

**ORDINANCE NO. 516 – 2017**

**AN ORDINANCE REGULATING ILLICIT DISCHARGES INTO THE SPANISH FORT MUNICIPAL SEPARATE STORM SEWER SYSTEM**

**WHEREAS**, the City Council of the City of Spanish Fort, Alabama, deems it to be in the best interest of the public health, safety and general welfare of its citizens to establish regulations to effectively prohibit the introduction of pollutants into the City’s Municipal Separate Storm Sewer System (MS4) and the Waters of the State; and

**WHEREAS**, this Ordinance establishes methods for controlling the introduction of pollutants into the City’s MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (“NPDES”) Phase II General Permit, administered by the Alabama Department of Environmental Management and overseen by the United States Environmental Protection Agency.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

**SECTION 1. TITLE.**

ORDINANCE 516 – 2017 “CLEAN WATER ORDINANCE”.

**SECTION 2. JURISDICTION.**

The provisions of this Ordinance shall apply to all lands within the corporate limits of the City of Spanish Fort, unless otherwise stated.

**SECTION 3. PURPOSE.**

The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Spanish Fort through the regulation of non-stormwater discharges to the MS4 and Waters of the State of Alabama to the maximum extent practicable as required by state and federal law. This Ordinance establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the NPDES permit process. The objectives of this Ordinance are:

1. To regulate the introduction of pollutants to the MS4 by stormwater discharges attributed to any user.
2. To prohibit illegal connections and discharges to the City’s MS4.
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance.
4. To establish legal authority to enforce fines and other penalties in response to municipal offenses.
5. To establish design and construction standards for all commercial and residential development.

**SECTION 4. DEFINITIONS.**

For the purposes of this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this section, unless taken specific exception to elsewhere in this Ordinance:

1. ADEM. The Alabama Department of Environmental Management.
2. Alabama Handbook. Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas, as approved by ADEM.

3. Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention, educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters or stormwater conveyance systems. BMPs also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal or drainage from raw materials storage.
4. “Class 1” Land Disturbance Permit. A permit required by the City of Spanish Fort for any land disturbing activity which meets the following criteria:
  - a. New and existing commercial construction activity – including multi-family residential developments and major subdivisions as defined in the City’s Subdivision Regulations – totaling one (1) acre or more, which require registration for NPDES permitting;
  - b. If determined necessary by ADEM, any new or existing construction site – regardless of size, which discharges to a “Tier 1” waterbody segment that has been listed for a pollutant that is likely to be discharged from the construction site, including, but not limited, to sediment, may also be required to register for NPDES permitting, and therefore, subject to “Class 1” permitting regulations; or
  - c. Any other qualified construction site which requires NPDES stormwater permitting.
5. “Class 2” Land Disturbance Permit. A permit required by the City of Spanish Fort for any land disturbing activity which meets the following criteria:
  - a. Total disturbed area is one thousand square feet (1000 sq. ft.) or more and not otherwise subject to NPDES permitting;
  - b. In-ground swimming pools; or
  - c. Any land disturbing activity which is not otherwise subject to a Land Disturbance Permit, but has been found to cause or contribute to an illicit discharge into the MS4.
6. Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C § 1251 et seq.) and any subsequent amendments thereto.
7. City. The City of Spanish Fort, Alabama.
8. Code Enforcement Personnel. Environmental Manager, Building Official, Code Enforcement Officer, law enforcement, or any other designee from the City chosen to enforce this Ordinance.
9. Construction Activity. The disturbance of soils associated with clearing, grading, excavating, filling of land or other similar activities which may result in soil erosion. Construction activity does not include agricultural and forestry practices done in accordance with industry standards and requirements of authorities having jurisdiction.
10. Construction Best Management Practices Plan (CBMPP). A plan to control the discharge of pollution associated with regulated construction activity that will result in land disturbance equal to or greater than one acre and which are part of a common plan of development or sale equal to or greater than one acre. The Alabama Department of Environmental Management requires the CBMPP be prepared by a Qualified Credentialed Professional (QCP) and submitted with application for General NPDES Permit.
11. Construction Exit Pad. A stone base pad, or other approved measure, designed to provide a buffer area where mud and caked soil will be removed from the tires of construction vehicles to avoid transporting it onto public roads.

12. Container. See Receptacle.
13. Court. The Municipal Court of the City of Spanish Fort.
14. Derelict Property. Any items such as wrecked or junked property, which have been left abandoned or unprotected from the elements, including, but not limited to, wrecked or partially dismantled motor vehicles, trailers, boats, machinery, refrigerators, washing machines, plumbing fixtures and other articles. Wrecked or partially dismantled motor vehicles shall include any vehicle which does not have lawfully affixed thereto a license plate, and the condition of which is wrecked, dismantled, partially dismantled, inoperable, abandoned or discarded and is not capable of being legally driven upon the public streets within the City of Spanish Fort.
15. Erosion Control Plan (ECP). A sketch plan which describes the location and details of construction best management practices for sites which require a "Class 2" Land Disturbance Permit.
16. Filter Strip. A belt of vegetation designed to provide infiltration, intercept sediment and other pollutants and reduce stormwater flow and velocity.
17. Garbage. All solid wastes, including, but not limited to, rubbish, ashes, trash, construction debris, street cleanings, and animals and vegetable matter which are likely to attract flies, insects or scavengers.
18. Handbill. Any paper, poster, circular, coupon or pamphlet, regardless of size, to be circulated for the purpose of making some public or private announcement, except newspapers circulated to bona fide subscribers.
19. Hazardous Waste. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
20. Illicit Discharge. Any direct or indirect discharge to the storm drain system that contains any substance (pollutant) other than stormwater, except as expressly exempt by this Ordinance. For the purposes of this Ordinance, any stormwater discharge containing a pollutant into a Water of the State shall be considered an illicit discharge.
21. Illegal Connection. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to:
  - a. Any conveyances which allow any illicit discharge, including sewage, process wastewater, chlorinated water, swimming pool discharge and wash water to enter the storm drain system;
  - b. Any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by a government agency; or
  - c. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps or equivalent records and approved by a government agency.
22. Industrial Activity. Activities subject to NPDES Industrial Permits as defined in the Code of Federal Regulations, 40 CFR, Section 122.26 (b) (14).
23. Jurisdictional Wetlands. Those areas regulated by the U.S. Army Corps of Engineers that are inundated or saturated by surface or ground water (hydrology) at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation (hydrophytes) typically adapted for life in saturated soil conditions (hydric soils) and are adjacent to a water identified as a "Water of the United States" under Section 404(b)(1)(o) of the Federal Clean Water Act.

24. Land Disturbance Activity. Any activity that changes the physical conditions of land form, vegetation and/or hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, and storing or stockpiling of materials.
25. Land Disturbance Permit. A permit required by the City to conduct any land disturbance activity expected to leave an area that is greater than or equal to one thousand square feet ( $\geq 1000$  ft<sup>2</sup>) disturbed for a period of time equal to fourteen (14) days or greater, including all in-ground swimming pools of any size being constructed for any period of time.
26. Litter. Any trash or garbage that is deposited on any public or private property or in any public or private waters in a manner which would allow such trash or garbage to be scattered by the wind, conveyed by stormwater or otherwise transported into Waters of the State.
27. Municipal Offense Ticket. The summons issued alleging that a violation has occurred that has not been remediated within the deadline set forth in this Ordinance, or is such that constitutes a violation of this Ordinance.
28. Municipal Separate Storm Sewer System (MS4). A publicly-owned conveyance or system of conveyances (i.e., ditches, curbs, catch basins, underground pipes, etc.) that is designed or used for collecting or conveying stormwater that discharges to surface waters of the State.
29. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. A permit issued by the Environmental Protection Agency (EPA) – or by a State under authority delegated pursuant to 33 USC § 1342(b) – that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group or general area-wide basis.
30. Nephelometric Turbidity Units (NTU). A measurement of water turbidity using a nephelometer to detect the propensity of particles to scatter a light beam focused on them.
31. Non-Stormwater Discharge. Any discharge to the storm drain system that is not composed entirely of stormwater; also known as an illicit discharge.
32. Non-Structural BMPs. Procedures, such as modified landscaping practices.
33. Notice of Violation. Written notification that documents and communicates violations observed during an inspection to the permittee.
34. NPDES Construction Site. Any construction activity that is required to obtain NPDES General Permit coverage.
35. Offense. A violation of such severity that may be subject to a fine and/or penalty, or failure to correct a violation within a reasonable time frame as set forth in this Ordinance, which shall result in a fine and/or penalty.
36. Offsite Impact. Any negative effect resulting from the failure of Best Management Practices that impacts a property or watercourse outside of the specific area permitted to be disturbed.
37. Organic Waste. Any waste accumulation of naturally-occurring substances, including, but not limited to, vegetation, soil and certain food products which are subject to decomposition or other natural processes.

38. Perennial Waterway. A creek, stream or river that has continuous flow in parts of its stream bed all year round during years of normal rainfall; typically identified as a “blue line” on National Hydrography Dataset Geographic Information Systems.
39. Permanent BMP. Procedures or practices used to reduce soil erosion and sedimentation during and after construction on the site. These BMPs require maintenance.
40. Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner’s agent.
41. Permittee. One to whom a Land Disturbance Permit is given.
42. Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; rubbish, garbage, litter, or other discarded or abandoned objects and accumulations that may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; sediment, solid wastes and other residues that result from constructing a building or structure; and/or noxious or offensive matter of any kind.
43. Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
44. Priority Watershed. Any watershed that is identified on ADEM’s most current 303(d) list of impaired watersheds, is a watershed with a specified Total Maximum Daily Load, or is identified as an Outstanding Alabama Water.
45. Qualified Credentialed Inspector (QCI). An ADEM-defined term for a person who may perform stormwater inspection under the supervision of a QCP that meets specific qualifications defined by ADEM.
46. Qualified Credentialed Professional (QCP). An ADEM defined term for a person responsible for the design and implementation of the management of construction stormwater discharge for a particular construction activity. Professionals meeting the minimum criteria for being a QCP must be certified or licensed by the State of Alabama or other professional organizations or associations. These professionals include: professional engineers, certified professionals in erosion and sediment control (CPESC), professional land surveyors, registered landscape architects, registered geologists and other professionals listed by ADEM.
47. Receptacle. A container that receives or holds trash, which possesses the appropriate capacities as required by the City or its agent retained, for the purpose of collecting and disposing of garbage. Said container shall be constructed of plastic, metal or fiberglass and be designed and constructed in a manner appropriate for the depositing, holding and collecting of garbage.
48. Sanitary Sewer. An underground carriage system specifically for transporting sewage and contaminated water from houses and commercial buildings through pipes to treatment or disposal.
49. Silviculture. Forestry management; the practice of controlling the establishment, growth, composition, health and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis.
50. State. The State of Alabama.
51. Stop Work Order. An order to cease all construction activity with the exception of installation and maintenance of BMPs.
52. Storm Drainage System or Stormwater Facilities or Stormwater Management Facilities. Facilities by which stormwater is collected and/or conveyed, including, but not limited to: any drainage systems, gutters, curbs, inlets or piped storm drains, pumping facilities,

retention and detention basins and natural and human-made or altered drainage channels, reservoirs, and other drainage structures such facilities may be publicly or privately owned.

53. Stormwater. Any surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
54. Structural BMPs. Physical, constructed controls that may effectively remove pollutants from runoff, including temporary and permanent BMPs.
55. Temporary BMPs. Procedures or practices used during the construction process to reduce soil erosion and sedimentation.
56. Temporary Cover. Temporary vegetative cover of rapid growing annual grasses, small grains or legumes, excluding invasive vegetative species, to provide initial, temporary cover for erosion control on disturbed sites.
57. Trash. Solid waste comprised of garbage and/or rubbish (such as bottles, cans, clothing, compost, disposables, food packaging, food scraps, newspapers and magazines, yard trimmings, etc.) that originates from private homes or apartments, vehicles or other private property. It may also contain household hazardous waste.
58. Upset. An exceptional incident in which there is unintentional and temporary noncompliance with water quality compliance because of factors beyond the reasonable control of the permittee; does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless improper operation.
59. Violation. A breach or transgression of a law.
60. Waste. Any substance or material that may be classified as garbage, hazardous waste, organic waste, trash or derelict property.
61. Wastewater. Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
62. Watercourse. A natural or artificial channel through which water flows, including, but not limited to, oceans, bays, rivers, bayous, streams, creeks, gullies, ravines or ditches.
63. Waters of the State. All waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the State, natural or artificial, excluding waters which are entirely confined or retained completely upon the property of a single individual, partnership or corporation, unless such waters are used in interstate commerce.

## **SECTION 5. APPLICABILITY**

This Ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands, unless explicitly exempted by the City.

## **SECTION 6. ULTIMATE RESPONSIBILITY.**

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants. It is the ultimate responsibility of the Owner, Occupant, Permittee, Neighborhood Home Owners Association and any other user(s) of the Municipal Separate Storm Sewer System (MS4) to ensure that illicit discharges are mitigated to the maximum extent practicable.

## **SECTION 7. ILLICIT DISCHARGES PROHIBITED.**

Federal regulations define an illicit discharge as "... any discharge to a Municipal Separate Storm Sewer System (MS4) that is not composed entirely of stormwater..." with some exceptions. Illicit discharges result in untreated runoff that contributes to high levels of pollutants, including, but

not limited to, heavy metals, toxins, oil and grease, solvents, nutrients, viruses and bacteria to receiving waterbodies. Pollutant levels from these illicit discharges have been shown in EPA studies to be high enough to significantly degrade receiving water quality and threaten aquatic habitats, wildlife and human health. The federal Clean Water Act requires certain municipalities which discharge wastewater or stormwater directly from a point source into a Water of the State must obtain a National Pollutant Discharge Elimination System (NPDES) permit. The following requirements attempt to ensure the City's compliance with its NPDES General Permit to discharge runoff into Waters of the State of Alabama. The permit requires discharges to the City's MS4 be controlled to the extent that such discharges will not impair the operation of the MS4 or contribute to the failure of the MS4 to meet any local, state or federal requirements.

1. Prohibition of Illicit Discharges.

- a. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including, but not limited to: pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards.
- b. Any person or entity responsible for illicit discharges determined by the City to be contributing to the failure of the City's MS4 or waters within the City to comply with the provisions and conditions of the City's NPDES General Permit shall provide corrective measures and may be subject to paying fines and damages and the penalties provided under applicable laws, rules and regulations.

2. Exemptions.

The following non-stormwater discharges are exempt from this section, provided they do not cause or contribute to a violation of water quality standards:

- a. Water line flushing;
  1. Lawn watering runoff, landscape irrigation and other irrigation water (not consisting of treated, or untreated, wastewater);
  2. Residential use of household chemicals that do not exceed the manufacturer's recommended amounts and/or EPA standards;
  3. Diverted stream flows;
  4. Rising ground water and springs;
  5. Uncontaminated ground water infiltration;
  6. Uncontaminated pumped ground water;
  7. Discharges from potable water sources, excluding swimming pools;
  8. Foundation drains, footing drains, and water from crawl space pumps;
  9. Air conditioning condensation;
  10. Individual residential car washing, to include charitable carwashes;
  11. Residual street wash water;
  12. Discharge or flows from firefighting activities (including fire hydrant flushing);
  13. Flows from riparian habitats and wetlands;
  14. Dechlorinated swimming pool discharges;
  15. Discharges specified in writing by the City as being necessary to protect public health and safety; and

16. Discharges authorized and in compliance with a separate NPDES permit.

## **SECTION 8. LITTER AND WASTE DISPOSAL.**

Litter is a chronic pollutant that is easily transported by stormwater, which constitutes an illicit discharge into the City's Municipal Separate Storm Sewer System. Garbage and derelict property that is improperly disposed of can also have significant potential to become litter and thereby pollute the MS4. Litter not only threatens wildlife and the unique ecosystem of the Mobile Bay Estuary, but also threatens human health and safety by way of drinking water pollution, vermin and bacteria proliferation, the creation of potential flooding and fire hazards and loss of private property value. Litter is unsightly and diminishes the natural beauty of Coastal Alabama, which can inhibit tourism, future growth and quality of life. Because the costs incurred by the City of Spanish Fort, Baldwin County and the State of Alabama to clean up litter creates an undue burden upon the taxpayers of said governments, the following section establishes regulations for the disposal of garbage, derelict property and hazardous waste:

### **1. Littering and Waste Disposal.**

- a. It shall be unlawful to throw, discard, deposit, scatter or place, or cause to be thrown, discarded, deposited, scattered or placed, litter or waste upon any public or private property, including, but not limited to, streets and sidewalks, storm drain inlets, gutters, ditches or other drainage structures, wetlands and waterways within the City of Spanish Fort.
- b. Waste shall be disposed in public receptacles, authorized private receptacles, or in accordance with regulations and requirements set forth by the City and its agent for collection.
- c. It shall be the duty of every person in possession, charge of, or in control of any place, public or private, where waste is accumulated or generated, to provide adequate and suitable receptacles and/or containers capable of holding such materials until proper final disposal is accomplished, and at all times to keep said garbage in these receptacles and/or containers, except as provided in subsection (e).
- d. All persons shall store garbage in leak-free, covered containers so as to eliminate wind-driven debris and unsightly garbage in and about the property owned, operated or controlled by them. Spillage and overflow around containers shall immediately be cleaned up as it occurs.
- e. In the event that the designated covered trash containers described in subsection (d) are full, trash may be placed in a separate bag or covered container on the designated trash pick-up day so as to prevent rummaging by animals. It is the responsibility of the trash owner to clean any resulting loose trash.
- f. It shall be unlawful to store or dispose of any hazardous waste except in the manner specifically authorized by this Ordinance or other applicable State or Federal law. Hazardous waste shall be disposed of only by permitted Treatment, Storage and Disposal Facilities permitted by the Alabama Department of Environmental Management, and shall not be disposed of as part of garbage, organic waste and derelict property as defined herein.
- g. Loose organic waste resulting from landscaping such as limbs, leaves and grass clippings, shall remain at curbside not longer than fourteen (14) calendar days, and shall be placed in such a way as to prevent waste from entering the stormwater system.
- h. Any unauthorized accumulation of waste on any public or private property shall be considered a violation of this Ordinance.



2. Construction Sites.

- a. All construction and demolition contractors, owners or agents shall provide on-site receptacles for loose debris, paper, building materials waste, scrap building materials and other litter products to prevent scattering of such materials by wind or rain if such materials are not otherwise properly disposed of on a daily basis.
- b. Scrap, lumber, plaster, roofing, concrete, brick and sanding dust resulting from the construction, repair, remodeling, removal or demolition of any building on any private property will not be removed by the City. All such material shall be removed by the owner or the contractor responsible for the accumulation of the same before, during or after construction. It shall be the responsibility of any person doing work on private property to remove from the premises all residue and rubbish resulting from such work.

3. Burial of Trash.

- a. It shall be unlawful to dispose of garbage, derelict property, construction materials or any other non-organic substance by burying below the ground surface and/or covering with soil, plastic or any other material not specifically addressed within this Ordinance.

4. Loads on Vehicles.

- a. In the event a vehicle is used to haul material such as garbage, organic waste, derelict property or any other materials that may fall or blow from the vehicle, said vehicle shall be covered or secured with a close-fitting tarpaulin or other appropriate cover. No person shall drive, move, park or in any other way operate any vehicles within the City unless said vehicle is loaded so as to prevent any of its load from dropping, shifting, leaking, blowing or otherwise escaping therefrom.
- b. Any driver or other person in direct control of any vehicle from which any materials or objects have fallen, blown, leaked, shifted or otherwise escaped shall immediately cause said materials or objects to be cleaned up at their own expense or be cited and fined in accordance with this Ordinance and laws of the State of Alabama.

5. Handbills.

- a. No person shall throw, scatter, deposit or distribute, or cause to be thrown, scattered, deposited or distributed, any handbill, upon any sidewalk, street, lane, alley, public ground or other public place or upon any private premises or building within the City; provided, that it shall not be unlawful to distribute handbills in the following manner:
  - 1. By delivering any such handbill directly into the personal possession of the owner, occupant or other person then present in or upon such premises; or
  - 2. By leaving such handbill on the premises provided that it is wrapped, tied, folded or otherwise secured so that it will not be blown loose by the winds or other elements.
- b. No person shall throw, scatter, deposit or distribute any handbill upon any private premises if requested not to do so by the owner, occupant or person in control of such premises, or if there is a sign posted on said premises in a conspicuous position bearing the words "No Trespassing," "No Peddlers or Agents," "No Advertisements" or any similar notice indicating in any manner the occupants of the premises desire to not have their privacy disturbed or to have any such handbills left or deposited on such premises.

- c. The placing of handbills or advertising materials on vehicles is a violation of this Ordinance.
  - d. No person shall tack, nail, post or place any sign, poster or placard upon any utility pole, tree or object otherwise situated upon public property.
  - e. The distribution of handbills shall adhere to all regulations set forth in Ordinance No. 412-2012: An Ordinance Regulating Peddling, Soliciting and Canvassing within the Corporate Limits of the City of Spanish Fort, Alabama, as the same may be amended.
  - f. Solicited subscription publications, mail and packaged deliveries shall be exempt from this Ordinance, provided the same are securely covered, fastened or weighted to reasonably prevent it from being blown, washed or scattered about.
  - g. In the event an individual, organization, business or other entity distributes unsolicited handbills onto public or private property in violation of this ordinance, that individual, organization, business or other entity shall be held responsible for any violation.
6. Swimming Pool Wastewater.
- a. Swimming pool wastewater shall be discharged in accordance with the currently-adopted International Swimming Pool and Spa Code, Section 320.
  - b. Swimming pool wastewater shall be filtered to remove particulates, treated to eliminate coliform bacteria and waterborne pathogens, and treated chemically or through the use of settling tanks to eliminate or neutralize chemicals (particularly chlorine and salt), diatomaceous earth and other contaminants in the water prior to being discharged onto any public or private property.
  - c. Where feasible, treated or filtered swimming pool wastewater shall be discharged into the storm drain system at the street.
  - d. It shall be unlawful to discharge swimming pool wastewater, whether treated, untreated or otherwise, onto any neighboring public or private property, except as provided herein.

**SECTION 9. INDUSTRIAL OR COMMERCIAL STORMWATER DISCHARGES.**

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit shall be required in a form acceptable to the City prior to the allowance of discharges to the MS4. If warranted, NPDES stormwater permitted sites may be required to connect non-stormwater discharges to the sanitary sewer for additional treatment to minimize the potential for pollutants entering the City's MS4.

1. Notification of Spills.

- a. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
- b. Notwithstanding other requirements of law, as soon as any person responsible for a property, facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants

discharging into stormwater, the storm drain system or waters of the State, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release.

- c. In the event of a release of non-hazardous materials, said person shall notify the City's Code Enforcement Personnel in person, by phone or by email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the same Code Enforcement Personnel within three (3) business days of the phone notice.
  - d. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained at the facility for at least three (3) years. Such records shall also be provided to the City upon request.
  - e. Upon discovery of any illicit discharge from a commercial or industrial site, the City's Code Enforcement Personnel shall report the discharge to the Alabama Department of Environmental Management.
2. Enforcement; Duty to Mitigate.
- a. The owner, entity, operator or other person found responsible for an illicit discharge of hazardous or non-hazardous pollutants into the MS4 shall contain and mitigate such discharge to the maximum extent practicable. The City's Code Enforcement Personnel shall have the authority to set a deadline for mitigation.
  - b. Failure to report or mitigate an illicit discharge from an industrial or commercial facility shall be a violation of this Ordinance.

## **SECTION 10. LAND DISTURBANCE PERMITTING**

### 1. General Rule.

A Land Disturbance Permit shall be required for all land-disturbing activities which disturb one thousand square feet (1000 sq. ft.) or more of contiguous land area, including any land change which may result in soil erosion from water or wind and the movement of sediment to the Municipal Separate Storm Sewer System, including, but not limited to, the clearing, dredging, excavating, transporting and filling of land.

### 2. Exemptions.

A Land Disturbance Permit shall not be required for the following, provided however, that the persons conducting such activities must do so in accordance with the provisions of this Ordinance and any other applicable law, including the proper control of sedimentation and runoff to the MS4:

- a. Agriculture;
  - b. Silviculture;
  - c. Minor land-disturbing activities on individual residential lots such as home gardens, landscaping, etc.;
  - d. Minor land-disturbing activities such as individual connections for utility or sewer services for single or two-family residences;
  - e. Emergency utility repairs; or
  - f. Installation of water supply wells or environmental ground water monitoring wells.
3. "Class 1" Land Disturbance Permit: NPDES Qualified Construction Sites.
- a. Applicability.
    - 1. The provisions of this section are applicable to all new and existing commercial construction activity, including multi-family residential

developments and major subdivisions as defined in the City's Subdivision Regulations, totaling one (1) acre or more, which require registration for NPDES permitting.

2. If determined necessary by ADEM, any new or existing construction site, regardless of size, which discharges to a "Tier 1" waterbody segment that has been listed for a pollutant that is likely to be discharged from the construction site, including, but not limited to, sediment, may also be required to register for NPDES permitting, and therefore subject to "Class 1" permitting regulations.
3. Any other qualified construction site which requires NPDES stormwater permitting.

b. Requirements.

1. Before the commencement of any land disturbing activity that is not expressly exempt, the land owner, operator or agent thereof shall submit to the City of Spanish Fort a permit application on a form provided for that purpose, accompanied by a permit fee totaling one hundred dollars (\$100).
2. Application for "Class 1" Land Disturbance Permit shall be accompanied by a copy of the required Notice of Intent (NOI) and the Construction Best Management Practices Plan (CBMPP) submitted to ADEM for coverage under the NPDES Permit. In addition, all requirements of the Stormwater Management Plan described in the City's Subdivision Regulations shall be met.

c. Application Procedure.

1. Application for "Class 1" Land Disturbance Permit shall accompany any applicable Site Plan or Preliminary Plat review application to be considered by the Spanish Fort Planning Commission.
2. Upon submission, City staff and engineer(s) shall review the submitted application and required documentation and plans to ensure conformance to applicable regulations.
3. City staff shall communicate any deficiencies to the applicant no less than seven (7) calendar days prior to the Planning Commission Regular Session meeting, at which, staff shall make a recommendation to the Planning Commission to approve or deny the Site Plan or Preliminary Plat application based, in part, on review of the Land Disturbance Permit application.
4. City staff may issue a "Class 1" Land Disturbance Permit only after approval of a Site Plan or Preliminary Plat application by the Spanish Fort Planning Commission. Issuance of the Land Disturbance Permit is at the sole discretion of the Building Official or Environmental Manager. Planning Commission approval shall not constitute issuance or approval of a Land Disturbance Permit.
5. Upon issuance of the "Class 1" permit, the permittee shall be subject to the provisions of the Federal Clean Water Act, the NPDES permit, the Alabama Water Pollution Control Act, the Alabama Environmental Management Act, the ADEM Administrative Code and this Ordinance.
6. In the event the NPDES-permitted site does not require Planning Commission approval, the "Class 2" Land Disturbance Permit application procedure shall apply.

4. "Class 2" Land Disturbance Permit: Other Disturbed Sites.

a. Applicability.

The provisions of this section are applicable to all new and existing construction which meets at least one of the following criteria:

1. Any land disturbing activity totaling at least one thousand square feet (1000 sq. ft.) or more that is not otherwise subject to NPDES permitting;
2. In-ground swimming pools; or
3. Any land disturbing activity which is not otherwise subject to a Land Disturbance Permit, which has been found to cause or contribute to an illicit discharge into the MS4.

b. Requirements.

1. Before the commencement of any land disturbing activity that is not expressly exempt, the land owner, operator or agent thereof shall submit to the City of Spanish Fort a permit application on a form provided for that purpose, accompanied by a permit fee totaling twenty-five dollars (\$25).
2. Application for "Class 2" Land Disturbance Permit shall be accompanied by an Erosion Control Plan (ECP) depicting best management practices to protect water quality during the construction process. The sketch plan shall include:
  - a. The boundary lines of the site on which the work is to be performed;
  - b. An identification of all areas within the site which will be included in the land disturbing activities;
  - c. The location of any adjacent roadways, structures, jurisdictional boundaries, wetlands, streams and rivers;
  - d. A topographic map of the site with contours at no less than two (2) foot intervals;
  - e. The proposed location of sediment control devices, including silt fence, wattles, mulch and other vegetative cover;
  - f. The proposed location, dimensions and characteristics of any construction exit pad(s);
  - g. The proposed location of any stockpile(s);
  - h. The proposed location of dumpster(s) and other good housekeeping devices; and
  - i. Where applicable, the proposed location of portable toilet(s) and other sanitation devices in relation to storm drain inlets.

c. Application Procedure.

1. Upon review of the application and Erosion Control Plan, the Building Official or Environmental Manager shall provide written approval or a written list of deficiencies to the applicant.
2. Upon issuance of the "Class 2" permit, the permittee shall implement erosion and sediment control measures in accordance with the approved plan.

3. If the erosion control sketch plan is determined to be deficient, the plan shall be revised within a timeline determined by the Code Enforcement Personnel, not to exceed seven (7) calendar days.
4. The issuance of a Building or Swimming Pool Permit shall be contingent upon an approved Land Disturbance Permit.

5. Land Disturbance Permit Conditions.

a. Duty to Comply.

1. The Permittee must comply with all terms and conditions of the Land Disturbance Permit. Any permit noncompliance constitutes a violation and is grounds for enforcement action, termination or suspension of coverage under the permit.
2. Nothing in this section shall be construed to preclude or negate the Permittee's responsibility or liability to apply for, obtain or comply with other ADEM, federal, state or local government permits, certifications, licenses or other approvals.

e. Erosion Controls and Sediment Controls.

1. The Permittee shall design, install and maintain effective erosion controls and sediment controls, appropriate for site conditions to, at a minimum:
  - a. Minimize the amount of soil exposed during construction activity through the use of project phasing or other appropriate techniques;
  - b. Provide and maintain a 25 foot natural riparian buffer around surface waters;
  - c. Control stormwater volume and velocity with the site to minimize soil erosion;
  - d. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
  - e. Minimize the disturbance of steep slopes as defined in Section 13;
  - f. Minimize sediment discharges from the site;
  - g. Minimize the generation of dust through the appropriate application of water or other dust suppression techniques;
  - h. Minimize all stream crossings;
  - i. Stabilize all construction entrances and exits; and minimize off-site tracking of sediment from vehicles;
  - j. Where applicable, install storm drain inlet protection measures to further prevent sediment discharges;
  - k. Direct stormwater to vegetated areas (excluding wetlands) to increase sediment removal and maximize stormwater infiltration, unless infeasible; and
  - l. Minimize soil compaction, unless infeasible, to preserve topsoil.

2. Additional Design Requirements:

- a. Sediment control measures, erosion control measures and other site management practices shall be properly selected based on site-specific conditions, must meet or exceed the technical standards outlined in the Alabama Handbook and the site-specific CBMPP or ECP prepared in accordance with this section.
- b. Unless specified otherwise by the Alabama Handbook, sediment control measures, erosion control measures and other site management practices shall be designed and maintained to minimize erosion and maximize sediment removal resulting from a 2-year, 24-hour storm event.
- c. The Permittee is encouraged to design the site, the erosion prevention measures, sediment controls measures and other site management practices with consideration of minimizing stormwater runoff, both during and following construction, including facilitating the use of low-impact development (LID) and green infrastructure.

f. Proper Operation and Maintenance.

- 1. The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of the Land Disturbance Permit.
- 2. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures.

g. Duty to Mitigate.

- 1. The Permittee shall take all reasonable steps to mitigate or prevent any violation of the Land Disturbance Permit or to minimize or prevent any adverse impact of any permit violation.

6. Performance Bonds or Surety.

a. Applicability.

- 1. Prior to the issuance of a "Class 1" Land Disturbance Permit where potentially hazardous soil or drainage conditions exist due to types of soils, steep grades, floodplain development, or threatened areas such as nearby lakes, streams, wetlands, large drainage ditches or roads, the applicant shall be required to provide a performance bond or similar form of surety acceptable to the City to complete all land and grade stabilization measures and improvements as shown in the approved plan.

b. Requirements.

- 1. The Building Official, Code Enforcement Personnel, or his or her designee, shall establish the amount and time period of the surety, based on the estimated cost and time for completing the plan. In no case shall the bond amount be less than six percent (6%) of the cost of the proposed improvements.
- 2. Within thirty (30) days of the final inspection by the City of all provisions of the approved plan, said performance bond or surety shall be refunded or terminated; provided, however, that a maintenance bond in the amount of forty percent (40%) of the Project Engineer's stamped

construction cost shall be required and in effect prior to the issuance of a Certificate of Occupancy. The maintenance bond shall be in effect for a period of two (2) years to ensure that the permanent vegetation is mature enough to control erosion and to survive seasonal weather conditions.

7. Inspections and Monitoring.

- a. Any operator of a construction site shall, upon the presentation of credentials, permit Code Enforcement Personnel of the City to enter, at all reasonable times, the construction project area and property and buildings at the construction site, and allow the representative to:
  1. Have vehicle and equipment access to inspect any facilities or equipment, including, but not limited to, monitoring and control equipment, construction BMPs, or other practices or activities regulated or required under this Ordinance; and
  2. Take photographs, review or copy records, and conduct monitoring and sampling for the purposes of assuring compliance with this Ordinance.
- b. "Class 1" sites shall be subject to inspection and record keeping requirements of the NPDES permit as described by the Alabama Department of Environmental Management. All discharge information, data, records, plans and other information required to be maintained by the operator shall be made available to the City upon request.
- c. The City's Code Enforcement Personnel shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's stormwater discharges.
- d. The City's Code Enforcement Personnel shall have the right to require the discharger 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 discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- e. 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 operator at the written or verbal request of the City. The costs of clearing such access shall be borne by the operator.
- f. Unreasonable delay in allowing the City's Code Enforcement Personnel access to a permitted facility is a violation of the stormwater discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.
- g. If the City's Code Enforcement Personnel have been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City may seek issuance of a search warrant from a court of competent jurisdiction.

8. Unpermitted Sites.

In the event the City discovers any unpermitted construction site disturbing at least one thousand square feet (1000 ft<sup>2</sup>), the Code Enforcement Personnel shall issue a Stop Work Order and grant the violator forty-eight (48) hours to comply with requirements set forth in this Ordinance. In such cases, the cost of the Land Disturbance Permit shall be doubled. If the violator does not meet the requirements of the permit within the



deadline set forth, the Code Enforcement Personnel shall issue a Municipal Offense Ticket.

9. Enforcement and Remediation.

- a. For “Class 1” permitted sites, any violation of the NPDES General Permit issued to that site shall be considered a violation of this Ordinance.
- b. The Building Official, Code Enforcement Officer, or his or her designee shall enforce compliance with this section in accordance with the most-current Standard Operating Procedure adopted by the Building Department.
- c. In the event an imminent or active illicit discharge is observed, the Code Enforcement Personnel shall issue an immediate Stop Work Order. The Stop Work Order shall prohibit all work, excluding that of repairing and maintaining construction best management practices, from taking place on a construction site until the source of the active or imminent illicit discharge is mitigated to the satisfaction of the Code Enforcement Personnel or City Engineer. Police force may be used to enforce a Stop Work Order.
- d. Any permitted land disturbance site that incurs repeated compliance issues and/or illicit discharges shall be issued a Stop Work Order, at which time the permittee shall be required to submit a revised CBMPP or ECP. In such case, work shall not resume on the site, excluding the maintenance of BMPs, until an acceptable plan is approved by the Code Enforcement Personnel.

10. Upset Conditions.

- a. An upset constitutes an affirmative defense of an action brought for noncompliance if a Permittee can demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:
  1. An upset occurred and the Permittee can identify the specific cause(s) of the upset;
  2. The Permittee’s facility was being properly operated at the time of the upset; and
  3. The Permittee promptly took all reasonable steps to minimize any adverse impact on human health or the environment resulting from the upset.
- b. The Permittee has the burden of establishing that each of the conditions listed above has been met to qualify for an exemption from enforcement proceedings.

11. Notification.

The Code Enforcement Personnel shall notify the Alabama Department of Environmental Management of any illicit discharges to the City’s MS4, and/or the discovery of any qualifying construction sites suspected of failing to file a Notice of Intent for NPDES General Permit coverage.

**SECTION 11. STORMWATER MANAGEMENT GENERAL REQUIREMENTS.**

1. Jurisdiction

- a. Unless otherwise specified, the following stormwater management requirements shall apply to all construction activities within the City Limits of Spanish Fort,;
- b. All infrastructure that will be dedicated to either the City of Spanish Fort or Baldwin County; and
- c. All privately-owned infrastructure, which shall meet the minimum requirements

of publicly-held infrastructure.

2. General System Standards.

- a. No person shall develop any land without having provided for appropriate drainage and stormwater management measures that control or manage runoff in compliance with this Ordinance, unless expressly exempt by the City.
- b. All stormwater infrastructure shall be designed and built in accordance with the Stormwater Management standards set forth in Article V, Section F and Article VI, Section F of the Spanish Fort Subdivision Regulations.

3. Maintenance of Stormwater Facilities.

a. Applicability.

Any stormwater discharge control facility which services a single lot or residential, commercial or industrial development shall be privately owned and maintained. The owner thereof shall grant to the City a perpetual, non-exclusive easement which allows for public inspection and emergency repair, in accordance with the terms of the maintenance agreement set forth herein.

b. Maintenance Agreement Required.

1. A proposed inspection and maintenance agreement shall be submitted to the individual designated by City for all private on-site stormwater discharge control facilities prior to the approval of any site plan. Such agreement shall provide access to the facility by virtue of a non-exclusive, perpetual easement in favor of the City at reasonable times for regular inspection by the individual designated by the City. The agreement will identify who will have the maintenance responsibility. Possible arrangements for this maintenance responsibility might include the following:

a. Use of property owners' association(s);

b. A statement that properties which will be served by the facility are granted rights to construct, use, reconstruct, repair, maintain and access the facility;

c. Description, expected schedule and cost of maintenance activities that are routine and non-routine (expensive, but infrequent, such as pond dredging or major repairs to stormwater structures). Non-routine maintenance shall be performed on an as-needed basis based on information gathered during regular inspections.

1. A statement that each lot served by the facility is responsible for repairs and maintenance of the facility and any unpaid ad valorem taxes, public assessments for improvements and unsafe building and public nuisance abatement liens charged against the facility, including all interest charges together with attorney fees, costs and expenses of collection. If an association is delegated these responsibilities, then membership into the association shall be mandatory for each property served by the facility and any successive buyer. The association shall have the power to levy assessments for these obligations and all unpaid assessments levied by the association shall become a lien on the individual property; and

2. A statement that no amendments to the agreement will become effective unless approved by the City.

2. The agreement shall provide that preventative maintenance inspections of stormwater management facilities may be made by the City Engineer, at his option. Without limiting the generality of the foregoing, the City Engineer's inspection schedule may include an inspection during the first year of operation and once every year thereafter, and after major storm events (i.e., 25-year floods or greater).
3. The agreement shall provide that if, after an inspection, the condition of a facility presents an immediate danger to the public health, safety or general welfare because of unsafe conditions or improperly maintenance, the City shall have the right, but not the duty, to take such action as may be necessary to protect the public and make the facility safe. Any cost incurred by the City shall be paid by the owner.
4. The agreement shall be recorded by the owner in the Probate Court prior to final approval.
5. The agreement shall provide that the City Engineer shall notify the owner(s) of the facility of any violation, deficiency or failure to comply with this Ordinance. The agreement shall also provide that, upon a failure to correct violations requiring maintenance work within 10 days after notice thereof, the City Engineer may provide for all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the costs of the work performed by the individual designated by the City, and there shall be a lien on all property of the owner which property utilizes or will utilize such facility in achieving discharge control, which lien, when filed in the Probate Court, shall have the same status and priority as liens for ad valorem taxes. Should such a lien be filed, portions of the affected property may be released by the City following the payments by the owner of such owner's pro-rata share of the lien amount based upon the acreage to be released with such release amount to be determined by the individual designated by the City, in his reasonable discretion.
6. The individual designated by the City, at his sole discretion, may accept the certification of a registered engineer in lieu of any inspection required by this Ordinance.

c. Compliance Deadline.

Any owner of a pre-existing stormwater facility shall provide the City with a Maintenance Agreement within one (1) year from the date of notice or eighteen (18) months from the adoption of this Ordinance, whichever is earliest.

4. City-Maintained Right-of-Ways.

- a. The installation or alteration of stormwater management infrastructure (i.e., ditches, flumes, culverts, side drains, etc.) by any private individual, company or other entity within any city-maintained right-of-way shall require a Right-of-Way Permit application to be received by the City of Spanish Fort Building Department prior to commencement of work.
- b. The City Engineer shall review the permit application to verify the proposed infrastructure is adequately sized and meets all applicable requirements of City code.
- c. The City Engineer may require plans, calculations or other pertinent documentation be produced by a Professional Engineer registered in the State of Alabama to verify the adequacy of proposed infrastructure in accordance with design standards set forth in the Subdivision Regulations.
- d. Any unpermitted installation or alteration of stormwater infrastructure within any city-maintained right-of-way shall constitute a violation of this Ordinance.

## **SECTION 12. LOW IMPACT DEVELOPMENT.**

Reserved.

## **SECTION 13. NATURAL RESOURCES MANAGEMENT**

The natural environment is an important asset to the community. To that end, the City desires to strike an important and delicate balance on environmental protection so that appropriate growth will continue. The following provisions apply to all developments within the City:

### **1. Wetlands and Perennial Waterways.**

- a. Purpose: Wetlands and the watercourses which traverse them are the single most important stormwater management tool available, providing flood conveyance and storage, stormwater detention, and water treatment and pollution abatement through biological degradation and chemical oxidation. Wetlands provide a linkage between aquatic systems, acting as living, breeding, nesting and feeding environments for various forms of wildlife and waterfowl, as well as nursery grounds and sanctuaries for fish. Wetlands are also recreation areas for fishing, boating, hiking, hunting and other recreational uses. Urbanization has led to a loss of wetlands, which has resulted in increased downstream water pollution, flooding and erosion and has resulted in the loss of wildlife habitat. Further loss of wetland quality and quantity endangers the public health, safety and general welfare of the residents of the City. This section aims to conserve and protect remaining wetlands and other water resources.
- b. Jurisdictional Determination: Jurisdictional Determination is required when any property proposed to be developed contains, or is suspected to contain, wetland areas, or is within 100 feet of wetland areas identified by the most current National Wetland Inventory (NWI), Baldwin County or Spanish Fort geographic information system database. Jurisdictional wetlands shall be delineated by an Environmental Scientist, certified by the United States Army Corps of Engineers, and identified on site with flagging tape labeled "Wetlands".
- c. Permitting: Unless permitted by the United States Army Corps of Engineers (COE) and the Alabama Department of Environmental Management (ADEM), no development shall be approved that proposes to fill or alter the natural state of jurisdictional wetlands or perennial waterways in order to create a buildable site. Any proposed impacts to a jurisdictional wetland or perennial waterway, including, but not limited to, filling, draining, cutting or otherwise disturbing, shall require a permit from the COE or ADEM, regardless of size or scope of the impact. All needed and required permits from the COE and other government agencies shall be provided to the City during the review process. Filling a jurisdictional wetland shall only be in accordance with permits issued by the COE. It is the City's desire that wetlands and waterways remain in their natural state and that any alteration of the adjacent property is for recreational use.
- d. Buffer Requirements and Dedication of Easements: At minimum, a thirty foot (30') undisturbed vegetated buffer shall be provided around all delineated jurisdictional wetlands and/or perennial waterways at the time of permit application. Buffers around perennial waterways shall be measured from the top of bank as determined by the surveyor or engineer of record at the time of application. Jurisdictional wetlands, perennial waterways and associated buffers shall be recorded with the Baldwin County Probate Court as a Natural Preserve Easement with adequate language to restrict future disturbance with the exception of any uses explicitly allowed herein.
- e. Building Setback Requirements: A fifty foot (50') building setback from delineated jurisdictional wetlands and/or perennial waterways shall be provided for principal structures as determined by the surveyor or engineer of record. A fifteen foot (15') building setback from delineated jurisdictional

wetlands and/or perennial waterways shall be provided for non-principal structures. The required setback shall be depicted on the plat or described in the deed and recorded with the Baldwin County Probate Court. Where standards conflict, the more stringent standards shall apply.

- f. Exceptions: The following are allowed within buffers and setbacks required by this section, provided they do not alter the natural hydrology, destroy wetland functions and values, or increase flood or erosion hazards on other lands (including, without limitation, downstream properties), and provided that all appropriate permits through the Army Corps of Engineers, the Alabama Department of Conservation and Natural Resources, State Lands Division, and/or the Alabama Department of Environmental Management can be provided to the City:
    - 1. Construction of piers, docks and boat houses;
    - 2. Construction of outdoor recreation infrastructure including hiking or biking trails, boardwalks, boat or kayak launches, information kiosks, viewing platforms and hunting blinds;
    - 3. Conservation of soil, vegetation, water, fish, shellfish and wildlife;
    - 4. Controlling noxious and/or non-native weeds; provided the control does not involve the drainage or fill of a wetland;
    - 5. Maintaining existing ditches, watercourses, farm ponds, utilities and roadways; provided the activity does not involve the expansion of roadways, drainage ditches or related improvements into previously unimproved right-of-ways or portions of right-of-ways; or
    - 6. Maintaining existing structures consistent with standards set forth herein.
  - a. Maintenance: Every person or entity owning property traversed by a perennial watercourse, or such person or entity's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, derelict property and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. The owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse.
  - b. Enforcement: Any construction explicitly exempt from buffer and setback requirements of this section shall require the issuance of a Building Permit through the City of Spanish Fort. Any structure which does not meet the requirements of this section shall be removed upon notice by the City.
2. Slope Protection.
- a. Purpose: The geology of the area in and around the City of Spanish Fort, composed primarily of steep, highly-erodible sandy loam slopes, combined with the intense rainfalls which frequent the area, creates a unique geography which is peculiar to the Gulf Coastal region. The area's fragile natural environment has become increasingly threatened by the impacts of urban development in recent decades. Land disturbance activities associated with construction, as well as increased overland stormwater runoff from impervious rooftops and paved surfaces have resulted in extreme erosion issues throughout the City. Erosion threatens the natural and built environments alike, killing wetland habitats and destroying private property. Millions of public and private dollars have been spent to combat the consequences of unregulated urban

development. The purpose of this section is to provide for reasonable use of steep slopes while ensuring development will not induce soil erosion, require excessive grading, increase slope instability, or create sewage disposal problems and shall be in conformance with the following objectives:

1. Guard against property damage and personal injury and minimize the potential for erosion, slope failure, stream siltation, increased runoff, flooding and contamination of surface waters caused by the adverse effects of site preparation and construction on steep slopes;
  2. Conserve existing woodlands for air and water quality benefits;
  3. Require development to avoid steep slope areas wherever possible, and require all land use, clearing, grading and construction to satisfy development standards;
  4. Regulate expansion of land use or development that existed on steep slope areas prior to enactment of these requirements; and
  5. Protect adjoining properties from harmful consequences of development permitted under these requirements.
- b. General Requirements: The following general requirements shall apply to all development applications which propose to clear, grade or otherwise alter the existing and/or natural hydrology of any slopes of 25% (4:1) or greater as determined by Spanish Fort Geographic Information Systems, unless otherwise delineated and certified by a Surveyor or Professional Engineer:
1. No person or entity shall cause an increase in the volume or velocity of stormwater runoff flowing over or across the crest of any slope totaling 25% (4:1) or greater without proper stormwater management.
  2. Finished slopes of all cuts and fills shall be no steeper than 33.5% (3:1), unless the applicant can demonstrate that steeper slopes can be adequately stabilized and maintained to the satisfaction of the City Engineer.
  3. All cuts and fills shall be immediately stabilized and supported by retaining walls or other appropriate retaining structures when, depending upon slopes and the nature of soil characteristics, such structures are deemed necessary by the City Engineer in order to prevent erosion.
  4. Retaining walls exceeding four (4) feet in height shall be designed and stamped by a professional engineer licensed in the State of Alabama.
  5. The maximum grade of a road shall typically range between one-half percent (0.5%) and seven percent (7.0%). Should a topographical challenge exist, a Variance may be requested as provided in the Zoning Ordinance.
- c. Construction Plan Requirements: A plan of development or use of any site which proposes to clear, grade or otherwise alter the existing and/or natural hydrology of any slopes of 25% (4:1) or greater, including residential sites, shall be required prior to application approval by the City. The following shall be included in the required plan:
1. All pertinent information describing the proposal;

2. Construction and drainage plans and calculations submitted by a Registered Professional Engineer or Surveyor conforming to the preliminary plan requirements of the Subdivision Regulations, which accurately locates the proposed use with respect to slopes of 25% (4:1) or greater. Plans shall depict contours at 1-foot intervals;
  3. Proposed modifications to the existing topography and vegetative cover, as well as the means of accommodating stormwater runoff;
  4. Specifications for building construction and materials, including filling, grading, storage of materials and water supply and sewerage facilities; and,
  5. Documentation of any additional engineering and/or conservation techniques designed to alleviate environmental problems that may be created by the proposed activities, in compliance with City's sediment and erosion control standards.
- d. Setback Requirements: A fifty (50) foot construction setback shall be provided from the crest of any natural slope totaling 25% (4:1) or greater. The following uses are prohibited within the construction setback:
1. Any construction which may require a Building Permit, with the exception of retaining walls;
  2. Impervious pavement;
  3. Swimming pools;
  4. On-lot sewage disposal systems;
  5. Sealed public water supply wells; and
  6. Stormwater outfalls and detention or retention basins, with the exception of certain Low Impact Development techniques which shall be approved by the City Engineer.

### 3. Maintenance.

Every person or entity owning property which contains steep slopes, wetlands, perennial waterways or other drainage structures shall take reasonable measures to keep and maintain said slopes and stormwater drainage ways in accordance with this Ordinance in order to prevent erosion and sedimentation. Any person or entity found to have neglected its duty to reasonably maintain such areas shall be in violation of this Ordinance.

### 4. Hardship.

An owner may request a variance of the requirements of this section in accordance with the Zoning Ordinance.

## **SECTION 14. UNLAWFUL OPERATION OF MOTORIZED VEHICLES**

It shall be unlawful to operate a motorized vehicle in such a way that displaces top soils, destroys root systems, causes erosion or otherwise causes harm to an environmentally-sensitive area, including, but not limited to, wetlands, stream or river banks, steep slopes as defined in Section 13 or any other drainage way, natural or otherwise. Costs incurred by the City or any other governmental agency to remediate a violation of this Section may be added to fines or penalties imposed by the Court. Furthermore, the operation of a motorized vehicle upon a public or private property, excluding a publicly-maintained right-of-way dedicated to that purpose, without proper permission from the owner of said property is per se trespass and may be prosecuted under this Ordinance.

## **SECTION 15. ENFORCEMENT.**

### 1. Penalties:

- a. Any person found to be in violation of any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Each day such violation continues shall constitute a separate punishable offense.
- b. Any person who is responsible for compliance with any order made pursuant to this Ordinance who fails to comply with such order shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). Each day such violation continues shall constitute a separate punishable offense.

## **SECTION 16. ENVIRONMENTAL IMPACT REMEDIATION.**

In addition to the fines and penalties listed above, the Court may also mandate remediation of any offsite impacts to neighboring property and/or Waters of the State.

## **SECTION 17. INJUNCTIVE RELIEF.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

## **SECTION 18. ABATEMENT OF THE VIOLATION.**

If a violation has not been corrected pursuant to the requirements set forth by the Court, and all legal means outlined in this Ordinance have been exhausted, the representatives of the City or State may enter upon the subject property and are authorized to take any and all measures necessary to abate the violation and/or restore the property at the expense of the violator. It shall be unlawful for any owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Upon completion of the abatement, the Code Enforcement Personnel shall report the costs of the abatement to the City Council. The City Council shall set a date for a hearing on determining the costs of the abatement, and notice of the hearing, along with a copy of the Code Enforcement Personnel's report, shall be mailed at least fourteen (14) days prior to the date of the hearing by certified or registered United States mail, return receipt requested, to the interested parties entitled to receive notice under Section 5.3 of Ordinance No. 246-2006: Ordinance to Abate Public Nuisances, as the same may be amended. At the hearing to determine the costs of the abatement, any owner or interested party shall be heard. The City Council shall adopt a resolution fixing the reasonable costs incurred in the abatement and assessing the costs against the lands upon which or abutting which the public nuisance was located.

## **SECTION 19. ALTERNATE COMPENSATORY ACTION IN LIEU OF ENFORCEMENT**

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the judge may impose upon a violator alternative compensatory action, including, but not limited to, attending compliance workshops, creek cleanup, etc.

## **SECTION 20. REMEDIES NOT EXCLUSIVE.**

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the City to seek cumulative remedies.

## **SECTION 21. SEVERABILITY.**



If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

**SECTION 5. Effective Date.**

This Ordinance shall become effective upon its adoption or as otherwise required by state law.

Adopted and approved this \_\_\_\_\_ *day of* \_\_\_\_\_, 2017.

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Michael M. McMillan  
Mayor

ATTEST:

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Mary Lynn Williams, MMC  
City Clerk