

AN ORDINANCE AMENDING CHAPTER 41 ENTITLED “WATER AND SEWER SYSTEMS” OF THE CODE OF CIVIL AND CRIMINAL ORDINANCES OF THE CITY OF IRVING, TEXAS, BY UPDATING AND REVISING ARTICLE VII. - GENERAL SANITARY SEWER USE REGULATIONS; PROVIDING SEVERABILITY, REPEALER, AND SAVINGS CLAUSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Irving City Council finds that it is in the best interest of the City’s wastewater users and the general public to enact updated regulations in compliance with state and federal law; and

WHEREAS, this ordinance is necessary to preserve and protect the health, safety, and welfare of the City of Irving and its residents, the region, and the State of Texas by regulating the safe and environmental disposal and reuse of wastewater;

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

SECTION 1. That Chapter 41, “Water and Sewer Systems”, Article VII, “General Sanitary Sewer Use Regulations of the Code of Civil and Criminal Ordinances of the City of Irving, Texas, is hereby repealed and replaced to read as follows:

ARTICLE VII.- GENERAL SANITARY SEWER USE REGULATIONS

Sec. 41-28 Purpose and Policy; Administration

- (a) This article sets forth uniform requirements for users of the Publicly Owned Treatment Works and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 USC §§ 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this article are:
 - (1) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;
 - (2) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works inadequately treated into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;
 - (3) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;
 - (4) To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;
 - (5) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and

- (6) To enable the Control Authority to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.
- (b) This article shall apply to all users of the Publicly Owned Treatment Works. The article authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.
- (c) Except as otherwise provided herein, the director shall administer, implement, and enforce the provisions. Any powers granted to or duties imposed upon the director may be delegated by the director to other departmental personnel.

SECTION 41-29. - SEWER USE; INDUSTRIAL DISCHARGES

(a) Prohibited Discharge Standards.

- (1) General Prohibitions. No person shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. Storm water and all other unpolluted drainage shall be discharged to sewers that are specifically designated as storm sewers, or to a natural outlet approved by the director who has authority under Articles IX or X. No liquid, semi-liquid, ready mixed concrete, mortar, asphalt material, or chemical waste shall be deposited in any area that will drain to the storm sewer or natural outlet.
- (2) Specific Prohibitions. No person shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
 - a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
 - b. Wastewater having a pH less than 5.5 or more than 11.0, or otherwise causing corrosive structural damage to the POTW or equipment;
 - c. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, blockage, or damage to the POTW;
 - d. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
 - e. Wastewater having a temperature greater than 150°F (65°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C);

- f. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference and/or pass through, and in amounts specified in section 41-29(c)(1).
- g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause health and safety problems for persons working in or around the POTW;
- h. Trucked or hauled pollutants, except at discharge points designated by the director and in accordance with section 41-29(k);
- i. Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
- j. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the applicable NPDES or TPDES permit;
- k. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;
- l. Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, and unpolluted wastewater, unless specifically authorized by the director;
- m. Sludges, screenings, or other residues from the pretreatment of industrial wastes;
- n. Medical wastes, except as specifically authorized by the director, that do not cause or contribute to pass through or interference;
- o. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- p. Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- q. Fats, oils, or greases of animal or vegetable origin in concentrations greater than that specified in the applicable local limits in section 41-29(c)(1);
- r. A discharge of water, normal domestic wastewater, or industrial waste which in quantity of flow exceeds, for a duration of longer than fifteen minutes, more than four times the average twenty-four (24) hour flow during normal operations of the industry;
- s. Insecticides and herbicides in concentrations that are not amenable to treatment;
- t. Garbage that is not properly shredded to such an extent that all particles will be carried freely under the flow conditions normally prevailing in wastewater mains, with no particle having greater than one-half inch (1/2") cross-sectional dimension;

- u. Wastewater or industrial waste generated or produced outside the City, unless approval in writing from the director has been given to the person discharging the waste; or
- v. Without the approval of the director, a substance or pollutant other than industrial waste, normal domestic wastewater, septic tank waste, or chemical toilet waste that is of a toxic or hazardous nature, regardless of whether or not it is amenable to treatment, including but not limited to bulk or packaged chemical products.

(3) Processing and Storage. Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

(b) National Categorical Pretreatment Standards. The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471 are hereby incorporated.

- (1) Where a categorical pretreatment standard is expressed in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c)(1).
- (2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (3) An industrial user may obtain a variance from a categorical pretreatment standard if the industrial user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA when developing the categorical pretreatment standard.
- (4) An industrial user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

(c) Local Discharge Limits.

- (1) The following pollutant limits are established to protect against pass through and interference and apply at the point where the wastewater is discharged to the POTW. No person shall discharge, or cause or permit to be discharged, wastewater containing in excess of the following instantaneous maximum allowable discharge limits.

Toxic Pollutants specified in the following table:

Toxic Pollutant	Instantaneous Maximum Allowable Discharge Limit (mg/L)
Arsenic	0.2
Cadmium	0.1
Chromium	2.1
Copper	1.8
Cyanide	0.4
Lead	1.2

Mercury	0.06
Molybdenum	0.5
Nickel	3.3
Selenium	0.2
Silver	0.8
Zinc	6.1
Oil and Grease	200
pH	5.5-11.0 S.U.

All concentrations for metallic substances are for “total” metal unless indicated otherwise. The director may impose mass limitations in addition to, or in place of, the concentration-based limitations above.

- (2) The City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.
- (d) *Dilution.* No industrial user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The director may impose mass limitations on industrial users who are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.
- (e) *Plant Loading.*
 - (1) No industry shall discharge wastewater containing a BOD or TSS loading that causes the City’s prorata share of the total BOD or TSS loading to the POTW system to exceed the City’s prorata share of the total flow to the POTW system. (Example: if the City contributes twenty-five percent (25%) of the total wastewater flow to the System, the City’s cumulative BOD or TSS loading to the System, as measured at the City’s points of entry to the System, shall not exceed twenty-five percent (25%) of the total BOD or TSS loading to the System.)
 - (2) Any industry with a wastewater strength that will cause the City’s cumulative wastewater loading, at the City’s points of entry, to exceed the City’s prorata share of the total wastewater loading based upon flow, shall be required to install pretreatment facilities to reduce its wastewater strength to an acceptable level.
- (f) *Pretreatment Facilities; Plans.* Industrial users shall provide wastewater treatment as necessary to comply with this chapter and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in sections 41-29(a) - 41-29(c) within the time limitations specified by EPA, the State, or the director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the industrial user’s expense. Detailed plans describing such facilities and operating procedures shall be submitted to the director for review and shall be acceptable to the director before the facilities are constructed. The review of such plans and operating procedures shall in no way relieve the industrial user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the City under the provisions.

(g) Discharge Flow; Conditions.

- (1) Whenever deemed necessary, the director may require industrial users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and require such other conditions as may be necessary to protect the POTW and determine the industrial user's compliance with the requirements.
- (2) The director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(h) Grease, Oil, and Sand Interceptors. Grease, oil, and sand interceptors shall be provided when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that these interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at the user's expense.

(i) Gas Detection Meters and Other Control Devices. Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter or other control device as deemed necessary by the director.

(j) Slug Control Plans.

- (1) The director shall evaluate whether each permitted significant industrial user needs a slug control plan or other action to control slug discharges no later than one (1) year of the SIU determination. The director may require any industrial user to develop, submit for approval, and implement such a plan. All the activities associated with Slug Control evaluation and results are to be kept in the Industrial User file.
- (2) A slug control plan shall address, at a minimum, the following:
 - a. Description of discharge practices, including nonroutine batch discharges;
 - b. Description of stored chemicals;
 - c. Procedures for immediately notifying the director and control authority of any slug discharge, as required by section 41-38(f); and
 - d. Procedures to prevent adverse impact from any slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(k) Hauled Septage Waste; Discharge; Permit.

- (1) Septage waste may be introduced into the POTW only at locations designated by the director and Control Authority, and at such times as are established by the director and Control Authority. Such waste shall not violate section 41-29(a) - 41-29(c) or any other requirements established by the City. The director or control authority may require septic tank waste haulers to obtain wastewater discharge permits.
 - (2) Septage waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of generator, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.
- (l) Best Management Practices. The director may develop Best Management Practices (BMPs) and require users to implement such BMPs if necessary to protect the POTW. Such BMPs would be supplemental and not used as a replacement for compliance with Local Limits listed in section 41-29(c) and Prohibited Discharge Standards in section 41-29(a).

SECTION 41-30. - WASTEWATER DISCHARGE PERMIT

- (a) Wastewater Analysis Required Upon Request. When requested by the director, an industrial user must submit information on the nature and characteristics of its wastewater by the deadline stipulated. The director is authorized to prepare a form for this purpose and may periodically require industrial users to update this information.
- (b) Permit Required.
- (1) No significant industrial user (SIU) or non-significant categorical industrial user (NSCIU) shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the director, who may disallow any or all discharges until a wastewater discharge permit is issued, except that a SIU or a NSCIU that has filed a timely application pursuant to section 41-30(c) may continue to discharge for the time period specified therein.
 - (2) The director may require other industrial users to submit a completed permit application or survey form, including monitoring data, and to obtain wastewater discharge permits as necessary to carry out the purposes of this section. To determine the status of an industrial user in relation to this section, industrial users may be required to perform sampling as specified by the director.
 - (3) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this section and subjects the wastewater discharge permittee to the sanctions set out in sections 41-39(e)-41-39(m) and 41-71. Obtaining a wastewater discharge permit does not relieve a permittee of the obligation to comply with all federal and state pretreatment standards or requirements with any other requirements of federal, state, and local law.

(c) Existing Industrial Users; Permit. Any industrial user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date and who wishes to continue such discharges in the future, shall, within ninety (90) days after that date, apply to the director for a wastewater discharge permit in accordance with section 41-30(e)(1), and shall not cause or allow discharges to the POTW to continue after ninety (90) days of the effective date except in accordance with a wastewater discharge permit issued by the director. If, in the director's judgment, the passing of the ordinance does not significantly affect the industrial user's current permit, then the existing permit may continue through to the expiration date.

(d) New Industrial Users; Permit. Any industrial user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW must obtain that permit prior to the beginning or recommencing of the discharge. An application for this wastewater discharge permit, in accordance with section 41-30(e)(1), must be filed prior to the date upon which any discharge will begin or recommence.

(e) Permit Application; Content; Signatories and Certification.

(1) Permit application. All industrial users required to obtain a wastewater discharge permit must submit a permit application.

a. The director may require all industrial users to submit as part of an application the following information:

1. All information required by section 41-38(a)(2);
2. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
3. Number and type of employees, hours of operation, and proposed or actual hours of operation;
4. Each product produced by type, amount, process or processes, and rate of production;
5. Type and amount of raw materials processed (average and maximum per day);
6. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
7. Time and duration of discharges; and
8. Any other information as may be deemed necessary by the director to evaluate the wastewater discharge permit application.

b. Incomplete or inaccurate applications will not be processed and will be returned to the industrial user for revision.

(2) Signatories and certification.

- a. An authorized representative of the industrial user must sign all wastewater discharge permit applications, industrial user reports, and enforcement responses. Wastewater discharge permit applications and industrial user reports as identified in 40 CFR §403.12(b), (d), (e), and (h), must contain the following certification statement: “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
- b. If the designation of an Authorized Representative of the industrial user is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this section must be submitted to the director within thirty (30) days of the change.
- c. A facility determined to be a Non-Significant Categorical Industrial User (NSCIU) by the director pursuant to section 41-1 must annually submit the signed certification statement signed in accordance with the signatory requirements in section 41-1 (1). This certification must accompany an alternative report required by the director:

“Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR § ____, I certify, to the best of my knowledge and belief, that during the period from _____, _____ to _____, _____ [months, days, year]:

1. The facility described as _____[facility name] met the definition of a Non-Significant Categorical Industrial as described in section 41-1 (2); [Note: See 40 CFR § 403.3(v)(2)]
2. The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.
3. This compliance certification is based on the following information.

_____”

(f) *Evaluation and Decision.* The director will evaluate the data furnished by the industrial user and may require additional information. Within a reasonable time from receipt of a complete

wastewater discharge permit application, the director will determine whether to issue a wastewater discharge permit. The director may deny any application for a wastewater discharge permit.

SECTION 41-31. - WASTEWATER DISCHARGE PERMIT DURATION AND CONDITIONS

- (a) *Permit Duration.* A wastewater discharge permit shall be issued for a specified time period, not to exceed five years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five years, at the discretion of the director. Each wastewater discharge permit will indicate a specific date upon which it will expire.
- (b) *Permit Content; Conditions.*
- (1) A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.
 - (2) Wastewater discharge permits must contain:
 - a. A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
 - b. A statement that the wastewater discharge permit is nontransferable without prior notification to the City in accordance with section 41-33(a), and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
 - c. Effluent limits including BMPs based on applicable pretreatment standards;
 - d. Self-monitoring, sampling, reporting, notification, and record-keeping requirements including those for BMPs. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;
 - e. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law; and
 - f. Requirements to control Slug Discharge, if determined by the director to be necessary.
 - (3) Wastewater discharge permits may contain, but need not be limited to, the following conditions:
 - a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

- b. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
- c. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;
- d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
- e. The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the POTW;
- f. Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- g. A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the wastewater discharge permit;
- h. Requirements to implement BMPs, if determined by the director to be necessary; and
- i. Other conditions as deemed appropriate by the director to ensure compliance with this ordinance, and state and federal laws, rules, and regulations.

SECTION 41-32. - WASTEWATER DISCHARGE PERMIT MODIFICATION

- (a) Wastewater Discharge Permit Modification. The director may modify a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
 - (2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of the wastewater discharge permit issuance;
 - (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
 - (4) Information indicating that the permitted discharge poses a threat to the POTW, POTW personnel, or the receiving waters;
 - (5) Violation of any terms or conditions of the wastewater discharge permit;
 - (6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

- (7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR § 403.13;
- (8) To correct typographical or other errors in the wastewater discharge permit; or
- (9) To reflect a transfer of the facility ownership or operation to a new owner or operator.

SECTION 41-33. - WASTEWATER DISCHARGE PERMIT TRANSFERAL, NOTICE AND APPROVAL

(a) Permit Transfer; Notice and Approval.

- (1) Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives a minimum of sixty (60) days' advance notice to the director and the director approves the wastewater discharge permit transfer. The notice to the director must include a written certification by the new owner or operator which:
 - a. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
 - b. Identifies the specific date on which the transfer is to occur; and
 - c. Acknowledges full responsibility for complying with the existing wastewater discharge permit.
- (2) Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.

(b) Permit Revocation.

- (1) The director may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:
 - a. Failure to notify the director of significant changes to the wastewater prior to the changed discharge;
 - b. Failure to provide prior notification to the director of changed conditions pursuant to section 41-38(e);
 - c. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;
 - d. Falsifying self-monitoring reports;
 - e. Tampering with monitoring equipment;
 - f. Refusing to allow the director timely access to the facility premises and records;
 - g. Failure to meet effluent limitations;

- h. Failure to pay fines;
 - i. Failure to pay sewer charges;
 - j. Failure to meet compliance schedules;
 - k. Failure to complete a wastewater survey or the wastewater discharge permit application;
 - l. Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
 - m. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this ordinance.
- (2) Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular industrial user are void upon the issuance of a new wastewater discharge permit to that industrial user.

SECTION 41-34. - WASTEWATER DISCHARGE PERMIT REISSUANCE

An industrial user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with section 41-30(e)(1), a minimum of sixty (60) days prior to the expiration of the industrial user’s existing wastewater discharge permit.

SECTION 41-35. - WASTE RECEIVED FROM OTHER JURISDICTIONS

(a) Regulation of Waste Received from Other Jurisdictions.

- (1) A municipality which contributes wastewater to the POTW, shall enter into an interlocal agreement with the City prior to contributing such wastewater.
- (2) Prior to the City entering into an interlocal agreement as provided in this section, the City may request the following information from the contributing municipality:
 - a. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;
 - b. An inventory of all industrial users located within the contributing municipality that are discharging to the POTW; and
 - c. Such other information as the City may deem necessary.

SECTION 41-36 - WASTE RECEIVED FROM EXTRAJURISDICTIONAL USERS

- (a) An extrajurisdictional user shall apply for a permit in accordance with this ordinance at least ninety (90) days prior to discharging to the POTW.

- (b) This section does not apply to extrajurisdictional users in jurisdictions which have an agreement with the City pursuant to section 41-35(a).
- (c) A wastewater discharge permit issued to an extrajurisdictional user shall be in the form of a contract, and must include, at a minimum, the components found in 40 CFR § 403.8(f)(1)(iii) and shall require the approval of the City's Council. An extrajurisdictional user shall agree to all the terms and the terms of its wastewater discharging contract in accordance with the procedures set forth in section 41-31(b) prior to discharging into the POTW.

SECTION 41-37 - DEVICES AND TESTING REQUIRED OF INDUSTRY

- (a) Grease and oil traps. The industrial user shall provide for the proper handling of liquid wastes containing grease in excessive amounts, sand, or other heavy solids. The user shall provide traps of a type and capacity approved by the director and shall locate them as to be readily and easily accessible for cleaning and inspection.
- (b) Process flow water meters. The industrial user shall install and maintain in working order, a separate isolated meter for the purpose of monitoring process water used in all its industrial or manufacturing processes.
- (c) Backflow preventer. The industrial user shall install and maintain in working order a chemical resistant industrial grade backflow prevention assembly on the process water supply line so as to prevent possible back-siphoning of industrial process waters or chemicals back into the potable water supply. The user or owner shall make this assembly readily accessible for testing by qualified personnel. A six-inch (6") air-gap between potable water lines and any process waters may be substituted for a backflow assembly preventer.
- (d) Control manhole. The industrial user or owner of any property serviced by a sewer carrying industrial wastes shall install a suitable control manhole, or sampling port, together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. The industrial user shall locate the manhole so that it is safely accessible without restriction and shall construct it in compliance with plans approved by the director. The owner or user shall install the manhole at his or her expense and maintain it so that it is safe and accessible at all times.
- (e) Test of strength of industrial wastes. The City may determine wastewater flow and concentration of constituents in whatever manner it designates. The time of selection as well as the number and type of the sample(s) shall be at the sole discretion of the City. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter may be determined in compliance with section 41-38(j) or methods approved by EPA or other agencies that have EPA approval authority for establishing methods for testing and analysis. These measurements, tests, and analyses may be determined at the control manhole or sample port provided, or upon suitable samples taken at the control manhole or at any other manhole considered by the director as appropriately isolated. Sampling may be carried out by methods specified in section 41-38(j) to reflect the effect of constituents upon the sewage works of the city and to determine the existence of hazards to health, life, limb, and property. The director, guided by the particular analyses involved, may determine whether a twenty-four-hour composite sample from all outfalls of an industrial user is appropriate or whether a grab sample or samples should be taken. If any industrial user so wishes, flow determinations may be made by a wastewater meter installed

and maintained at the sampling station at the user's expense. The director may include calibration requirements in the user's permit.

- (f) Cost of tests. Each industry or wastewater user that does not discharge wastewater in excess of two hundred fifty (250) mg/l BOD or suspended solids shall compensate the City for the cost of sampling, laboratory analysis, and administrative cost required for monitoring discharges to comply with city, state or federal effluent standards. For industries and users that discharge BOD and suspended solids in excess of two hundred fifty (250) mg/l, the above cost will be included in their surcharge billing.
- (g) Isolated water and sewer service. An industrial user shall provide an isolated water service controlled by a City-owned and maintained water meter. In addition, the industrial user shall provide an isolated sewer service so that its industrial wastewaters can be monitored. The industrial user shall install a City-approved control manhole, or sample port, on the isolated sewer service that will be installed at the end of any process wastewater or domestic discharges into the sewer service. The industrial user shall pay for installation, maintenance and operation of the control manhole, or sample port, unless that fee is waived by the director.

SECTION 41-38 - COMPLIANCE MONITORING; REPORTING REQUIREMENTS

(a) Baseline Monitoring Reports.

- (1) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR § 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed in subsection b. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that will become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsection b. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (2) Users described above shall submit the information set forth below.
 - a. Identifying Information. The name and address of the facility, including the name of the operator and owner.
 - b. Environmental Permits. A list of any environmental control permits held by or for the facility.
 - c. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications and/or North American Industry Classifications (NAICS) of the operation(s) carried out by the user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 - d. Flow measurement. Information showing the measured or estimated average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams

and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR § 403.6(e).

e. Measurement of Pollutants.

1. The categorical pretreatment standards applicable to each regulated process (and any new categorically regulated processes for Existing Sources.)
2. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process.
3. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported.
4. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 41-38(j). Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the director or the applicable Standards to determine compliance with the Standard.
5. If discharge flow conditions are representative of daily operations, the User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this section. The director may require additional representative sampling to be conducted.
6. Representative samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR § 304.6(e) to evaluate compliance with Pretreatment Standards.
7. The director may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.
8. The baseline report shall indicate the time, date and place of sampling and method of analysis, and shall certify that such sampling and analysis is representative of normal work cycle and expected pollutant discharges to the POTW.
9. Sampling must be performed in accordance with procedures set out in section 41-38.(k).

- f. Certification. A statement, reviewed by the user's authorized representative of the user and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and

maintenance (O&M) and/or additional pretreatment are required to meet the pretreatment standards and requirements.

- g. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide the additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 41-38(b).
- h. Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with section 41-30(e)(2)(a).

(b) Compliance Schedule; Progress Reports. The following conditions shall apply to the compliance schedule required by section 41-38(a)(2)(g):

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (2) No increment referred to above shall exceed nine (9) months;
- (3) The user shall submit a progress report to the director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, at a minimum, whether it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (4) In no event shall more than nine (9) months elapse between the submission of progress reports to the director.

(c) Categorical Pretreatment Standards; Compliance Reports. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to those pretreatment standards and requirements shall submit to the director a report containing the information described in section 41-38(a) (2)(d-f). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR § 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. In cases where the Categorical Pretreatment Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the applicable Categorical Pretreatment Standard necessary to determine the compliance status of the User. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section 41-30(e) (2)(a). All sampling will be done in conformance with section 41-38(k) of the ordinance.

(d) Periodic Compliance Reports.

- (1) All significant industrial users shall, at a frequency determined by the director but in no case less than twice per year, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Categorical Pretreatment Standard or the director requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the director or the applicable Categorical Pretreatment Standard necessary to determine the compliance status of the User. All periodic compliance reports must be signed and certified in accordance with section 41-30(e)(2)(a).
- (2) All Non-significant Categorical Industrial Users (NSCIUs) shall submit a report annually in the month specified by the director. The report shall be completed according to the City's current reporting requirements, including the submittal of the applicable certification statement found in section 41-30(e) (2)(c).
- (3) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- (4) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in section 41-38(k), the results of this monitoring shall be included in the report.

(e) Changed Conditions; Notices.

- (a) Each user must notify the director and the Control Authority of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater a minimum of thirty (30) days prior to the change.
- (b) The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 41-30(e)(1)
- (c) The director may issue a wastewater discharge permit under section 41-30(f) or modify an existing wastewater discharge permit under section 41-32(a) in response to changed conditions or anticipated changed conditions.
- (d) For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent (20%) or greater, and the discharge of any previously unreported pollutants that are determined to be of concern.

(f) Accidental Discharge or Potential Problems; Report; Liability.

- (1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause

potential problems for the POTW, the user shall immediately telephone and notify the City and the Control Authority of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

- (2) Within five (5) days following that discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall this notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.
 - (3) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (a), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
 - (4) Significant industrial users are required to notify the director immediately of any changes at their facilities affecting the potential for a Slug Discharge.
- (g) Users Without Permit; Required Reports. All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the director as the director may require.
- (h) Notice of Violation; Repeat Sampling and Reporting. If sampling performed by a user indicates a violation, the user must notify the director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within thirty (30) days after becoming aware of the violation. The user is not required to resample if the director monitors at the user's facility at least once a month, or if the director samples between the user's initial sampling and when the user receives the results of this sampling or if the director has performed the sampling and analysis in lieu of the user.
- (i) Hazardous Waste Discharge; Notification.
- (1) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and TCEQ Water Quality Division Director, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR § 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR § 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this division need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be

submitted under section 41-38(e). The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 41-38(a), 41-38(c), and 41-38(d).

- (2) Dischargers are exempt from the requirements of subsection (1), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR §§ 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR §§ 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
 - (3) In the case of any new regulations under Section 3001 of Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the director, the POTW, the EPA Regional Waste Management Waste Division director, and TCEQ Water Quality Division director of the discharge of that substance within ninety (90) days of the effective date of such regulations.
 - (4) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
 - (5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable federal or state law.
- (j) *Analytical and Sampling Standards.* All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR § 136, and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR § 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any applicable sampling and analytical procedures, including procedures suggested by the director, the EPA, TCEQ, or other parties approved by EPA.
- (k) *Sample Collection Techniques.*
- (1) Except as indicated in subsections (2) and (3) of this section, the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the director. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory.

Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

- (2) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
 - (3) For sampling required in support of baseline monitoring and 90-day compliance reports required in sections 41-38(a) and 41-38(c) [40 CFR § 403.12(b) and (d)], a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data does not exist; for facilities for which historical sampling data are available, the director may authorize a lower minimum. For the reports required by section 41-38(d) [40 CFR §§ 403.12(e) and 403.12(h)], the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.
- (l) *Submission Date.* Written reports will be deemed to have been submitted on the postmarked date. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.
- (m) *Records Retention.* Users subject to the reporting requirements shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established in this ordinance. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of the analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the City, or where the user has been specifically notified of a longer retention period by the director.

SECTION 41-39 - ADMINISTRATION AND ENFORCEMENT

(a) *Right of Entry: Inspection and Sampling.*

- (1) The director and/or the Control Authority, TCEQ, or EPA or their designated representative(s) shall have the right to enter the premises of any user to determine whether the user is complying with all requirements and any wastewater discharge permit or order issued hereunder. Users shall allow the inspecting or sampling person(s) ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.
- (2) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, City, Control Authority, TCEQ, or

EPA personnel will be permitted to enter without delay for the purposes of performing specific responsibilities.

- (3) The director and/or Control Authority shall have the right to set up on the user's property, or require installation of such devices as are necessary, to conduct sampling and metering of the user's operations. All sampling and analysis performed by the City and/or Control Authority to monitor compliance shall be at the expense of the industrial user.
 - (4) The director may require the user, at user's sole expense, to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated, at a minimum, annually to ensure their accuracy.
 - (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the director and shall not be replaced. The costs of clearing the access shall be borne by the user.
 - (6) Unreasonable delays in allowing an inspecting or sampling person access to the user's premises shall be a violation.
 - (7) In accordance with 40 CFR § 403, the City shall inspect and monitor each Significant Industrial User a minimum of once per year. If the City elects to perform compliance monitoring for the Significant Industrial User then the City will monitor the industry a minimum of semiannually.
 - (8) The City shall inspect each NSCIU a minimum of once per year. If the City elects to perform compliance monitoring for the NSCIU, then the City will monitor the industry a minimum of one time each permit cycle.
- (b) Search Warrants. If the director and/or control authority has been refused or denied access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation, 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 chapter or any permit or order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the director and/or control authority may seek issuance of a search warrant from an appropriate court or judicial officer.
- (c) Confidential Information. Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the City or Control Authority, that the release of that information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that the information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall only be available pursuant to the requirements of the Texas Public Information Act, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES or TPDES program or pretreatment

program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics, and other effluent data as defined by 40 CFR § 2.302, will not be recognized as confidential information and will be available to the public without restriction.

(d) Publication of Users in Significant Noncompliance.

- (1) The director shall publish annually in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements.
- (2) The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (3), (4), or (8) of this paragraph) and shall mean:
 - a. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in subsections 41-29(a) - 41-29(f);
 - b. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by subsections 41-29(a)- 41-29(f) multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);
 - c. Any other violation of a Pretreatment Standard or Requirement as defined by subsections 41-29(a) - 41-29(f) (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the director determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;
 - d. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the director's exercise of its emergency authority to halt or prevent such a discharge;
 - e. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
 - f. Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;
 - g. Failure to accurately report noncompliance; or

- h. Any other violation(s), which may include a violation of Best Management Practices, which the director determines will adversely affect the operation or implementation of the local pretreatment program.
- (e) Notification of Violation; User Plan of Action. When the director finds that a user has violated, or continues to violate, any provision, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the director may serve upon that user a written Notice of Violation. Within the time frame specified in this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this section shall limit the authority of the director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.
- (f) Consent Order. The director may enter into a Consent Order, assurance of compliance, or a similar document establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the user 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 subsections 41-39(g) and 41-39(i) and shall be judicially enforceable. Issuance of a consent order shall not be a bar against, or a prerequisite for, taking any other action against the user.
- (g) Show Cause Hearing. The director may order a user which has violated or continues to violate any provision, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, to appear before the director and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.
- (h) Compliance Orders. When the director finds that a user has violated or continues to violate any provision, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the director may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. 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 sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement; nor does a compliance order relieve the user 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 user.
- (i) Cease-and-Desist Orders.

- (1) When the director finds that a user has violated or continues to violate any provision, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the director may issue an order to the user directing it to cease and desist all such violations and directing the user to:
 - a. Immediately comply with all requirements; and
 - b. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
- (2) Issuance of a cease-and-desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

(j) Emergency Suspension of Discharge.

- (1) The director may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The director may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.
 - a. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the director that the period of endangerment has passed, unless the termination proceedings in subsection 41-39(k) are initiated against the user.
 - b. A user 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 contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any show cause or termination hearing under subsections 41-39(f) or 41-39(k).
- (2) Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(k) Termination of Discharge.

- (1) In addition to the provisions in section 41-33(b), any user who violates the following conditions is subject to discharge termination:
 - a. Violation of wastewater discharge permit conditions;

- b. Failure to accurately report the wastewater constituents and characteristics of its discharge;
 - c. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
 - d. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling; or
 - e. Violation of the pretreatment standards in sections 41-29(a)-41-29(f).
- (2) Such users will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under section 41-39(g) why the proposed action should not be taken. Exercise of this option by the director shall not be a bar to, or a prerequisite for, taking any other action against the user.
- (l) Injunctive Relief. When the director finds that a user has violated or continues to violate any provision, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the director may petition a court of competent jurisdiction through the City Attorney for the issuance of a temporary restraining order and temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this chapter on activities of the user. The director may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.
- (m) Remedies Not Exclusive. The remedies provided for in this chapter are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the director may take other action against any user when the circumstances warrant. Further, the director is empowered to take more than one enforcement action against any noncompliant user.
- (n) Applicability of More Stringent Regulations.
- (1) More Stringent Discharge Limits. If national pretreatment standards, categorical or otherwise, more stringent than the discharge limits prescribed in this article are promulgated by the United States Environmental Protection Agency for certain industries, the more stringent national pretreatment standards will apply to the affected industrial user. A violation of the more stringent national pretreatment standards will also be considered a violation.
 - (2) Applicability of More Stringent Discharge Limits. An industrial user within the city who discharges industrial waste ultimately received and treated by another governmental entity pursuant to a wholesale wastewater contract or a reciprocal agreement with the city is subject to the following additional rules:
 - a. If the governmental entity has more stringent discharge limits than those prescribed by this chapter, or by a discharge permit issued hereunder, because the United States Environmental Protection Agency requires the more stringent discharge limits as part of

the governmental entity's wastewater pretreatment program, the more stringent discharge limits shall prevail.

- b. The director is authorized to issue a discharge permit to an industrial user affected by subsection (1), to ensure notice of and compliance with the more stringent discharge limits. If the industrial user already has a discharge permit, the director may amend the permit to apply and enforce the more stringent discharge limits. An industrial user shall submit to the director an expected compliance date and an installation schedule if the more stringent discharge limits necessitate technological or mechanical adjustments to discharge facilities or plant processes.
 - c. If the director chooses not to issue or amend a permit under subsection (2), the director shall notify the affected industrial user in writing of the more stringent discharge limits and their effective date. Regardless of whether or not a permit is issued or amended, an industrial user shall be given a reasonable opportunity to comply with the more stringent discharge limits.
 - d. The more stringent discharge limits cease to apply upon termination of the City's wholesale wastewater contract or reciprocal agreement with the governmental entity, or upon modification or elimination of the limits by the government entity or the United States Environmental Protection Agency. The director shall take the appropriate action to notify the affected industrial user of an occurrence under this subsection.
- (3) Variances in Compliance Dates. The director may grant a variance in compliance dates to an industry when, in the director's opinion, such action is necessary to achieve pretreatment or corrective measures. In no case shall the director grant a variance in compliance dates to an industry affected by national categorical pretreatment standards beyond the compliance dates established by the United States Environmental Protection Agency.
- (4) Authority to Regulate. The director may establish regulations, not in conflict with this chapter or other laws, to control the disposal and discharge of industrial waste into the wastewater system and to ensure compliance with the City's pretreatment enforcement program with all applicable pretreatment regulations promulgated by the United States Environmental Protection Agency. The regulations established shall, where applicable, be made part of any discharge permit issued to an industrial user by the director.

(o) Affirmative Defenses to Discharge Violations.

- (1) Acts of God
 - a. An event that would otherwise be a violation that is caused solely by an act of God, war, strike, riot, or other catastrophe is not a violation.
 - b. In an enforcement proceeding, the user seeking to establish the occurrence of an act of God, war, strike, riot, or other catastrophe shall have the burden of proof.
 - c. In the event that an act of God, war, strike, riot, or other catastrophe has been established, the user shall control production of all discharges to the extent possible until

such time as the reduction, loss, or failure of its treatment facility is restored or an alternative method of treatment is provided.

(2) Bypass

- a. For the purpose of this section:
 1. “Bypass” means the intentional diversion of wastestreams from any portion of a user’s treatment facility.
 2. “Severe property damage” means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- b. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (c) and (d).
- c. If a user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten (10) days before the date of the bypass, if possible.
- d. A user shall submit oral notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- e. Bypass is prohibited, and the director may take an enforcement action against a user for a bypass, unless:
 1. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 3. The user submitted notices as required under subsection (c).

- f. The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in subsection (d)(1).

(p) Penalties.

(1) Civil Penalties

- a. A user who has violated, or continues to violate, any provision, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, shall be liable to the City for a maximum civil penalty of One Thousand Dollars (\$1,000) per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- b. The director may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
- c. In determining the amount of civil liability, 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 user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- d. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

(2) Criminal Prosecution

- a. A user who violates intentionally, knowingly, recklessly, or negligently any provision, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than Two Thousand Dollars (\$2,000) per violation, per day.
- b. A user who intentionally, knowingly, recklessly, or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to the same penalties described in section 41-71. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.
- c. A user who makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this chapter, wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter shall, upon conviction, be subject to the same penalties described in section 41-71.
- d. A person is criminally responsible for a violation if that person intentionally, knowingly, recklessly, or negligently:

- i. Commits or assists in the commission of a violation, or causes or permits another person to commit a violation; or
- ii. Owns or manages the property or facilities determined to be the cause of the illegal discharge under sections 41-29(a), 41-29(b), 41-29(c), 41-29(l), or 41-30(b).

SECTION 41-40 - PRETREATMENT CHARGES AND FEES; COSTS PASSED ON TO INDUSTRY

(a) *Pretreatment Charges and Fees; Surcharges.*

- (1) The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's pretreatment program, which may include:
 - a. Fees for wastewater discharge permit applications including the cost of processing the applications, not to exceed one hundred dollars (\$100);
 - b. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge;
 - c. Fees for reviewing and responding to accidental discharge procedures and construction;
 - d. Fees for filing appeals;
 - e. Recovery of administrative and legal costs associated with enforcement activity taken by the director to address industrial user noncompliance.
 - f. Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this chapter and are separate from all other fees, fines, and penalties chargeable by the City;
 - g. Fees for treating abnormal strength wastes; and
 - h. Fees incurred from an upset, bypass, or unauthorized discharge.
- (2) Surcharge. The City may surcharge industrial users or businesses for the treatment of abnormal strength wastes. Water or waste having (1) a five (5) day biochemical oxygen demand greater than two hundred fifty (250) parts per million (ppm) by weight, or (2) containing more than two hundred fifty (250) parts per million by weight of total suspended solids, shall be subject to the review and approval of the director. Where the director has approved the admission of (1) and/or (2) above into the POTW, that discharge may be subject to a surcharge as determined by the director. In no case shall a discharge be accepted that will prevent the POTW from meeting its NPDES or TPDES limits.
 - a. Any industrial user that discharges over-strength wastewater shall pay a surcharge assessed by the city using the formula set forth in section 41-40(a)(2)(d).

- b. Class I, II, or III commercial and industrial establishments which discharge wastewater into the city sanitary sewer system shall meet the requirements of this section. Class I, II and III are defined as:
1. Class I: Food establishments, to include restaurants, bars, lounges and other establishments which engage in preparation of food or beverage which is served directly to the consumer.
 2. Class II: Equipment service facilities, to include establishments that perform or provide washing, cleaning or servicing of automobiles, trucks, buses, machinery, clothing or equipment. This class includes public facilities, facilities limited to specific companies, and attended and/or coin-operated establishments; and
 3. Class III: Food and kindred products processing, to include commercial establishments which engage in the preparation, packaging, processing or distributing of food, food products, grains, or produce, other than those included in Class I, and which discharge less than one hundred fifty thousand (150,000) gallons of wastewater per month.
- c. All businesses falling within one (1) or more of the above class groups shall be subject to and pay a surcharge set forth in section 41-40(a)(2)(d) In addition, these class groups shall comply with the following requirements:
1. The director may require that the establishments in the different class groups pay a surcharge based on wastewater strength determination for that particular class group;
 2. Flow determinations may be made by estimating flow from water consumption records or flow meters as outlined in this chapter, except that a permit may not be required. If a business that falls under the requirements of this section is located in a larger facility served by a master meter, the director may estimate the wastewater flow from the business;
 3. If a business contains operations from more than one (1) class group and it is determined that the surcharge rate for a particular class group would not adequately compensate the city for its costs of treatment, the director may assess an additional charge based on a proportional average of the class groups involved or require the business to pay an industrial surcharge as outlined in this chapter;
 4. A business placed into a class group may elect to have its surcharge determined from composite samples in lieu of the class averages provided that:
 - A. A written request to do so is submitted to, and approved by, the director;
 - B. The business installs a manhole built to the director's specifications at the sole expense of the requesting business
 - C. The entity obtains and strictly follows at its expense a self-monitoring procedure to include sampling and analyses prescribed by the director;

- D. The requesting entity agrees and understands that the director may obtain check samples, either grab or composite, from the monitoring site for the purpose of checking the accuracy of the self-monitoring procedures and analyses prescribed above, and that in the event of discrepancies, the director's data shall be used for determining the surcharge;
 - E. The laboratory employed by the requesting business has been approved by the director prior to implementation of self-monitoring. Subsequent changes in the laboratory shall have prior approval by the director.
 - F. At the option of the director, the business may be removed from a class surcharge group and surcharges determined in compliance with this chapter.
- d. The surcharge will be assessed according to the following formula each month using the most current pollutant concentration data and the current month's wastewater flow:

$$\text{Surcharge} = \frac{Q}{1,000,000} \times [a(\text{BOD} - x) + b(\text{TSS} - y)][8.34][1.20]$$

Where:

Q = flow in gallons

8.34 = weight in pounds of one gallon of water

1.20 = cost factor to recover administrative overhead cost including, but not limited to, sampling cost (only applicable to Class I, II and III surcharge accounts)

x = normal limits of BOD in domestic wastewater expressed in milligrams per liter

y = normal limits of TSS in domestic wastewater expressed in milligrams per liter

a = unit cost of treatment per pound of BOD

b = unit cost of treatment per pound of TSS

- e. A surcharge is an additional charge by the POTW for the increased cost of handling discharge of unusual strength and character and shall not serve as a variance to the requirements. Exercise of this provision shall not be a bar to, or a prerequisite for, taking any other action against the user.

SECTION 2. That the terms and provisions shall be deemed to be severable and that if the validity of any section, subsection, sentence, clause, or phrase should be declared to be invalid, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase.

SECTION 3. That all ordinances of the City of Irving, Texas, in conflict with the provisions are hereby repealed to the extent of the conflict.

SECTION 4. That nothing in this ordinance shall be construed to affect any prosecution currently pending, or any suit or proceeding currently proceeding in any court, or any liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance, nor shall any legal right or remedy of the City of any character be lost, impaired, or affected by this ordinance.

SECTION 5. That this ordinance shall take effect upon passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF IRVING, TEXAS,
on December 12, 2024.

RICHARD H. STOPFER
MAYOR

ATTEST:

Shanae Jennings
City Secretary/Chief Compliance Officer

APPROVED AS TO FORM:

Kuruvilla Oommen
City Attorney