

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the 4th day of April, 2017, the following Ordinance:

ORDINANCE NO. 2896

AN ORDINANCE TO ADOPT THE ILLICIT DISCHARGE DETECTION AND ELIMINATION ORDINANCE, AND FOR RELATED PURPOSES

WHEREAS, the United States Environmental Protection Agency and the Mississippi Department of Environmental Quality have imposed requirements for political subdivisions, including Municipalities, in the State of Mississippi, to regulate storm water drainage and discharge.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS:

SECTION A. That the matters and things set forth in the above preamble are hereby accepted as stated as the findings of the Gulfport City Council.

SECTION B. The Council further finds and ordains, as follows:

SECTION 1 - PURPOSE/INTENT

- 1.1 The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City 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 ordinance establishes methods for controlling the introduction of pollutants into the storm drain system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:
- A. To regulate the contribution of pollutants to the storm drain system by stormwater discharges by any user.
 - B. To prohibit Illicit Connections and Discharges to the storm drain system.
 - C. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

SECTION 2 - APPLICABILITY

- 2.1 This ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands in the City.

SECTION 3 - DEFINITIONS

- 3.1 For the purposes of this ordinance, the following shall mean:
- A. Authorized enforcement agency: The City acting through its Department of Public Works or any other designee of the City.
 - B. 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.
- C. Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) and any subsequent amendments thereto.
 - D. Construction Activity: NPDES Storm Water Phase II permits will be required for construction projects resulting in land disturbance of 1 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
 - E. 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.
 - F. Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 7 of this ordinance.
 - G. Illicit Connections: An illicit connection is defined as either of the following: 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-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 City or, 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 City.
 - H. Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
 - I. National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of storm water associated with regulated activities to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
 - J. Non-Storm Water Discharge: Any discharge to the storm drain system that is not composed entirely of storm water.
 - K. 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.
 - L. 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.
 - M. Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
 - N. Storm Drainage/Drain System: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, 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.
 - O. Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
 - P. 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.

- Q. Wastewater: Any water or other liquid, other than uncontaminated storm water, discharged from a facility.
- R. Water Course: A course of water flowing in a particular direction by a regular channel having a bed with banks and sides and usually discharging itself into some other body or stream of water. Also, although it must have a well-defined and substantial existence, a water course need not flow continuously or never be dry.

SECTION 4 - RESPONSIBILITY FOR ADMINISTRATION

- 4.1 The authorized enforcement agency shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by Mayor or his duly authorized agent (i.e. Director of the Department of Public Works) to persons or entities acting in the beneficial interest of or in the employ of the agency.

SECTION 5 - SEVERABILITY

- 5.1 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 6 - ULTIMATE RESPONSIBILITY

- 6.1 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 7 - DISCHARGE PROHIBITIONS

7.1 PROHIBITION OF ILLEGAL DISCHARGES

- A. Only storm water shall be discharged into the storm drain system or water courses. No person shall discharge or cause to be discharged into the storm drain system or water courses 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.
- B. 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 ordinance: 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 dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if de-chlorinated - less than one PPM chlorine), firefighting activities, and any other water source not containing Pollutants.
 - 2. Dye testing is an allowable discharge, but requires a written notification (electronic mail is acceptable) to Department of Public Works prior to the time of the test.
 - 3. 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 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.

7.2 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 connection.
- C. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the storm drain system, or allows such a connection to continue.

SECTION 8 - SUSPENSION OF STORM DRAIN SYSTEM ACCESS

8.1 SUSPENSION DUE TO ILLICIT DISCHARGES IN EMERGENCY SITUATIONS

- A. The City may, without prior notice, suspend storm drain system 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 storm drain system or 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 storm drain system or Waters of the United States, or to minimize danger to persons.

8.2 SUSPENSION DUE TO THE DETECTION OF ILLICIT DISCHARGE

- A. Any person discharging to the storm drain system in violation of this ordinance may have their storm drain system access terminated if such termination would abate or reduce an illicit discharge. The City shall notify a violator of the proposed termination of its storm drain system access. The violator may petition to the City Council for a reconsideration and hearing.
- B. A person commits an offense if the person reinstates storm drain system access to premises terminated pursuant to this Section, without the prior approval of the City.

SECTION 9 - INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

- 9.1 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 prior to the allowing of discharges to the storm drain system.

SECTION 10 - MONITORING OF DISCHARGES

10.1 APPLICABILITY

- A. This section applies to all facilities that have storm water discharges, including construction activity.

10.2 ACCESS TO FACILITIES

- A. The City 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.
- B. Facility operators shall allow the City 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.
- C. The City shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's storm water discharge.
- D. The City 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 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 and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- F. Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- G. If the City 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 may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 11 - REQUIREMENTS TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

- 11.1 The City will develop a non-exhaustive list of 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 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 storm drain system or water courses through the use of 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 separate storm drain system. 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 stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

SECTION 12 - WATER COURSE PROTECTION

- 12.1 Every person owning property through which a water course passes shall keep and maintain that part of the water course 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 water course. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a water course, so that such structures will not become a hazard to the use, function, or physical integrity of the water course.

SECTION 13 - NOTIFICATION OF SPILLS

- 13.1 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 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 nonhazardous materials, said person shall notify the City in person or by phone or electronic mail 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 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.

SECTION 14 - ENFORCEMENT

- 14.1 The City shall administratively enforce this ordinance. The City may also institute appropriate civil or criminal actions for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, and other appropriate forms of remedy or relief.
- 14.2 Each day of noncompliance is considered a separate offense; and nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation, including application for injunctive relief.
- 14.3 Any of the following enforcement remedies and penalties shall be available to the City in response to violations of this ordinance. If the person, property or facility has or is required to have a storm water discharge permit, the City shall alert the appropriate state authorities of the violation. “Director” shall mean the Director of the Department of Public Works.
- A. Notice of Violation (NOV): Whenever designated City staff find that any person, company or facility owning or occupying a premises has violated or is violating this Ordinance or order issued hereunder, the enforcement official may serve, by personal service, or by registered or certified mail a written NOV. Within thirty (30) days of the receipt of this notice, or shorter period as may be prescribed in the NOV, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions, shall be submitted to the Director. Submission of this plan shall in no way relieve liabilities for violations occurring before or after receipt of the NOV.
- B. Revocation of permit: The Director may revoke and require the return of a permit or certificate, with or without a prior NOV, by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application plans, or specifications; refusal or failure to comply with the requirements of state or local law; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of any applicable state or local law may also be revoked.
- C. Compliance Order: If any person, company or facility shall violate the provisions of this ordinance, the Director may, with or without a prior NOV, give notice to the owner or to any person in possession of the subject property, ordering that all unlawful conditions existing thereupon be abated within a schedule defined from the date of such notice.
1. The enforcement official shall have the authority to establish elements of a storm water pollution prevention plan, and to require any business to adopt and implement such a plan, as may be reasonably necessary to fulfill the purposes of this chapter. The enforcement official may establish the requirements of Best Management Practices for any premises.
 2. The notice and order may be given provided, that if, in the opinion of the Director or his/her designee, the unlawful condition is such that it is of imminent danger or peril to the public, then an authorized City representative may, without notice, proceed to abate the same, and the cost thereof shall be charged against the property. The City, as described further in this subsection, may recover the cost of such actions from the property owner.
- D. Civil Penalties: Any person, company or facility who has been found to have been in violation of any provision of this Ordinance, may be assessed, by the Director of the Department of Public Works or by a court if court proceedings are instituted, a civil penalty not to exceed the amount presented in this subsection.
1. The penalty shall increase by twenty-five percent (25%) of the previous penalty amount for every subsequent but separate offense made by the same person, company, construction site or facility. The penalty shall be additional to other enforcement actions of this section.
 2. The penalty may be assessed for each day beyond schedules applied in compliance orders or other schedules issued to the property owner or other person responsible for unauthorized activity defined in this Ordinance.
 3. In determining the amount of the penalty the following shall be considered:
 - a. The degree and extent of the harm to the natural resources, to the public health, or to the public or private property resulting from the violation;
 - b. The duration and gravity of the violation;
 - c. The effect on ground or surface water quality;
 - d. The cost of rectifying the damage;
 - e. The amount of money saved by noncompliance;

- f. Whether the violation was committed willfully or intentionally;
 - g. The cumulative effect of other enforcement actions applied for the same offense;
 - h. The prior record of the violator in complying or failing to comply with the storm water quality management program;
 - i. The costs of enforcement to the City.
4. Any violation of this ordinance shall be a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment not exceeding ninety (90) days, or both. Every day any violation of this Code or any such ordinance shall continue shall constitute a separate offense.
5. In the event there are penalties assessed by the State against the City caused by any person, company or construction site or facility, the said shall be assessed the equivalent amount of civil penalty. This shall include, but is not limited to penalties for improper disposal or illegal dumping, or illicit connection into the municipal separate storm drain system.
- E. Order to clean and abate/restore: Any violator may be required to clean and/or restore land to its condition prior to the violation.
- F. Corrective action and cost recovery: If necessary, the City may pursuant to Section 21-19-11 of the Mississippi Code Annotated take corrective action to alleviate violations of this Ordinance in order to protect the public health and safety. The cost of such corrective action shall become an assessment against the property involved.
- G. Injunctions and/or proceedings at law or in equity: Any violation of this Ordinance or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceedings pursuant to state law.
- H. Civil actions: In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the City. Monies recovered under this subsection shall be paid to the City to be used exclusively for costs associated with implementing or enforcing the provisions of this ordinance. In any such action, the City may seek, as appropriate, any or all of the following remedies:
- 1. A temporary and/or permanent injunction;
 - 2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which lead to the establishment of the violation, and for the reasonable costs attorney's fees and expenses preparing and bringing legal action under this subsection;
 - 3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
 - 4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.
- I. Emergency Orders and Abatements: The Director of the Department of Public Works may order the abatement of any discharge from any source to the storm water conveyance system when, in the opinion of the enforcement official, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, the environment, or a violation of an NPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety, or welfare, or the environment or a violation of a NPDES permit, the City may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the owner and shall be collectable in accordance with the provisions of this subsection.
- J. This Ordinance may also be enforced by criminal prosecution for willful violation.

SECTION 15 - REMEDIES NOT EXCLUSIVE

- 15.1 The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

SECTION 16 - SEVERABILITY

- 16.1 Should any article, section, subsection, clause or provision of this Ordinance be declared

by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part declared to be unconstitutional or invalid, each article, section clause and provision being declared severable.

- 16.2 If any provisions of this Ordinance and any other provisions of law impose overlapping or contradictory regulations, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern.

SECTION 17 - ADOPTION OF ORDINANCE

- 17.1 This ordinance shall be in full force and effect immediately after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION C. All provisions of the Code of Ordinances of the City of Gulfport, Mississippi, not in conflict herewith shall remain in full force and effect as heretofore provided. All prior ordinances and parts of ordinance in conflict with this ordinance are hereby repealed.

SECTION D. This ordinance shall be in full force and effect thirty (30) days after the date of passage, except should it pass unanimously in which case, for purposes of public health and safety, the ordinance shall be in effect immediately upon its passage. It shall be published according to law and shall be spread on the minutes of the Gulfport City Council.

The above and foregoing Ordinance, after having been first reduced to writing and read by the Clerk, was introduced by Councilmember Pucheu, seconded by Councilmember Holmes-Hines, and was adopted by the following roll call vote:

<u>AYES</u>	<u>NAYS</u>	<u>ABSENT/ABSTAIN</u>
Casey	None	None
Dombrowski		
Holmes-Hines		
Walker		
Sharp		
Flowers		
Pucheu		

WHEREUPON, the President declared the motion carried and the Ordinance adopted, this the 5th day of April, 2017.

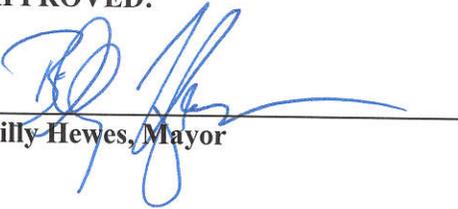


Ronda S. Cole
Ronda S. Cole, Clerk of Council

ADOPTED:
Rusty Walker
F.B. "Rusty" Walker, IV, President

The above and foregoing Ordinance was submitted to and approved by the Mayor, this the 5th day of April, 2017.

APPROVED:



Billy Hewes, Mayor