

**CITY OF WALTON, KENTUCKY
ORDINANCE NO. 2019-01**

**AN ORDINANCE OF THE CITY OF WALTON, KENTUCKY,
ADOPTING THE CITY'S STORMWATER QUALITY
MANAGEMENT ORDINANCE IN ORDER TO PROHIBIT ILLICIT
DISCHARGES AND ILLICIT CONNECTIONS TO THE CITY'S
STORMWATER SYSTEM IN FURTHERANCE OF THE CITY'S
CONTINUING EFFORTS TO KEEP THE CITY'S
STORMWATER MANAGEMENT PRACTICES IN
COMPLIANCE WITH STATE AND FEDERAL LAW.**

WHEREAS, the Kentucky Division of Water has required that the City of Walton start a Municipal Separate Storm Sewer System program, otherwise known as an MS4; and

WHEREAS, the City of Walton now wishes to create a system for permitting and inspecting stormwater discharges in the City limits in order to prohibit illicit discharges and illicit connections to the City's stormwater system in furtherance of the City's continuing efforts to keep the City's stormwater management practices in compliance with state and federal law and to manage and protect the quality of our lakes and creeks.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WALTON, KENTUCKY AS FOLLOWS:

SECTION ONE

New CHAPTER 52 of the City of Walton Code of Ordinances is hereby created as follows:

§ 52.02 PURPOSE AND INTENT.

The purpose of this subchapter is to provide for the health, safety, and general welfare of the citizens of Walton, Kentucky, through the regulation of non-stormwater illicit discharges to the storm drainage system to the maximum extent practicable as required by the Federal Clean Water Act. This subchapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this subchapter are to:

(A) Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user.

(B) To prohibit illicit connections and discharges to the municipal separate storm sewer system.

(C) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this subchapter.

§ 52.04 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

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.

CODE ENFORCEMENT BOARD. The Union/Walton Joint Code Enforcement Board or any duly authorized enforcement agency, officer or designee.

CONSTRUCTION ACTIVITY. Land disturbance activities subject to KPDES general construction permits or local permits. These include construction projects resulting in land disturbance of five acres or more. 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 substance or hazardous materials disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means, intentionally or unintentionally, into the MS4 or any area that has been determined to drain directly or indirectly into the municipal separate storm sewer system (MS4), except as exempted in § 52.12.

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 system (storm drain system) including, but not limited to, any conveyances which allow any non-storm water 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 Code Enforcement Board; 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 plans, maps, or equivalent records and approved by the Code Enforcement Board.

INDUSTRIAL ACTIVITY. Activities subject to NPDES industrial permits as defined in 40 CFR, § 122.26(b)(14).

ISSUING AUTHORITY. The Code Enforcement Board or duly authorized designee.

KDOW. Referring to the Kentucky Division of Water.

KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM (KPDES) STORMWATER DISCHARGE PERMIT. A permit issued by the Kentucky Division of Water (KDOW) under delegated authority by the United States Environmental Protection Agency (USEPA) pursuant to 33 U.S.C. § 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.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). A conveyance, or system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains designed or used for collecting or conveying stormwater to the waters of the United States. Sanitary and combined

sewers are not included in the definition of the **MS4 MUNICIPAL SEPARATE STORM SEWER SYSTEM**.

NON-STORMWATER DISCHARGE. Any discharge to the MS4 storm drainage system that is not composed entirely of stormwater.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT. A permit issued by EPA (or by a state under authority delegated pursuant to 33 U.S.C. § 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

PERSON. Except to the extent exempted from this subchapter, 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, 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 RUNOFF or 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 (SWPPP). 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.

UNDILUTED DISCHARGES. A discharge that has not been messed with that of another source such as another septic tank.

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

WATERS OF THE STATE. Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the commonwealth which are not entirely confined and retained completely upon the property of a single person.

WATERCOURSE. Any natural or improved stream, river, creek, ditch, channel, canal, conduit, gutter, culvert, drain, swale, or wash in waters flow either continuously or intermittently.

WATERSHED. A lowland area, such as a march, that is saturated with moisture, as defined in § 404 of the Federal Water Pollution Control Act Amendments of 1987.

§ 52.06 APPLICABILITY.

This subchapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the Code Enforcement Board.

§ 52.08 RESPONSIBILITY FOR ADMINISTRATION.

The Code Enforcement Board or duly authorized designee shall administer and implement the provisions of this subchapter and be enforced by the Code Enforcement Board. Any powers granted or duties imposed upon the Code Enforcement Board may be delegated to persons or entities acting in the beneficial interest of or in the employ of the Code Enforcement Board.

§ 52.10 ULTIMATE RESPONSIBILITY.

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

§ 52.12 DISCHARGE PROHIBITIONS.

(A) *Prohibition of illegal discharges.* No person, company, developer or any other entity shall discharge or cause to be discharged into the MS4 storm drainage 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. The commencement, conduct or continuance of any illegal discharge to the MS4 storm drain system is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this subchapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater de-watering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), firefighting activities and street wash water from municipal cleaning operations, and any other water source not containing pollutants.

(2) Discharges specified in writing by the Code Enforcement Board as being necessary to protect public health and safety.

(3) Dye testing is an allowable discharge, but requires a verbal notification to the Code Enforcement Board prior to the time of the test.

(4) The prohibition shall not apply to any non-stormwater discharge permitted under a KPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (USEPA), 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.

(B) *Prohibition of illicit connections.*

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this subchapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(4) The City shall take all necessary steps to abate the nuisance, including all measures cited in § 52.26, and/or any other action permitted by state and federal law.

§ 52.14 SUSPENSION OF MS4 ACCESS.

(A) *Suspension due to illicit discharges in emergency situations.* The Code Enforcement Board 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 Code Enforcement Board may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(B) *Suspension due to the detection of illicit discharge.*

(1) Any person discharging to the MS4 in violation of this subchapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Code Enforcement Board will notify a violator of the proposed termination of its MS4 access. The violator may petition the Code Enforcement Board for a reconsideration and hearing.

(2) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the Code Enforcement Board.

§ 52.16 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity KPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Code Enforcement Board prior to the allowing of discharges to the MS4.

§ 52.18 INSPECTION AND MONITORING OF DISCHARGES.

(A) *Applicability.* This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

(B) *Access to facilities.*

(1) The Code Enforcement Board shall be permitted to enter and inspect facilities subject to regulation under this subchapter as often as may be necessary to determine compliance with this subchapter. 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 Code Enforcement Board.

(2) Facility operators shall allow the Code Enforcement Board 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 KPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(3) The Code Enforcement Board shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Code Enforcement Board to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4) The Code Enforcement Board 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.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Code Enforcement Board and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the Code Enforcement Board access to a permitted facility is a violation of a stormwater discharge permit and of this subchapter. A person who is the operator of a facility with a KPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Code Enforcement Board reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this subchapter.

(7) If the Code Enforcement Board 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 subchapter, 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 subchapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Code Enforcement Board may seek issuance of a search warrant from any court of competent jurisdiction.

§ 52.20 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The Code Enforcement Board 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 MS4 storm drain system, or waters of the U.S. 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 MS4 municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, 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 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 compliant with the provisions of this section.

§ 52.22 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.

§ 52.24 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 waters of the United States, 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 Code Enforcement Board 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 Code Enforcement Board within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 52.26 ENFORCEMENT AND PENALTIES.

Any of the following enforcement remedies and penalties, to be applied independently or in a sequence as deemed necessary, shall be available to the City in response to violations of this subchapter.

(A) *Notice of violation/Citation.* Enforcement proceedings for this subchapter shall be initiated by the issuance of a notice of violation (NOV) by the Code Enforcement Board.

1. Any violation of a provision contained in this Chapter 52 is hereby classified as a civil offense, pursuant to KRS 65.8808 and §§ 34.40 thru 34.77 of this Code of Ordinances,; and such classification is intended, and shall be construed, to provide an additional or supplemental means of obtaining compliance with these provisions, and nothing contained herein shall prohibit the enforcement of these provisions by any other means authorized by law.
2. Civil Fines for violations of this Chapter 52 shall be as set forth in §§ 34.51 and 34.74 of this Code of Ordinances and amendments thereto.
3. Each abovementioned provision of this Chapter 52 violated shall be considered a separate fineable offense. If two (2) or more provisions of this Chapter 52 are violated, the fines shall be cumulative and may be enforced under the same Citation. Each day a violation exists shall be considered a separate offense without issuance of a separate Citation.

(B) *Legal proceedings; notification of Kentucky Division of Water.* The Code Enforcement Board may pursue appropriate legal proceedings for the enforcement of this subchapter, and the City shall be entitled to recover its costs expended and reasonable attorney's fees in such proceedings. If the person, property, or facility has or is required to have a stormwater discharge permit from KDOW, the City shall notify the appropriate state authorities of the violation.

(C) *Revocation of permit, improvement or development plans.* Permits, improvement plans or development plan approvals may be revoked for any substantial departure from the approved plans thereby resulting in an illicit discharge as defined herein.

(D) *Stop work orders.* For violations involving active construction sites, the Code Enforcement Board may issue a stop work order and require that all activities cease, except those actions that are necessary to eliminate the illicit discharge.

(E) Suspension of MS4 access due to illicit discharges in emergency situations. The City may, without prior notice, suspend MS4 discharge access when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, to the MS4, or to waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4, or waters of the United States, or to minimize danger to persons.

(F) Suspension of MS4 access due to the detection of illicit discharge. Any entity discharging to the MS4 or any conveyance in violation of this subchapter may have its MS4 access terminated in such that termination would abate or reduce an illicit discharge. The City shall require the violator to disconnect access to the MS4 at their cost or take corrective action to eliminate the source of the illicit discharge. Reinstatement of MS4 access to premises terminated pursuant to this chapter without the prior approval of the City constitutes a violation.

(G) Cost of abatement of a violation. Any person causing a violation of this subchapter which requires the City to expend public funds for the response to the violation, its abatement or the cleanup or removal of any prohibited discharges, pollutants or hazardous materials shall be liable to the City for all recoverable fees and costs incurred by the City for such response, cleanup and removal. This shall include but not be limited to personnel costs of any City departments, or designated contractor costs, replacement costs of supplies and equipment contaminated as a result of the discharge, proper disposal of contaminated materials, cleanup, evacuation and administrative and other expenses, including legal expenses, incurred in recovering such costs. Any such illegal discharges shall be considered a public health hazard and the City shall have a lien against the property for its recoverable costs if these costs are not paid within 90 days of invoice.

§ 52.28 INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this subchapter. If a person has violated or continues to violate the provisions of this subchapter, the City or the Code Enforcement Board 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.

§ 52.30 COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties, and remedies authorized by this subchapter, the City or the Code Enforcement Board may impose upon violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, and the like.

§ 52.32 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 subchapter 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.

§ 52.34 CRIMINAL PROSECUTION.

(A) Any person that has violated or continues to violate this subchapter may be referred for criminal prosecution subject to a criminal penalty of \$1,000 per violation per day and/or

imprisonment for a period of time not to exceed 30 days. Said criminal prosecution shall only be sought after a minimum of two civil offenses as set forth herein.

(B) The City or the Code Enforcement Board may recover all attorney fees, court costs and other expenses associated with enforcement of this subchapter, including sampling and monitoring expenses.

§ 52.36 REMEDIES NOT EXCLUSIVE.

The remedies listed in this subchapter 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 or the Code Enforcement Board to seek cumulative remedies.

SECTION TWO

This Ordinance shall take effect and shall be in full force upon its enactment and publication as required by law.

SECTION THREE

All ordinances or parts of any ordinances in conflict herewith, to the extent of the conflict, if any, are hereby repealed.

SECTION FOUR

If any sentence, clause, section or part of this ordinance or the application thereof to any particular situation is, for any reason, found to be unconstitutional, illegal or invalid, the invalidity of any provision of this Ordinance shall not affect the validity of any other provisions hereof, and such other provisions shall remain in full force and effect as long as they remain valid in the absence of that provision determined to be invalid.

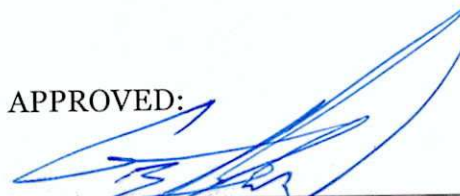
SECTION FIVE

This ordinance may be read and published in summary form.

PASSED AND APPROVED ON FIRST READING BY 6 OF 6 MEMBERS OF CITY COUNCIL ON THE 12TH DAY OF FEBRUARY, 2019.

PASSED AND APPROVED ON SECOND READING BY 6 OF 6 MEMBERS OF CITY COUNCIL ON THE 12TH DAY OF MARCH, 2019.

APPROVED:



GABE BROWN, MAYOR

ATTEST:



SHARON L. STEVENSON, CITY CLERK/FINANCE

DATE OF PUBLICATION: MARCH 21, 2019