

## **ARTICLE VII. ILLICIT DISCHARGE AND ILLEGAL CONNECTION**

### **Sec. 46-170. Introduction.**

It is hereby determined that:

Discharges to the municipal separate storm sewer system that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters;

These non-stormwater discharges occur due to spills, dumping and improper connections to the municipal separate storm sewer system from residential, industrial, commercial or institutional establishments.

These non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters.

The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;

These impacts can be minimized through the regulation of spills, dumping and discharges into the municipal separate storm sewer system;

Localities in the State of Georgia are required to comply with a number of state and federal laws, regulations and permits which require a locality to address the impacts of stormwater runoff quality and nonpoint source pollution due to improper non-stormwater discharges to the municipal separate storm sewer system;

Therefore, the city adopts this article to prohibit such non-stormwater discharges to the municipal separate storm sewer system. It is determined that the regulation of spills, improper dumping and discharges to the municipal separate storm sewer system is in the public interest and will prevent threats to public health and safety, and the environment.

(Ord. No. 2005-31, 8-1-05)

### **Sec. 46-171. General provisions.**

(a) *Purpose and intent.* The purpose of this article is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the municipal separate storm sewer system to the maximum extent practicable as required by federal law. This article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the national pollutant discharge elimination system (NPDES) permit process. The objectives of this article are to:

- (1) Regulate the contribution of pollutants to the municipal separate storm sewer system by any person;
- (2) Prohibit illicit discharges and illegal connections to the municipal separate storm sewer system;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the municipal separate storm sewer system; and,
- (4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this article.

(b) *Applicability.* The provisions of this article shall apply throughout the corporate area of the city.

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- (c) *Compatibility with other regulations.* This article is not intended to modify or repeal any other ordinance, rule, regulation, other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.
- (d) *Severability.* If the provisions of any section, subsection, paragraph, subdivision or clause of this article shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this article.
- (e) *Responsibility for administration.* The community development department shall administer, implement, and enforce the provisions of this article.

(Ord. No. 2005-31, 8-1-05)

## **Sec. 46-172. Definitions.**

*Accidental discharge* means a discharge prohibited by this article which occurs by chance and without planning or thought prior to occurrence.

*Clean Water Act* means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

*Construction activity* means activities subject to the Georgia Erosion and Sedimentation Control Act or NPDES general construction permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

*Illicit discharge* means any direct or indirect non-stormwater discharge to the municipal separate storm sewer system, except as exempted in section 46-173.

*Illegal connection* means either of the following:

- (1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

*Industrial activity* means activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).

*National pollutant discharge elimination system (NPDES) storm water discharge permit* means a permit issued by the Georgia EPD under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*Municipal separate storm sewer system* means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, municipal streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and manmade or altered drainage channels, reservoirs, and other drainage structures, and which is:

- (1) Owned or maintained by the City of Smyrna;

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- (2) Not a combined sewer; and
  - (3) Not part of a publicly-owned treatment works.

*Non-stormwater discharge* means any discharge to the storm drain system that is not composed entirely of stormwater.

*Person* means, except to the extent exempted from this article, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the state, any interstate body or any other legal entity.

*Pollutant* means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

*Pollution* means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

*Premises* means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

*State waters* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Georgia which are not entirely confined and retained completely upon the property of a single person.

*Stormwater runoff or stormwater* means any surface flow, runoff, and drainage consisting of water from any form of natural precipitation, and resulting from such precipitation.

*Structural stormwater control* means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

(Ord. No. 2005-31, 8-1-05)

## **Sec. 46-173. Prohibitions.**

- (a) *Prohibition of illicit discharges.* No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the municipal separate storm sewer system any pollutants or waters containing any pollutants, other than stormwater.

The following discharges are exempt from the prohibition provision above:

- (1) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, individual

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- residential car washing, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;
- (2) Discharges or flows from fire fighting, and other discharges specified in writing by the city as being necessary to protect public health and safety;
  - (3) The prohibition provision above shall not apply to any non-stormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the state and the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the municipal separate storm sewer system.
- (b) *Prohibition of illegal connections.* The construction, connection, use, maintenance or continued existence of any illegal connection to the municipal separate storm sewer system is prohibited.
- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
  - (2) A person violates this article if the person connects a line conveying sewage to the municipal separate storm sewer system, or allows such a connection to continue.
  - (3) Improper connections in violation of this article must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the community development department.
  - (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the city requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the city.

(Ord. No. 2005-31, 8-1-05)

#### **Sec. 46-174. Industrial or construction activity 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 may be required in a form acceptable to the city prior to allowing discharges to the municipal separate storm sewer system.

(Ord. No. 2005-31, 8-1-05)

#### **Sec. 46-175. Access and inspection of properties and facilities.**

The community development department shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this article.

- (1) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the community development department.

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- (2) The owner or operator shall allow the community development department ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater.
  - (3) The community development department shall have the right to set up on any property or facility such devices as are necessary in the opinion of the community development department to conduct monitoring and/or sampling of flow discharges.
  - (4) The community development department may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the community development department. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.
  - (5) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the community development department and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
  - (6) Unreasonable delays in allowing the community development department access to a facility is a violation of this article.
  - (7) If the community development department has been refused access to any part of the premises from which stormwater is discharged, and the community development department is able to demonstrate probable cause to believe that there may be a violation of this article, 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 article or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the community development department may seek issuance of a search warrant from any court of competent jurisdiction.

(Ord. No. 2005-31, 8-1-05)

#### **Sec. 46-176. Notification of accidental discharges and spills.**

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the municipal separate storm sewer system, state waters, or waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

Said person shall notify the authorized enforcement agency in person or by phone, facsimile or in person no later than 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the community development department within three business days of the phone or in person notice. 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 for at least three years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

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Failure to provide notification of a release as provided above is a violation of this article.

(Ord. No. 2005-31, 8-1-05)

**Sec. 46-177. Violations, enforcement and penalties.**

- (a) *Violations.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. Any person who has violated or continues to violate the provisions of this article, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the community development department is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The community development department is authorized to seek costs of the abatement as outlined in subsection (f) below.

- (b) *Notice of violation.* Whenever the community development department finds that a violation of this article has occurred, the community development department may order compliance by written notice of violation.

- (1) The notice of violation shall contain:

- a. The name and address of the alleged violator;
- b. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- c. A statement specifying the nature of the violation;
- d. A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action;
- e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,
- f. A statement that the determination of violation may be appealed to the community development department by filing a written notice of appeal within thirty (30) days of service of notice of violation.

- (2) Such notice may require without limitation:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit discharges and illegal connections;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- e. Payment of costs to cover administrative and abatement costs; and,
- f. The implementation of pollution prevention practices.

- (c) *Appeal of notice of violation.* Any person aggrieved by a decision or order of community development department, may appeal in writing within 30 days after the issuance of such decision or order. Such appeal shall be filed with the city administrator. A hearing before the city administrator to consider the appeal shall be held within 30 days of receipt of the written appeal. The city administrator shall issue a written decision within 30 days of the conclusion of the hearing.

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- (d) *Judicial review.* The decision of the city administrator on an appeal under this article shall be final unless appeal is made to the Superior Court of Cobb County. The applicant may appeal a decision of the city administrator by filing a petition for writ of certiorari to the superior court in the manner provided by state law.
- (e) *Enforcement measures after appeal.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 30 days of the decision of the appropriate authority upholding the decision of the city administrator or community development department, then representatives of the city may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, 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.
- (f) *Costs of abatement of the violation.* Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within 30 days of such notice. If the amount due is not paid within 30 days after receipt of the notice, or if an appeal is taken, within 30 days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the city by reason of such violation.

- (g) In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten days, or such greater period as the community development department shall deem appropriate, after the community development department has taken one or more of the actions described above, the community development department may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (h) *Criminal penalties.* For violations of this article, the community development department may issue a citation to the alleged violator requiring such person to appear in the City of Smyrna Municipal Court to answer charges for such violation. Upon conviction, such person shall be punished as provided in section 1-8 of the Code of Ordinances of the City of Smyrna. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.
- (i) *Violations deemed a public nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by law.
- (j) *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 the city may seek cumulative remedies. The city may recover attorney's fees, court costs, and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

(Ord. No. 2005-31, 8-1-05)