ARTICLE I. - ILLICIT STORMWATER DISCHARGES AND CONNECTIONS

Sec. 75-1. - Purpose/intent.

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of Winston-Salem by 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 article are:

(1) To enforce the city's stormwater quality management program;
(2) To reduce or prevent pollutants in the MS4 to the maximum extent practicable;
(3) To prohibit illicit connections and discharges to the MS4;
(4) To prevent improper disposal of materials that degrade water quality; and
(5) To authorize all inspections, surveillance and monitoring procedures necessary to ensure compliance with this article.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-2. - Definitions.

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

Best management practices (BMPs): Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices, as approved by the stormwater manager, to prevent or reduce the discharge of pollutants directly or indirectly to the MS4. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

City: The City of Winston-Salem, a North Carolina Municipal Corporation.

City manager: The city manager as appointed by the City Council of the City of Winston-Salem, or his designee.


Facility: Any land use including, but not limited to: commercial, industrial and residential land uses, and any other source including, but not limited to: motor vehicles and rolling stock that directly or indirectly contribute, cause or permit the contribution of any discharge, illicit or otherwise, to the MS4.

Hazardous materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit discharge: Any direct or indirect non-stormwater discharge to the MS4, except as exempted in subsection 75-6(a).

Illicit connections: An illicit connection is defined as either of the following:

(1) A storm drainage system which allows, or may allow, an illicit discharge to enter the MS4; or
(2) Any pipeline, ditch or other conveyance connected to the MS4 which has not been documented in construction or site plans, a building permit, maps, or other equivalent records by which the city would have express notice of the existence and location of the connection to the MS4.

Industrial activity: Activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).
Municipal Separate Storm Sewer System (MS4): For purposes of regulation and not maintenance, the MS4 includes all storm drain systems, watercourses and waters of the state, as defined herein, within the city limits and any of the city's extra territorial jurisdictions.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit: A permit issued by EPA (or by a state 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.

Noncommercial car washing: Any occasional automotive washing performed by individuals or groups without charging any fee or in exchange for a charitable donation. This shall include but is not limited to car washes performed by local church groups, school groups, athletic teams, youth organizations, and individuals at their place of residence.

Non-stormwater discharge: Any discharge to the MS4 that is not composed entirely of stormwater.

Person: Any individual or group of individuals, association, organization, partnership, firm, corporation or other entity recognized by law, other than the city and including a user, as defined below.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; oil and other automotive fluids; hazardous and nonhazardous liquids, solids and wastes; solid wastes, yard wastes, refuse, rubbish, garbage, litter, and floatables; pesticides, herbicides and fertilizers; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; other discarded or abandoned objects and accumulations; or any noxious or offensive matter of any kind that may cause or contribute to pollution.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

Storm drainage system: Any publicly or privately owned facility, including the MS4, whether on the surface or subsurface, by which stormwater is collected and/or conveyed, including but not limited to: Watercourses, waters of the state, roads with drainage systems, city streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Stormwater division: The city department created to manage the city's stormwater management program pursuant to G.S. § 160A-311(10).

Stormwater manager: The city employee hired by the city manager to manage the city's stormwater division, or the stormwater manager's designee.

Stormwater Pollution Prevention Plan (SPPP): A document which describes the BMPs and activities to be implemented by a person or business to identify sources of pollution at a site and the actions to eliminate or reduce pollutant discharges to the MS4 to the maximum extent practicable.

User: Any person who owns real property on which a facility is owned.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Watercourse: Any channel, ditch, gully, swale, or stream, which sole purpose is to convey the flow of water.

Water supply watershed: An area from which water drains to a point of impoundment and where the water is then used principally as a source for a public water supply.
Waters of the state: All streams, lakes, ponds, marshes, water courses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of North Carolina or any portion thereof.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-3. - Acronyms.

The following acronyms when used in this article shall have the designated meanings:

- CFR - Code of Federal Regulations
- DEHNR - North Carolina Department of Environment, Health and Natural Resources
- DEM - North Carolina Division of Environmental Management
- DWQ - North Carolina Division of Water Quality
- EPA - United States Environmental Protection Agency
- N.C.G.S. - North Carolina General Statutes

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-4. - Jurisdiction and scope of authority.

The Illicit Stormwater Discharge and Connection Ordinance, hereinafter the ordinance, shall apply to all facilities within the city limits and to any of the city's extra territorial jurisdiction. All users whose facility is subject to this ordinance, regardless of whether the user's facility is managed or operated by another person, shall comply with this ordinance as well as any permits, enforcement actions or orders issued hereunder. The stormwater division shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or imposed on the stormwater manager may be delegated by the stormwater manager to other stormwater division personnel or other designated personnel as may be necessary. Nothing in this ordinance shall be interpreted to impose an obligation on the city to construct, maintain, repair or operate a storm drainage system, or any part thereof, located on another person's property.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-5. - Abrogation.

This ordinance is not intended to repeal, abrogate, annul, impair, or interfere with any existing agreements, covenants, rules, regulations or permits previously adopted or issued. However, if any provisions or requirements of this ordinance conflict with any existing regulations or ordinances, the more restrictive provisions shall apply. This ordinance is not intended to contradict article II, storm drainage improvements, or article III, stormwater management utility of this chapter.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-6. - Illicit discharge and connection prohibitions.

(a) Illicit discharges.

(1) It shall be unlawful for any person to allow, directly or indirectly, anything other than stormwater, whether solid, liquid or vegetative, to be discharged, deposited or placed in such location that it may reach or be blown or scattered into the MS4, except for the following:

a. Water line flushing.
b. Landscape irrigation.

c. Rising ground waters.

d. Diverted stream flows.

e. Pumped ground water.

f. Ground water infiltration to storm sewers.

g. Discharges from potable water sources.

h. Irrigation water.

i. Foundation drains.

j. Springs.

k. Water from crawl space pumps and basement sump pumps.

l. Footing drains.

m. Noncommercial car washing.

n. Flows from habitats and wetlands.

o. Street wash waters.

p. Discharges from fire fighting activities.

q. Discharges from swimming pools if free and total chlorine is less than one ppm.

r. Discharges associated with emergency removal and treatment activities for hazardous materials if authorized by the federal, state or local government on-scene coordinator.

s. Maintenance activities of the storm drainage system requiring flushing or cleaning with potable water.

t. Illicit discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the user and administered under the authority of the EPA, or DWQ, provided that the user is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations. Discharges specified in writing by the stormwater manager as being necessary to protect public health and safety or discharges that have been filtered through an approved pretreatment system that consistently demonstrate no discharge of pollutants.

u. Dye testing, but only if the user has notified the stormwater manager at least 24 hours prior to the time of the test.

(2) If any of the above illicit discharge exceptions are found to be polluted and may therefore negatively impact the quality of the waters of the state, the polluted illicit discharge exception shall be deemed unlawful and shall not be allowed into the MS4. These conditions shall be determined by the stormwater manager or designee. These polluted illicit discharges, though listed as an exception above, shall be regulated as an illicit connection or discharge.

(b) Illicit connections. The construction, use, maintenance or continued existence of illicit connections is prohibited. 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.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-7. - Suspension of MS4 access in emergency situations.

When necessary to stop an actual or threatened discharge that is imminently dangerous or prejudicial to the public's health or safety, the stormwater manager may, without prior notice, order that a user's access to the MS4 be suspended. If the violator fails to comply with this suspension order, the stormwater manager may take such steps as deemed necessary to remove, abate or
remedy the actual or threatened discharge. The user shall reimburse the city the full cost of such removal, abatement or remedy according to the terms of subsection 75-11(c). The user may appeal the stormwater manager's decision pursuant to section 75-12, but the user may not reconnect to the MS4 without the prior written approval of the city manager.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-8. - Right of entry/access to facilities.

(a) The stormwater manager shall be permitted to enter and inspect facilities as often as may be necessary to determine compliance with this ordinance.

(b) Users shall allow the stormwater manager immediate access to all parts of the facility for the purposes of inspection, sampling and examining all discharges into the MS4 and for copying records that must be kept under the conditions of an NPDES permit or to enforce compliance with any additional duties mandated by this ordinance, state or federal law.

(c) The stormwater manager shall have the right to install or to require the user to install on any facility such devices as are necessary in the opinion of the stormwater manager, to monitor and/or sample the facility's discharges into the MS4.

(d) The user shall maintain the facility's sampling and monitoring equipment in a safe and proper operating condition at the user's expense. All devices used to measure the flow and quality of discharges to the MS4 shall be calibrated to ensure their accuracy.

(e) Upon the stormwater manager's request, a user shall immediately remove any temporary or permanent obstruction to the safe and easy access to a facility. The obstruction shall not be replaced. The user shall bear the costs of clearing the access. If a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make the necessary arrangements to allow access to the stormwater manager.

(f) If the stormwater manager has been refused access to any part of a facility and if the stormwater manager is able to demonstrate probable cause to believe that the portion of the facility to which access has been refused contains a discharge into the MS4 and that there is a need to inspect and/or sample the discharge as part of a routine sampling and inspection program or probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such a search or inspection of that property, then the stormwater manager may seek issuance of an administrative search warrant pursuant to N.C.G.S. § 15-27.2.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-9. - Requirement to prevent, control, and reduce stormwater pollutants by the use of best management practices.

The stormwater manager may require BMPs for any facility which may cause or contribute to an illicit discharge to the MS4. All users shall provide, at their own expense, reasonable protection from illicit discharges into the MS4 through the use of these structural and nonstructural BMPs. 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 compliant with the provisions of this section. These BMPs shall be part of a SWPPP as necessary for compliance with requirements of the NPDES permit.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-10. - Notification of spills.

Notwithstanding other requirements of law, as soon as any user has information of any known or suspected illicit discharge into the MS4, the user shall take all necessary steps to ensure the discovery, containment, and cleanup of such illicit discharge. In the event of a known or suspected illicit discharge of hazardous materials into the MS4, the user shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a non-hazardous illicit discharge, the user shall notify the stormwater manager 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 City of Winston-Salem Stormwater Division within three business days of the phone notice. If an illicit discharge emanates from a commercial or industrial land use, the user 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.

(Ord. No. 4536, §1, 10-24-05)

Sec. 75-11. - Enforcement.

(a) Notice of violation. Whenever the stormwater division finds that a user has violated this ordinance, the stormwater division shall notify the user, in writing by registered or certified mail, personal service or posting of said notice at the facility where the alleged violation occurred, that the user shall perform any or all of the following:

1. Install equipment or perform testing necessary to monitor, analyze and report on the condition of the user's storm drainage system;
2. Eliminate illicit connections or discharges;
3. Cease and desist all violating discharges, practices or operations;
4. Abate or remedy the stormwater pollution or contamination hazards and restore any affected property;
5. Pay a civil penalty;
6. Implement source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the user fail to meet the deadline, then representatives of the stormwater division shall enter upon the facility and are authorized to take any and all measures necessary to abate the violation and/or restore the facility and the expense thereof shall be charged to the user and collected pursuant to subsection (c) below. Refusal to accept the notice shall not relieve the user of the obligations set forth herein.

(b) Civil penalties.

1. Illicit discharges. Any user or other person, including, but not limited to, a designer, contractor, agent or engineer, who, either directly or indirectly, allows, participates in, or directs an illicit discharge shall be subject to civil penalties as follows:

   a. Yard waste and household products less than five gallons: First time offenders who discharge into the MS4 yard waste or five gallons or less of domestic or household products, where the quantity actually discharged is considered ordinary for household purposes shall be assessed a Category I Civil Penalty in an amount set forth in the schedule of civil penalties. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.

   b. Household products greater than five gallons, non-household products and unknown volume and nature: First time offenders who discharge into the MS4 more than five gallons of domestic or household products, who discharge substances generally not used in a home, including but not limited to process waste water, or who cannot provide clear and convincing evidence of the volume and nature of the substance discharged, shall be assessed a Category II Civil Penalty. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.

   c. Waste products and bulk sales: First time offenders who discharge into the MS4 any substance that is a byproduct of a commercial or industrial process or any substance that was purchased at a bulk sales location shall be assessed a Category II Civil Penalty. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.

   d. Repeat offenders: A user who discharges into the MS4 in violation of this ordinance more than once within a 12-
month period, shall be assessed a civil penalty at one category level higher than the category assessed for a first time offender of the substance discharged. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.

(2) **Illicit connections.** Any user found with an illicit connection and any other person, including, but not limited to: a designer, engineer, contractor, or agent who allows, acts participates, directs or assists directly or indirectly in the establishment of an illicit connection shall be subject to civil penalties as follows:

a. First time offenders shall be assessed a Category II Civil Penalty in an amount set forth in the schedule of civil penalties. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.

b. A user or person who is found to have violated subsection (2)a. more than once within a 12-month period shall be assessed a Category III Civil Penalty in an amount set forth in the schedule of civil penalties. Each day's continuing violation shall constitute a separate and distinct offense for the purpose of assessing a civil penalty.

(3) In the event the city is fined by the state or federal governments resulting from an illicit discharge or connection made by a user or other person, the user or other person at fault shall reimburse the city for the full amount of the civil penalty assessed by the state and/or federal governments as well as for the abatement costs incurred by the stormwater division during the investigation and restoration process pursuant to subsection (c) below.

(4) Civil penalties collected pursuant to this ordinance shall be credited to the City of Winston-Salem General Fund.

(5) Any civil penalty assessed above shall be increased by 25 percent if the violation of this ordinance occurs within any designated water supply watershed.

(6) Schedule of civil penalties. The following civil penalties shall be imposed, up to the amount shown for each category, upon the user or person found to have violated this ordinance. In determining the amount of the penalty, the stormwater manager or his designee shall consider:

a. The degree and extent of harm to the environment, public health and public and private property.

b. The cost of remedying the damage.

c. The duration of the violation.

d. Whether the violation was willful.

e. The prior record of the person responsible for the violation in complying with this ordinance.

f. The city's enforcement costs and the amount of money saved by the violator through his, her or its noncompliance.

Category I: Civil penalty to not exceed $100.00 per day per violation

Note: In lieu of a civil penalty for first time offenders, the city manager or his designee may impose upon a violator, alternative compensatory actions, such as storm drain stenciling, creek cleanup, etc.

Category II: Civil penalty not to exceed $500.00 per day per violation

Category III violation: Civil penalty not to exceed $1,000.00 per day per violation

(c) **Recovery of costs and fines.** As authorized by N.C.G.S. § 160A-193, the offender shall be liable to the stormwater division for the civil penalty, all costs incurred by the city while enforcing this ordinance, including but not limited to: abatement costs, remedying the damage caused by the illicit discharge, restoring the facility, sampling, clean-up, the stormwater division's administrative costs, costs of court, and costs of litigation, to include reasonable attorney's fees. Within 30 days after the stormwater division has completed its abatement of the violation, restoration of the facility and/or its investigation and inspection, the violating user or person will be notified of the stormwater division's total costs and the civil penalty, if any. The total amount due shall be paid within 30 days of the date of notice. If the amount due is not paid...
Sec. 75-12. - Appeal of notice of violation.

(a) Any person receiving a notice of violation may appeal the notice of violation to the city manager. The notice of appeal must be received by the city manager within 15 days from the date of the notice of violation. Hearing on the appeal before the city manager shall take place within 15 days from the date of receipt of the notice of appeal.

(b) The decision of the city manager may be appealed to the city council's public works committee. The notice of appeal must be received by the city manager within 15 days from the date of the city manager's decision pursuant to subsection (a) above. Hearing on the appeal before the public works committee shall be scheduled by the committee with at least ten days' notice to the person appealing. The decision of the public works committee shall be final.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-13. - 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 final decision, then representatives of the stormwater division shall enter upon the facility and are authorized to take any and all measures necessary to abate the violation and/or restore the facility and the expense thereof shall be charged to the user and collected pursuant to subsection 75-11(c). It shall be unlawful for any user or person to refuse to allow the city or its designated contractor to enter upon the facility for the purposes set forth above.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-14. - Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the city may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(Ord. No. 4536, § 1, 10-24-05)

Sec. 75-15. - 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.

(Ord. No. 4536, § 1, 10-24-05)
Sec. 75-16. - 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 city to seek cumulative remedies.

(Ord. No. 4536, § 1, 10-24-05)

Secs. 75-17—75-30. - Reserved.