

COMMISSIONERS' ORDINANCE NO. 0-14-22

AN ORDINANCE OF THE CITY OF COVINGTON, KENTUCKY PROHIBITING ILLICIT DISCHARGES AND ILLICIT CONNECTIONS TO THE CITY'S STORMWATER SYSTEM.

* * * *

WHEREAS, this subchapter is being enacted pursuant to the mandates imposed by the Federal Clean Water Act, in particular those parts that require local governments to comply with water pollution control requirements.

NOW THEREFORE,
BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY
OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

A new subchapter Sections § 50.24 through 50.37, which read as follows, are added to and amend the Covington Code of Ordinances:

ILLICIT DISCHARGES AND ILLICIT CONNECTIONS

§ 50.24 **PURPOSE/INTENT.**

The purpose of this subchapter is to provide for the health, safety, and general welfare of the citizens of Covington through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. 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 subsection are:

- (1) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.**
- (2) To prohibit illicit connections and discharges to the MS4.**
- (3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this subchapter.**

§ 50.25 **DEFINITIONS.**

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

Authorized Enforcement Agency. The City of Covington.

Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good house keeping 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 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 NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre 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-storm water discharge to the storm drain system, except as exempted in Section 50.30 of this subchapter.

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

- Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that 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 an authorized enforcement agency or,
- Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

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

Municipal Separate Storm Sewer System (MS4). The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Covington and designed or used for collecting or conveying storm water, and that is not used for collecting or conveying sewage. A combined sewer is specifically excluded.

National Pollutant Discharge Elimination System (NPDES) Storm Water

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-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.

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 storm water 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.

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

Storm Water Management 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 Storm Water, Storm Water Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

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

§ 50.26

APPLICABILITY.

This subchapter shall apply to all water entering the City of Covington's MS4 storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Covington.

§ 50.27 **RESPONSIBILITY FOR ADMINISTRATION.**

The City of Covington shall administer, implement, and enforce the provisions of this subchapter. Pursuant to KRS 83A.087 the City of Covington, through Municipal Order will authorize citation officers to enforce the provisions of this subchapter. In addition, duly sworn Covington Police Officers, shall have the authority to enforce the provisions of this subchapter.

§ 50.28 **COMPATIBILITY WITH OTHER REGULATIONS.**

This subchapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this subchapter are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this subchapter imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

§ 50.29 **ULTIMATE RESPONSIBILITY.**

The standards set forth herein and promulgated pursuant to this subchapter are minimum standards; therefore this subchapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants

§ 50.30 **DISCHARGE PROHIBITIONS.**

(A) Prohibition of Illegal Discharges.

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than storm water.

The commencement, conduct or continuance of any illegal discharge to the 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, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.**
- (2) Discharges or flow from firefighting, and other discharges specified in writing by the City of Covington as being necessary to protect**

public health and safety.

- (3) Discharges associated with dye testing, however this activity requires a verbal notification to the City of Covington prior to the time of the test.
- (4) 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 the United States Environmental Protection Agency (EPA), 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) Improper connections in violation of this subchapter must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the City of Covington.
- (5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City of Covington requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of Covington.

§ 50.31

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.

§ 50.32 **INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.**

(A) Submission of NOI to City of Covington.

- (1) Any person subject to an industrial or construction activity NPDES storm water 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 City of Covington prior to the allowing of discharges to the MS4.**
- (2) The operator of a facility, including construction sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the City of Covington at the same time the operator submits the original Notice of Intent to the EPA as applicable.**
- (3) The copy of the Notice of Intent may be delivered to the City of Covington either in person or by mailing it to:**
Notice of Intent to Discharge Storm Water
City of Covington, Attn: City Manager
20 West Pike, Covington, Kentucky 41011
- (4) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the City of Covington.**

§ 50.33 **COMPLIANCE MONITORING**

(A) Right of Entry: Inspection and Sampling.

The City of Covington 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.

- (1) 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 Covington.**
- (2) Facility operators shall allow the City of Covington 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 an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

- (3) The City of Covington shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Covington to conduct monitoring and/or sampling of the facility's storm water discharge.
- (4) The City of Covington 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 storm water 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 City of Covington and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delays in allowing the City of Covington access to a permitted facility is a violation of a storm water discharge permit and of this subchapter. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City of Covington reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this subchapter.

(B) Search Warrants.

If the City of Covington has been refused access to any part of the premises from which storm water 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 City of Covington may seek issuance of a search warrant from any court of competent jurisdiction.

§ 50.34

REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

City of Covington will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility 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 property or premise that 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 MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water management plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

§ 50.35 **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 storm water, 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 City of Covington in person or by phone or facsimile or by electronic means, including but not limited to 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 Covington within one (1) business day 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 (3) years.

Failure to provide notification of a release as provided above is a violation of this subchapter.

§ 50.36 **ALTERNATIVE REMEDIES**

(A) Compensatory Action.

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

(B) Emergency Cease and Desist Orders

When the City of Covington finds that any person has violated, or continues to violate, any provision of this subchapter, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the City of Covington 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.**

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the City of Covington may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The City of Covington may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the City of Covington that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this subchapter. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the City of Covington within three (3) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(C) Suspension due to Illicit Discharges in Emergency Situations

The City of Covington 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 Covington 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.

(D) Suspension due to the Detection of Illicit Discharge

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 City of Covington will notify a violator of the proposed termination of its MS4 access. The violator may petition the City of Covington for a reconsideration and hearing.

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

§ 50.37 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.

Section 2

Section 50.99 of the Covington Code of Ordinances is amended to read as follows:

~~Any person convicted of violating the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be fined not less than \$200, nor more than \$500, and each day of violation may be considered a separate offense.~~

(A) Violations of the rules and regulations set forth in this chapter shall constitute a civil offense and an enforcement officer may issue a citation to the person found to be in violation of these sections of the chapter, in accordance with the applicable procedures set forth in Ch. 92 of this code of ordinances. In the event a citation is issued, the citation shall bear a civil penalty in accordance with the fines established in division (B) below, the costs of abatement, or both.

(B) Violations of this chapter which have been designated as enforceable as civil offenses shall be subject to a fine of \$250 and a maximum civil fine of \$500 if the citation is contested in accordance with the applicable procedures set forth in Ch. 92 of this code of ordinances. Each day shall be considered a separate offense.

(C) The remedies listed in this section 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 Covington to seek cumulative remedies. The City of Covington may recover all attorney's fees court costs and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

Section 3

That this subchapter shall take effect and be in full force when passed, published and recorded according to law.



MAYOR

ATTEST:



CITY CLERK

Passed: August 9, 2022 (Second Reading)

July 19, 2022 (First Reading)