

**CITY OF DULUTH
ILLICIT DISCHARGE AND ILLICIT CONNECTION
ORDINANCE**

The Council of the City of Duluth hereby ordains that the Duluth Code of Ordinances is hereby amended by repealing Chapter 16, Article 6, “Storm Water Management” in its entirety and replace with the following section entitled “Illicit Discharge and Illicit Connection”:

Section 1. General Provisions

1.1 Title

This ordinance shall be known as the “Illicit Discharge and Illegal Connection Ordinance”.

1.2 Authority

The authority for this ordinance is based on home rule provisions of the Georgia Constitution, Article IX, Section 2, Paragraph 3(a)(6).

1.3 Findings

It is hereby determined that:

- (1) The city separate storm sewer system was designed and installed to manage stormwater so as to prevent localized flooding, damage to property and risk to public safety;
- (2) The city separate storm sewer system was not designed or installed as a receiving system for non-stormwater discharges;
- (3) Discharges to the city separate storm sewer system that are not composed entirely of stormwater contribute to increased nonpoint source pollution and degradation of receiving waters;
- (4) These non-stormwater discharges occur due to spills, dumping and improper connections to the city separate storm sewer system from residential, industrial, commercial or institutional establishments;
- (5) These non-stormwater discharges not only impact local waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters;
- (6) The impacts of these non-stormwater 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;
- (7) These impacts can be minimized through the regulation of spills, dumping and

discharges into the city separate storm sewer system;

- (8) 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 nonpoint source pollution caused by non-stormwater discharges to the city separate storm sewer system;
- (9) The Clean Water Act requires the management and maintenance of the city separate storm sewer system and the management of discharges to that system;
- (10) Therefore, in order to prohibit such non-stormwater discharges to the city separate storm sewer system, it is determined that the regulation of spills, improper dumping and discharges to the city separate storm sewer system is in the public interest and will prevent threats to public health and safety, and the environment.

1.4. Purpose and Intent

The purpose of this ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the city separate storm sewer system to the maximum extent practicable as required by Federal law. This ordinance establishes methods for controlling the introduction of non-stormwater discharges into the city separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are to:

- (1) Comply with all Georgia Department of Natural Resources (DNR) and Federal Environmental Protection Agency (EPA) storm water regulations developed pursuant to the Clean Water Act; and
- (2) Prohibit illicit discharges and illegal connections to the city separate storm sewer system; and
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the city 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 ordinance

1.5. Applicability

The provisions of this ordinance shall apply throughout the incorporated area of the city. The city may enter into agreements with cities within the city, or other municipalities, to carry out the purpose of this ordinance. These agreements may include, but are not

limited to, enforcement of provisions, resolution of disputes, and cooperative monitoring and management of the separate storm sewer system and management programs.

1.6. Compatibility with Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance constitute a minimum standard, should not be deemed to limit or repeal any other local requirements, and are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance 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.

1.7. Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance 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 ordinance.

1.8. Responsibility for Administration

- (1) The department shall have the power to administer, implement, and enforce the provisions of this ordinance and any procedures, standards and guidelines established under authority of this ordinance. Such power shall include the right to maintain an action or procedure in any court of competent jurisdiction to compel compliance with or restrain any violation of this ordinance.
- (2) The department shall be responsible for the conservation, management, maintenance (where applicable), extension and improvement of the city separate storm sewer system, including activities necessary to control storm water and activities necessary to administer and implement the storm water management programs incorporated by reference into the city's NPDES storm water permit.
- (3) The department may develop, and update periodically, a storm water management design manual for the guidance of persons preparing storm water management plans, designing or operating storm water management systems, and designing or operating facilities that may contribute non-stormwater discharges to the city's separate storm sewer system.
- (4) The department may:
 - (a) Establish or oversee the establishment of standards and guidelines for controlling storm water; and
 - (b) Determine the manner in which conveyances should be operated; and
 - (c) Inspect private systems which discharge to the city separate storm sewer system; and
 - (d) Advise other departments on issues related to storm water; and
 - (e) Protect facilities and premises controlled by the city and prescribe how they are to be used by others; and

- (f) Require facilities or activities that create new, increased, or significantly changed storm water contributions to the city's separate storm sewer system to comply with the terms of this ordinance; and
- (g) Develop programs or procedures to control the discharge of pollutants into the city separate storm sewer system.

Section 2. Definitions

- (1) For the purposes of this ordinance, unless specifically defined below, words or phrases shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most effective application. Words in the singular shall include the plural, and words in the plural shall include the singular. Words used in the present tense shall include the future tense; the word "shall" connotes "mandatory" and not "discretionary"; the word "may" is permissive.
- (2) Unless otherwise specified, or it is apparent from the context, definitions herein will be the same as those in other city codes.
- (3) For the purposes of this ordinance, the following terms, phrases and words, and their derivatives, shall have the meaning given herein:

“Accidental Discharge” means a discharge prohibited by this ordinance that 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.

“Conveyance” shall mean an aboveground or underground natural or man made drainage feature, that provides for the collection and movement of storm water, and shall include but not be limited to concrete or metal pipes, ditches, depressions, swales, roads with drainage systems, highways, city streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural storm water controls, drainage channels, reservoirs, rights of way, storm drains, culverts, street gutters, oil/water separators, modular pavements and other similar drainage structures.

“City” shall mean City of Duluth and such of its departments, employees and agents as may have duties and responsibilities for administering and enforcing all storm water management activities and implementation of the provisions of this ordinance.

“City Separate Storm Sewer System” means any conveyance or system of

conveyances which is:

- a) Owned or maintained by the city;
- b) Not a combined sewer; and
- c) Not part of a publicly owned treatment works.

“Department” shall mean, unless otherwise specified, the city department responsible for storm water management activities and implementation of the provisions of this ordinance.

“Director” shall mean either the director of the city department responsible for storm water management activities and implementation of the provisions of this ordinance or any of that person's duly authorized representatives.

“Discharge” shall mean the direct or indirect release of water, fluid, materials or other matter to a conveyance or surface that drains to a conveyance.

“Illicit Discharge” means any direct or indirect non-stormwater discharge to the city separate storm sewer system.

“Illegal Connection” shall mean any of the following:

- a) Any pipe, open channel, drain or other conduit, whether natural or man made, which is used exclusively to drain a non-stormwater discharge to the city’s separate storm sewer system; or
- b) Any pipe, open channel, drain or other conduit, whether natural or man made, that was designed, installed or redirected for the purpose of draining a non-stormwater discharge into the city’s separate storm sewer system; or
- c) Any pipe, open channel, drain or other conduit, whether natural or man made, which is connected to the city separate storm sewer system and which has not been documented in plans, maps, or equivalent records and approved by the city regardless of whether such pipe, open channel, drain or other conduit, whether natural or man made, was permissible under law or practices applicable or prevailing at the time the connection was made, or has been previously allowed, permitted, or approved by the city or any other authorized enforcement agency. “Illegal connection” expressly includes, without limitation, those connections made in the past.

“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.

“Non-Stormwater” means any surface flow, runoff, drainage, or discharge that is not composed entirely of stormwater and which may include pollutants, but that excludes:

- a) Water from those sources described in section 3.1(2)(a) and 3.1.(2)(b) of this ordinance; and /or
- b) Any discharge permitted under 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 city separate storm sewer system.

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

“Pollutant” means anything that 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; process waste water and wash water; 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” shall mean the man-made or man-induced alteration of the chemical, physical, biological, thermal and radiological integrity of water.

“Premises” shall mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Procedure” shall mean a procedure adopted by the department, by and through the director, to implement a regulation or regulations adopted under this ordinance, or to carry out other responsibilities as may be required by this Code or other codes, ordinances or resolutions of the city or other agencies.

“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” means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation, but which also includes:

- a) Water from those sources described in section 3.1(2)(a) and 3.1(2)(b) of this ordinance; and /or
- b) Any discharge permitted under 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 city separate storm sewer system.

“Storm water management design manual” shall mean the most recent version of the *Gwinnett City Georgia Storm Water Design Manual*.

“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.

“Variance” shall mean the modification of the minimum storm water requirements for specific circumstances where strict adherence of the requirements would result in unnecessary hardship and not fulfill the intent of this ordinance.

Section 3. Prohibitions

3.1 Prohibition of Illicit Discharges

- (1) It shall be a violation of this ordinance for any person to throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the city separate storm sewer system anything other than stormwater.
- (2) Discharges from the following sources are exempt from the prohibition provision in section 3.1(1) above:
 - (a) 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, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;

- (b) Discharges or flows from fire fighting, and other discharges specified in writing by the city as being necessary to protect public health and safety;

3.2 Prohibition of Illegal Connections

- (1) It shall be a violation of this ordinance for any person to construct, connect, use, maintain, or suffer or allow the continued existence of any illegal connection to the city separate storm sewer system.
- (2) Illegal connections must be disconnected. The department may require that illegal connections be disconnected and redirected if necessary, to an approved on-site sewage management system or the sanitary sewer system. Such redirected connections must be approved by the agency responsible for administering and operating those systems.
- (3) The department may require any underground or above ground pipe, drain or other conduit, that has not been documented in plans, maps or equivalent, and which may be connected to the city's separate storm sewer system, to be located by the owner or occupant of that property upon receipt of written notice from the department. 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 department. Failure to comply with the terms of the written notice mentioned within this subsection shall constitute a violation of this ordinance.

Section 4. 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 city separate storm sewer system.

Section 5. Access and Inspection of Properties and Facilities

5.1 Access and Inspection

The director or his designee shall be permitted to enter and inspect premises, properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

- (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 the director or his designee.

- (2) The owner or operator shall allow the director or his designee ready access to all parts of the premises for the purposes of inspection, investigation, observation, monitoring, measurement, recording, enforcement, sampling and testing, photography and videotaping for the purpose of ensuring compliance with the provisions of this ordinance. The owner or operator shall allow the director or his designee to examine and copy any records that are required under the conditions of an NPDES permit. The director or his designee shall duly notify the owner of said property or the representative on site, except in the case of an emergency.
- (3) The director or his designee shall have the right to set up on any premises, property or facility such devices as are necessary in the opinion of the department to conduct monitoring and/or sampling of discharges.
- (4) The director or his designee may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the 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. Measurements, tests and analyses performed shall be completed in accordance with 40 CFR Part 136, unless the director approves another method.
- (5) Any temporary or permanent obstruction to safe and easy access to the premises, 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 director or his designee 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 director or his designee access to a facility, property or premises shall constitute a violation of this ordinance.
- (7) If the director or his designee has been refused access to any part of a premises, property or facility from which stormwater is or would likely be discharged, and the director or his designee 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, environment and welfare of the community, then the department may seek issuance of a search warrant from any court of competent jurisdiction.

5.2 Schedule

The director or his designee may determine inspection schedules necessary to enforce the provisions of this ordinance.

Section 6. 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 non-stormwater from that facility or operation which is resulting or may result in a discharge of that non-stormwater into the city separate storm sewer system, state waters, or waters of the United States, 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 department by phone, facsimile or in person within 24 hours of discovering the discharge. Such notification shall detail 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 department within three business days of the phone or in person notice. If the discharge 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.

Failure to provide notification of a release or discharge as provided above is a violation of this ordinance.

Section 7. Violations, Enforcement and Penalties

7.1. Violations

It shall be a violation of this ordinance for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person, who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section. Each day of noncompliance is considered a separate offense. The department may institute appropriate action or proceedings at law or equity for the enforcement of this ordinance. Any court of competent jurisdiction may have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief. Nothing herein contained shall prevent the department from taking such other lawful action as is necessary to prevent or remedy any violation, including application for injunctive relief.

In the event the violation constitutes an immediate danger to public health or public safety, the department has the right but not the duty, to enter upon the subject private property or premises, without giving prior notice, and take any and all measures

necessary to abate the violation and/or restore the property. The department is authorized to seek costs of the abatement as outlined in Section 7.5.

7.2. Notice of Violation

Whenever the department finds that a violation of this ordinance has occurred, the 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; and
 - (b) The address when available or a description of the building, structure, premises or land upon which the violation is occurring, or has occurred; and
 - (c) A statement specifying the nature of the violation; and
 - (d) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action; and
 - (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 department by filing a written notice of appeal within thirty (30) days of service of notice of violation.

- (2) Such notice of violation may require without limitation:
 - (a) The performance of monitoring, analysis, and reporting;
 - (b) The elimination of illicit discharges and illegal connections;
 - (c) That violations of this ordinance shall cease and desist;
 - (d) The abatement of non-stormwater discharges, the remediation of land or the effects of pollution, and the restoration of any affected property to its unaffected condition;
 - (e) Payment of costs to cover administrative and abatement costs; and,
 - (f) The implementation of pollution prevention practices; and
 - (g) The development and provision to the department of written remediation

or action plan's; and

- (h) The development and provision to the department of documents showing the location and discharge points of conveyances, pipes, channels, or drains; and
- (i) Any other actions that will lead to the remedy of a condition of violation of this ordinance.

7.3. Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination of the director or his designee. The notice of appeal must be received by the department within thirty (30) days from the date of the Notice of Violation. Hearing on the appeal before the director shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the director shall be final.

7.4. Enforcement Measures

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 3 days of the decision of the director upholding the decision of the director or his designee, then, in addition to any other remedies that may be available, representatives of the department or its contractors may enter upon the subject private premises, property or facility, where they are then authorized to take any and all actions or measures necessary to abate the violation and/or restore the property. Such measures or actions shall include but not be limited to repairs, maintenance, containment, cleanup and remediation. It shall be a violation of this ordinance for any person, owner, agent or person in possession of any premises, property or facility to refuse to allow the department or designated contractor to enter upon the premises for the purposes set forth above.

7.5 Costs of Abatement of the Violation

Within 10 working days after abatement of the violation by the department or its contractors, 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 10 working days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within thirty (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.

7.6 Criminal Penalties

For violations of this ordinance, the department may issue a citation to the alleged violator requiring such person to appear in a court of competent jurisdiction to answer

charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$2,500 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

7.7 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 ordinance 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.

7.8 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 department may seek cumulative remedies.

The department may recover attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses. If the amount due is not paid within thirty (30) days after receipt of a notice requiring payment of such costs, or if an appeal is taken, within thirty (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.

Section 8 Variances

8.1 Variance Circumstances

The director or his designee may grant a variance from the requirements of this ordinance if exceptional circumstances applicable to a site or premises exist such that strict adherence to the provisions of the ordinance will result in unnecessary hardship and will not fulfill the intent of the ordinance. Specifically, such variances may be granted in such individual cases of unnecessary hardship upon a finding by the director or his designee that:

- (a) There are extraordinary and exceptional conditions pertaining to the particular site in question; and
- (b) The variance is the minimum necessary, considering the impact on upstream and downstream properties; and
- (c) The application of the ordinance to this particular site would create an unnecessary hardship; and
- (d) Such conditions are peculiar to the particular site involved; and
- (e) Such conditions are not the result of any actions of the site owner; and
- (f) Relief, if granted, would not cause substantial detriment to the public good nor impair the purposes or intent of this ordinance; and
- (g) No variance may be granted for a site for any discharge that is prohibited by this ordinance or which would result in a deterioration of quality of storm water from a site greater than would otherwise be allowed if no

variance were involved.

- (2) A written request for a variance shall be required and shall state the specific variance sought and the reasons, with supporting data, that a variance should be granted. The request shall include all information necessary to evaluate the proposed variance.
- (3) The director or his designee will conduct a review of the request for a variance within 30 working days of receiving the request.

BE IT FURTHER RESOLVED that this resolution becomes effective upon its adoption.

BE IT FURTHER RESOLVED that the ordinance known as the Storm Water Management Ordinance shall hereby be repealed in its entirety.

BE IT FURTHER RESOLVED that all regulations or parts of regulations in conflict with this resolution are hereby rescinded to the extent of said conflict.

It is so ordained this 8th day of March, 2004.