



**CITY OF DUNWOODY**  
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## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Jennifer Peterson, Community Development Director

**Date:** March 16, 2009

**Subject:** **Illicit Discharge and Illegal Connection Ordinance**

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An illicit discharge is defined as any discharge to a municipal or county separate storm sewer system (stormwater drainage system) that is not composed entirely of stormwater runoff (except for discharges allowed under an NPDES permit or non-polluting flows). These non-stormwater discharges occur due to illegal dumping or illegal connections to the stormwater drainage system. This model ordinance provides communities with the authority to deal with illicit discharges and establishes enforcement actions for those persons or entities found to be in noncompliance or that refuse to allow access to their facilities.

In order to comply with state standards to establish and maintain our office as a permitting authority we must adopt and enforce this code. The code is written by the Metropolitan North Georgia Water Planning District is intended to create a model standard for which all permitting authorities in the district shall adopt and enforce.

**AN ORDINANCE TO ADOPT AND APPROVE CHAPTER 28, ILLICIT DISCHARGE AND ILLEGAL CONNECTION, PROVIDING FOR INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES FOR THE CITY OF DUNWOODY, GEORGIA TO BE REFERENCED IN THE FUTURE AS CHAPTER 28 (ILLICIT DISCHARGE AND ILLEGAL CONNECTION) AS ATTACHED HERETO AND INCOPORATED HEREIN**

**WHEREAS:** The Ordinance relating to Chapter 28, Illicit Discharge and Illegal Connection, is hereby adopted and approved; and is attached hereto as if fully set forth herein; and,

**WHEREAS:** This Ordinance shall be designated as Chapter 28 of the Code of Ordinances of the City of Dunwoody, Georgia; and

**WHEREAS:** This Ordinance shall become effective upon its adoption.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF DUNWOODY HEREBY ORDAINS** that Chapter 28, Illicit Discharge and Illegal Connection, is hereby adopted and approved as part of the Code of Ordinances for the City of Dunwoody, Georgia

**SO ORDAINED** this the \_\_\_\_ day of \_\_\_\_\_, 2009.

Approved:

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Ken Wright, Mayor

Attest:

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Sharon Lowery, City Clerk

(Seal)

Approved as to Form and Content:

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Brian Anderson, City Attorney

## **CHAPTER 28: ILLICIT DISCHARGE AND ILLEGAL CONNECTION**

### **Section 1: Findings**

It is hereby determined that:

- (a) Discharges to the municipal separate storm sewer system that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters; and
- (b) These non-stormwater discharges occur due to spills, dumping and improper connections to the municipal separate storm sewer system from residential, industrial, commercial or institutional establishments; and
- (c) These non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters; and
- (d) The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters; and
- (e) These impacts can be minimized through the regulation of spills, dumping and discharges into the municipal separate storm sewer system; and
- (f) Localities in the State of Georgia are required to comply with a number of State and Federal laws, regulations and permits which require a locality to address the impacts of stormwater runoff quality and nonpoint source pollution due to improper non-stormwater discharges to the municipal separate storm sewer system; and
- (g) Therefore, the City of Dunwoody adopts this ordinance to prohibit such non-stormwater discharges to the municipal separate storm sewer system. It is determined that the regulation of spills, improper dumping and discharges to the municipal separate storm sewer system is in the public interest and will prevent threats to public health and safety, and the environment.

### **Section 2: General Provisions**

#### **(a) Purpose and Intent**

The purpose of this ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the municipal separate storm sewer system to the maximum extent practicable as required by Federal law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are to:

- (1) Regulate the contribution of pollutants to the municipal separate storm sewer system by any person;
- (2) Prohibit illicit discharges and illegal connections to the municipal separate storm sewer system;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the municipal separate storm sewer system; and,
- (4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance

**(b) Applicability**

The provisions of this ordinance shall apply throughout the incorporated area of the City of Dunwoody.

**(c) Compatibility with Other Regulations**

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance 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.

**(d) Severability**

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

**(e) Responsibility for Administration**

The City of Dunwoody shall administer, implement, and enforce the provisions of this ordinance.

**Section 3: Definitions**

**“Accidental Discharge”** means a discharge prohibited by this ordinance which occurs by chance and without planning or thought prior to occurrence.

**“Clean Water Act”** means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

**“Construction Activity”** means activities subject to the Georgia Erosion and Sedimentation Control Act or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

**“Illicit Discharge”** means any direct or indirect non-stormwater discharge to the municipal separate storm sewer system, except as exempted in Section 4 of this ordinance.

**“Illegal Connection”** means either of the following:

- (1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit 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, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
- (2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**“Industrial Activity”** means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

**“National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit”** means a permit issued by the Georgia EPD 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.

**“Municipal Separate Storm Sewer System”** means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, municipal streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- (1) Owned or maintained by the City of Dunwoody;
- (2) Not a combined sewer; and
- (3) Not part of a publicly-owned treatment works.

**“Non-Stormwater Discharge”** means any discharge to the storm drain system that is not composed entirely of stormwater.

**“Person”** means, except to the extent exempted from this ordinance, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the State, any interstate body or any other legal entity.

**“Pollutant”** means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-

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

**“Pollution”** means the contamination or other alteration of any water’s physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

**“Premises”** mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**“State Waters”** means 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 State of Georgia which are not entirely confined and retained completely upon the property of a single person.

**“Stormwater Runoff”** or **“Stormwater”** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**“Structural Stormwater Control”** means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

#### **Section 4: Prohibitions**

##### **(a) Prohibition of Illicit Discharges**

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the municipal separate storm sewer system any pollutants or waters containing any pollutants, other than stormwater. The following discharges are exempt from this prohibition provision:

- (1) Water line flushing performed by a government agency, 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 dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;
- (2) Discharges or flows from fire fighting, and other discharges specified in writing by the City of Dunwoody as being necessary to protect public health and safety;

- (3) The prohibition provision above shall not apply to any non-stormwater discharge permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State and 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 municipal separate storm sewer system.

**(b) Prohibition of Illegal Connections**

The construction, connection, use, maintenance or continued existence of any illegal connection to the municipal separate storm sewer system is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person violates this ordinance if the person connects a line conveying sewage to the municipal separate storm sewer system, or allows such a connection to continue.
- (3) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the DeKalb County Water and Sewer Department or its designee.
- (4) 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 Dunwoody 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 completed, 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 Dunwoody.

**Section 5: Industrial or Construction Activity Discharges**

Any person subject to an industrial or construction activity NPDES 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 City of Dunwoody prior to allowing discharges to the municipal separate storm sewer system.

**Section 6: Access and Inspection of Properties and Facilities**

The City of Dunwoody shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

- (1) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the City of Dunwoody.
- (2) The owner or operator shall allow the City of Dunwoody ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater.
- (3) The City of Dunwoody shall have the right to set up on any property or facility such devices as are necessary in the opinion of the City of Dunwoody to conduct monitoring and/or sampling of flow discharges.
- (4) The City of Dunwoody may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the City of Dunwoody. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the City of Dunwoody and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
- (6) Unreasonable delays in allowing the City of Dunwoody access to a facility is a violation of this ordinance.
- (7) If the City of Dunwoody has been refused access to any part of the premises from which stormwater is discharged, and the City of Dunwoody 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, environment and welfare of the community, then the City of Dunwoody may seek issuance of a search warrant from any court of competent jurisdiction.

#### **Section 7: Notification of Accidental Discharges and Spills**

- (a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the municipal separate storm sewer system, State Waters, or Waters of the U.S., 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. Said person shall notify the authorized enforcement agency by phone, facsimile or in person no later than 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Dunwoody within three business days of the phone or in person 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. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

- (b) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.
- (c) Failure to provide notification of a release as provided above is a violation of this ordinance.

### **Section 8: Violations, Enforcement and Penalties**

#### **(a) Violations**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the City of Dunwoody is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City of Dunwoody is authorized to seek costs of the abatement as outlined in Section 8(e).

#### **(b) Notice of Violation**

Whenever the City of Dunwoody Community Development Department finds that a violation of this ordinance has occurred, the City of Dunwoody Community Development Department may order compliance by written notice of violation.

- (1) The notice of violation shall contain:
  - (i) The name and address of the alleged violator;
  - (ii) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
  - (iii) A statement specifying the nature of the violation;
  - (iv) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;

- (v) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,
  - (vi) A statement that the determination of violation may be appealed to the City of Dunwoody Municipal Court by filing a written notice of appeal within thirty (30) days of service of notice of violation.
- (2) Such notice may require without limitation:
- (i) The performance of monitoring, analyses, and reporting;
  - (ii) The elimination of illicit discharges and illegal connections;
  - (iii) That violating discharges, practices, or operations shall cease and desist;
  - (iv) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
  - (v) Payment of costs to cover administrative and abatement costs; and,
  - (vi) The implementation of pollution prevention practices.

**(c) Appeal of Notice of Violation**

Any person receiving a Notice of Violation may appeal the determination of the City of Dunwoody. The notice of appeal must be received within thirty (30) days from the date of the Notice of Violation. Hearing on the appeal before the City of Dunwoody Municipal Court shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Municipal Court shall be final.

**(d) Enforcement Measures after Appeal**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 30 days of the decision of the Municipal Court upholding the decision of the City of Dunwoody, then representatives of the City of Dunwoody may 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 City or designated contractor to enter upon the premises for the purposes set forth above.

**(e) Costs of Abatement of the Violation**

Within 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 assessment or to the amount of the assessment within 14 days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within thirty (30) days after a decision on said 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 of Dunwoody by reason of such violation.

**(f) Civil Penalties**

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the City of Dunwoody shall deem appropriate, after the City of Dunwoody has taken one or more of the actions described above, the City of Dunwoody Municipal Court may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

**(g) Criminal Penalties**

For intentional and flagrant violations of this ordinance, the City of Dunwoody may issue a citation to the alleged violator requiring such person to appear in the City of Dunwoody Municipal Court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for 60 days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

**(h) Violations Deemed a Public Nuisance**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by law.

**(i) 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 the City of Dunwoody may seek cumulative remedies. The City of Dunwoody may recover attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.