

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 12.50 TO THE OAK HARBOR MUNICIPAL CODE ENTITLED "ILLICIT DISCHARGE PROHIBITED" WHICH PROHIBITS THE DISCHARGE OF CERTAIN MATERIAL INTO THE CITY'S STORMWATER DRAINAGE SYSTEM; PROHIBITS ILLICIT CONNECTIONS TO THE CITY'S STORMWATER DRAINAGE SYSTEM; AND ESTABLISHES ENFORCEMENT PROCEDURES AND PENALTIES

WHEREAS, protection of the environment, sustainable development and responsible stewardship and preservation of the water resources in Oak Harbor and Whidbey Island are a high priority for the citizens of the city of Oak Harbor.

WHEREAS, regulation of illicit discharges into and illicit connections to the City's stormwater drainage system is necessary for the public health, safety and general welfare of Oak Harbor residents; and

WHEREAS, the City of Oak Harbor has been included as a Phase II city for purposes of the Phase II Municipal Stormwater General Permit for Western Washington under the National Pollutant Discharge Elimination System ("NPDES") program; and

WHEREAS, as a Phase II city, the City of Oak Harbor is required to adopt pollution prevention measures including regulation of illicit discharges into and illicit connections to the City's stormwater drainage system or "municipal separate storm sewer system" ("MS4") ; and

WHEREAS, the present deadline to adopt Illicit Discharge Detection and Elimination regulations is August 15, 2009;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

**Section One.** There is hereby added to Title 12 of the Oak Harbor Municipal Code a new Chapter 12.50 entitled "Illicit Discharge Prohibited" to read as follows:

**CHAPTER 12.50  
ILLICIT DISCHARGE PROHIBITED**

**Sections:**

12.50.005	Definitions
12.50.010	Discharges to Water Resources
12.50.015	Spills
12.50.020	Illicit Connections
12.50.030	Administration
12.50.040	Public Nuisance
12.50.050	Summary Abatement

12.50.060 Penalties  
12.50.070 Enforcement

**12.50.005 Definitions.** For the purposes of this chapter, the following words shall have the meanings set forth below:

- (1) AKART – All Known, Available, and Reasonable methods of prevention, control, and Treatment. See also the State Water Pollution Control Act, RCW 90.48.010 and RCW 90.48.520.
- (2) “Best management practices (BMPs)” mean schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and structural or managerial 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.
- (3) “Clean Water Act” means the federal Water Pollution Control Act (33 USC Section 1251 et seq.), and any subsequent amendments thereto.
- (4) "Contaminant" or "stormwater discharge contaminant" means any material other than stormwater, an allowable discharge as defined in OHMC 12.50.010(2), or a conditional discharge allowed pursuant to OHMC 12.50.010(3).
- (5) "Department" shall mean the Department of Public Works.
- (6) "Director" shall mean the Director of the Department of Public Works.
- (7) “Ground water” means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.
- (8) “Hazardous materials” means 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.
- (9) “Hyperchlorinated” means water that contains more than 10mg/Liter chlorine.
- (10) “Illicit discharge” means any direct or indirect non-stormwater discharge to the city’s storm drain system, except as expressly allowed by this chapter.
- (11) “Illicit connection” means any man-made connection to the City’s storm drain system without a permit, excluding roof drains and other similar type connections. Examples

include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate stormwater system.

- (12) “Municipal separate stormwater system” (MS4) means a conveyance or system of conveyances (including roads with ditches, man-made channels, or storm drains):
- (a) Owned or operated by the City of Oak Harbor;
  - (b) Designed or used for collecting or conveying stormwater;
  - (c) Which is not part of a Publicly Owned Treatment Works (POTW). POTW” means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned; and
  - (d) Which is not a combined sewer. “Combined sewer” means a system that collects sanitary sewage and stormwater in a single sewer system.
- (13) “National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit” means a permit issued by the Environmental Protection Agency (EPA) (or by the Washington Department of Ecology under authority delegated pursuant to 33 USC Section 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.
- (14) “Non-stormwater discharge” means any discharge to the storm drain system that is not composed entirely of stormwater.
- (15) “Person” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law.
- (16) “Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous 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; 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.
- (17) “Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
- (18) “Storm drainage system” means publicly owned facilities, including the City’s municipal separate stormwater system, 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.

- (19) “Stormwater” means runoff during and following precipitation and snowmelt events, including surface runoff and drainage.
- (20) “Stormwater pollution prevention plan” means a document which describes the best management practices and activities to be implemented by a person to identify sources of pollution or contamination at a premises and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

#### **12.50.010 Discharges to Water Resources.**

- (1) Illicit Discharges Prohibited. No person shall throw, drain or otherwise discharge, cause or allow others under its control to throw, drain or otherwise discharge into the City of Oak Harbor Storm Drainage System, any material other than stormwater. No person, property owner, business or other operation shall allow, either through direct act or through failure to prevent, discharge of any contaminated stormwater into the City of Oak Harbor storm drainage system, Persons or operations shall use AKART to prevent the discharge of contaminants into the City of Oak Harbor Storm Drainage System. The following are examples of prohibited stormwater discharge contaminants:
- (a) Trash or debris
  - (b) Construction and landscaping materials
  - (c) Petroleum products including, but not limited to, oil, gasoline, grease, diesel, fuel oil and heating oil
  - (d) Antifreeze and other automotive-fluids and lubricants
  - (e) Metals, in either particulate or dissolved form
  - (f) Flammable or explosive materials
  - (g) Radioactive materials
  - (h) Batteries
  - (i) Acids, alkalis or bases
  - (j) Paints, stains, resins, lacquers or varnishes
  - (k) Degreasers and/or solvents
  - (l) Drain cleaners
  - (m) Pesticides, herbicides or fertilizers
  - (n) Steam cleaning wastes
  - (o) Soaps, detergents or ammonia
  - (p) Car washing soaps, waxes, polishing agents, wheel cleaning products, degreasing agents or engine cleaners
  - (q) Swimming pool or spa filter backwash
  - (r) Chlorine, bromine or other disinfectants
  - (s) Heated water
  - (t) Domestic animal wastes
  - (u) Sewage
  - (v) Recreational vehicle wastes
  - (w) Animal carcasses
  - (x) Food wastes

- (y) Bark, mulch, compost or other fibrous material
- (z) Lawn clippings, leaves, branches, weeds or other yard waste
- (aa) Silts, sediment, concrete, cement, clay, gravel or other soil generated from erosion, vehicle tracking, material stockpiles or other similar source
- (bb) Dyes
- (cc) Chemicals not normally found in rainwater
- (dd) Any other process-associated discharge except as others allowed in this section
- (ee) Any hazardous material or waste not listed above

(2) Allowable Discharges to Stormwater Drainage System. The following types of discharges shall be permitted unless the City determines that these discharges (whether singularly or in combination with others) are causing significant contamination of water resources:

- (a) Diverted stream flows
- (b) Rising ground waters
- (c) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(2))
- (d) Uncontaminated pumped ground water
- (e) Foundation drains
- (f) Air conditioning condensation
- (g) Irrigation water from agricultural sources that is commingled with urban stormwater
- (h) Springs
- (i) Water from crawl space pumps
- (j) Footing drains and roof drains, from non-pollution generating roofing materials, drains
- (k) Flows from riparian habitats and wetlands
- (l) Non-stormwater discharges covered by another NPDES Permit
- (m) Discharges from emergency fire fighting activities and fire department training activities
- (n) Accidental discharges from breaks in potable water mains, damage to fire hydrants or other failure of any potable water facilities or structure
- (o) Any discharge specifically authorized in writing by a local, state or federal agency for remedial action in an agreed order, a consent decree or a voluntary cleanup effort

(3) Conditional discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter if they meet the stated conditions, or unless the City determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

- (a) Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;

- (b) Lawn watering and other irrigation runoff are permitted but shall be minimized;
- (c) De-chlorinated swimming pool discharges. These discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary and in volumes and velocities controlled to prevent re-suspension of sediments in the stormwater system;
- (d) Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents are permitted if the amount of street wash and dust control water used is minimized. At active construction sites, street sweeping must be performed prior to washing the street;
- (e) Non-stormwater discharges covered by another NPDES permit, 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; and
- (f) Other non-stormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan (SWPPP) reviewed and approved by the City, which addresses control of such discharges by applying AKART to prevent contaminants from entering surface or ground water.
- (g) Where required to protect public safety, the use sand, salt, or other traction or de-icing agents placed on roads, sidewalks, parking lots or similar surfaces are allowed during inclement weather provided that the use is minimized and residual materials are cleaned up after the weather event.

#### **12.50.015 Spills.**

- (1) Spills, whether intentional or accidental, of stormwater contaminants released, discharged to, or having the potential to release or discharge to the City of Oak Harbor Storm Drainage System, surface waters or ground waters, shall be contained, controlled, collected, cleaned up and properly disposed. All affected areas shall be restored to their preexisting condition to the maximum extent practical.
- (2) All costs incurred by the City of Oak Harbor in assisting with containing, controlling, collecting, cleaning up and properly disposing of spilled materials together with all restoration costs shall be the responsibility of the persons, organization, entities or other parties in control of the stormwater contaminants immediately prior to their release or discharge.
- (3) Persons in control of the stormwater contaminants immediately prior to their release or discharge, and persons owning the private property, vehicles, equipment or vessels, on or

from which, the substances were released or discharged, shall immediately notify the Oak Harbor Stormwater Utility and Oak Harbor Fire Department of the release or discharge, as well as making any required notifications under state and federal law. Notification of a spill shall be made by contacting the emergency dispatch center, (ICOM at 911) or the City of Oak Harbor spill notification hotline which shall be published together with City telephone numbers and on the City website. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability, civil penalty or criminal offense which may be imposed by state or other law.

**12.50.020 Illicit Connections.**

- (1) Any connection that could allow conveyance of any illicit discharge is prohibited, except:
  - (a) Connections conveying allowable discharges as set forth at Section 12.50.010(2);
  - (b) Connections conveying discharges pursuant to a National Pollutant Discharge Elimination System (NPDES) Permit or a State Waste Discharge Permit; and
  - (c) Connections conveying effluent from permitted or authorized onsite sewage disposal systems to subsurface soils provided that said system is properly operating and in conformance with all relevant Washington State and Island County regulations for use, operation, maintenance and inspection.

**12.50.030 Administration.** The Director, or designee, shall be responsible for the administration and enforcement of this Chapter.

**12.50.040 Public Nuisance.** Illicit discharges and illicit connections which exist within the city limits are hereby found, deemed, and declared to be dangerous or prejudicial to the public health or public safety and are found, deemed, and declared to be unlawful and public nuisances.

**12.50.050 Summary Abatement.** Notwithstanding any other authority granted herein, the City may summarily abate an illicit discharge or illicit connection which is an immediate threat to the safety, health or welfare of the public or is a contamination threat to any surface or ground water and for which any delay might cause irreparable loss. All costs borne by the City in undertaking a summary abatement shall be, following passage of a lawful resolution by the Council, charged against the owner of the property, responsible person, or responsible operation and a lien against any real property. Notice of the lien herein authorized shall as nearly as practicable be in substantially the same form, filed with the same officer within the same time and manner, and enforced and foreclosed as is provided by law for liens for labor and materials.

**12.50.060 Penalties.**

- (1) The failure to comply with the provisions of this chapter is a civil offense, classified as a Class 1 infraction pursuant to Ch. 1.20 OHMC. Each day of violation shall be a separate

offense. This is an absolute liability offense. No mental element as defined in law is required for proof of violation.

- (2) The knowing or intentional failure or refusal to comply with an abatement order of an illicit discharge or an illicit connection is a misdemeanor which shall be punishable by the maximum penalty established by RCW 9.92.030 as now or hereafter amended.
- (3) An intentional or repeated violation of this chapter by the person responsible shall be a misdemeanor.

#### **12.50.070 Enforcement.**

- (1) Provisions of this chapter will be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
- (2) Investigation required. Upon information received that a violation of this chapter has occurred or is occurring, the Director or designee shall investigate the alleged violation., If it is determined that a violation has occurred or is occurring, enforcement action shall be taken in accordance with the terms of this section.
- (3) Voluntary compliance. Unless the violation poses an immediate threat to the safety, health or welfare of the public or is a contamination of the City's storm drainage system for which delay may cause irreparable loss or harm, the Director or designee may attempt to secure voluntary compliance.
  - (a) If the Director or designee determines that the violation is a first-time minor offense, a written warning may be issued, advising the property owner of the violation, the requirements to achieve compliance and the time by which compliance is required to prevent further enforcement action. The stipulated time period for compliance may not exceed thirty (30) days. The Director or designee shall make a written record of the reasons for treating the violation as a minor offense. If the Director or designee is satisfied that compliance has been achieved in the stipulated time period, no further enforcement action is required and a record shall be created of the outcome of the written warning.
  - (b) If the Director or designee determines that the violation is not a first-time minor offense but that the violation also does not pose an immediate threat to the safety, health or welfare of the public or is a contamination of the City's storm drainage system for which delay may cause irreparable loss or harm, then a voluntary correction agreement may be entered with the person responsible for the violation. A voluntary correction agreement is a contract between the City and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:
    - (i) The name and address of the person responsible for the violation; and

- (ii) The street address or other description sufficient for identification of the land upon which the violation has occurred or is occurring; and
- (iii) A description of the violation and a reference to the code section which has been violated; and
- (iv) The necessary corrective action to be taken, and a date or time by which correction must be completed; and
- (v) An agreement by the person responsible for the violation that the City may inspect the property as may be necessary to determine compliance with the voluntary correction agreement; and
- (vi) An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and impose a monetary penalty pursuant to this chapter and Ch. 1.28 OHMC from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and
- (vii) An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing on the violation and the required corrective action.

Execution of a voluntary correction agreement shall not relieve the person responsible for the violation of liability for any violations not specifically included in the voluntary correction agreement. The outcome of the voluntary correction agreement shall be noted in the records of the department.

- (4) **Civil Infraction Procedures Applicable.** If voluntary compliance is not achieved with respect to a violation or if the Director or designee determines that voluntary compliance is not appropriate due to the nature of the violation, prior civil offenses on the part of the person responsible for the violation or for other reasons, the civil infraction procedures of Ch. 1.28 OHMC shall be followed. The reasons for the decision to seek a civil infraction shall be noted in the records of the department.
- (5) **Criminal Prosecution.** A criminal complaint may be brought by the City Attorney or a citation may be issued by a duly commissioned law enforcement officer for violation of the misdemeanor provisions of this chapter, in accordance with CrRLJ 2.1.
- (6) Nothing in this section shall limit the authority of the City to take any action, including emergency actions, civil infractions, criminal prosecutions or any other enforcement action, without first seeking voluntary compliance.

**Section Two. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

**Section Three. Effective Date.** This Ordinance shall be in full force and effect five days after publication.

PASSED by the City Council and approved by its Mayor this \_\_\_\_ day of \_\_\_\_\_, 2009.

THE CITY OF OAK HARBOR

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

Published: \_\_\_\_\_

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