

RECOMMENDED BY: Councilor Sheila Tyson,  
Chair, Public Improvements Committee

SUBMITTED BY: Ralph Cook, City Attorney

**ORDINANCE NO. 14-198**

**WHEREAS**, from time to time the City of Birmingham reviews its regulations of public ways and facilities to ensure that they are up to date and that they regulate matters as intended by the city; and,

**WHEREAS**, the National Pollutant Discharge Elimination System (NPDES), the Alabama Water Pollution Control Act (AWPCA), and the Clean Water Act (CWA), prohibit unauthorized discharge of non-storm water discharges to municipal separate storm sewer systems (as defined in 40 CFR 122.26); and,

**WHEREAS**, the Phase I Municipal Separate Storm Sewer System (MS4) Permit requires that the City of Birmingham shall insure legal authority exists to control discharges to and from those portions of the MS4 over which it has jurisdiction to control pollutants and the discharges of spills or dumping or disposal of materials other than storm water; and,

**WHEREAS**, Ala. Code, 1975, Title 11, Chapter 89C, authorizes the City of Birmingham to adopt and enforce resolutions or ordinances to implement federal and state storm water laws, specifically regulate and control storm water discharges and eliminate to the maximum extent practicable the discharge of pollutants to the city's MS4; and,

**WHEREAS**, discharges to the City of Birmingham's MS4 that are not composed entirely of storm water runoff contribute to increased non-point source pollution and degradation of receiving waters; and,

**WHEREAS**, these non-storm water discharges occur due to spills, dumping and improper connections to the MS4 from industrial, commercial, institutional, residential or agricultural establishments; and,

**WHEREAS**, these impacts can be minimized through regulation of spills, dumping and discharges in the City of Birmingham's MS4; and,

**WHEREAS**, the City Council of the City Birmingham adopted Resolution No. 2064-14 at its regularly scheduled meeting on October 14, 2014, which provided for notice of a public hearing to adopt a Storm Water Protection Ordinance as follows:

**"RESOLUTION NO. 2064-14**

**“BE IT RESOLVED** by the Council of the City of Birmingham that said Council will hold a public hearing pursuant to Ala. Code, 1975, Section 11-89C-9(a) at its regular meeting to be held in the Council Chamber, Third Floor in the City Hall in Birmingham, Alabama on Tuesday, November 18, 2014 at 9:30 a.m. to consider the adoption of a proposed storm water protection ordinance to provide for the detection and elimination of illicit discharges of pollutants to the City’s municipal separate storm water system through prohibition of illicit discharges and illicit connections to the City’s MS4; required compliance with state and federal Clean Water Act permitting requirements for persons discharging to the City’s MS4, including best management practices; authorization for inspection and sampling to investigate sources of contamination of the MS4; required notification of accidental spills and discharges; enforcement procedures and penalties; and creation of a storm water appeals board, and that reads substantially as follows:

(TEXT OF ORDINANCE OMITTED.)

**“BE IT FURTHER RESOLVED** that a copy of the proposed ordinance shall be available for public review beginning Friday, October 17, 2014 from 8:00 a.m. until 5:00 p.m. on weekdays at the City Clerk’s Office, City Hall, 710 North 20th Street, Birmingham, Alabama 35203 and on the City of Birmingham’s website at www.birminghamal.gov. Contact Thomas Miller, Storm Water Administrator, at (205) 714-8644 for additional information.

**“BE IT FURTHER RESOLVED** by the Council of the City of Birmingham that the City Clerk be, and hereby is, directed to cause to be published in a newspaper of general circulation in the City of Birmingham, a notice as follows:

#### **“NOTICE OF PUBLIC HEARING**

“Notice is hereby given that at its meeting beginning at 9:30 a.m. on Tuesday, November 18, 2014 in the Council Chamber on the Third Floor of Birmingham City Hall, the Council of the City of Birmingham will hold a public hearing pursuant to Ala. Code, 1975, Section 11-89C-9(a), to consider the approval of a proposed storm water protection ordinance that authorizes procedures for the detection and elimination of illicit discharges of pollutants to the City’s municipal separate storm water sewer system. Provisions of the ordinance to be considered include prohibition of illicit discharges and illicit connections to the City’s MS4; required compliance with state and federal Clean Water Act permitting requirements for persons discharging to the City’s MS4, including best management practices; authorization for inspection and sampling to investigate sources of contamination of the MS4; required notification of accidental spills and discharges; enforcement procedures and penalties; and creation of a storm water appeals board.

“A copy of the proposed ordinance shall be available for public review beginning Friday, October 17, 2014 from 8:00 a.m. until 5:00 p.m. on weekdays at the City Clerk’s Office, City Hall, 710 North 20th Street, Birmingham, Alabama 35203 and on the City of Birmingham’s website at www.birminghamal.gov. Contact Thomas Miller, Storm Water Administrator, at (205) 714-8644 for additional information.”

and,

**WHEREAS**, the draft ordinance was made available for public review for at least 30 days prior to the public hearing held at the regular meeting of the City Council on November 18, 2014: and,

**WHEREAS**, the Council has considered all the facts and circumstances related to the proposed ordinances, including staff recommendations and comments from the public; and,

**WHEREAS**, the Council finds it in the best interest of the public health, safety and welfare of the citizens of the City of Birmingham to adopt a Storm Water Protection Ordinance to specifically regulate and control storm water discharges and eliminate the discharge of pollutants to the city's MS4.

## **SECTION 1.**

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Birmingham, that the Storm Water Protection Ordinance of the City of Birmingham, providing for the detection and elimination of illicit discharges of pollutants to the City's municipal separate storm water sewer system is hereby adopted in full as follows:

### **CHAPTER 1 General Provisions**

- 100 Title
- 101 Purpose/Intent
- 102 Authority
- 103 Applicability
- 104 Administration
- 105 Regulatory Consistency

### **CHAPTER 2 Definitions**

- 200 Usage
- 201 Definitions

### **CHAPTER 3 Prohibitions**

300 Prohibition of Illicit Discharges

301 Prohibition of Illicit Connections

#### **CHAPTER 4** **MS4 Protection**

401 General Provisions

#### **CHAPTER 5** **Industrial or Construction Activity Discharges**

500 Industrial or Commercial Activities

501 Construction and Land Disturbing Activities

502 Notice of Intent

503 Storm Water Discharge without Permit Prohibited

#### **CHAPTER 6** **Compliance Monitoring**

600 Right of Entry; Inspection and Sampling

601 Search Warrants

602 Emergency Discharge

#### **CHAPTER 7** **Requirements to Prevent, Control, and Reduce Storm Water Pollutants through the Use of Best Management Practices**

700 BMPs Required

701 Exceptions

702 Responsibility to Implement Best Management Practices

703 Spill Containment

#### **CHAPTER 8** **Notification of Accidental Discharges and Spills**

800 Responsibility

801 Release of Hazardous Materials

- 802 Release of Non-Hazardous Materials
- 803 Notifications
- 804 Responsibility for Hazardous Spills
- 805 Written Records
- 806 Violations

## **CHAPTER 9**

### **Violations, Enforcement and Penalties**

- 900 Violations
- 901 Warning Notice
- 902 Notice of Violation
- 903 Appeal of Notice of Violation
- 904 Emergency Abatement
- 905 Injunctive Relief and/or Civil Remedies
- 906 Remedies not Exclusive; Costs Recoverable by the City

## **CHAPTER 10**

### **Storm Water Appeals Board**

- 1000 Established
- 1001 Composition; terms; filling vacancies
- 1002 Meetings; quorum
- 1003 General duties of the SAB
- 1004 Hearing procedure

## **CHAPTER 11**

### **Miscellaneous**

- 1100 Notices
- 1101 References

- 1102 Minimum Requirements
- 1103 Severability
- 1104 Captions
- 1105 Repeal of Conflicting Sections and Ordinances
- 1106 Effective Date

## **Chapter 1 – General Provisions**

### **Section 100 TITLE**

- a) These regulations shall hereafter be known, cited and referred to as the Storm Water Protection Ordinance of the City of Birmingham, Alabama.

### **Section 101 PURPOSE/INTENT**

- a) The primary intent of this ordinance is to protect the health, safety, and general welfare of the citizens of the City of Birmingham, Alabama, through the regulation of non-storm water discharges to the city's municipal separate storm water system ("MS4") to the maximum extent practicable as required by federal and state law.
- b) This ordinance establishes methods for controlling the introduction of pollutants into the City of Birmingham's MS4 in order to comply with requirements of the national pollutant discharge elimination system ("NPDES") permit.
- c) The objectives of the Storm Water Protection Ordinance are:
  - 1) To regulate the contribution of pollutants to the MS4 from storm water discharges by any person;
  - 2) To prohibit illicit connections and non-storm water discharges to the MS4;
  - 3) To prevent non-storm water discharges, generated as a result of spills, inappropriate dumping or disposal, to the city's MS4; and
  - 4) To establish legal authority to carry out all inspections, surveillance, monitoring and enforcement necessary to ensure compliance with this ordinance and the NPDES MS4 Permit.

### **Section 102 AUTHORITY**

Title 11, Chapter 89C of the Code of Alabama 1975, authorizes the City of Birmingham to specifically regulate and control storm water discharges and eliminate the discharge of pollutants to the city's MS4.

### **Section 103 APPLICABILITY**

This ordinance applies to all premises (whether developed or undeveloped) that have storm water discharges associated with any and all land uses within the City of Birmingham.

#### **Section 104 ADMINISTRATION**

The director of the department of planning, engineering and permits of the city or his designee, shall administer, implement, and enforce the provisions of this ordinance and shall act as the "official" for the provisions of this ordinance. Any powers granted or duties imposed may be delegated by the director of planning, engineering and permits to persons or entities acting in the beneficial interest of or in the employ of the city.

#### **Section 105 REGULATORY CONSISTENCY**

This ordinance shall be construed to assure consistency with the requirements of the Clean Water Act (CWA), the Alabama Water Pollution Control Act (AWPCA) and acts amendatory thereof or supplementary thereto or any other applicable regulations including the City's NPDES MS4 Phase 1 permit.

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

#### **Chapter 2 - Definitions**

#### **Section 200 USAGE**

- a) For the purposes of this ordinance, certain words, terms and phrases shall be used, interpreted and defined as set forth in this chapter.
- b) Definitions not expressly prescribed herein are to be construed in accordance with terms defined in the federal Clean Water Act (33 U.S.C. § 1251, et seq., as amended)) and the Alabama Water Pollution Control Act of 1975 (§22-22-1, as amended), the regulations promulgated with respect to those laws, and the City's NPDES MS4 permit. Terms not otherwise defined shall be construed in accordance with customary usage in municipal planning and engineering practice.

#### **Section 201 DEFINITIONS**

**Accidental discharge.** A discharge prohibited by this ordinance into the MS4 which occurs by chance and without planning or thought prior to occurrence.

**Alabama Department of Environmental Management (herein abbreviated as "ADEM").** The state regulatory agency, created under Code of Alabama (1975) § 22-22A-1, et seq., responsible for administering and enforcing the storm water laws of the United States of America and the state.

**Alabama Water Pollution Control Act("AWPCA").** The state act found in Code of Alabama § 22-22-1 et seq. and any subsequent amendments thereto.

**Best management practices ("BMPs").** Site specific schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage and construction sites.

**City.** The City of Birmingham, Alabama, a municipal corporation organized under the laws of the State of Alabama.

**City official or official.** The director of the department of planning, engineering and permits of the city or his designee.

**Clean Water Act ("CWA").** The Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.) and any subsequent amendments thereto.

**Construction activity.** Activities that require a land disturbing activity permit and are subject to the city's Soil Erosion and Sediment Control Ordinance and/or NPDES construction permits.

**Discharge.** The passing of water or other liquid into the MS4 or into waters of the state. **Alabama Code (1975) § 22-22-1**

**Discharger.** Any person, property owner, or operator which causes, allows, permits, or is otherwise responsible for a discharge.

**EPA.** United States Environmental Protection Agency.

**Hazardous Material.** 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.

**High-Risk Source.** Municipal landfills; other treatment, storage, or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal and recover facilities; facilities subject to Emergency Planning & Community Right-to-Know Act (EPCRA), Title III, Section 313; and any other industrial or commercial source that the city official determines may make or has made a substantial pollutant contribution to the MS4.

**Illicit Connection.** An illicit connection is defined as any man-made conveyance connecting an illicit discharge directly to a municipal separate storm sewer.

**Illicit Discharge.** Any discharge to a municipal separate storm sewer system that is not composed entirely of storm water except discharges pursuant to an NPDES permit (other than the NPDES permit for certain discharges from the municipal separate storm sewer system), discharges resulting from firefighting activities, and other allowable non-storm water discharges.



**Industrial Activity.** Activities subject to NPDES Industrial Permits as defined in 40 C.F.R. §122.26 (b)(14) by the EPA.

**Municipal Separate Storm Sewer System (MS4 or Storm Drainage System).** means a conveyance, or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State Law) having jurisdiction over disposal of wastes, storm water, or other wastes, including special districts under State Law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian Tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.

**National Pollutant Discharge Elimination System (NPDES) Storm Water 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 and waters of the state, whether the permit is applicable on an individual, group, or general area-wide basis.

**Operator.** The party or parties that (either individually or groups taken together) meet either of the following two criteria: 1) They have operational control over the site specifications (including the ability to make modifications in specifications); or 2) They have the day to day operational control of those activities at the site necessary to ensure compliance with storm water pollution prevention plan requirements and any permit conditions.

**Person.** Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as the owner or owner's agent of a premises or as a lessee of a premises. Any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent or agency of the foregoing.

**Pollutant.** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. The term also includes any other effluent characteristics specified in the City's NPDES permit.

**Pollution.** The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

**Premises.** Any building, lot, parcel of land, or portion of land whether improved or unimproved including facilities, adjacent sidewalks and parking strips located thereon for all land uses.

**Sewage.** The term "sewage" means any solid, semisolid, or liquid waste from a sewer or drain; water-carried human, animal or vegetable wastes from residences, buildings, institutions, food service and industrial establishments, and other similar facilities. When used in connection with this ordinance, the term "sewage" shall also include the contents or drainage from water closets,

lavatories, showers, bathtubs, clothes washing machines, kitchen sinks, grease traps, dishwashers, or other similar appurtenances.

**Source.** The term “source” shall mean any specific activity, operation, use or facility which discharges or may discharge any pollutant to the MS4 or which may be required by the Clean Water Act to have a permit to discharge storm water associated with the source.

**State.** The State of Alabama.

**Storm Water.** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation. It is that portion of the rainfall and resulting surface flow that is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.

**Storm Water Pollution Prevention Plan.** A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination potential at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable or technologically feasible.

**Structural Storm Water Control.** A structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff, including, but not limited to quantity, quality, and period of release or the velocity of flow.

**Watercourse.** A natural or man-made surface drainage channel or body of water (including a lake or pond) through which a water flow occurs, either continuously or intermittently.

**Waters of the State.** Means all waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the State, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce. (Code of Alabama 1975, §22-22-1(b)(2). “Waters of the State” include all “navigable waters” as defined in 502(7) of FWPCA, which are within the State of Alabama.

**Waters of the United States.** Means:

- a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of tide;
- b) All interstate waters, including interstate “wetlands”;
- c) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters
  - i. Which are or could be used by interstate or foreign travelers for recreational purposes;
  - ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - iii. Which are used or could be used for industrial purposes by industries in interstate commerce:

- d) All impoundments of waters otherwise defined as waters of the United States under this definition;
- e) Tributaries of water identified in paragraphs (a) through (d) of this definition;
- f) The territorial sea; and
- g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoon designed to meet the requirements of CWA are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal areas in wetlands) nor resulted from the impoundment of waters of the United States.

### **Chapter 3. Prohibitions.**

#### **Section 300 PROHIBITION OF ILLICIT DISCHARGES.**

- a) **PROHIBITION.** Unless otherwise excepted herein, no person now or in the future, shall spill, dump, throw, drain, make, cause to be made or continue to be made; allow others under such person's control to spill, dump, throw, drain, make, cause to be made or continue to be made; or otherwise discharge and/or dispose of into the city's MS4 any illicit discharge, including but not limited to pollutants or waters containing any pollutants, other than storm water. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of ADEM, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations.
- b) **EXCEPTIONS.** Discharges from the following activities will not be considered a source of pollutants to the MS4 when properly managed to ensure that no potential pollutants are present, and therefore shall not be considered illicit discharges unless determined to cause a violation of the provisions of the AWPCA, CWA or this article:
  - 1) Water line flushing (including fire hydrant testing);
  - 2) Landscape irrigation water and/or lawn watering;
  - 3) Diverted stream flows carried out in accordance with applicable law;
  - 4) Rising ground water;
  - 5) Building pressure wash water without detergents;
  - 6) Uncontaminated ground water infiltration to storm drains;
  - 7) Uncontaminated pumped ground water;
  - 8) Discharges from potable water sources;
  - 9) Foundation and/or footing drain water (not including active groundwater dewatering systems);
  - 10) Water from crawl space pumps;
  - 11) Air conditioning condensation;
  - 12) Springs;
  - 13) Street wash water;

- 14) Non-commercial or charity car washes;
  - 15) Individual residential washing of vehicles;
  - 16) Discharges from natural riparian habitat and/or wetlands;
  - 17) Swimming pool discharges (only if dechlorinated);
  - 18) Discharges or flow from firefighting activities and other discharges determined by the fire chief as being necessary to protect public health and safety; and
  - 19) Discharges associated with biodegradable dye testing.
- c) The City of Birmingham may exempt in writing other non-storm water discharges which are not a source of pollutants to the MS4.
  - d) A person must not improperly store, handle, or apply any pollutant in a manner that will cause its exposure to rainfall or runoff and discharge as point source or nonpoint source pollution into the city's MS4 except in concentrations and quantities authorized by an approved NPDES discharge permit and consistent with a storm water pollution prevention plan for compliance.
  - e) No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any component of the MS4 or any public or private property, driveway, parking area, street, alley, or sidewalk any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution of the MS4. Yard wastes deposited in streets in proper waste receptacles or otherwise in compliance with city ordinances, regulations or policies for the purposes of collection are exempted from this prohibition. However, no waste or receptacle shall be placed in a manner to block, obstruct or restrict drain inlets to the MS4.

### **Section 301 PROHIBITION OF ILLICIT CONNECTIONS.**

- a) **PROHIBITION.** The construction, use, maintenance or continued existence of undocumented and illicit connections to the storm drainage system is prohibited and a violation of this ordinance.
- b) **PAST CONNECTIONS 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.
- c) **SEWAGE CONNECTIONS PROHIBITED.** 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 an illicit connection to continue. Improper connections in violation of this ordinance shall be disconnected and redirected, if necessary, to an approved onsite wastewater management system or a sanitary sewer system upon approval of the city and at no cost to the city for same.
- d) **WARNING NOTICE PROVIDED FOR:** Upon discovering an illicit discharge to the MS4, the official shall investigate and identify the property or properties from which the discharge is suspected to have originated. The official shall issue written warning notice to the owner or operator of the premises requiring that any drain or conveyance that has not been permitted by the city and documented in plans, maps or the equivalent and which may be connected to the MS4 be located. Such notice will specify a reasonable time within

which the location of the drain or conveyance is to be determined, the basis for the reasonable suspicion of an undocumented connection, that the drain or conveyance be identified as storm drainage system, sanitary sewer, or other, and that the outfall location or point of connection to the storm drainage system, sanitary sewer system or other discharge point be identified. The owner or operator of the premises shall cooperate with the official in locating the illicit connection or shall investigate and report the location of the connection to the official. Results of these investigations are to be documented and provided in writing to the official.

- e) **DISCONTINUE ILLICT DISCHARGES:** Upon indentifying and locating an illicit connection, the city official may require that discharges from the illicit connection be discontinued and disconnected from the MS4 or may require that the owner or operator provide a plan acceptable to the city for bringing the connection into compliance with this ordinance.

#### **Chapter 4. MS4 protection.**

##### **Section 401 GENERAL PROVISIONS**

- a) No person owning or leasing premises through which a MS4 passes shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained or kept in any part of a MS4 any trash, debris, other obstacles that would cause pollution, contamination or pollutant loading.
- b) A person shall keep and maintain that part of the MS4 on the premises owned or leased by such person free from any such trash, debris, excessive vegetation and other obstacles that would pollute or contaminate the MS4.
- c) A person shall only be liable under this ordinance for trash, debris, excessive vegetation and other obstacles that originate from the premises owned or leased by such person. Nothing in this ordinance shall allow any person to maintain any trash, debris, excessive vegetation or other obstacles on the premises in violation of Sec. 11-8-8 of the General Code of the City of Birmingham that may impact the MS4.

#### **Chapter 5. Industrial or construction activity discharges.**

##### **Section 500 INDUSTRIAL OR COMMERCIAL ACTIVITY**

- a) **Plan and Records Review Requirement.** Any person requesting a business license, rezoning, permit to construct, or permit to subdivide for a property in the City of Birmingham not limited to residential, industrial, agricultural or construction activities will be subject to plan and records reviews by the city official.
- b) It shall be unlawful to commence or continue to conduct or for the owner to allow the commencement or conduct of any commercial or industrial activity with the potential to discharge non-storm water, whether illicitly or by accident, that is not exempted under this ordinance without first having submitted to the city official either a notice of intent to seek a National Pollutant Discharge Elimination System (NPDES) operating permit from

ADEM, if required by state law to do so, a current copy of an NPDES operating permit, or a statement that an NPDES permit is not required.

- c) Compliance with (b), above, shall not excuse the owner from the need to obtain other required state and local permits or licenses.

## **Section 501 CONSTRUCTION AND LAND DISTURBING ACTIVITIES**

### **a. City of Birmingham Soil Erosion and Sediment Control Permit Required.**

Construction or land-disturbing activity shall be carried out in accordance with and governed by the City of Birmingham Soil Erosion and Sediment Control Ordinance, Ordinance No. 99-131, as amended. It shall be the duty of the owner, or his duly authorized agent, of the land on which construction or land-disturbing activity is proposed to be conducted to first obtain a Soil Erosion and Sediment Control Permit from the city, as required by Ordinance No. 99-131, as amended. Failure to do so prior to construction is unlawful and subject to penalty in accordance with Ordinance No. 99-131, as amended.

### **b. Consistent with Permit Conditions**

Any person subject to a City of Birmingham Soil Erosion and Sediment Control Permit and required also to have or having a NPDES permit shall comply with all terms and provisions of such permits. Any person required to have a NPDES permit shall provide the city official with either a copy of the permit or notice of intent (NOI) of said permit, a copy of the storm water pollution prevention plan, and copies of all monitoring data and reports submitted to ADEM as required by the NPDES permit.

**Section 502 Notice of intent (NOI).** The owner and/or operator of a source, including construction sites, required to have a NPDES permit to discharge storm water shall submit a copy of the NOI to the official. The copy of the NOI may be delivered to the official either in person or by mailing to:

Notice of Intent to Discharge Storm Water  
Planning, Urban Design and Watershed Management Division  
Department of Planning, Engineering and Permits  
710 North 20<sup>th</sup> Street,  
City Hall, 2<sup>nd</sup> Floor  
Birmingham, Alabama 35203

## **503 STORM WATER DISCHARGE WITHOUT PERMIT PROHIBITED**

No direct discharge to the city's MS4 permit shall be permitted until either proof of a NPDES NOI or NPDES permit has first been obtained and/or approved by the City official.

## **Chapter 6. Compliance Monitoring.**

#### **Section 600 RIGHT OF ENTRY: INSPECTION AND SAMPLING.**

- a) The city official may enter upon private property upon reasonable notice to the owner and the person in possession thereof and during normal business hours and upon the presentation of appropriate credentials for the purpose of performing investigations regarding the existence and source of contamination and determining from the owner or other appropriate individual the methods which they will employ to stop, neutralize, remove, or otherwise remedy the contamination, and as needed to determine compliance or non-compliance with permit conditions, including any prohibition of illicit discharges to its municipal separate storm sewers. Any officer, employee, or other authorized agent who performs the duties authorized by this ordinance in accordance with provisions hereof shall be immune from arrest and prosecution for trespass while performing any legal duty pursuant to this ordinance by presenting identification issued by the City of Birmingham. Identification issued by the city shall be presented by the city official at the time of entry.
- b) If security measures are in force on a premise, then the premises owner shall make the necessary arrangements to allow access to representatives of the official for the purposes of this ordinance. Proof of an illicit discharge or an illicit connection is not required for entry onto a premise.
- c) Owners and/or operators of a premises shall allow the city official reasonable access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, testing, and examination; for the copying of records that must be kept under the conditions of an NPDES permit to discharge storm water; and for the performance of any additional duties as required by state and federal law.
- d) The city official shall have the right as may be necessary to conduct monitoring, determine flow connections using test dyes or other appropriate methods, and/or sampling of the premises' storm water discharges.
- e) Any temporary or permanent obstruction to safe and easy access to the premises to be inspected and/or sampled shall be promptly removed by the owner of the premises at the written or oral request of the city official. The costs of clearing such access shall be borne by the owner and/or operator of the premises.
- f) Unreasonable delay in allowing the city official access to a premise is a violation of this ordinance. It shall be understood that for any person who is the owner and/or operator of a source with a NPDES permit to discharge storm water and denies the official reasonable access to the permitted premises for the purpose of conducting any activity authorized or required by this ordinance shall be considered an offense, punishable by Chapter 9 of this ordinance.

#### **Section 601 SEARCH WARRANTS.**

If the city official has been refused access to all or any part of a premises from which storm water is discharged and 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, and welfare of the community, then the city official may seek issuance of a search warrant from any court of competent jurisdiction.

## **Section 602 EMERGENCY DISCHARGE.**

The city official 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. If the violator fails to comply with a suspension order in an emergency, the city may take such steps as deemed necessary to prevent or minimize danger to the MS4 or to minimize danger to persons.

## **Chapter 7. Requirement to prevent, control, and reduce storm water pollutants through the use of best management practices.**

### **Section 700 BMPs REQUIRED.**

- a) All commercial, industrial and high-risk sources shall identify, implement and maintain BMPs to prevent any pollution or contamination of storm water discharges.
- b) Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and/or non-structural BMPs to prevent the further discharge of pollutants to the MS4.
- c) Non-compliance with such BMPs will constitute a violation of this ordinance.

### **Section 701 EXCEPTIONS.**

- a) Where BMPs are promulgated by the city or any federal, state or regional agency for any specific activity, operation, or facility which would otherwise cause the discharge of pollutants to the city's MS4, every person undertaking such activity or operation or owning or operating such source shall comply with such requirements.
- b) Compliance with such BMPs shall be deemed in compliance with the provisions of this ordinance.
- c) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with construction and/or industrial activity shall be deemed in compliance with the provisions of this ordinance.

### **Section 702 RESPONSIBILITY TO IMPLEMENT BEST MANAGEMENT PRACTICES.**

- a) The owner or operator of a commercial, industrial or high risk source shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of these structural and non-structural BMPs.
- b) Except as set forth herein, any person engaged in activities or operations, or owning facilities or property which results in pollutants entering storm water and the MS4 shall implement BMPs to the extent they are technologically achievable to prevent and reduce such pollutants.





**Section 703 SPILL CONTAINMENT.**

- a) Spill containment facilities shall be provided when required by State or Federal regulations or, in the judgment of the city.
- b) Such facilities are necessary for the containment of any raw materials, products, wastes or other potential pollutants used or stored on the user's premises.
- c) Facilities are also needed in such locations where a spill of the material may enter into the city MS4 and cause interference or violations of the applicable NPDES permit.

**Chapter 8. Notification of accidental discharges and spills.**

**Section 800 RESPONSIBILITY.**

Notwithstanding other requirements of law, as soon as any premises owner or person responsible for a premises or responsible for emergency response for a premises has information of any known or suspected release of materials which is resulting or may result in illicit discharges or pollutants discharging into storm water and the MS4, 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.

**Section 801 RELEASE OF HAZARDOUS MATERIALS.**

In the event of a release of hazardous pollutants or materials into the MS4, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911) and shall also notify the city official in person, by phone or facsimile not later than twenty-four (24) hours from the date and time of the release as to the occurrence of and the quantity of the release.

**Section 802 RELEASE OF NON-HAZARDOUS MATERIALS.**

In the event of a release of non-hazardous materials, said person shall notify the Birmingham Fire Department and the city official in person, by phone or facsimile no later than the twenty-four (24) hours from the date and time of the release as to the occurrence of and the quantity of the release.

**Section 803 NOTIFICATIONS.**

Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the official within three (3) business days of date of the phone or in person notice.

**Section 804 RESPONSIBILITY FOR HAZARDOUS SPILLS.**

- a) The property owner and/or person responsible for the hazardous materials spill or release shall be financially responsible for the response, control, containment, equipment and materials costs (including legal fees), incurred by the city and supporting agencies.

- b) The property owner and/or person responsible for the hazardous material spill may provide personnel to assist abatement, removal and remedial measures, provided such personnel have been adequately equipped and trained pursuant to the requirements of local, state and federal laws.

#### **Section 805 WRITTEN RECORDS.**

- a) If the discharge of prohibited pollutants or materials to the MS4 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.
- b) Such records shall be retained for at least three years from the date of the discharge.
- c) Said person shall also take immediate steps to ensure no reoccurrence of the discharge or spill.

### **Chapter 9. Violations, enforcement and penalties.**

#### **Section 900 VIOLATIONS.**

(a) It shall be unlawful for any person to violate any provision of or fail to comply with any requirement of this ordinance, provided however, proof of compliance or any demonstration of compliance with any NPDES permit is considered to be in compliance with the provisions of this ordinance. Any person that has violated or continues to violate this ordinance shall be, upon conviction, subject to a penalty of not greater than five hundred dollars (\$500.00) and/or imprisonment for a period of time not to exceed six (6) months for each violation. Each act of violation and/or each day upon which any violation shall occur or continue to occur shall constitute a separate offense.

(b) Any discharge to the MS4 in violation of this ordinance or continuing violation of any provision of this ordinance may be subject to the enforcement actions outlined in this ordinance or may be restrained by injunction or otherwise abated in a manner provided by law.

#### **Section 901 WARNING NOTICE.**

- a) When the city official determines that any person has violated or continues to violate any provision of this ordinance or any order issued hereunder, the city official may serve upon that person a written warning notice specifying the particular violation believed to have occurred and requesting that the discharger immediately investigate the matter and seek a resolution whereby any offending discharge will cease.
- b) The notice shall set forth a deadline (30 days) by which a written response to the warning notice must be received indicating the discharger's plan for remediation or restoration and the time by which such plan will be completed.

- c) Investigation and/or resolution of the matter in response to the warning notice does not relieve the alleged violator of liability for any violations occurring before or after receipt of the warning notice.
- d) Nothing in this subsection shall limit the authority of the city official to take any action, including notice of violation, emergency action or any other enforcement action, without first issuing a warning notice.

**Section 902 NOTICE OF VIOLATION.**

- a) Whenever the city official finds that a person has violated a prohibition or failed to meet a requirement of this ordinance or failed to comply with a warning notice, the official may order compliance by written notice of violation to the responsible person.
- b) This Notice of Violation shall contain:
  - 1) The name and address of the alleged violator;
  - 2) The address of the premises (when available) or a description of the building, structure or land upon which the violation is occurring or has occurred;
  - 3) A statement specifying the nature of the violation;
  - 4) A description of the remedial and/or restoration measures necessary to restore compliance with this ordinance and a deadline for the completion of such remedial and/or restoration action;
  - 5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
  - 6) A statement that the determination of violation may be appealed to the storm water appeals board, by filing a written notice of appeal with the director of planning, engineering, and permits within ten (10) business days of service of a notice of violation; and
  - 7) A statement specifying that, should the violator fail to restore compliance with this ordinance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator as allowed hereunder and collected as allowed by law.
- c) Such notice may require without limitation:
  - 1) The performance of monitoring, analyses, and reporting;
  - 2) The elimination of illicit connections and/or illicit discharges;
  - 3) That violating discharges, practices, or operations shall cease and desist;
  - 4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
  - 5) Payment of an amount equal to administrative and remediation costs; and/or
  - 6) The implementation of source control or treatment BMPs.
- d) The failure of a person to comply with any lawful notice to abate issued by the official, which has not been appealed within the time allowed herein, shall be deemed a violation of this ordinance.

**Section 903 APPEAL OF NOTICE OF VIOLATION.**

- a) Notwithstanding the provisions of this ordinance, any person receiving a notice of violation may appeal the determination of the city official to the storm water appeals board.
- b) The notice of appeal must be received within ten (10) days following the date of the notice of violation.
- c) A hearing on the appeal before the storm water appeals board shall take place in accordance with the procedure set out in Section 1004 herein.

**Section 904 EMERGENCY ABATEMENT.**

- a) The city official is authorized to require immediate abatement of any violation of this ordinance that is reasonably believed to be an immediate threat to the health, safety or well-being of the public.
- b) When the city official finds that any person has violated, or continues to violate, any provision of this ordinance, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4, which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the city official may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:
  - 1) Immediately comply with all ordinance requirements; and
  - 2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.
- c) Any person notified of an emergency order directed to it under this subsection shall immediately take steps to comply and stop or eliminate its illicit discharge.

**Section 905 INJUNCTIVE RELIEF AND/OR CIVIL REMEDIES.**

- a) If a person has violated or continues to violate the provisions of this ordinance, the city may petition the appropriate court for a preliminary and/or permanent injunction restraining the person from activities which would create violations of this ordinance or compelling the person to perform abatement or remediation of any violation.
- b) The city may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to the MS4 by any person, including costs incurred for abatement or remediation, and may seek other equitable relief to enforce compliance with the provisions of this ordinance or to force compliance with any lawful orders of the city official.
- c) Damages sought by the city shall include any and all costs of such action, including attorneys' fees, trial expenses, court costs and damages to the MS4.

**Section 906 REMEDIES NOT EXCLUSIVE: COSTS RECOVERABLE BY THE CITY.**

- a) 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.
- b) The city may seek to recover in a civil suit for damages all attorney's fees, trial expenses, court costs and any and all other costs and losses resulting directly or indirectly from a violation of this ordinance or any rule, regulation, order, or other provision authorized by state law. These costs or losses may include, but are not limited to, sampling and monitoring expenses, ADEM fines, EPA fines and any other costs associated with the enforcement of this ordinance or the abatement of violations of this ordinance.

## **Chapter 10. STORM WATER APPEALS BOARD**

### **Section 1000 ESTABLISHED.**

The storm water appeals board (SAB) shall be composed of seven members appointed as provided in this division; and each member shall be a resident of the city who has a recognized interest in storm water management.

### **Section 1001 COMPOSITION; TERMS; FILLING VACANCIES.**

- a) The seven members of this board shall be appointed by the council. The council shall appoint members with the following qualifications, which shall be obtained through application to the city's storm water administrator or other person designated by the city official: one environmental engineer, one environmental scientist, one person employed by a utility, one person employed or retired from an industrial or commercial establishment regulated by this chapter, one person that is a member of an organized neighborhood organization, one person from either an environmental or conservation group, and one resident of the City of Birmingham appointed at large. The city's storm water administrator or his designee shall attend all meetings of the board.
- b) The members shall serve until their successor is appointed. In the event of a vacancy, the council shall appoint a member to fill the unexpired term. The SAB shall select its own chair and vice chair. All officers shall serve for terms of one year.
- c) The terms of office of the commission members shall be six (6) years. Initially, the terms of three (3) members shall be for two (2) years; the terms of two (2) members shall be for four (4) years, and the term of two (2) members shall be for six (6) years. Following the expiration of a member's initial term, each member's appointment thereafter shall be for a term of six years. Should a vacancy occur prior to expiration of a member's term, a successor shall be appointed by the council from a list of interested individuals provided by the city official.
- d) An appointee shall cease to be a member of the SAB upon the appointee's death, being declared inactive or resignation or upon the appointee's ceasing to reside in the city. Appointments to fill any vacancies on the committee shall be made only for the unexpired portion of the term so vacated.
- e) SAB members shall serve without compensation.

f) SAB shall meet and organize as soon as possible after appointments. Members shall annually elect from among its members a chairman, vice-chairman and a secretary. The records of the proceedings of the SAB shall be maintained by the director of planning, engineering, and permits, or his designee. Such records shall set forth the reasons for the committee's decisions. The records of SAB shall be open for public inspection at the office of the director of planning, engineering, and permits, or his designee during normal business hours.

g) SAB shall establish rules and regulations for its own procedures consistent with the provisions of this section.

#### **Section 1002 MEETINGS; QUORUM.**

a) The SAB shall meet at least six times a year on a bimonthly basis and such special meetings as the chair may find necessary.

b) A majority of the SAB shall constitute a quorum. A concurring vote of a majority of the voting members present shall be necessary to deny or grant any appeal.

c) The SAB meetings, deliberations, and records shall be open to the public. The SAB may elect to provide for public comment on relevant issues.

d) The city clerk shall act as secretary of the storm water appeals board and shall attend and record all meetings and hearings of the Board. The city clerk shall prepare the minutes of all SAB meetings showing the final motions and decisions of the board.

#### **Section 1003 GENERAL DUTIES OF THE SAB.**

In addition to any other duty or responsibility otherwise conferred upon the SAB by this title, the SAB shall have the duty and power as follows:

a) To recommend from time to time to the council that it amend or modify the provisions of this ordinance;

b) To hold hearings upon appeals from actions of the city official, as may be provided under any provision of this title relating to storm water;

c) To hold hearings relating to the suspension, revocation, or modification of a storm water discharge decision and issue appropriate decisions relating thereto;

d) To hold such other hearings as may be required in the administration of this title and to make such determinations and issue such decisions as may be necessary to effectuate the purposes of this title;

#### **Section 1004 HEARING PROCEDURE.**

a) The SAB shall make a record of such hearing as prescribed in section 1002 of this ordinance.

b) Any person aggrieved by any order or determination of the city official may appeal said order or determination to the SAB and have such order or determination reviewed by the SAB under the provisions of this title. The party shall have 30 days to petition the SAB in order to appeal the city official's decision. A written notice of appeal shall be filed with the city clerk, and such notice shall set forth with particularity the action or inaction of the city complained of and the relief sought by the person filing said appeal. Upon receiving such appeal, the clerk shall immediately forward the notice to the chair of the board and the storm water administrator. The appeal shall be heard at the next regular meeting of the SAB but the chair may call a special meeting of the SAB to specifically hear the appeal. The SAB may, in its discretion, suspend the operation of the decision or determination of the city until such time as the SAB has acted upon the appeal.

c) The SAB shall give written notice of decisions of the appeal to the petitioner. The decision shall be issued to no later than 30 days following the close of the hearing.

d) The vice-chair or the chair pro tem shall possess all the authority delegated to the chair by this section when action in his/her absence or in his/her stead is required.

e) An appeal may be filed with the city council by any person aggrieved by any determination of the SAB within ten (10) days of the decision of the board. The appeal shall be filed in writing with the city clerk and a hearing shall be held as provided in section 907 of this ordinance.

## **Chapter 11. Miscellaneous.**

### **Section 1100 NOTICES**

Whenever the city is required or permitted to:

- a) Give a notice to any party, such notice shall be in writing; or
- b) Deliver a document to any party; such notice or document may be delivered by personal delivery, certified mail (return receipt requested), registered mail (return receipt requested) or a generally recognized overnight carrier, to the address of such party which is in the records of the city or is otherwise known to the city.

### **Section 1101 REFERENCES**

Whenever a chapter or section is referred to in this ordinance, unless the context clearly indicates the contrary, such reference shall be to a section of this ordinance.

### **Section 1102 MINIMUM REQUIREMENTS**

- a) In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, and the general welfare.



- b) Where this ordinance imposes greater restrictions than are imposed or required by other ordinances, rules, regulations or permits, or by easements, covenants or agreements, the provisions of this ordinance shall apply.
- c) Where any other laws, ordinances or rules, regulations or permits or restrictive conditions of other governmental or city agencies charged with land or clean water regulation impose greater restrictions than are required under the regulations of this ordinance, such provisions shall govern.

## **SECTION 2.**

### **SEVERABILITY**

The provisions of this ordinance are severable. If any part of this ordinance is determined by a court of competent jurisdiction to be invalid, unenforceable or unconstitutional, such determination shall not affect any other part of this ordinance.

## **SECTION 3. CAPTIONS**

The captions of articles and sections are for the purpose of reference only, and such captions shall not affect the meaning of any provision of this ordinance.

## **SECTION 4. REPEAL OF CONFLICTING SECTIONS AND ORDINANCES**

All city code sections and ordinances or parts thereof in conflict with the provisions of this ordinance insofar as they conflict, are repealed as of the effective date of this ordinance, shall be repealed as of the date and time this ordinance become effective, provided however, that neither any cause of action nor any fine, forfeiture, judgment, penalty, right, bond, remedy, obligation, duty or defense accrued or in place at said date, nor any prosecution, permit, bond or complaint pending at said date shall be in any manner released, affected, abated, or impaired by this ordinance.

## **SECTION 5. EFFECTIVE DATE**

This ordinance shall be effective when published as required by state law.

