

ORDINANCE NO. 2023

**STORM WATER MANAGEMENT
ILLICIT DISCHARGE ORDINANCE**

RECITALS

WHEREAS, the purpose of this ordinance is to provide for the health, safety, and general welfare of the residents of City of Mountain Brook 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; and

WHEREAS, this ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process; and

WHEREAS, this ordinance provides the minimum content for implementing and enforcing a storm water management program consistent with the Alabama Department of Environmental Management (ADEM) permit currently issued to the City of Mountain Brook; and

WHEREAS, the objectives of this ordinance are:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any user;
2. To prohibit Illicit Connections and Illegal Discharges to the municipal separate storm sewer system; and
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

**Section 1
DEFINITIONS**

For the purposes of this ordinance, the following words and terms shall have the meaning assigned to them in this section.

Authorized Enforcement Agency. Employees or designees of the City of Mountain Brook who are designated to enforce this ordinance.

Best Management Practices (BMPs). Activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices designed to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

2023

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

Construction Activity. Activities that are subject to NPDES Construction Permits, which include construction projects resulting in land disturbance of 1/2 acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

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-storm water discharge to the MS4 system, except as exempted in Section 3 of this ordinance.

Illicit Connection. An illicit Connection is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 including but not limited to conveyances which allow any non-storm water 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 by the City of Mountain Brook or, piped or sloped onto another private property without written recorded consent of the owner of the property upon which the conveyance is piped or sloped, not to include recorded drainage easements or developed drainage structures recorded on the property plat.
2. Any drain or conveyance connected from a commercial or industrial land use to MS4 which has not been documented in plans, maps, or equivalent records and approved by the City of Mountain Brook.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipal Separate Storm Sewer System (MS4). Municipal storm water discharge system which conveys all water runoff from private and public property to the discharge outfall of the receiving waters at the corporate limit to include all storm drains, municipal storm drain system, water courses, drainage system, drainage easements, or storm water development system or components.

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 pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the MS4 that is not composed entirely of storm water.

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. 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.

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

Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Storm Water 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 storm water, the MS4, other storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

Wastewater. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 2 ADMINISTRATION

The City of Mountain Brook shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the City of Mountain Brook may be enforced by the City Building Official, Building Inspection Officer or delegated in writing by an official of the City of Mountain Brook to persons or entities acting in the beneficial interest of or in the employ of the agency (any such person shall be referred to herein as the "Official").

Section 3 ILLICIT DISCHARGE PROHIBITIONS

Section 3.1 Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the MS4 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, other than storm water.

Section 3.2 Illegal Discharges Exemptions.

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 MS4.

The following discharges have been determined not to be substantial contributors of pollutants by the City or Alabama Department of Environmental Management (ADEM) and are exempt from discharge prohibitions established by this ordinance:

- a) Water line flushing
- b) Landscape irrigation or lawn watering (not consisting of treated, or untreated wastewater unless otherwise authorized)
- c) Diverted stream flows
- d) Uncontaminated ground water infiltration
- e) Uncontaminated pumped groundwater
- f) Discharges from potable water sources
- g) Foundation or footing drains (not including active groundwater dewatering systems)
- h) Air conditioning condensation or drains
- i) Irrigation water (not consisting of treated or untreated wastewater unless otherwise authorized)
- j) Rising ground water
- k) Springs
- l) Water from crawl space pumps
- m) Lawn watering runoff
- n) Individual residential car washing, to include charitable carwashes
- o) Residential street wash water
- p) Discharges or flows from firefighting activities (including fire hydrant flushing)
- q) Flows from natural riparian habitat or wetlands
- r) De-chlorinated swimming pool discharges
- s) Dye testing, provided that verbal notification to the City of Mountain Brook is given prior to the time of the test.
- t) Boring machine discharge or utility manhole pumping for utility construction using secondary sediment control devices

Section 3.3 Prohibition of Illicit Connections.

- a) The construction, use, maintenance or continued existence of illicit connections to the MS4 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) Connection of any line conveying sewage to the MS4, or continuation of such a connection by any person is prohibited and shall constitute a violation of this ordinance.

**Section 4
SUSPENSION OF MS4 ACCESS**

Section 4.1 Suspension Due to Illicit Discharges in Emergency Situations.

The City of Mountain Brook 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 waters of the United States. If such person fails to comply

with a suspension order issued in an emergency, the City of Mountain Brook may take any and all steps deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

Section 4.2 Suspension Due to the Detection of Illicit Discharge.

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City of Mountain Brook will notify a violator of the proposed termination of its MS4 access. The violator may petition the City of Mountain Brook for a reconsideration and hearing.

A person who reinstates MS4 access to premises for which access has been terminated pursuant to this ordinance, without the prior approval of the City of Mountain Brook shall be deemed to have violated this ordinance.

Section 5

INDUSTRIAL, COMMERCIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial, commercial 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 of Mountain Brook prior to the allowing of discharges to the MS4.

Section 6

MONITORING OF DISCHARGES

Section 6.1 Applicability.

This section applies to all facilities that have storm water discharges associated with industrial, commercial, and construction activity.

Section 6.2 Access to Facilities.

- a) The City of Mountain Brook 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 of Mountain Brook.
- b) Facility operators shall allow the City of Mountain Brook 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 of Mountain Brook shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City of Mountain Brook to conduct monitoring and/or sampling of the facility's storm water discharge.
- d) The City of Mountain Brook 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 storm water 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 of Mountain Brook and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- f) Unreasonable delays in allowing the City of Mountain Brook 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 of Mountain Brook reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- g) If the City of Mountain Brook has been refused access to any part of the premises from which storm water is discharged, and there is 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 of Mountain Brook may seek issuance of a search warrant from any court of competent jurisdiction.

Section 7

REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The City of Mountain Brook will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of the MS4, storm water, or waters of the United States. 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 MS4 or watercourses through the use of these 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 MS4. 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 storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

Section 8

WATERCOURSE PROTECTION

Every person owning property and each person with control and responsibility for maintaining property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or other such responsible person shall maintain existing privately owned structures within or adjacent to

a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Section 9 NOTIFICATION OF SPILLS

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 MS4, storm water or waters of the United States, 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 non-hazardous materials, said person shall notify the City of Mountain Brook in person or by phone or facsimile 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 of Mountain Brook 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 10 ENFORCEMENT AND ABATEMENT

Whenever the City of Mountain Brook finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the City of Mountain Brook may enforce the ordinance through the use of any of the remedies designated in this section, as deemed necessary and most effective by the City.

Section 10.1 Notification; Enforcement Remedies.

- (a) **Warning Notice:** A warning notice of violation is the lowest level of formal response to a violation. It is a verbal or written response presented to the violator shortly after a violation has been identified and is intended for minor violations that would not cause significant harm to the environment.

- (b) **Notification of Violation:** Whenever the Official finds that any person is in violation of any provision of this ordinance or any order issued hereunder, the Official or his agent may serve upon such person written notice of the violation requiring the removal of illegal discharges or illicit connections and immediate cessation of improper discharge practices within ten (10) calendar days of the date of such notice. Compliance by written notice of violation to the responsible person may require without limitation:
 - 1. The performance of monitoring, analyses, and reporting;
 - 2. The abatement or remediation of MS4, storm water pollution or contamination hazards and the restoration of any affected property;
 - 3. Payment of a fine to cover administrative and remediation costs; and
 - 4. The implementation of source control or treatment BMPs.

- (c) Compliance Order: Whenever abatement of a violation and/or restoration of affected property is not possible within ten (10) days, a compliance order may be issued to the violator. The order shall set forth a deadline within which such remediation or restoration must be completed. Said order shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be performed by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Section 10.2 Appeal of Violation.

Any person receiving a Notice of Violation or Compliance Order may appeal the determination to the City Manager. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation/Compliance Order. A hearing on the appeal before the appropriate authority or his/her designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

Section 10.3 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 thirty (30) days of the decision of the municipal authority, then representatives of the City of Mountain Brook shall enter upon the subject private premises 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.

Section 10.4 Cost of Abatement of the Violation.

Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within thirty (30) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority 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. Interest at the rate of twelve_(12) percent per annum shall accrue on all unpaid special assessments from the date of assessment.

Section 10.5 Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Notwithstanding any other remedies which may be available to the City, including, without limitation, prosecution of an ordinance violation in the municipal court of the City, if a person has violated or continues to violate the provisions of this ordinance, the City of Mountain Brook 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.

Section 10.6 Compensatory Action.

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the City of Mountain Brook may impose upon a person who violates this ordinance alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, or other measures targeted at compliance and remediation.

Section 10.7 Violations Deemed a Public Nuisance.

Any condition caused or permitted to exist in violation of any of the provisions of this ordinance constitutes a threat to public health, safety, and welfare, and is declared and deemed to be a public nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action may be initiated to abate, enjoin, or otherwise compel the cessation of such nuisance.

Section 10.8 Criminal Prosecution.

Any person that has violated or continues to violate this ordinance shall be subject to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of \$500 dollars per violation per day and/or imprisonment for a period of time not to exceed one hundred and eighty (180) days.

The City of Mountain Brook may recover all attorney's fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section 10.9 Remedies Not Exclusive.

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

**Section 11
MISCELLANEOUS**

Section 11.1 Applicability.

This ordinance shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by the City of Mountain Brook.

Section 11.2 Severability.

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 11.3 Ultimate Responsibility.

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 11.4 Effective Date.

This ordinance shall be published as required by law and shall become effective ~~on~~ on Oct. 1, 2018.

ADOPTED: This 13th day of August, 2018.



Council President

APPROVED: This 13th day of August, 2018



Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, at its regular meeting on the 13th day of August, 2018, as same appears in the minutes of record of said meeting, and published by posting copies thereof on the 14th day of August, 2018, at the following public places, which copies remained posted for five (5) days as provided by law:

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park, 3020 Overton Road
Cahaba River Walk, 3503 Overton Road



City Clerk

**CITY OF MOUNTAIN BROOK, ALABAMA.
ILLCIT DISCHARGE ORDINANCE**

RECITALS

**Section 1
DEFINITIONS**

**Section 2
ADMINISTRATION**

**Section 3
ILLCIT DISCHARGES PROHIBITIONS**

- Section 3.1 Prohibition of Illegal Discharges.
- Section 3.2 Illegal Discharge Exemptions.
- Section 3.3 Prohibition of Illicit Connections.

**Section 4
SUSPENSION OF MS4 ACCESS**

- Section 4.1 Suspension Due to Illicit Discharges in Emergency Situations.
- Section 4.2 Suspension Due to the Detection of Illicit Discharge.
- Section 4.3 Post Construction BMP Operation and Maintenance Plan Description.

**Section 5
INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

**Section 6
MONITORING OF DISCHARGES**

**Section 7
REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER
POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES**

**Section 8
WATERCOURSE PROTECTION**

**Section 9
NOTIFICATION OF SPILLS**

Section 10
ENFORCEMENT AND ABATEMENT

- Section 10.1 Notice of Violation.
- Section 10.2 Appeal of Notice of Violation.
- Section 10.3 Enforcement Measures After Appeal.
- Section 10.4 Cost of Abatement of the Violation.
- Section 10.5 Injunctive Relief.
- Section 10.6 Compensatory Action.
- Section 10.7 Violations Deemed a Public Nuisance.
- Section 10.8 Criminal Prosecution.
- Section 10.9 Remedies Not Exclusive.

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- Section 11.1 Applicability.
- Section 11.2 Severability.
- Section 11.3 Ultimate Responsibility.
- Section 11.4 Effective Date.