

**ORDINANCE NO. F-1543**

**AN ORDINANCE AMENDING CHAPTER 34 "FLOODPLAINS, STORMWATER RUNOFF AND EROSION CONTROL" OF THE WHEATON CITY CODE**

**WHEREAS**, the United States Congress has adopted the Clean Water Act and, thereafter, the Water Quality Act to combat water pollution; and

**WHEREAS**, the aforesaid Federal legislation authorized the establishment of the National Pollution Discharge Elimination System ("NPDES") permitting program, under which permitting is, generally, administered by the states; and

**WHEREAS**, the Illinois Environmental Protection Agency ("IEPA") has issued a General National Pollution Discharge Elimination System Permit for Discharges from Small Municipal Separate Storm Sewer Systems ("Phase II") to the County of DuPage and several DuPage County municipalities (the "co-permittees") including the City of Wheaton; and

**WHEREAS**, NPDES Permits require permittees to develop, adopt and implement an ordinance for the detection, prohibition and elimination of illicit discharges into the storm sewer systems of the permittees; and

**WHEREAS**, illicit discharges of pollutants into storm sewer systems is a significant source of water pollution to DuPage County streams and waterbodies; and

**WHEREAS**, the DuPage County Stormwater Management Division has worked closely with the municipal engineers of the co-permittee municipalities to develop a program to detect, prohibit and eliminate illicit discharges into the storm sewer systems of the County and co-permittees in order to prevent water pollution, and in particular, to comply with the requirements of their General NPDES Phase II permit; and

**WHEREAS**, the DuPage County Stormwater Management Division and the municipal engineers of the co-permittee municipalities have developed a program that includes public education, monitoring and tracing of illicit discharges and a proposed ordinance as the enforcement component thereof; and

**WHEREAS**, the proposed Illicit Discharge Detection and Elimination Ordinance is intended to reduce and, or, prevent the pollution of any stream or any body of water within the City, and to reduce and, or, prevent pollutants from entering the Waters of the United States; and

**WHEREAS**, improving water quality in the City, and reducing or eliminating the public's exposure to water-borne pollutants is in the best interests of the County and its residents.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its Home Rule authority that Chapter 34 "Floodplains, Stormwater Runoff, and Erosion Control" of the Wheaton City Code is hereby amended by adding the following article, which shall read as follows:

**SECTION 1:**

**“ARTICLE VI  
ILLCIT DISCHARGE DETECTION AND ELIMINATION**

**Sec. 34-151. Purpose.**

1. The purpose of this Article is to ensure the health, safety, and general welfare of the citizens of the City of Wheaton, and protect and enhance water quality in a manner pursuant to and consistent with the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) through the regulation of non-stormwater discharges to the storm drainage system. This Article establishes methods for controlling the introduction of discharges other than those occurring as a direct result of precipitation and, or, snow melt into the municipal separate storm sewer system (MS4) and the storm drainage system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II permit process. Other purposes of this Ordinance include:
  - a. To regulate the contribution of pollutants to the MS4 and the storm drainage system by non-stormwater discharges; and
  - b. To prohibit illicit connections and discharges to the MS4 and the storm drainage system.
2. The purposes of this Article are consistent with the Plan and advance the following objectives of the Plan:
  - a. Protect and enhance the quality, quantity, and availability of surface and groundwater resources.
  - b. Preserve and enhance existing aquatic and riparian environments and encourage restoration of degraded areas.
  - c. Promote equitable, acceptable, and legal measures for stormwater management.
3. The purposes of this Article shall be implemented by its provisions.

**Sec. 34-152. Definitions.**

For the purposes of this Article, the following words and terms

shall have the meanings set forth except where otherwise specifically indicated. Words and terms not defined shall have the meanings indicated by common dictionary definition.

**Building.** A structure that is constructed or erected partially or wholly above ground and is enclosed by walls and a roof. The term “building” includes manufactured homes and includes both the above-ground and the below-ground portions of the structure.

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

**City.** The City of Wheaton, Illinois.

**Department.** The City of Wheaton Department of Engineering or successor agency.

**Director.** The City of Wheaton Director of Engineering or successor position or his or her designee.

**Drain.** Piping and appurtenances for conveying a fluid.

**Facility.** Something that is built, installed, or established to serve a particular purpose.

**Hazardous Materials.** Any material which may cause, or significantly contribute to, a substantial hazard to human health, safety, property, or the environment.

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

1. Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the storm drainage system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the community or,
2. Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system that has not been documented in plans, maps, or equivalent records and approved by the community.

**Illicit Discharge.** Any direct or indirect non-storm water discharge to the storm drainage system, except as exempted in Section 34-155.3 of this Article.

**Industrial Activity.** Activities subject to an industrial NPDES stormwater permit, as defined in 40 CFR, Section 122.26 (b)(14).

**Line.** A hollow conduit through which fluids are transported between two or more points.

**Municipal Separate Storm Sewer System (MS4).** A conveyance or system of conveyances (including but not limited to sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm sewers) owned or operated by a governmental entity and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

**National Pollutant Discharge Elimination System (NPDES) Permit.** A permit issued by Illinois Environmental Protection Agency (IEPA) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**Non-Stormwater Discharge.** Any discharge to the storm drainage system that is not the direct result of precipitation and, or, snow melt in the tributary drainage basin.

**Notice of Intent (NOI).** Illinois Environmental Protection Agency Notice of Intent to participate in coverage under the General Permit to Discharge Storm Water Associated with Industrial Activity.

**Parcel.** Contiguous land under single ownership or control.

**Person.** Any individual, association, partnership, public or private corporation, municipality, political subdivision, government agency, or any other legal entity, including heirs, successors, agents, officers, and assigns of such entity.

**pH Neutral.** pH value between 6.5 and 9.0 Standard Units.

**Plan.** The DuPage County Stormwater Management Plan, adopted by the DuPage County Board in September 1989, as amended from time to time.

**Pollutant.** Anything that 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, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, wastewater, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

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

**Runoff.** The waters derived from precipitation and, or, melting snow within a tributary drainage basin that exceeds the infiltration capacity of that basin.

**Sewage.** Polluted stormwater, wastewater, or other refuse liquids usually conveyed by sewers.

**Sewer.** An artificial conduit to carry off sewage and, or, surface water (as from rainfall), including sanitation, stormwater, and, or, combined sewers.

**Sewerage.** A system of sewers and appurtenances for the collection, transportation, pumping, and treatment of sewage.

**Storm Drainage System.** A facility 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.

**Stormwater.** Any surface flow, runoff, and drainage from any form of natural precipitation, and resulting from such precipitation.

**Structure.** Anything that is erected or constructed. The term "structure" includes, without limitation: buildings, manufactured homes, tanks, dams, sewers, constructed channels, outfalls, parking lots, driveways, roads, sidewalks, and concrete patios.

**Wastewater.** Water that has been used and is not for reuse unless treated by a wastewater treatment facility.

**Waters of the United States.** As defined in the CWA, “Waters of the United States” applies only to surface waters, rivers, lakes, estuaries, coastal waters, and wetlands. Not all surface waters are legally “Waters of the United States.” Generally, those waters include the following:

- All interstate waters;
- Intrastate waters used in interstate and, or, foreign commerce;
- Tributaries of the above;
- Territorial seas at the cyclical high tide mark; and
- Wetlands adjacent to all the above.

**Sec. 34-153. Applicability.**

This Article shall apply to all water entering the storm drainage system from any developed or undeveloped lands within the jurisdiction of the City, unless explicitly exempted by Section 34-155.3 of this Article, including any amendments or revisions thereto.

**Sec. 34-154. Interpretation.**

1. The provisions of this Article shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, convenience, prosperity, and general welfare and the environment of the residents of the City, and to effectuate the purposes of this Article and enabling legislation.
2. Where the conditions imposed by any provision of this Article are either more restrictive or less restrictive than comparable conditions imposed by any other applicable statute, law, ordinance, regulation, or rule, the provision that is most restrictive or imposes the higher standards or requirements shall apply.
3. The provisions of this Article shall be interpreted to be cumulative of, and to impose limitations in addition to, all other ordinances, laws, codes, and regulations, in existence or which may be passed governing any subject matter of this chapter. To the greatest extent possible, the provisions of this Article shall be construed to be consistent with, and not in conflict with, the provisions of such other ordinances, laws, codes, and regulations, and with each other,

to the end that all such provisions may be given their fullest application.

**Sec. 34-155. Prohibition of Illicit Discharges.**

1. No person shall place, drain, or otherwise discharge, cause, or allow others under their control to place, drain, or otherwise discharge into the storm drainage system or MS4 any pollutants or waters containing any pollutants, other than normal storm water unless specifically exempted in Section 34-155.3 of this Article.
2. The following discharges into the MS4 or the storm drainage system shall be prohibited:
  - a. Discharges that are not a direct result of precipitation and, or, snow melt within the drainage area of the MS4.
  - b. Discharges from an illicit connection.
3. The following discharges are exempt from discharge prohibitions established herein provided they do not cause an adverse effect on water quality as determined by the Director:
  - a. Discharges caused by governmental public works and stormwater management units as part of their standard operations in compliance with all applicable regulations.
  - b. Discharges required by law or authorized by permit, including any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the USEPA and, or, IEPA.
  - c. Water line and fire hydrant flushing.
  - d. Landscape irrigation water.
  - e. Rising ground waters.
  - f. Ground water infiltration.
  - g. Pumped ground water.
  - h. Discharges from potable water sources.

- i. Foundation drains.
- j. Air conditioning condensate.
- k. Irrigation water (except for wastewater irrigation).
- l. Springs.
- m. Water from crawl space pumps.
- n. Footing drains.
- o. Storm sewer cleaning water.
- p. Water from any outdoor residential, charitable, or automobile dealership premise car wash.
- q. Routine external building washdown which does not use detergents.
- r. Flows from riparian habitats and wetlands.
- s. Dechlorinated pH neutral swimming pool discharges.
- t. Residual street wash water.
- u. Discharges or flows from fire fighting activities.
- v. Dechlorinated water reservoir discharges.
- w. Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed).
- x. Discharges associated with dye testing of water line, sanitary sewers, storm sewers, private drains or septic systems; however, this activity shall not take place until the discharger, or tester, has provided notification to the Department at least two (2) full business days prior to the test date, unless an emergency situation does not allow time for such notification.
- y. Other discharges approved by the Department as being substantially like any of the discharge types enumerated in Section 34-155.3 of this Article.



**Sec. 34-156. Prohibition of Illicit Connections.**

1. The construction, use, maintenance, or continued existence of illicit connections to the storm drainage system or 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 Article if the person connects a line conveying sewage to the storm drainage system or MS4, or allows such a connection to continue.
4. Connections in violation of this Article must be disconnected and redirected, if necessary, to an approved wastewater management system or the sanitary sewer system upon approval of the City and the appropriate sanitary treatment facility.
5. Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system or MS4, shall be located by the owner or occupant of that property upon receipt of written Notice of Violation from the City requiring that such locating be completed. Such notice shall specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, MS4, sanitary sewer system, or other discharge point be identified. Results of these investigations are to be documented and provided to the City.

**Sec. 34-157. Submission of Notice of Intent (NOI) to the City.**

1. Any person operating a facility subject to the IEPA's General Permit to Discharge Storm Water Associated with Industrial Activity shall submit a copy of the Notice of Intent (NOI) to the City at the same time the operator submits the original Notice of Intent to the IEPA as applicable.
2. The copy of the Notice of Intent may be delivered to the City either in person or by mailing it to:

Notice of Intent to Discharge Stormwater

City of Wheaton Department of Engineering  
303 W. Wesley Street  
Wheaton, IL 60187

3. A person commits an offense if the person operates a facility that is discharging stormwater associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the City.

**Sec. 34-158. Notification of Spills.**

1. Notwithstanding other requirements of law, as soon as any person owning, leasing or exercising control over a property, or responsible for emergency response for a property, has information of any known or suspected spill of materials which are resulting or may result in illicit discharges or pollutants discharging into the MS4 or the storm drainage system, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such spill.
  - a. In the event of such a spill, said person shall immediately notify local emergency dispatch services and act in accordance with Illinois Emergency Management Agency (IEMA) and IEPA regulations.
  - b. Said person shall notify the City of the spill in person or by phone, facsimile, or email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City within three (3) business days of the phone notice.
  - c. If the spill emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the spill and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years.
2. Proper notice, including containment and cleanup as outlined in Section 34-158.1, shall exempt the notifying parties from applicable fines set forth in Section 34-164.
3. Failure to provide notification of a release as provided above is a violation of this Article.

4. Notwithstanding the language of paragraph 2 of this provision, a party causing a spill that contaminates or harms a storm sewer system shall not be relieved of liability for damages resulting from such act.

**Sec. 34-159. Enforcement: Violations.**

1. The Director shall have primary responsibility for the enforcement of the provisions of this Article. The City may enter into agreements with other governmental units for the purpose of implementing this Article.
2. A person violates this Article when that person:
  - a. Performs any act expressly prohibited by any provision of this Article; or
  - b. Disobeys, neglects, or fails to carry out or comply with any provision of this Article or of any order or notice issued by the Director; or
  - c. Allows any condition or act that violates any provision of this Article to continue unabated on property owned, leased, managed, or under the control of such person; or
  - d. Directs, orders, permits, or allows a second person to do any act expressly prohibited by any provision of this Article, or to maintain or continue unabated any condition or act that violates any provision of this Article on property owned, leased, managed or under the control of the first person.

**Sec. 34-160. Notice to Correct Violations: City May Take Action.**

1. The City may issue a Notice of Violation ordering a person to take action to achieve compliance with the provisions of this Article and, or, to cease and desist from any action conducted in violation of this Article. Failure to comply with the terms and conditions of a Notice of Violation and, or, order to cease and desist shall constitute a violation of this Article.
  - a. The Director shall set forth the form and content of any notices issued under this Article.

- b. The Director may issue a Warning of Violation ordering a person to take action to achieve compliance with the provisions of this Article. If a person fails to comply with the terms and conditions of a warning, the Director may, thereafter, issue a Notice of Violation.
  - c. The Director may issue a Warning of Violation and disburse educational materials outlining appropriate measures to minimize the discharge of pollutants.
2. If a person fails to comply with an order issued under this section, the Director may direct the appropriate legal counsel to commence any legal proceeding authorized by this Article, under the law or equity, necessary to enforce any provision of this Article and, or, to protect public health and safety. Any legal action brought under this Article shall be in the name of the City of Wheaton.

**Sec. 34-161. Emergency Cease and Desist Orders.**

1. The City may obtain an emergency order in the event of the following:
  - a. Any person has violated, or continues to violate, any provision of this Article or any order issued hereunder, or that the person's past violations are likely to recur; and
  - b. That the person's violation has caused or contributed to an actual or threatened discharge to the MS4 or storm drainage system and an imminent threat of violation is present.
2. The City may issue the emergency order to the violator directing that the violator:
  - a. Immediately cease and desist all such violations;
  - b. Immediately comply with all Article requirements; and
  - c. Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and, or, terminating the discharge.
3. Any person notified of an emergency order under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the City may take

such steps as deemed necessary to prevent or minimize harm to the MS4, storm drainage system, or Waters of the United States, and, or, endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Department may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Department that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Article. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Department within fifteen (15) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

**Sec. 34-162. Violations Deemed a Public Nuisance.**

Any condition caused or permitted to exist in violation of any provision of this Article shall constitute a threat to public health and safety and is declared and deemed a public nuisance.

**Sec.34-163. Nuisance Abatement.**

Whenever a nuisance shall be found to exist on any premise, the Director may order such nuisance to be abated upon determination that the nuisance constitutes a threat to public health or safety.

1. In the event of an emergency situation, as determined by the Director, involving an immediate threat to public health and safety, the Director may direct legal counsel to immediately commence any legal or equitable proceeding necessary to restrain, abate, and, or, remedy said situation. The Director may take such action without having to first issue a Notice of Violation to the person(s) having control of, or acting as agent for, such premise where the nuisance is located, or, waiting for such person(s) to abate or remove such nuisance as previously ordered by the Director.
2. In all other cases, the Director may notify, in writing, the person(s) having control of, or acting as agent for, such premise where the nuisance is located and directing such person(s) to abate or remove such nuisance within such time as is stated on the notice. Upon the

failure or refusal of such person(s) to comply with the notice, the Director may direct that appropriate proceeding commence to compel the abatement, or removal, of such a nuisance in any manner allowed by law, equity, or this Article and, or, authorizing the City to act to abate, or remove, such nuisance. The person(s) having control of such premises, in addition to the other remedies provided by this Article, shall be liable to the City for any costs incurred by the City to effect such abatement, or removal, including reasonable attorney's fees and other costs of enforcement, to be recovered by a court of competent jurisdiction.

**Sec. 34-164. Fines.**

Any person who violates, disobeys, omits, neglects or refuses to comply with, or resists the enforcement of any of the provisions of this Article shall be subject to punishment as provided in section 1-8 of this Code. Each day such a violation continues to exist after written notification shall constitute a separate offense and shall require the imposition of a separate punishment.

**Sec. 34-165. Remedies Not Exclusive.**

The remedies listed in this Article are not exclusive of any other remedy available under this Article or under any applicable Federal, State, or local law and do not supersede or limit, any and all other penalties provided by law. The Director may seek, at his discretion, cumulative remedies.

**Sec. 34-166. Suspension of MS4 Access Due to Detection of Illicit Discharges.**

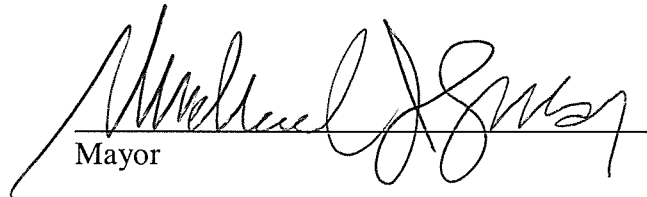
1. Any person discharging to the MS4 in violation of this Article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Department shall notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.
2. In emergency situations, the 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, storm drainage system, or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Department may take such steps as deemed necessary to prevent or minimize damage to the MS4, storm drainage system, or Waters of the United States, or to minimize danger to public health and safety. The City shall obtain an emergency court order authorizing such termination.”

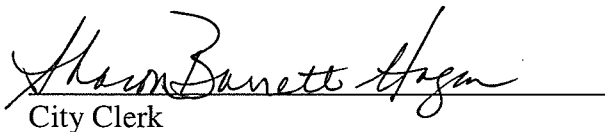
**SECTION 2:** All ordinances or parts thereof in conflict or inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

**SECTION 3:** That if any part of this Ordinance is declared invalid by a Court of competent jurisdiction, such partial invalidity shall not affect the remainder of this Ordinance.

**SECTION 4:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as authorized and directed to be done by the Mayor and City Council of the City of Wheaton.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Roll Call Vote:

Ayes:	Councilman Levine Councilman Mouhelis Mayor Gresk Councilman Prendiville Councilman Scalzo Councilwoman Corry
Nays:	None
Absent:	Councilman Suess

Motion Carried Unanimously

Passed: February 22, 2011  
Published: February 23, 2011

