

After previous introduction on September 24, 2018, Council Member Farrell moved passage, seconded by Council Member Rakostraw, of the following Ordinance:



ORDINANCE NO. 181001-074

STORMWATER MANAGEMENT ILLICIT DISCHARGE ORDINANCE

SUMMARY: AN ORDINANCE REPLACING ORDINANCE NUMBER 98-011 ESTABLISHING METHODS FOR CONTROLLING THE INTRODUCTION OF POLLUTANTS INTO MUNICIPAL SEPARATE STORM SEWER SYSTEMS INORDER TO COMPLY WITH THE REQUIREMENTS OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT PROCESS

THE PUBLIC GOOD REQUIRING IT, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALABASTER, ALABAMA AS FOLLOWS:

WHEREAS, the purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Alabaster through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law.

WHEREAS, this ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

WHEREAS, this ordinance provides the minimum content for implementing and enforcing stormwater management consistent with the Alabama Department of Environmental Management (ADEM) permit ALS000011 issued to the City of Alabaster.

WHEREAS, the objectives of this ordinance are:

- 1. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user
- 2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- 3. To establish legal authority to carry out all inspection and monitoring procedures necessary to ensure compliance with this ordinance.

Be it Ordained as follows:

**Section 1
DEFINITIONS**

For the purposes of this ordinance, the following words and terms shall have the meaning assigned to them in this section.

Authorized enforcement agency – employees or designees of the director of the municipal agency designated to enforce this ordinance.

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 to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or STORMWATER conveyance systems. 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.

Clean Water Act – The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity – Activities subject to ADEM NPDES and/or City of Alabaster Construction Permits. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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.

Illegal Discharge – Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 3.2 of this ordinance.

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

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City of Alabaster or,
2. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in the plans, maps, or equivalent records and approved by the City of Alabaster.

Industrial Activity – Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit – means 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.

Non-Stormwater Discharge – Any discharge to the storm drain system that is not composed entirely of stormwater.

Person – Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

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; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

Storm Drainage System – Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal 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 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 at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the Maximum Extent Practicable.

Wastewater – means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Section 2 ADMINISTRATION

The City of Alabaster shall administer, implement, and enforce the provisions of this ordinance. Any powers granted, or duties imposed upon the City of Alabaster, may be enforced by the Code Enforcement Officer or delegated in writing by an Official of the City of Alabaster to persons or entities acting in the beneficial interest of or in the employ of the agency.

Section 3 ILLICIT DISCHARGE PROHIBITIONS

SECTION 3.1 Prohibition of Illegal Discharges

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

SECTION 3.2 Illegal Discharges Exemptions

The prohibition shall not apply to any non-stormwater discharge permitted under a NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

The following discharges are exempt from discharge prohibitions established by this ordinance provided that they have been determined not to be a substantial contributor of pollutants by the City or ADEM:

- a) Water line flushing;
- b) Landscape irrigation or lawn watering (not consisting of treated, or untreated wastewater unless otherwise authorized);
- c) Diverted stream flows;
- d) Uncontaminated ground water infiltration;
- e) Uncontaminated pumped groundwater;
- f) Discharges from potable water sources;
- g) Foundation or footing drains (not including active groundwater dewatering systems);
- h) Air conditioning condensation or drains;
- i) Irrigation water (not consisting of treated, or untreated wastewater unless otherwise authorized);
- j) Rising ground water;
- k) Springs;
- l) Water from crawl space pumps;
- m) Lawn watering runoff;
- n) Individual residential car washing, to include charitable carwashes;
- o) Residential street wash water
- p) Discharges or flows from firefighting activities (including fire hydrant flushing);
- q) Flows from natural riparian habitat or wetlands;
- r) Dechlorinated swimming pool discharges;

SECTION 3.3 Prohibition of Illicit Connections

- a) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
- b) 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 the connection.
- c) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.

Section 4 SUSPENSION OF MS4 ACCESS

SECTION 4.1 Suspension Due to Illicit Discharges in Emergency Situations

The City of Alabaster may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present

imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City of Alabaster may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States or minimize danger to persons.

SECTION 4.2 Suspension Due to the Detection of Illicit Discharge

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

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section without prior approval of the City of Alabaster.

Section 5

INDUSTRIAL, COMMERCIAL, OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial, commercial, or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit shall be required in a form acceptable to the City of Alabaster prior to allowing discharge to the MS4.

Section 6

MONITORING OF DISCHARGES

SECTION 6.1 Applicability

This section applies to all facilities that have stormwater discharges associated with industrial, commercial, and construction activity.

SECTION 6.2 Access to Facilities

- a) The City of Alabaster shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the City of Alabaster.
- b) Facility operators shall allow the City of Alabaster ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records that must be kept under the conditions of a NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- c) The City of Alabaster shall have the right to establish equipment on any permitted facility as necessary in the opinion of the City of Alabaster to conduct monitoring and/or sampling of the facility's stormwater discharge.
- d) The City of Alabaster has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- e) Any temporary or permanent obstruction to safe access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written request of the City of Alabaster and shall not be replaced. The costs of clearing such access shall be borne by any person responsible for a facility or operation.
- f) Unreasonable delays in allowing the City of Alabaster access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the City of Alabaster access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- g) If the City of Alabaster has been refused access to any part of the premises from which stormwater is discharged, and he/she 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 of Alabaster may seek issuance of a search warrant from any court competent jurisdiction.

Section 7
REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The City of Alabaster will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the US. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a facility or operation, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. 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 section. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Section 8
WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Section 9
NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City of Alabaster in person, by phone, or by email 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 Alabaster within three business days of the notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the person responsible of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its reoccurrence. Such records shall be retained for a minimum of three (3) years.

Section 10
ENFORCEMENT AND ABATEMENT

Whenever the City of Alabaster finds that a Person has violated a prohibition or failed to meet a requirement of this Ordinance, the City of Alabaster may enforce the ordinance with escalating procedures.

Section 10.1 Notification; Enforcement Remedies

- a) Warning Notice: A warning notice of violation is the lowest level of formal response to a violation. It is a written response presented to the violator shortly after a violation has been identified and is intended for minor violations that would not cause significant harm to the environment.
- b) Notification of Violation: Whenever the Code Enforcement Officer or Official finds that any person is in violation of any provision of this ordinance, or any order issued hereunder, the Code

Enforcement Officer or Official may serve upon such person written notice of the violation requiring the removal of illicit discharges and immediate cessation of improper disposal practices within ten (10) calendar days of the date of such notice. Compliance may require without limitation:

1. The performance of monitoring, analyses, and reporting;
 2. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
 3. Payment of a fine to cover administrative and remediation costs; and
 4. The implementation of source control or treatment BMPs.
- c) **Compliance Order:** Whenever abatement of a violation and/or restoration of affected property is not possible within ten (10) day, a compliance order may be issued to the violator by the Code Enforcement Officer or Official. The order shall set forth a deadline within which remediation or restoration must be completed. Said order shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator.

Section 10.2 Appeal of Violation

Any person receiving a Notice of Violation or Compliance Order may appeal the determination of the City of Alabaster. The notice of appeal must be received within ten (10) days from the date of the Notice Violation/Compliance Order. Hearing on the appeal before the appropriate authority, which shall be the Municipal Judge appointed by the City Council, shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

Section 10.3 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 thirty (30) days of the decision of the Municipal Judge upholding the decision of the City of Alabaster, then the representatives of the City of Alabaster shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

Section 10.4 Cost of Abatement of the Violation

Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this ordinance shall become liable to the City by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of twelve (12) percent per annum shall be assessed on the balance beginning on the 1st day following discovery of the violation.

Section 10.5 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 of Alabaster 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.

Section 10.6 Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City of Alabaster may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

Section 10.7 Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance that is a threat to public health, safety and welfare, and is declared and deemed a nuisance may be summarily abated or restored at the violator's expense and/or civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.

Section 10.8 Criminal Prosecution

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of \$500 dollars plus court costs per violation per day and/or imprisonment for a period of time not to exceed one hundred and eighty (180) days.

The City of Alabaster may recover all attorney’s fees, court costs, and other expenses associated with enforcement of this ordinance including sampling and monitoring expenses.

Section 10.9 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 of Alabaster to seek cumulative remedies.

**Section 11
MISCELLANEOUS**

Section 11.1 Applicability.

This ordinance shall apply to all non-stormwater entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Alabaster.

Section 11.2 Severability.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

Section 11.3 Ultimate Responsibility.

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


Section 11.4 Ordinance Review and Update.

The City of Alabaster reserves the right to review and update this ordinance as necessary.

This Ordinance shall become effective upon its passage, execution and publication as provided by law.

ADOPTED AND APPROVED THIS 1st DAY OF OCTOBER 2018.

ATTEST:




Brian Binzer, City Manager/Clerk

CITY OF ALABASTER



Sophie Martin, Council President Pro-Tem

APPROVED:



Marty B. Handlon, Mayor