

**Ordinance No. 3412
Entitled an Ordinance to amend the Municipal Code of the City
of Morristown by adding the following sections relating to
Illicit Discharges and Connections to the Municipal Separate
Storm Sewer System as Title 18, Chapter 8.**

CHAPTER 8

ILLICIT DISCHARGES AND CONNECTIONS TO THE MUNICIPAL SEPARATE
STORM SEWER SYSTEM

SECTIONS

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18-801. General

(1) Purpose

It is the purpose of this ordinance to:

- (a) Protect, maintain, and enhance the environment of the City of Morristown and the public health, safety and general welfare of the citizens of the city by controlling discharges of pollutants to the city's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the city.
- (b) Enable the City of Morristown to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable federal and state regulations for storm water discharges.

(2) Scope

This ordinance shall apply to all water generated on developed or undeveloped land which enters the City's separate storm sewer system.

(3) Administration

The City Engineer, under the direction and supervision of the City Administrator, shall administer the provisions of this ordinance.

(4) Conflict

Whenever there is a conflict between any standard contained in this ordinance and a local, state, or federal law or regulation, the strictest standard shall prevail.

(5) Definitions

For the purpose of this ordinance, the following definitions shall apply. Words used in the singular shall include the plural, and the plural shall include the singular. Words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. The masculine form shall include the feminine.

- (a) "Best Management Practices (BMPs)" Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to the municipal separate storm sewer system. This term also includes treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage
- (b) "City" The City of Morristown, Tennessee
- (c) "City Administrator" The chief executive of the city
- (d) "City Engineer" The City Engineer of the city or his or her designee, who is responsible for the implementation of this article
- (e) "Discharge" To dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means, including any direct or indirect entry, of any non-stormwater solid or liquid matter into the municipal separate storm sewer system
- (f) "Hazardous Material" Material defined as a hazardous material under US Department of Transportation regulations.
- (g) "Hot Spot" An area where the land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater. These include:
 - (i) Vehicle, truck or equipment maintenance, fueling, washing or storage areas including but not limited to: gas stations, automotive dealerships, automotive repair shops and car wash facilities;
 - (ii) Parking lots over 400 spaces or parking areas greater than 120,000 square feet;
 - (iii) Recycling and/or salvage yard facilities;
 - (iv) Restaurants, grocery stores and other food service facilities;
 - (v) Commercial facilities with outside animal housing areas including animal shelters, fish hatcheries, kennels, livestock stables, veterinary clinics or zoos; and
 - (vi) Other producers of pollutants identified by the City Engineer as a Hot Spot using information provided to or collected by the City Engineer, or reasonably deduced or estimated by the City Engineer from engineering or scientific study

- (h) "Illicit connection" Any unauthorized or illegal connection to the municipal separate storm sewer system, whether or not such connection results in a discharge into that system
- (i) "Illicit discharge" Any discharge to the municipal storm sewer system that is not composed entirely of stormwater and not specifically exempted in this chapter
- (j) "Industrial waste" Liquid or other waste resulting from any process of industry, manufacturer, trade or business or from the development of any natural resources
- (k) "Municipal separate storm sewer system (MS4)" A conveyance or system of conveyances, including roads with drainage systems, streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, which are:
 - (i) Owned or operated by a state, county, city, town, district, association, or other public body created by or pursuant to state law having jurisdiction over the disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the federal Clean Water Act that discharges to waters of the state;
 - (ii) Designed or used for collecting or conveying stormwater;
 - (iii) Which is not a combined sewer; and
 - (iv) Which is not part of a publicly owned treatment works (POTW) as defined by 40 C.F.R. § 122.2, as amended from time to time
- (l) "National Pollutant Discharge Elimination System (NPDES) permit" A permit issued pursuant to 33 U.S.C. § 1342, as amended from time to time
- (m) "Other wastes" Discarded brush, sawdust, shavings, leaves, lawn clippings, animal waste, used or previously applied lime, garbage, trash, refuse, used newspaper, paper products, plastic containers or metal containers, ashes, offal, discarded tar, discarded paint, discarded or uncontained solvents, used, discarded or spilled petroleum products, antifreeze, motor vehicle fluids, used or discarded gas tanks or chemicals, or any other used, uncontained, unpackaged, or disposed of materials which may discharge to or otherwise enter the stormwater system. These items are not considered "other wastes" when they are placed in a city right-of-way for collection by the city and meet the requirements set forth by the city for garbage and/or bulk trash collection.
- (n) "Person" Any individual, firm, corporation, partnership, association, organization or entity, including governmental entities, or any combination thereof
- (o) "Pollutant" Sewage, industrial waste, or other waste or materials, whether liquid or solid

- (p) "Restaurant" An establishment or facility where food is prepared and sold
- (q) "Sanitary sewer" A system of underground conduits that collect and deliver sanitary wastewater to a wastewater treatment plant
- (r) "Sanitary wastewater" Wastewater from toilets, sinks and other plumbing fixtures
- (s) "Sewage" Human wastes carried by water from residences, buildings, industrial establishments or other places, together with such industrial wastes, stormwater or other water as may be present; or any substance discharged from a sanitary sewer collection system
- (t) "Sinkhole" (a) A naturally occurring depression where drainage collects in the earth's surface that is a minimum of two (2) feet deep; or (b) A hole, fissure or other opening in the ground, often underlain with limestone, dolomite or other rock formation that provides for and is being designated as a natural conduit for the passage of stormwater
- (u) "Stormwater," "runoff," or "stormwater runoff" That portion of the precipitation on a drainage area that is discharged from the area into the municipal separate storm sewer system
- (v) "Stormwater system" The system of roadside drainage, curbs and gutters, curb inlets, swales, catch basins, manholes, gutters, ditches, pipes, lakes, ponds, sinkholes, channels, creeks, streams, storm drains, and similar conveyances and facilities, both natural and manmade, located within the city which are designated or used for collecting, storing, or conveying stormwater, or through which stormwater is collected, stored or conveyed, whether owned or operated by the City of Morristown or any other person
- (w) "TDEC" The State of Tennessee Department of Environment and Conservation
- (x) "Waters" or "waters of the state" Any and all waters, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to and retained within the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters

18-802. Responsibility

- (1) Conformance with this ordinance is a minimum requirement and does not relieve the property owner, utility, facility operator, lessee, tenant, contractor, equipment operator and/or any other person or entity doing work from applying sound judgment and taking measures which go beyond the scope of the requirements of this ordinance where necessary.

- (2) This ordinance is a regulatory instrument only, and is not to be interpreted as an undertaking by the City to design any structure or facility. Nor does this ordinance imply a warranty or the assumption of responsibility on the part of the City for the suitability, fitness, or safety of any structure with respect to flooding, water quality, or structural integrity.
- (3) Neither the approval of a discharge under this ordinance, nor compliance with the conditions of such approval, shall relieve any person of responsibility for damage to other persons or property or impose any liability upon the city for damage to other persons or property.

18-803. Prohibition of Illicit Discharges

- (1) No person shall introduce or cause to be introduced into the municipal separate storm sewer system any discharge that is not composed entirely of stormwater. The commencement, conduct, or continuance of any non-stormwater discharge to the municipal separate storm sewer system is prohibited.
- (2) Notwithstanding the foregoing, uncontaminated discharges from the following sources are permitted:
 - (a) Landscape irrigation or lawn watering with potable water
 - (b) Diverted stream flows permitted by the State of Tennessee
 - (c) Rising groundwater
 - (d) Groundwater infiltration, as defined by 40 C.F.R. § 35.2005(20), as amended from time to time, to separate storm sewers
 - (e) Pumped groundwater
 - (f) Foundation or footing drains
 - (g) Water discharged from crawl space pumps
 - (h) Air conditioning condensate
 - (i) Springs
 - (j) Individual, residential washing of vehicles or car washing of two or fewer consecutive days for a charity, non-profit fund raising, or similar non-commercial purpose
 - (k) Flows from natural riparian habitat or wetlands
 - (l) Swimming pools, if dechlorinated to less than one part per million chlorine
 - (m) Discharges necessary to protect public health and safety, as specified in writing by the City
 - (n) Dye testing authorized by the City
 - (o) Street wash waters resulting from normal street cleaning and de-icing operations
 - (p) Fire fighting activities

- (q) Emergency public utility repair activities for breaks in water and sewer lines and discharges from water line flushing and blow-offs
 - (r) Discharges pursuant to a valid and effective NPDES permit issued by the State of Tennessee
 - (s) Any other uncontaminated water source.
- (3) Notwithstanding any other provision in this article, no person or entity shall allow any discharge into the municipal separate storm sewer system that would be a violation of the city's NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer System or would cause the city to be in violation of its permit.
- (4) Stormwater discharges from "Hot Spots" may require the application of specific structural Best Management Practices and pollution prevention practices.

18-804. Prohibition of Illicit Connections and Dumping

- (1) The construction, use, maintenance, or continued existence of illicit connections to the city's municipal separate storm sewer system is prohibited.
- (2) Illicit connections to the city's municipal separate storm sewer system made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection, are prohibited.
- (3) It shall be illegal for any person to intentionally dump liquids or solids that are considered pollutants by the U.S. Environmental Protection Agency (EPA) on the ground where there is potential exposure to rain or stormwater and potential for the pollutant to reach the Municipal Separate Storm Sewer System of the city.

18-805. Elimination of Illicit Connections and Illicit Discharges

- (1) Any owner or tenant of a property or premises where an illicit connection and/or discharge is located shall be required, at such person's expense, to eliminate the illicit connection and/or discharge to the municipal separate storm sewer system.
- (2) Any owner or tenant of 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, the BMPs necessary to prevent the further discharge of pollutants to the municipal separate storm sewer system.
- (3) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this article.

18-806. Spill Notification

Notwithstanding other requirement of law, as soon as any person responsible for a facility or operation (including the owner, occupant, or operator thereof) or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting in, or may result in, illicit discharges or pollutants discharging into stormwater or the municipal separate storm sewer

system, the person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

- (1) In the event of a release of hazardous materials, the person shall immediately contact Central Dispatch by dialing 911 and reporting the release. Central Dispatch will contact the appropriate response agency. The person shall notify the City Engineer in person or by telephone or facsimile no later than the next business day.
- (2) In the event of a release of non-hazardous materials, the person shall notify the City Engineer in person or by telephone or facsimile no later than the next business day.
- (3) Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the City Engineer within three business days of the initial notice.
- (4) 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 five years.

18-807. Inspections

- (1) The City Engineer shall have the right to enter onto private properties for the purposes of investigating a suspected violation of this article, or to remove foreign objects or blockages.
- (2) The owner or person in control of any premises, facility, operation, or residence where an illicit discharge or illicit connection is known or suspected shall allow the City Engineer to have access to and copy at reasonable times, any applicable state or federal permits and associated records related to the known or suspected discharge or connection, and any reports or records maintained in accordance with this article.
- (3) The failure of an owner or person in control of any premises to allow such inspection by the City Engineer shall be a violation of this ordinance, which violation may be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties.
- (4) The City Engineer may require any person engaging in any activity or owning any property, building or facility (including but not limited to a site of industrial activity) to undertake such reasonable monitoring of any discharge(s) to the stormwater system and to furnish periodic detailed reports of discharges and/or illicit discharges.

18-808. Enforcement

- (1) Any person who fails to comply with the ordinance shall be in violation of this article. Each day such violation continues shall constitute a separate violation.
- (2) Any person who violates this article shall be subject to the requirement for corrective action(s), the issuance of a stop work order, the withholding of a certification of occupancy, and civil penalties and/or damages. Each day such violation continues shall constitute a separate violation.

- (3) Any failure of a person to comply with a stop work order issued by the city shall be a violation of this article. Each day such violation continues shall constitute a separate violation.
- (4) In order to obtain compliance with this article, the City Engineer may notify other departments of the city to deny service to the property until the site has been brought into compliance.
- (5) Upon the request of the City Engineer, the city attorney shall initiate appropriate legal action to enforce the provisions of this article. The City may bring legal action to enjoin the continuing violation of this chapter and the existence of any other remedy in law or equity shall be no defense to any such action.
- (6) Any person who violates any provision of this ordinance may also be liable to the city in a civil action for damages.
- (7) The remedies provided for in this ordinance are not exclusive and the City Engineer may take any, all or any combination of enforcement actions against any noncompliant owner that is in violation.
- (8) The City Engineer shall have the authority to undertake enforcement actions and to impose the civil penalties provided in this section.
- (9) Enforcement Actions
 - (a) Notice of Violation. Whenever the City Engineer finds that any person discharging stormwater has violated or is violating this ordinance or an order issued hereunder, the City Engineer may serve upon the property owner, tenant, utility, facility, operator, lessee, contractor, or equipment operator of the site of the discharge a Notice of Violation.
 - (i) The notice of violation shall: (1) be in writing, (2) include a description of the property sufficient for identification of where the violation has occurred, (3) list the violation, (4) state the action required, and (5) provide a deadline for compliance or to stop work.
 - (ii) Within fourteen (14) days of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the City Engineer. Submission of this plan in no way relieves the discharger of liability for any violations occurring before or after receipt of the notice of violation.
 - (b) Consent Orders. The City Engineer is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the person to correct the noncompliance within a time period specified by the order. Consent orders shall have the same force and effect as administrative orders issued pursuant to paragraphs (d) and (e) below.

- (c) Show Cause Hearing. The City Engineer may order any person who violates this ordinance or an order issued hereunder to show cause why a proposed enforcement action should not be taken. The hearing shall be before the City Administrator. Notice shall be served on the person specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the violator show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing.
 - (d) Compliance Order. When the City Engineer finds that any person has violated or continues to violate this ordinance or an order issued hereunder, he may issue an order to the violator directing that, following a specific time period, adequate structures, devices, or other BMP's be installed or procedures implemented and properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the construction of appropriate structures, installation of devices, self-monitoring, and management practices.
 - (e) Cease and Desist Orders. When the City Engineer finds that any person has violated or continues to violate this ordinance or an order issued hereunder, the City Engineer may issue an order to cease and desist all such violations and direct those persons in noncompliance to: (1) comply forthwith; or (2) take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.
- (10) An Enforcement Response Plan or similar policy document, including a schedule of civil penalties which may be assessed for certain specific violations or categories of violations, may be adopted by the City Engineer.

18-809. Emergency Suspensions

- (1) Under this article, if the City Engineer finds that an emergency exists imperatively requiring immediate action to protect the public health, safety or welfare; the health of animals, fish or aquatic life; or a public water supply, the City Engineer may, without prior notice, issue an order reciting the existence of such an emergency and requiring that such action be taken as the City Engineer deems necessary to meet the emergency.
- (2) Any owner or tenant notified of a suspension shall immediately eliminate the violation. If an owner or tenant fails to immediately comply voluntarily with the suspension order, the City Engineer may take such steps as deemed necessary to remedy the endangerment. The City Engineer may allow the owner or tenant to recommence when the owner or tenant has demonstrated to the satisfaction of the City Engineer that the period of endangerment has passed.

- (3) An owner or tenant that is responsible, in whole or in part, for any discharge or connection presenting imminent danger to the public health, safety or welfare; the health of animals, fish or aquatic life; or a public water supply, shall submit a detailed written statement describing the causes of the harmful discharge or connection and the measures taken to prevent any future occurrence, to the City Engineer within seven (7) calendar days of receiving notice of the suspension.
- (4) Nothing in this article shall be interpreted as requiring a hearing prior to any emergency suspension under this section.
- (5) Any owner or tenant whose operation is suspended pursuant to this section, on petition to the City Council, shall be afforded a hearing as soon as possible, but in no case shall such hearing be held later than thirty (30) calendar days from the receipt of such a petition by the City Engineer.

18-810. Civil Penalties

- (1) Any person who violates any provision of this article may be assessed an administrative civil penalty by the City Engineer of not less than \$50.00 and not more than \$5,000.00 for each day of violations in accordance with T.C.A. § 68-221-1106. Each day of violation shall constitute a separate violation. In assessing a civil penalty, the City Engineer may consider:
 - (a) The harm done to the public health or the environment;
 - (b) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity;
 - (c) The economic benefit gained by the violator;
 - (d) The amount of effort put forth by the violator to remedy the violation;
 - (e) Any unusual or extraordinary enforcement costs incurred by the city;
 - (f) Any amount of penalty established by ordinance or resolution for specific categories of violations; and
 - (g) Any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.
- (2) In addition to the civil penalty, the City Engineer may assess:
 - (a) All damages proximately caused by the violator to the city, which may include any reasonable expenses incurred in investigating violations of, and enforcing compliance with, this article, or any other actual damages caused by the violation; and
 - (b) The costs of the city's maintenance of stormwater facilities when the user of such facilities fails to maintain them as required by this section.
- (3) The municipality may bring legal action to enjoin the continuing violation of this ordinance, and the existence of any other remedy, at law or equity, shall be no defense to any such actions.

- (4) The remedies provided for in this ordinance are not exclusive and the City Engineer may take any, all, or any combination of enforcement actions against any noncompliant owner that is in violation.
 - (a) Any remedies taken shall be in addition to any other remedies provided by law.
 - (b) The remedies set forth in this ordinance shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one (1) or more of the remedies set forth herein has been sought or granted.
- (5) Any civil penalty assessed to a violator pursuant to this section may be in addition to any other penalty assessed by a State or Federal authority.
- (6) All damages and civil penalties collected under this ordinance, following adjustment for the expenses incurred in making such collections, shall be allocated and appropriated for the administration of the City's stormwater program.

18-811. Appeals

Pursuant to Tennessee Code Annotated section 68-221-1106(d), any person aggrieved by the imposition of a civil penalty or damage assessment as provided by this ordinance may appeal said penalty or damage assessment to the City Council.

- (1) Any person against whom an assessment has been issued may secure a review of said assessment by filing with the City Engineer a written petition setting forth the grounds and reasons for their objections and asking for a hearing on the matter before the City Council. The appeal shall be in writing and filed with the City Clerk within fifteen (15) days after the civil penalty and/or damage assessment is served in any manner authorized by law.
- (2) Upon receipt of an appeal, the City Council shall hold a public hearing within thirty (30) days. Ten (10) days prior notice of the time, date, and location of said hearing shall be published in a daily newspaper of general circulation. Ten (10) days' notice by registered mail shall also be provided to the aggrieved party, such notice to be sent to the address provided by the aggrieved party at the time of appeal.
- (3) If a petition for review of such damage assessment or civil penalty is not filed within thirty (30) days after the damage assessment or civil penalty is served in any manner authorized by law, the violator shall be deemed to have consented to the damage assessment or civil penalty, and it shall become final.
- (4) If any assessment becomes final because of a person's failure to appeal the municipality's assessment, the City Engineer may apply to the appropriate court for a judgment and seek execution of said judgment. Upon final order, if payment is not made, the City Engineer may issue a cease and desist order.
- (5) Any alleged violator may appeal a decision of the City Council pursuant to the provisions of Tennessee Code Annotated, Title 27, Chapter 8.

Adopted on first reading the 15th day of March, 2011.

Mayor

ATTEST:

City Administrator

Adopted on second and final reading the 5th day of April 2011.

Mayor

ATTEST:

City Administrator