

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING TITLE XI: BUSINESS REGULATIONS OF THE CITY OF MANSFIELD CODE OF ORDINANCES, AS AMENDED, BY ADDING A NEW CHAPTER 115. SEWAGE SLUDGE APPLICATIONS; REQUIRING NOTICE OF APPLICATIONS; SETTING OUT CERTAIN REGULATIONS OF APPLICATIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City of Mansfield is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code;

WHEREAS, Title XI of the City of Mansfield Code of Ordinances provides for regulations of business operations in the City adopted to protect the public health, safety, and welfare of the City;

WHEREAS, sewage sludge is the solid by-product of the treatment of wastewater, which contains nutrients useful as fertilizers as well as heavy metals, toxicants, and pathogens that may be harmful to the public health and the environment;

WHEREAS, the City Council finds that sewage sludge is a nuisance because the heavy metals, toxicants, pathogens, and odors associated with it are potentially harmful to the public health and the environment and desires to regulate the application of sewage sludge in the city to protect the public health and the environment; and

WHEREAS, the City Council finds that these regulations are in the best interest of the City and the public health, safety, and welfare of the City.

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

SECTION 1.

That Title XI, "Business Regulations," of the Code of Ordinances of the City of Mansfield, as amended, is hereby amended by adding Chapter 115, "Sewage Sludge Application," to read as follows:

“CHAPTER 115. SEWAGE SLUDGE APPLICATION

GENERAL PROVISIONS

Sec. 115.01. PURPOSE.

This chapter establishes requirements applicable to those applying sewage sludge and to the application of sewage sludge in the city to protect the public health, safety, and welfare of the city.

Sec. 115.02. DEFINITIONS.

All definitions in 30 T.A.C. § 312.8, "General Definitions," as amended, are hereby adopted by reference as if set out herein, for any and all purposes, and apply in this chapter. In addition, the following definitions shall apply in this chapter:

Application means the application, beneficial use, disposal, experimental use, land application, staging, or treatment of sewage sludge.

Application site means the facility or land where the application of sewage sludge will be done.

City means authorized representatives of the City of Mansfield.

Director means the Environmental Manager, or a designated representative, for the City of Mansfield.

Regulatory authority means the Texas Commission on Environmental Quality.

Sec. 115.03. STATE REGULATIONS.

The application of sewage sludge in the City shall comply with all regulations and requirements of Chapter 312, Texas Administrative Code, as amended, and any other applicable state laws or regulations.

Secs. 115.04—115.19. - RESERVED.

NOTIFICATION REQUIRED

Sec. 115.20. NOTIFICATION REQUIRED.

The operator shall notify the City prior to the commencement of the application of sewage sludge at an application site in the City.

Sec. 115.21. TIMING OF NOTIFICATION.

A notification under this chapter must be filed with the City at least fifteen (15) days prior to the application.

Sec. 115.22. CONTENTS OF NOTIFICATION.

A notification under this chapter must be made in writing and filed with the city secretary. The notification must contain the following:

- (1) A copy of the application for the permit or registration that authorizes the application;
- (2) A copy of the permit or registration that authorizes the application;
- (3) Location of the application site;
- (4) Name, address, and phone number of the owner of the application site;
- (5) Name, address, and phone number of the operator;
- (6) Name, address, and phone number of the applier (if different from the operator);
- (7) Name, address, and phone number for the transporter;
- (8) Approximate date and time of the application;
- (9) Certification that all sewage sludge will be incorporated into the soil within 6 hours of the application;
- (10) Explanation of the procedures to be followed in the case of adverse weather during the application; and
- (11) Explanation of procedures to prevent nuisance odors during the application. If an operator is required to provide an Odor Control Plan under Section 115.44(c) of this chapter, a copy of the Odor Control Plan must be included with the notification.

Sec. 115.23. DIRECTOR DETERMINATION.

(a) Upon receipt of a notification filed under this chapter, the Director shall determine whether the planned application is in compliance with the ordinances of the City. The Director shall investigate and determine whether the planned application is in compliance with the ordinances of the City. Director shall provide a written determination to the operator within seven (7) days after the notification is filed.

(b) If the Director determines that the planned application is not in compliance with the ordinances of the City, the Director's written determination shall state that the planned application is not in compliance with the ordinances of the City, inform the operator why the planned application is not in compliance with the ordinances of the City, and inform the operator of its right to request a variance under this chapter.

Secs. 115.24—115.39. - RESERVED.

GENERAL REQUIREMENTS

Sec. 115.40. TRANSPORT OF SEWAGE SLUDGE.

A transporter shall transport sewage sludge in a manner to prevent the loss of liquid or solid material during transport.

Sec. 115.41. POSTING SIGNS.

(a) The operator of an application site shall post a sign on all publicly accessible roads leading to the application site at a location within one-half (1/2) mile of the application site during the application. The signs shall be posted at least three (3) days prior to and up to fourteen (14) days after the commencement of the application. The sign must include, with minimum two inch (2") letters, the operator name, the operator telephone number, the classification of sewage sludge and the TCEQ authorization number (if applicable).

(b) In the event of reasonably unforeseen circumstances, such as weather conditions or equipment failure, that necessitate a change in a planned application site, the required signs may be posted on the day on which the application commences. If signs are posted less than three days prior to commencement of the application, the operator shall notify the Director of the change in the application site prior to the commencement of the application and shall provide a written statement detailing the circumstances that necessitated the change in the application site to the Director within three days of the commencement of the application.

Sec. 115.42. INCORPORATION.

Sewage sludge or bulk sewage sludge shall be incorporated into the land within six (6) hours after application.

Sec. 115.43. BUFFER ZONES.

The application of sewage sludge or bulk sewage sludge shall not be done at an application site within one (1) mile of any property owned by a school.

Sec. 115.44. PUBLIC HEALTH NUISANCES.

(a) The operator shall operate the application site and perform all applications in a manner to prevent public health nuisances, including offensive odors.

(b) Upon the discovery of or upon notice from the city of the existence of a public health nuisance, the operator shall immediately cease further application until the condition is corrected.

(c) If an operator provides an Odor Control Plan to the regulatory authority pursuant to Section 312.44(j)(4), Texas Administrative Code, the operator shall provide a copy of the same to the Director.

Sec. 115.45. SOIL CONCENTRATION INFORMATION.

(a) The operator shall test the background soil concentration of metals, nutrients, salinity, and PH at the application site no more than thirty (30) days prior to the application of sewage sludge.

(b) The operator shall maintain the results of the test required in subsection (a) of this section for five years after the application. The operator shall provide a copy of the results of the test to the City upon the City's request.

Secs. 115.46—115.59. – RESERVED.

VARIANCE PROCEDURE

Sec. 115.60. REQUEST FOR VARIANCE

(a) The city council shall hear and render judgment on requests for variances under this section.

(b) An operator that is informed by the Director that a planned application is in violation of this chapter may appeal to the city council for a variance from the regulations in this chapter.

(c) To appeal to the city council for a variance under this section, an operator must file a request for variance with the city secretary.

(d) In the request for variance, the operator shall set out the conditions that justify the variance and that warrant a variance that will not have the effect of nullifying the intent and purpose of these regulations.

(e) The city council may authorize a variance to any regulation set forth in this chapter. In granting a variance under this chapter, the city council shall prescribe only conditions that it deems necessary to or desirable in the public interest. No variance shall be granted unless the council finds that all of the following conditions exist:

- 1) That the use of the land in the vicinity will not be adversely affected;
- 2) That the persons who reside or work in the vicinity will not be adversely affected;
- 3) That any school related activities will not be adversely affected; and
- 4) That the granting of the variance will not be detrimental to the public health, safety, convenience or welfare of the city.

(f) Such findings of the council, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the council meeting at which such variance is granted. Variances may be granted only when in harmony with the general

purpose and intent of this ordinance so that the public health, safety and welfare may be secured and substantial justice done.

(g) The city secretary shall provide a copy of a request for variance filed under this section to the Director. The Director shall submit to the city council a copy of the notification filed by the operator under this chapter, a copy of the Director's written determination, and a letter containing all the specific facts and pertinent data upon which the Director's decision was based and setting out any conditions relevant to a determination of the effect of the planned application on the public health, safety, convenience, or welfare in the vicinity, and such documents shall be entered into the official minutes of the council meeting. The decision of the city council relating to the approval or disapproval of a variance shall be final.

Secs. 115.61—115.98. - RESERVED.

Sec. 115.99. PENALTY.

(a) It is an offense for a person, firm, company, or corporation to violate, disobey, omit, neglect or refuse to comply with or resist the enforcement of any of the provisions of this chapter. Each day that a violation is permitted to exist shall constitute a separate offense.

(b) An offense under subsection (a) is a Class C Misdemeanor punishable by a fine of not more than \$2,000 for each offense.

(c) It is a defense to prosecution for a violation of the buffer zone requirement in Section 115.43 of this chapter if the defendant presents a written determination from the Director stating that the application is in compliance with the ordinances of the City.

(d) It is a defense to prosecution for a violation of this chapter if a defendant presents a variance from the city council providing relief from the requirement of this chapter for which the defendant is being prosecuted.”

SECTION 2.

That this ordinance shall be cumulative of all other ordinances of the City of Mansfield and shall not repeal any of the provisions of such ordinances, except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

SECTION 3.

Should any paragraph, sentence, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of the Mansfield Code of Ordinances as a whole.

SECTION 4.

That all rights or remedies of the City of Mansfield, Texas, are expressly saved as to any and all violations of the City Code or any amendments thereto regarding public pools, spas, or interactive water features that have accrued at the time of the effective date of this ordinance; and as to such accrued violations, and all pending litigation, both civil or criminal, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.

Any person, firm, company or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined as provided for in this ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 6.

The City Secretary of the City of Mansfield is hereby directed to publish the caption and penalty clauses of this ordinance at least once in the official newspaper of the City of Mansfield.

SECTION 7.

This Ordinance shall take effect immediately from and after its passage on third and final reading and the publication of the caption, as the law and charter in such cases provide.

FIRST READING APPROVED ON THE _____ DAY OF _____, 2015.

SECOND READING APPROVED ON THE _____ DAY OF _____, 2015.

DULY PASSED ON THE THIRD AND FINAL READING BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS, THIS _____ DAY OF _____, 2015.

David L. Cook, Mayor

ATTEST:

Vicki Collins, City Secretary

Ordinance No. _____

Page **8** of **8**

APPROVED AS TO FORM AND LEGALITY:

City Attorney

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