

11. **Proposed Ordinance, City of Derby Code, entitled "Illicit Discharge and Connection Stormwater Ordinance".**
Discussion/Possible Action and Recommendation to the full Board of Aldermen/Alderwomen.

8.3.3. Move to adopt proposed ordinance, City of Derby Code, "Illicit Discharge and Connection Stormwater".

Illicit Discharge and Connection Stormwater Ordinance
ORDINANCE NO. _____

SECTION 1. PURPOSE/INTENT.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Derby (the "City") through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

The objectives of this ordinance are:

1. *To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user.*
2. *To prohibit and eliminate illicit connections and discharges to the municipal separate storm sewer system.*
3. *To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance*

SECTION 2. APPLICABILITY.

This ordinance shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

SECTION 3. DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

1. **Authorized Enforcement Agency:** *employees or designees of the director of the municipal agency designated to enforce this ordinance.*
2. **Best Management Practices (BMPs):** *schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state consistent with state, federal or other equivalent and technically supported guidance. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from material storage.*
3. **Clean Water Act:** *The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.*
4. **Construction Activity:** *Any activity associated with construction at a site including, but not limited to, clearing and grubbing, grading, excavation, and dewatering.*
5. **Hazardous Materials:** *Any material, including any substance, waste, or combination thereof, which because of its quantity,*

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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.

SECTION 7. DISCHARGE PROHIBITIONS.

A. Prohibition of Illegal Discharges

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, other than storm water. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

1. *The following discharges are exempt from discharge prohibitions established by this ordinance:*
 - a. *untampered ground water discharges including, but not limited to, pumped ground water, foundation drains, water from crawl space pumps and footing drains;*
 - b. *irrigation water including, but not limited to, landscape irrigation and lawn watering runoff;*
 - c. *residual street wash water associated with sweeping;*
 - d. *discharges or flows from firefighting activities (except training); and,*
 - e. *naturally occurring discharges such as rising ground waters, untampered ground water infiltration (as defined at 40 CFR 35.2005(20)), springs, diverted stream flows and flows from riparian habitats and wetlands.*
2. *Any non-stormwater discharge to the MS4 authorized by a permit issued pursuant to Section 22a-430 or 22a-430b of the Connecticut General Statutes is also authorized under this ordinance.*

B. Prohibition of Illicit Connections

1. *The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.*
2. *This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.*
3. *A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.*

SECTION 8. SUSPENSION OF MS4 ACCESS.

A. Suspension due to Illicit Discharges in Emergency Situations

The Director of Public Works may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

B. Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

SECTION 9. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water 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 Director of Public Works prior to the Board of Aldermen / Alderwomen Meeting Minutes – May 10, 2018

SECTION 13. NOTIFICATION OF SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a 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 or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. 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. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director of Public Works within three business days of the phone 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.

SECTION 14. ENFORCEMENT.

A. Notice of Violation.

Whenever the Director of Public Works finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. 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; and*
- 5. Suspension of any discharge to the MS4 system consistent with Section 8 of this ordinance; and,*
- 6. The implementation of source control or treatment BMPs.*

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Where elimination is not possible within 60 days of source confirmation, a schedule for its elimination will be set for no more than 180 days.

Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator, in addition to any fines imposed in subsections (b) or (c) of this section.

B. Procedure for Issuance of citations.

- 1. The Director of Public Works shall issue a written notice to any person who violates any provision of this ordinance. No written notice may be issued against the state or any state official or state employee acting within the scope of his employment. Such written notice shall explain the nature of the violation and the steps required for compliance, and shall allow a seventy-two-hour period within which to correct the violation or within which a written plan for correction shall be submitted to the Director of Public Works, setting forth a reasonable time period for correction of the violation as agreed upon by the Director of Public Works. A written notice issued pursuant to this subsection shall be served:*
 - a. by hand delivery, at which time the seventy-two- hour period shall begin; or*
 - b. by certified mail return receipt requested and by regular first class mail.*

Three (3) business days shall be allowed for mail delivery of the notice prior to the commencement of the seventy-two-hour period.

- 2. Within two (2) business days after the period for correction established in subsection B.1. expires, the Director of Public Works shall re-inspect the subject property to determine compliance.*
- 3. If the violations set forth in the written notice have not been corrected at the time of re-inspection, the Director of Public Works may issue a citation and fine of up to one hundred dollars (\$100.00) for each violation, by leaving a true and attested copy of the citation at the usual place of abode or residence of the person in violation, or in the case of a corporate or business entity, delivery to the business address or the address of the statutory agent of said entity. No such fine shall be levied against the state or any state official*

impose upon a violator, alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

SECTION 18. 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, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

SECTION 19. CRIMINAL PROSECUTION

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law. The Director of Public Works may recover all attorneys' fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

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 authorized enforcement agency to seek cumulative remedies.

SECTION 21. SAVINGS CLAUSE.

The enactment of this ordinance shall not operate as an abatement of any action or proceeding previously taken, now pending, or taken prior to the effective date of this ordinance. All said actions and proceedings are hereby ratified to be continued.

SECTION 23. STATUTORY AUTHORIZATION.

The Legislature of the State of Connecticut has in Title 7, Chapter 98, Section 7-148(c)(7) of the General Statutes delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

SECTION 24. EFFECTIVE DATE.

This ordinance shall be in full force and effect fifteen (15) days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

APPROVED AS TO FORM:

*Vincent M. Marino, Esq.,
Corporation Counsel*

ATTEST:

*Marc Garofalo
Town Clerk*

PASSED AND ADOPTED this [] day of May, 2018, by the following vote:

Motioned by Ms. DeGennaro, seconded by Mr. Sampson and the motion carried.