

## ORDINANCE NUMBER 2016-26



### AN ORDINANCE TO AMEND THE CITY CODE BY ADDING A NEW SECTION ESTABLISHING AN ILLICIT DISCHARGE ORDINANCE

**WHEREAS**, Section 62.1-44.2, et seq., of the *Code of Virginia*, 1950, as amended establishes the Virginia State Water Control Law, which establishes regulations for state waters to be in compliance with various federal laws and regulations; and

**WHEREAS**, the requirements of §62.1-44.2, et seq. are now applicable to the City in the regulation of discharges into state waters within the City.

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Waynesboro that pursuant to §62.1-44.2, et seq., of the *Code of Virginia*, 1950, as amended, the City Code be and is hereby amended by the addition of the following.

#### **Illicit Discharge Ordinance**

##### **I. General**

The City of Waynesboro finds uncontrolled discharges of pollutants into the storm sewer system has an adverse impact on the quality of receiving waterways. Amendments to the Clean Water Act, established a National Pollutant Discharge Elimination System (NPDES) Program requiring permits for discharges from regulated municipal separate storm sewer systems (MS4's) into the waters of the United States. The Environmental Protection Agency has authorized the Commonwealth of Virginia to issue NPDES Permits under the Virginia Pollutant Discharge Elimination System (VPDES). The VPDES regulations for stormwater discharges require the City of Waynesboro to control the amount of pollutants and prohibit illicit discharges entering to its MS4 by way of inspection, monitoring and enforcement.

##### **II. Purpose and Intent**

The purpose of this Article is to enable the City to comply with state and federal laws and regulations in addition to the City's MS4 permit by preventing the discharge of non-stormwater substances into the City of Waynesboro's municipal separate storm sewer system and state waters. This ordinance is intended to prohibit illicit connections and illicit discharges to the City's MS4, and to establish inspections and monitoring procedures to ensure compliance with this ordinance.

##### **III. Applicability**

This chapter shall apply to all activities that cause or allow to be caused direct or indirect illicit discharges and illicit connections into the MS4.

##### **IV. Compatibility**

This ordinance is not intended to interfere with or rescind any other ordinance, rule or regulation, statute or provision of law. Where any provision of this ordinance imposes restrictions different from

those imposed by any other ordinance, rule or regulation, or provision of law, whichever are more restrictive or enforces higher protective standards for human health or the environment shall apply.

## **V. Definitions**

The following words and terms as used in this ordinance shall have the following meanings, unless the context clearly indicates otherwise:

“Best Management Practice (BMP)” means schedule of activities, prohibitions of practices, including both, structural or non-structural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems.

"Illicit connection" means any connection, in any manner whatsoever, to the City's municipal separate storm sewer system (the "MS4") which is not authorized by applicable state law or city ordinance, and which has not been approved by the City in accordance with applicable City ordinances.

"Illicit discharge" means any discharge from the MS4 that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the City's MS4), discharges resulting from firefighting activities, and discharges identified by and in compliance with this ordinance.

## **VI. Prohibited Discharges**

A. It shall be unlawful and a violation of this ordinance to allow any discharge that is not composed entirely of stormwater, except as described in subsection (C) below, that enters, or has the potential of entering, the MS4.

B. Illicit discharges include, but are not limited

1. Discharging, or causing or allowing to be discharged, sewage, industrial wastes, yard wastes, or other wastes, into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots, the ground, or any other areas draining to the storm sewer system;

2. Connecting, or causing or allowing connection of any sanitary sewer to the storm sewer system, including any sanitary sewer connected to the storm sewer as of the date of the adoption of this ordinance;

3. Connecting, or causing or allowing any connection to the storm sewer system, without a valid VSMP, VPDES, or NPDES permit, any structure that conveys any liquid other than stormwater or discharges listed in subsection C, including, but not limited to, pipes, drains, sanitary sewer lines, washing machine drains, or floor drains;

4. Prohibitions 2 and 3 listed in this subsection expressly include, without limitations, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of the connection;

5. Throwing, placing, or depositing, or causing to be thrown, placed, or deposited in the storm sewer system anything that impedes or interferes with the free flow of stormwater therein, or adversely affects water quality;

C. The following non-stormwater discharges are allowable under this ordinance:

1. Discharges resulting from firefighting and other public safety activities;
2. Discharges associated with the maintenance or repair of public water, sanitary and storm sewer lines, and public drinking reservoirs and drinking water treatment or distributions systems conducted in accordance with applicable federal and state regulations and standards;
3. Water line flushing;
4. Diverted stream flows or rising groundwater;
5. Uncontaminated ground water infiltration;
6. Uncontaminated pumped groundwater;
7. Discharges from potable water sources, foundation drains, irrigation water, springs, water from crawl space pumps, or footing drains;
8. Air conditioning condensation;
9. Lawn irrigation;
10. House washing and individual car washing on residential lots;
11. Dechlorinated swimming pool discharges with pH between 6.0 to 8.0 standard units, at ambient water temperature, and with less than 0.10 milligrams per liter or parts per million;
12. Water from street, sidewalk or parking lot washing to remove algae or oil buildup;
13. Application of salts or other de-icing substances to streets, sidewalks and parking lots;
14. Discharges associated with dye testing, provided the program authority is notified in writing prior to test.

D. If any activity listed in paragraph (B) of this section is found by the City Manager or designee be a source of pollutants to the MS4, the City Manager or designee shall serve a written notice on the party responsible for the activity which orders that the activity be ceased or conducted in a manner that will avoid the discharge of pollutants to the MS4. The notice shall state the date by which the activity shall cease or be conducted without pollution. Failure to comply with such order within the time stated in the notice shall constitute as a violation of the provisions of this ordinance.

## **VII. Inspection and Monitoring**

A. In order to assure compliance with the provisions of this chapter, and all applicable city ordinances, state and federal laws, orders or regulations, the City Manager or designee shall have the right to inspect any property, public or private, within the City at any reasonable time. In the event access to the property is denied, the City Manager or designee may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes probable cause that a violation of this chapter has occurred, request that the magistrate or court grant the City Manager or designee an inspection warrant to enable access to the property for the purpose of determining whether a violation of this chapter exists. The City Manager or designee shall make a reasonable effort to obtain consent from the owner or occupant of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the City Manager or designee access to any property after obtaining an inspection warrant from the magistrate or a court of competent jurisdiction for the inspection of such property.

B. The City Manager or designee shall have the authority to carry out all inspections and

monitoring procedures necessary to determine compliance and/or noncompliance with this ordinance, and to enforce the requirements of this ordinance.

- C. The City Manager or designee shall have the authority to require any person responsible for a discharge to the MS4 to document that such discharge meets and is in compliance with the requirements of this ordinance. This includes, but is not limited to, the ability to require such person to provide monitoring reports, test results, and such other matters as may be deemed necessary to show that such discharge is in compliance with the requirements of this ordinance. The cost of any required documentation shall be the responsibility of the person responsible for the discharge.
- D. The failure of any person to comply with any of the requirements of this section shall constitute a violation of this chapter.

### **VIII. Prevention and Control**

The City may require the use of best management practices (BMPs) for any activity, operation or facility which may cause or contribute to pollution or contamination of the MS4. The owner or operator of a commercial or industrial establishment shall provide, at the expense of the owner or operator, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 system through the use of these structural and non-structural BMPs. Furthermore, any person responsible for a property or premises which is or may be the source of an illicit discharge may be required to implement, at such person's expense, additional structural and non-structural BMPs and/or implement a pollution prevention plan to prevent the further discharge of pollutants to the MS4.

Illicit discharges to the MS4 are prohibited. Any person owning or occupying a premises or facility thereon who has knowledge of a discharge of pollutants from those premises or facilities which might result in a violation of the prohibitions found in this ordinance shall immediately take action to abate the discharge and shall notify the City within twenty-four (24) hours of the discharge. Discharges of hazardous materials or hazardous substances shall be immediately reported by calling "911".

### **IX. Violations, enforcement and Penalties**

- A. Notice of violation. Whenever the City Manager or designee finds that a person or entity has violated a prohibition or failed to meet a requirement of this chapter, the City Manager or his designee may order compliance by written notice of violation to the responsible party. Such notice may require without limitation:
  - 1. The performance of monitoring, analyses and reporting;
  - 2. The elimination of illicit connections or discharges;
  - 3. That violating discharges, practices or operations shall cease and desist;
  - 4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
  - 5. Payment of the costs of administration and remediation; and
  - 6. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, a written notice shall be delivered by certified postal mail and will set forth a deadline such remediation or restoration must be completed. Should a violator fail to remediate by the set deadline, a final notice shall be issued,

advising that, should the violator fail to remediate or restore within the final established deadline, the work will be performed by a designated governmental agency or a contractor procured by the governmental agency and the expense thereof shall be charged to the violator.

- B. Any person or entity who commits any act prohibited by this article shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each day that the violation continues. The penalty must be paid into the Treasury of the City.
- C. In addition to other remedies provided by the Code of the City of Waynesboro and the Code of Virginia, any costs or fees that may be charged pursuant to this ordinance remaining unpaid for more than thirty (30) days after a bill or invoice is sent for such cost or fees, shall be referred to the City Treasurer who shall collect the costs or fees in the same manner as other taxes and liens are collected.
- D. A willful violation of the provisions of the chapter shall constitute a class 1 misdemeanor each day that a violation of this chapter is maintained or permitted to remain shall constitute a separate offense.
- E. The City may elect to take any or all of the above remedies concurrently, and the pursuit of one (1) shall not preclude the pursuit of another.

This ordinance is to be effective as of 12:01 AM of July 1, 2016.

**INTRODUCED: ON MAY 23, 2016 BY MR PETE MARKS**

**ADOPTED: ON JUNE 13, 2016**

**EFFECTIVE: JULY 1, 2016**

/s/ Julia Bortle  
CLERK

/s/ Bruce Allen  
BRUCE ALLEN, MAYOR