

Ordinance No. 2016-42
Brownsburg, Indiana
January 12, 2017

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BROWNSBURG,
INDIANA, AMENDING TITLE V OF THE BROWNSBURG TOWN CODE BY ADDING A
NEW CHAPTER 57 RELATING TO ILLICIT DISCHARGES AND CONNECTIONS**

WHEREAS, the Town of Brownsburg, Hendricks County, Indiana through the Town Council desires to amend and update its Ordinances to be consistent with Indiana Code regarding certain provisions of its Town Code relating to Illicit Discharges; and

WHEREAS, the Town Council desires that Title V of the Town Code be amended by adding a new Chapter 57 addressing Illicit Discharges as set forth and further described below.


NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BROWNSBURG, INDIANA AS FOLLOWS:

Section I. The foregoing Recitals are fully incorporated herein by reference.

Section II. Title V of the Brownsburg Town Code is hereby amended with the addition of a new Chapter 57 titled "Illicit Discharges and Connections" Sections 57.01 through 57.16 as further set forth on Exhibit "A" attached hereto and incorporated herein by reference.

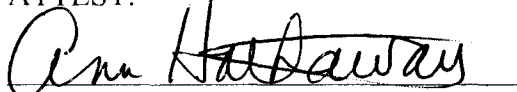
Section III. All prior Ordinances or parts thereof inconsistent with any provision of this Ordinance are hereby repealed.

Section IV. This Ordinance is hereby passed by the Town Council for the Town of Brownsburg, Indiana this 12 day of January, 2017 and shall be effective following any publications required by Indiana law.



President

ATTEST:



Ann Hathaway
Clerk-Treasurer

EXHIBIT "A"

NEW TITLE V, CHAPTER 57, SECTIONS 57.01 TO 57.15

CHAPTER 57 ILLCIT DISCHARGES AND CONNECTIONS

§ 57.01 PURPOSE AND INTENT

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

- (A) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user.
- (B) To prohibit illicit connections and discharges to the MS4.
- (C) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.

§ 57.02 DEFINITIONS

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BEST MANAGEMENT PRACTICES (BMPs). Any structural or nonstructural control measure utilized to improve the quality and, as appropriate, reduce the quantity of stormwater run-off. The term includes schedules of activities, prohibitions of practice, treatment requirements, operation and maintenance procedures, use of containment facilities, land use planning, policy techniques and other management practices.

CLEAN WATER ACT (CWA). The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

COMBINED SEWER. A sewer intended to receive both wastewater and stormwater or surface water.

CONSTRUCTION ACTIVITIES. Land disturbing activities and land disturbing activities associated with the construction of infrastructure and structures. This term does not include routine ditch or road maintenance or minor landscaping projects. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

CONVEYANCE. Any structural process for transferring stormwater between at least two points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains and roadways.

HAZARDOUS MATERIALS. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard

to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLEGAL DISCHARGE. Any direct or indirect non-stormwater discharge to the MS4, except as exempted in Section 57.08 (B).

ILLICIT CONNECTIONS. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 including, but not limited to, any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved.

ILLICIT DISCHARGE. Any discharge to an MS4 conveyance that is not composed entirely of stormwater, except naturally occurring floatables, such as leaves or tree limbs. Sources of illicit discharges include, but are not limited to, sanitary wastewater, septic tank effluent, car wash wastewater, oil disposal, radiator flushing disposal, laundry wastewater, roadway accident spillage and household hazardous wastes. Exempted activities are identified in Section 57.08 (B).

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

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). A conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basin, curbs, gutters, ditches, manmade channels or storm drains, that are:

- (A) Owned or operated by a: (i) federal, state, city, town, county, district, association or other public body (created by or pursuant to state law) having jurisdiction over stormwater, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges into waters of the state; or (ii) privately owned stormwater utility, hospital, university, or college having jurisdiction over stormwater that discharges into water of the state;
- (B) Designed or used for collecting or conveying stormwater;
- (C) Not a combined sewer; and
- (D) Not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT. A permit issued by EPA (or by a state under authority delegated pursuant to 33 U.S.C. § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

NUISANCE. No person shall erect, construct, cause, permit, keep or maintain within the Town limits, anything whatsoever which is injurious to the public health or safety, or offensive to the senses of inhabitant. The existence of any of the above is declared to be a nuisance and shall be regulated as set forth in Chapter 93.

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. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. **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; sediments; animal wastes; wastes and residues that result from constructing a building or structure; concrete washout liquids; 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.

RUNOFF. The portion of precipitation that flows from a drainage area on to the land surface, in open channels or in stormwater conveyance systems.

SANITARY SEWER. A sewer which carries sanitary and industrial wastes, and to which stormwater, surface water and ground water are not intentionally admitted.

SPILL. Any unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge or other loss of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. The term does not include releases to impermeable surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.

ILLCIT DISCHARGE STOP WORK ORDER. A legal notice requiring persons to immediately suspend all work and operations.

STORMWATER. Water resulting from rain, melting or melted snow, hail or sleet. Stormwater can soak into the soil (infiltrate), be held on the surface and evaporate, or runoff and end up in nearby streams, rivers, or other water bodies (surface water).

STORMWATER POLLUTION PREVENTION PLAN. A written document that addresses stormwater runoff, identifies potential sources of pollution and outlines specific management activities designed to minimize the introduction of pollutants into stormwater.

WASTEWATER. A liquid or water carrying industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, whether treated or untreated.

WATERCOURSE, WATERWAY. A natural or manmade channel through which water flows; includes legal drains, creeks, ditches, swales, streams, and other open channels.

§ 57.03 APPLICABILITY

This chapter shall apply to anything entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by the Development Services Department.

§ 57.04 RESPONSIBILITY FOR ADMINISTRATION

The Town shall administer, implement and enforce the provisions of this chapter. Any powers granted or duties imposed upon the Development Services Department may be delegated in writing by the Town to persons or entities acting in the beneficial interest of or in the employ of the Town.

§ 57.05 AUTHORITY

The Town has the authority to: inspect the interior and exterior of all buildings and structures, properties and construction sites; present Illicit Discharge Stop Work Orders; suspend utility service; assess and issue notices of violations and enforcement actions to persons in violation of the Town's ordinances; and any other activities associated with the compliance of this ordinance and applicable Federal, State and other Local statutes. Specifically, Town employees or representatives have the authority to implement all applicable requirements of the ordinance and to assess fines.

§ 57.06 SEVERABILITY

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter 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 chapter.

§ 57.07 ULTIMATE RESPONSIBILITY

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

§ 57.08 DISCHARGE PROHIBITIONS

- (A) *Prohibition of illegal discharges.* No person shall discharge or cause to be discharged into the MS4 or waterways any materials, including but not limited to pollutants, wastewater or waters containing any pollutants. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited.
- (B) *Exempted Stormwater Discharges.* The following categories of exempted stormwater discharges or flows are not considered illicit discharges unless the Development Services Department identifies them as significant contributors of pollutants to the MS4:
 - (1) Water line or hydrant flushing.
 - (2) Emergency water main breaks
 - (3) Emergency utility repairs

- (4) Landscape and lawn irrigation without chemical additives.
- (5) Diverted stream flows.
- (6) Rising ground waters.
- (7) Uncontaminated ground water infiltration.
- (8) Uncontaminated pumped ground water.
- (9) Discharges from potable water sources.
- (10) Foundation drains.
- (11) Air conditioning condensation.
- (12) Springs.
- (13) Water from crawl space pumps.
- (14) Footing drains.
- (15) Individual residential car washing.
- (16) Flows from riparian habitats and wetlands.
- (17) Dechlorinated swimming pool discharges or water line disinfection (less than one PPM chlorine) and free of pollutants.
- (18) Discharges from firefighting activities.
- (19) Other water sources not containing pollutants.
- (20) Discharges specified in writing by the Town as being necessary to protect public health and safety.
- (21) Dye testing is an allowable discharge, but requires a verbal notification to the Development Services Department prior to the time of the test.
- (22) The prohibition shall not apply to any exempted stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal or State 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 MS4.

(C) *Prohibition of illicit connections.*

- (1) The construction, use, maintenance or continued existence of illicit connections to the MS4 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 chapter if the person connects a line conveying wastewater to the MS4, or allows such a connection to continue.
- (4) All connections shall also be in compliance with Chapter 52 – Sewer and Sewer Rates.

 **§ 57.09 SUSPENSION OF MS4 ACCESS**

- (A) *Suspension due to illicit discharges in emergency situations.* The Development Services Department 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 waterways. If the violator fails to comply with a suspension

order issued in an emergency, the Town may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waterways, or to minimize danger to persons.

- (B) *Suspension due to the detection of illicit discharge.* Any person discharging to the MS4 in violation of this chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Town will notify a violator of the proposed termination of its MS4 access. The violator may petition the Town 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 Town.

§ 57.10 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 Town prior to the allowing of discharges to the MS4.

§ 57.11 MONITORING OF DISCHARGES

- (A) *Access to facilities and properties.*
- (1) The Town or representative thereof shall be permitted to enter and inspect properties and facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. 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 Town.
 - (2) Facility operators and property owners shall allow the Town 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 stormwater, and the performance of any additional duties as defined by State and Federal law.
 - (3) The Town shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Town to conduct monitoring and/or sampling of a stormwater discharge.
 - (4) The Town has the right to require the discharger to install monitoring equipment as necessary. The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - (5) Any temporary or permanent obstruction to safe and easy access to a facility or property to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Town 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 Town access to a facility or property is a violation of this chapter.
 - (7) If the Town 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 chapter, 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 chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Town may seek issuance of a search warrant from any court of competent jurisdiction.

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

The Town will require best management practices for any activity, operation or facility which may cause or contribute to pollution or contamination of stormwater, the MS4 or waterways.

- (A) The owner or operator of a property or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal MS4 or watercourses through the use of these structural and non-structural BMPs.
- (B) 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 MS4.
- (C) These BMPs shall be incorporated into a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of a NPDES permit.

§ 57.13 NOTIFICATION OF SPILLS

- (A) Notwithstanding other requirements of law, as soon as any person responsible for a property, facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release or spill of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the MS4, or waterways said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release or spill in accordance with State regulations.
- (B) In the event of a spill, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. The Development Services Department shall also be notified within 1 hour of becoming aware of the spill. Notifications in person or by phone shall be confirmed by written report filed with the Town and the Indiana Department of Environmental Management (IDEM) within five (5) days of the spill. The written report shall specify:
 - (1) product name/description;
 - (2) date and time of spill;
 - (3) cause of spill;
 - (4) spill location; please include site specific map with address and zip code;
 - (5) description of area affected, mention square feet or cubic feet;
 - (6) amount spilled;

- (7) amount recovered;
 - (8) containment and cleanup activities (with dates);
 - (9) disposal of recovered material;
 - (10) who was at the scene; name, organization, position;
 - (11) do you have a contingency plan; if so, was it implemented;
 - (12) list preventive measures to eliminate recurrence;
 - (13) respondent's signature and position with company; and
 - (14) the Incident Number in correspondence.
- (C) This requirement does not relieve discharger from notifying other entities as required by State or Federal regulations.
- (D) 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.

§ 57.14 ILLICIT DISCHARGE STOP WORK ORDER

- (A) *Issuance*
- (1) If conditions exist such that any work activity must be stopped immediately to cease an illicit discharge, the Town issues a verbal order to stop work to the responsible person.
 - (2) After a verbal order is issued, the Town immediately notifies the person of the condition.
 - (3) The Town initiates a written "Illicit Discharge Stop Work Order" by providing detailed information to the person. The order states the reason for the order, the conditions under which the cited work will be permitted to resume, and the name and contact information of the official issuing the order.
 - (4) Any person who continues to engage in any work after having been served with an Illicit Discharge Stop Work Order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be provided a Notice of Violation and potentially be assessed penalties.
 - (5) Violators receiving an Illicit Discharge Stop Work Order are required to respond to the Town within two (2) business days of the issued notice to receive instructions on how to rescind the order.
 - (6) The Town may impose penalties in accordance with this ordinance.
- (B) *Appeal.* Any person receiving an Illicit Discharge Stop Work Order may appeal the determination of the Storm Water Department. The notice of appeal must be filed with the Town within ten (10) days from the date of the notice. Hearing on the appeal before the Town Council shall take place within thirty (30) days from the date of its receipt of the notice of appeal. The decision of the Town Council shall be final.
- (C) *Restart Work*

- (1) Once the person notifies the Town that they are ready to restart the work that had been stopped, the Town shall verify corrective/preventative actions have been completed.
- (2) The Town indicates the verification of satisfactory completion of corrective/preventative actions, and notifies the person that work is authorized to be resumed.
- (3) The Town issues the approved restart to the affected persons via a letter or memorandum.

§ 57.15 ENFORCEMENT

- (A) *Notice of violation.* Whenever the Town finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the Development Services Department may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
 - (1) The performance of monitoring, analyses, and reporting;
 - (2) The elimination of illicit connections or discharges;
 - (3) That violating discharges, practices, or operations shall cease and desist;
 - (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 - (5) Payment of a fine to cover administrative, remediation, response costs and additional fees as deemed necessary; and
 - (6) The implementation of source control or treatment BMPs.
- (B) If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- (C) *Appeal of notice of violation.* Any person receiving a notice of violation may appeal the determination of the Development Services Department. The notice of appeal must be filed with the Town within ten (10) days from the date of the notice. Hearing on the appeal before the Town Council shall take place within forty-five (45) days from the date of its receipt of the notice of appeal. The decision of the Town Council 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 ten (10) days of the decision of the Town Council upholding the decision of the Development Services Department, then representatives of the Town shall 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 government agency or designated contractor to enter upon the premises for the purposes set forth above.

- (E) *Cost of abatement of the violation.* After completion of abatement activities, 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 amount of the assessment within ten (10) days. If the amount due is not paid within a timely manner as determined by the decision of the Town Council or by the expiration of the time in which to file an 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 chapter shall become liable to the Town by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of eight percent (8%) per annum shall be assessed on the balance beginning on the first day following discovery of the violation. If such amount is not timely paid, then the Town may authorize the amount due and unpaid to the Treasurer of Hendricks County to be collected in the same manner as delinquent property taxes.
- (F) *Injunctive relief.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the Town may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.
- (G) *Compensatory action.* In lieu of fines, the Town may impose upon a violator alternative compensatory actions and schedule for completion, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. If the compensatory action is not completed according to the provided schedule, then all fines and penalties will be immediately due from the violator.
- (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 chapter 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.
- (I) *Remedies not exclusive.* The remedies listed in this chapter are not exclusive of any other remedies available under any applicable Federal, State or Local law and it is within the discretion of the Town to seek cumulative remedies.

§ 57.16 PENALTIES

- (A) Any person who violates any of the provisions of this chapter may be fined.
- (B) The fines described in the notice of violation may include a civil infraction and is subject to a minimum \$100 fine for investigation, inspection and administrative costs and a maximum fine of \$2,500 for a first offense. A maximum of \$7,500 may be assessed for a subsequent offense. Each day such a violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day.

- (C) Any person responsible for the discharge or potential discharge of a prohibited substance into the stormwater drainage system shall be subject to all remedial and punitive enforcement procedures specified in this chapter. In addition to fines, the owner shall be responsible for: a stormwater administrative fee; all costs associated with eliminating the illegal discharge or connection; any emergency response, clean-up, installation of infrastructure, remediation or disposal fees; and ensuring that all sanitary and stormwater connections originating from the property are in full compliance with the requirements of this ordinance.