronic version of inspection documentation at the frequency indicated by the erosion control submittal packet and of event driven inspections. Documentation will be of the condition of the practices and will note any repairs needed and action taken.

d. Within ten working days of installation of final stabilization enter the website and note that the project has been terminated and a notice of termination (NOT) has been submitted to the TCEQ and the city, when appropriate.

e. Upon written notice by an agent of the city to the applicant or the applicant's designated representative regarding an erosion control action or repair needed to bring the site into compliance, the owner or operator shall comply with noted actions or repairs, and record such actions within 48 hours of the notification and prior to the next rain event. Failure to record such actions within 72 hours of notification shall be a violation of this article.

(3) *Erosion and sediment control measures.* Erosion and sediment control measure shall be designed and established at the construction site in a manner that minimizes erosion and retain sediment on-site to the maximum extent practicable with consideration of the topography, soil type, and rainfall. BMPs and control measures described in the Integrated Stormwater Management (ISWM) Manual produced by the Texas Council of Governments or subsequent versions are minimum control measure where appropriate; however, BMPs not listed in the ISWM Manual may be considered.

## Current City of Rockport Ordinance

- (4) *Preserve existing vegetation.* The owner or operator of the site shall ensure that existing vegetation is preserved to the maximum extent practicable. Should the existing vegetation not be preserved, the owner or operator shall take steps necessary to stabilize the site in order to prevent erosion.
- (5) *Stabilization.* Erosion control and stabilization measures must be initiated as soon as practicable in portions of the construction site where construction activities have temporarily ceased. These measures must be initiated no more than 14 days after the construction activity in that portion of the construction site where activity has temporarily or permanently ceased, except where earth disturbing activities will be resumed within 21 days.
- (6) *Minimize off-site tracking.* Off-site tracking of sediment, in the form of mud, rocks, dirt, etc. is not permitted. Where required to prevent off-site tracking of sediment, a construction entrance shall be established and maintained.
- (7) *Maintenance.*
- i. All temporary stabilization measures shall be maintained until final stabilization is established and a notice of termination (NOT) is filed with the TCEQ, when required by the CGP, and the finalization of a Rockport Termination Inspection has been conducted, as described in herein, or transfer of operations control has been completed, as required by the CGP, when appropriate based on the acreage of the construction site.
  - ii. The owner or operator of any site shall perform maintenance as necessary to maintain the continued effectiveness of stormwater controls with 48 hours of discovery of failure, damage, or compromise and prior to the next rain event.
  - iii. Failure to maintain BMPs in proper working order shall be a violation of this article.
- (8) *Sediment or silt accumulation.* Should the control measures at a site fail, in part or in total, the owner or the operator shall remove all sediment and siltation accumulation caused by BMP failure from the city's MS4, including streets and rights-of-way, within 48 hours of discovery or prior to the next rain event. Removal includes sweeping streets, sidewalks, and other infrastructure and removing sediment from the MS4.
- (9) *Good housekeeping measures for chemicals and wastes.* Good housekeeping measures shall be provided on-site to prevent and contain spills of paints, solvents, fuels, septic waste and other chemicals hazardous to the public or environment or might cause polluted runoff. Proper cleanup and disposal of any such spills shall be in accordance with state, federal, and local requirements.
- (10) *Waste.*

## Current City of Rockport Ordinance

- i. A location shall be established on-sited, or near the site, for personal and construction waste so as to prevent waste from involuntarily leaving the site.
  - ii. Proper waste disposal and waste management techniques shall be implemented, including covering waste materials, minimizing ground contact with regulated or hazardous chemicals and trash, and keeping trash receptacles off of paved surfaces or other locations that drain directly to a storm drain system or local waterway.
- (11) *Sanitary waste.* Sanitary waste facilities shall be maintained so that the waste does not create a hazard to the public or the environment. Sanitary waste facilities should not be placed over any paved surfaces.
- (12) *Dust suppression.* Techniques shall be employed to prevent air-borne dust from leaving the site.
- (13) *Street sweeping to remove sediments and siltation.*
- i. Sediments and other materials that enter the streets shall be limited to the greatest extent practicable.
  - ii. Street sweeping shall be conducted in a manner that minimizes dust, including sweeping during periods of minimal wind or using a vacuum sweeper.
  - iii. All property owners or operators within a common plan of development are expected to coordinate efforts to prevent sedimentation from entering the MS4. All owners or operators of contributing construction sites, as determined at the discretion of the city, shall be held responsible jointly and severally to remove sediments from the street.
  - iv. In absence of a coordinated effort amongst all property owners or operators, the city reserves the right to abate the problem and charge all the property owners contributing to the violation.
- (14) *Temporary concrete batch plants.* Temporary concrete batch plants shall comply with zoning requirements.
- (15) *Concrete wash-out.*
- i. An operator shall specify a containment area and/or a concrete wash-out device that will be established and maintained for all sites.
  - ii. Signs six square feet in size and emblazoned with "CONCRETE WASHOUT AREA" in both English and Spanish shall be posted in full view of any concrete delivery trucks.

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iii. Failure of concrete delivery trucks to utilize specified concrete wash-out areas shall be a violation of this article.

(16) No off street parking shall be permitted on vacant lots or where construction has commenced with the exception of short term delivery not to exceed two hours on approved surfaces. Signs six square feet in size and emblazoned with "OFF STREET PARKING PROHITED" in both English and Spanish shall be posted on vacant lots by developers and on permitted lots by the contractor.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-124. Responsibility of all on-site personnel.**

It is a violation of this article for any person to damage or allow to be damaged any temporary or permanent stormwater control measures through their actions or inactions without promptly restoring the control measure to an effective and efficient state.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-125. Training required.**

After 180 days of the effective date of this article:

(1) No contractor or subcontractor shall commence work on a construction site without first attending training on stormwater impacts from construction activities and maintenance of control measures.

a. Training shall be provided by the city.

b. Prior training or training provided by another entity shall be considered by city staff. Staff shall consider the merits of said alternative training and may disapprove of this training for any reason.

c. Proof of attendance of training provided by the city shall be provided in the form of a certificate.

(2) Contractors shall have proof of attendance available for inspection at any construction site. The contractor shall be responsible for ensuring that each of its employees is knowledgeable of the conditions of this article.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-126. Allowable discharges.**

The following non-stormwater discharges may be discharged from the construction site:

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- (1) Water line flushing (excluding discharges of hyper-chlorinated water, unless the water is first de-chlorinated and discharges are not expected to adversely affect aquatic life);
- (2) Runoff or return from landscape irrigation, lawn irrigation, and other irrigation utilizing potable water, groundwater or surface water resources;
- (3) Discharges from potable water sources;
- (4) Diverted stream flows;
- (5) Rising ground waters and springs;
- (6) Uncontaminated ground water infiltration;
- (7) Uncontaminated pumped ground water;
- (8) Flows from wetlands and riparian habitats;
- (9) Discharges or flows from fire fighting activities (fire fighting activities do not include washing of trucks, runoff water from training activities, test water from fire suppression systems, and similar activities);
- (10) Other allowable non-stormwater discharges listed in 40 CFR § 122.26(d)(92)(iv)(B)(1) or its successor;
- (11) Non-stormwater discharges that are specifically listed in the multi sector general permit (MSGP) and the CGP; and
- (12) Other similar occasional incidental non-stormwater discharges unless the TCEQ develops permits or regulations addressing these discharges.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-127. Prohibited discharges.**

The following list of discharges from a construction site to the City of Rockport's MS4 are prohibited:

- (1) Excessive amounts of sediment that would cause accumulation of sediment in the City of Rockport's MS4.
- (2) Motor oil or other vehicle fluids;
- (3) Concrete truck wash out water;

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- (4) Rinse water or waste water from operations that are contaminated with chemicals or waste products from operations, including pool installations products;
- (5) Wash-off water associated with concrete cutting and exposed aggregate pressure washing;
- (6) Trash or debris associated with the construction site;
- (7) Runoff that would cause the City of Rockport's MS4 to discharge into the waters of the state water that would violate the Texas Surface Water Quality Standards; and
- (8) Any polluted liquids.

(Ord. No. 1460, § 1, 8-11-09)



### **Sec. 42-128. Erosion and sediment control submittal required.**

An erosion and sediment control submittal packet shall be submitted to the city and reviewed and released by the city prior to the commencement of any activity on a construction site. Commencement of activity before the submittal, review and release of an erosion and sediment control submittal packet shall be a violation of this article.

- (1) The erosion and sediment control submittal packet shall include all documentation required by the city's erosion control submittal process as defined in the city erosion and sediment control manual.
- (2) The erosion and sediment control submittal packet shall be submitted to the city no later than ten days prior to commencement of any construction activities.

(Ord. No. 1460, § 1, 8-11-09)



### **Sec. 42-129. Review and release for implementation and responsibility.**

- (a) The city shall review each erosion and sediment control submittal packet submitted for any construction site to determine its conformance with the provision of this article. The city shall, in writing:
  - (1) Acknowledge the receipt of the erosion and sediment control submittal packet and its completeness for review;
  - (2) Release for implementation the erosion and sediment control submittal packet, subject to reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and release work subject to these conditions; or

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- (3) Deny release for implementation the erosion and sediment control submittal packet, indicating the reasons and procedure for submitting a revised plan. Re-submittal and release for implementation of an erosion and sediment control submittal packet must occur before clearing or commencement of construction at a construction site.
- (b) *Temporary approval.* With approval from the director of public works, a construction site may be temporarily approved for clearing or commencement of construction before approval of the erosion and sediment control submittal packet. This temporary approval may be revoked at any time for any reason a director sees fit for revocation.
- (c) *Responsibility.* The owner or operator shall not be relieved of responsibility for damage to persons or property otherwise imposed by law, and the city or its officers or agents will not be made liable for such damage, by
- (1) The release for implementation of an erosion and sediment control submittal packet under this article;
  - (2) The compliance with provisions of the erosion and sediment control submittal packet or with conditions attached to it by the city;
  - (3) Failure of city officials to observe or recognize hazardous or unsightly conditions;
  - (4) Failure of city officials to recommend denial of release for implementation of an erosion and sediment control submittal packet or to deny an erosion and sediment control submittal packet;
  - (5) Granting exemptions from the requirements of this article.
- (d) Materials used for temporary erosion control or sediment control (e.g., silt fences, inlet protection) and established in support of the construction site, shall be removed by owner or operator of the site once final stabilization has been established.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-130. Termination of operational control.**

- (a) A final acceptance of public improvement associated with land development, issuance of a certificate of occupancy for a building or the issuance of a final "Green Tag" for other construction covered by this article shall be contingent upon an inspection for termination.
- (b) Submit a notice of termination (NOT):
- (1) Where an NOI has been submitted to the TCEQ, a letter of final acceptance of public improvement, a certificate of occupancy, or final "Green Tag" shall not be issued until final stabilization is established and maintained as specified in the released erosion control submittal packet. The developer for a subdivision or other large plat shall continue to

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maintain all temporary erosion and sediment control until final stabilization has been established on all those lots within the subdivision or large plat for which a building permit has not been issued or transfer of operational control has been established in compliance with the CGP.

(2) A NOT should not be submitted to the TCEQ or other regulatory agency unless all requirements for submittal have been completed, when required by the CGP.

(3) The city reserves the right to refuse issuance of the final acceptance or certificate of occupancy when in disagreement with submittal of an NOT.

(Ord. No. 1460, § 1, 8-11-09)



### **Sec. 42-131. Right of entry: inspection and sampling.**

A director or authorized representative shall have the right to enter any site to determine if the owner or operator is complying with all requirements of this article, and with any state or federal discharge permit limitation, or requirement. Owners or operators shall allow a director ready access to all parts of the site for the purposes of inspections, sampling, records examination and taking photos, copying, and for performance of any addition duties. Owners or operator shall make available to the director, upon request, any SWPPP's modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notices of intent, and any other records, reports and other documents related to compliance with this article and with any state or federal discharge permit.

(1) Where the owner or operator has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the directors or their authorized representative(s) will be permitted to enter without delay for purposes of performing their responsibilities.

(2) A director shall have the right to set up on the site, or require installation of, such devices as are necessary to conduct sampling and/or metering of the owner or operator's operations. Operator must reimburse the city for costs related to sampling or damaged or lost equipment.

(3) A director may require any owner or operator to conduct specified sampling, testing, analysis, and other monitoring of its stormwater discharges, and may specify the frequency and parameters of any such required monitoring.

(4) A director may require the owner or operator to install monitoring equipment as necessary at the discharger's expense. The site's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

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(5) Any temporary or permanent obstruction to safe and easy access to the site to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or verbal request of a director and shall not be replaced. The costs of clearing such access shall be borne by the authorized representative.

(6) Unreasonable delays in allowing a director access to the site shall be a violation of this article

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-132. Search warrants.**

If a director, or his/her authorized representative, has been refused access to any part of a site from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article or any state or federal discharge permit, limitation, or requirement, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then a director may seek issuance of a search warrant from any court of competent jurisdiction. For purposes of this article the city manager, director of public works, the director of planning and development, the city engineer, and the duly authorized representatives of these city departmental directors are declared to be "health officers," as that term is used in the Texas Code of Criminal Procedure, Article 18.05.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-133. Warning notice.**

When a director finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, a director may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the owner or operator to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieve the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this article shall limit the authority of a director to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-134. Notification of violation.**

When a director finds that any person has violated, or continues to violate, any provision of this article, or any order issued hereunder, a director may serve upon that person a written notice of violation. Within ten calendar days of the receipt of this notice, an explanation of the violation and

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a plan for the satisfactory correction and prevention of reoccurrence thereof, to include specific required actions, shall be submitted by the alleged violator to the issuing director. If the alleged violator denies that any violation occurred and/or contends that no corrective action is necessary, an explanation of the basis of any such denial or contention shall be submitted to the issuing director within ten calendar days of receipt of the notice. Submission of an explanation and/or plan in no way relieves the alleged violator of liability for any violation occurring before or after receipt of the notice of violation. Nothing in this article shall limit the authority of a director to take any action, including emergency action or any other enforcement action, without first issuing a notice of violation. A director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance with any provision in this article or any order issued hereunder. Such documents may include specific action to be taken by the person to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to this article and shall be judicially enforceable.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-135. Show cause hearing.**

A director may order any person who has violated, or continues to violate, any provision of this article, or any order issued hereunder, to appear before the director and show cause why a proposed enforcement action should not be taken. Notice shall be served on the alleged violator specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the alleged violator show cause why the proposed enforcement action should not be taken. The notice of the hearing for all enforcement actions shall be served personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the alleged violator. The hearing shall be conducted pursuant to the rights and procedures specified in this article. A show cause hearing shall not be a bar against or prerequisite for, taking any other action against the alleged violator.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-136. Compliance orders.**

When a director finds that any person has violated, continues to violate, or threatens to violate, any provision of this article, or any order issued hereunder, the director may issue an order to the violator directing that the violator come into compliance within a specified time limit, prior to commencement or continuance of operation, or immediately. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the MS4 and waters of the state. A compliance order may not extend the deadline for compliance established by a state or federal standard or requirement, nor does a compliance order relieve the person of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

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(Ord. No. 1460, § 1, 8-11-09)



### **Sec. 42-137. Remediation, abatement, and restoration orders.**

When a director finds that a person has violated, or continues to violate, any provision of this article or any order issued hereunder, and that such violation has adversely affected the MS4, or the waters of the state, the director may issue an order to the violator directing him/her to undertake and implement any appropriate action to remediate and/or abate any adverse effects of the violation upon the MS4, or the waters of the state, and/or to restore any part of the MS4, or the waters of the state. Such remedial, abatement, and restoration action may include, but not limited to: monitoring, assessment, and evaluation of the adverse effects and determination of the appropriate remedial, abatement, and/or restoration action; confinement, removal, cleanup, treatment, and disposal of any discharged or released pollution or contamination; prevention, minimization, and/or mitigation of any damage to the public health, welfare, or the environment that may result from the violation; restoration or replacement of city property or natural resource damaged by the violation. The order may direct that the remediate, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this article does not relieve the violator of liability for any violation, including any continuing violation. Issuance of an order under this article shall not be a bar against, or a prerequisite for, taking any other action against any responsible party.

(Ord. No. 1460, § 1, 8-11-09)



### **Sec. 42-138. Emergency cease and desist orders.**

(a) When a director finds that any person has violated, continues to violate, or threatens to violate, any provision of this article, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s), or threatened violation(s), have caused or contributed to an actual or threatened discharge to the MS4 or waters of the state which reasonable appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the director may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (1) Immediately comply with all requirements of this article; and
- (2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

(b) Any person notified of an emergency order directed to it under this article shall immediately comply and stop or eliminate its endangering discharge. In the event of a person's failure to immediately comply voluntarily with the emergency order, a director may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the state, including immediate termination of a site's water supply, sewer connection, or other municipal utility services. A director may allow the person to commence or recommence its discharge when it has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless

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further termination proceeding are initiated against the person. The cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the person under this article. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the issuing director within ten calendar days of receipt of the emergency cease and desist order.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-139. Stop work orders.**

Whenever a director finds that any owner or operator of a construction site has violated, threatens to violate, or continues to violate, any provision of this article, or any order issued hereunder, the director may issue a stop work order to the owner or operator, and require that a copy of the stop work order be posted at the construction site and distributed to all city departments and divisions whose decisions affect any activity at the construction site. Unless express written exception is made by the issuing director, the stop work order shall prohibit any further construction activity, or any commencement of construction activity, at the site and shall bar any further inspection or approval by the city associated with a building permit, grading permit, or any other city approval necessary to commence or continue construction or to assume occupancy at the site. Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-140. Reconsideration and hearing.**

(a) Any person subject to a compliance order, a remediation, abatement, or restoration order, an emergency cease and desist order, or a stop work order under this article may petition the issuing director to reconsider the basis for his/her order within 15 calendar days of the affected person's notice of issuance of such an order.

(b) Failure to submit a timely written petition for reconsideration shall be deemed to be a waiver of any further right to administrative reconsideration or review of the order.

(c) In its petition, the petitioning party must indicate the provisions of the order objected to, the reasons for the objection(s), any facts that are contested, the evidence that supports the petitioner's view of the facts, any alternative terms of an order that the petitioner would accept, and whether the petitioning party requests a hearing on its petition.

(d) The effect of any compliance order, remediation, abatement, or restoration order, and any stop work order under article shall be stayed pending the issuing director's reconsideration of the petition, and any hearing thereon, unless the issuing director expressly makes a written determination to the contrary. The effectiveness of any emergency cease and desist order under this article shall not be stayed pending the issuing director's reconsideration, or any hearing thereon, unless the issuing director expressly and in writing stays his/her emergency order.

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(e) Within 30 calendar days of the submittal of a petition for reconsideration, the issuing director shall either (1) grant the petition and withdraw or modify the order accordingly; (2) deny the petition without a hearing, if no material issue of fact is raised; or if a hearing has been requested and a material issue of fact has been raised, set a hearing of the petition.

(f) Written notice of any hearing set by the issuing director pursuant to this section shall be served on the petitioning party personally or by registered or certified mail (return receipt requested) at least ten calendar days prior to the hearing. Such notice may be served on any authorized representative of the petitioning party.

(g) The issuing director may himself/herself conduct the hearing and take evidence, or he/she may designate any employee of the city or any specially-designated attorney or engineer to:

- (1) Issue in the name of the city notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing;
- (2) Take evidence;
- (3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the director for action thereon.

At any hearing held pursuant to this section, testimony taken shall be under oath and recorded. Any party is entitled to present his/her case or defense by oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. A transcript will be made available to any party to the hearing upon payment of the usual charges thereof.

(h) After the issuing director has reviewed the evidence, he/she shall either:

- (1) Grant the petition;
- (2) Deny the petition; or
- (3) Grant the petition in part and deny it in part.

The issuing director may modify his/her order as is appropriate based upon the evidence and arguments presented at the hearing and his/her action on the petition. Further orders and directives as are necessary and appropriate may be issued.

(Ord. No. 1460, § 1, 8-11-09)



### **Sec. 42-141. Appeal.**

Any person who remains adversely affected by a director's order after petitioning for reconsideration pursuant to this article, or who is subject to an order of a director issued following

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a show cause hearing under this article, may challenge the final action of the director in an appropriate court of competent jurisdiction.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-142. Civil remedies.**

(a) Whenever it appears that a person has violated, or continues to violate, any provision of this article that relates to:

- (1) The preservation of public safety relating to the materials or methods used in construction of any structure or improvement of real property;
- (2) The preservation of public health or to the fire safety of a building or other structure or improvement;
- (3) The establishment of criteria for land subdivision or construction of buildings, including street design;
- (4) Dangerously damaged or deteriorated structures or improvements;
- (5) Conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- (6) Point source effluent limitations or the discharge of a pollutant, other than from a non point source, into the MS4.

The city may invoke Sections 54.012 - 54.017 of the Texas Local Government Code and petition the state district court or the county court at law of Aransas County, through the city attorney, for either the injunctive relief specified in this article or the civil penalties specified below, or both the specified injunctive relief and civil penalties.

(b) Pursuant to Section 54.016 of the Texas Local Government Code, the city may obtain against the owner or operator of a site a temporary or permanent injunction, as appropriate, that:

- (1) Prohibits any conduct that violates any provision of this article that relates to any matter specified above; or
- (2) Compels the specific performance of any action that is necessary for compliance with any provision of this article that relates to any matter specified above.

(c) Pursuant to Section 54.017 of the Texas Local Government Code, the city may recover a civil penalty of not more that \$1,000.00 per day of reach violation of any provision of this article that relates to any matter specified above, and a civil penalty of not more than \$5,000.00 per day for each violation of any provision of this article that relates to any matter specified above, if the city proves that:

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- (1) The defendant was actually notified of the provisions of the article; and
- (2) After the defendant received notice of the provisions of this article, the defendant committed acts in violation of the article or failed to take action necessary for compliance with the article.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-143. Criminal penalties.**

- (a) Any person who has violated any provision of this article, or any order issued hereunder, shall be strictly liable for such violation, regardless of the presence or absence of a culpable mental state, and shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation, per day.
- (b) Any person who has knowingly made any false statement, representation, or certification in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this article or any order issued hereunder, or who has falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method required under this article shall, upon conviction, be subject to a fine of not more than \$2,000.00 per violation, per day.
- (c) In determining the amount of any fine imposed hereunder, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the violation, corrective actions by the violator, the compliance history of the violator, the knowledge, intent, negligence, or other state of mind of the violator, and any other factor as justice requires.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-144. Civil suit under the Texas Water Code.**

Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of the Texas Water Code, or any rule, permit, or order of the Texas Commission of Environmental Quality, has occurred or is occurring within the jurisdiction of the city, exclusive of its extraterritorial jurisdiction, the city, in the same manner as the Texas Commission on Environmental Quality, may have a suit instituted in a state district court through its city attorney for the injunctive relief or civil penalties or both authorized in Sections 7.031 and 7.032 of the Texas Water Code, against the person who committed or is committing or threatening to commit the violation. This power is exercised pursuant to Section 7.351 of the Texas Water Code. In any suit brought by the city under this article, the Texas Commission on Environmental Quality is a necessary and indispensable party.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-145. Remedies nonexclusive.**

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The remedies provided for in this article are not exclusive of any other remedies that the city may have under state or federal law or other city ordinances. The city may take any, all, or any combination of these actions against a violator. The city is empowered to take more than one enforcement action against any violator. These actions may be taken concurrently.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-146. Performance and maintenance bonds.**

A director may, by written notice, order any owner or operator of a source of stormwater discharge associated with construction or industrial activity to file a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance with this article, any order issued hereunder, any required best management practice, and/or any SWPPP provision, and/or to achieve final stabilization of the site. The city may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city permit or approval necessary to commence or continue construction or any industrial activity at the site, or to assume occupancy, until such a performance or maintenance bond has been filed.

(Ord. No. 1460, § 1, 8-11-09)

### **Sec. 42-147. Liability insurance.**

A director may, by written notice, order any owner or operator of a source of stormwater discharge associated with construction or industrial activity to submit proof that it has obtained liability insurance, or other financial assurance, in an amount greater than or equal to a value determined by the director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the state, or any other aspect of the environment that is caused by the discharge.

(Ord. No. 1460, § 1, 8-11-09)

### **Secs. 42-148—42-179. Reserved.**