

ORDINANCE NO. 1168

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE CITY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM; ADDING NEW CHAPTER 14.30 TO THE GIG HARBOR MUNICIPAL CODE ADOPTING REGULATIONS FOR ILLICIT DISCHARGE DETECTION AND ELIMINATION; AMENDING CHAPTER 14.20 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Gig Harbor (the "City") is regulated under the Washington State Department of Ecology's Western Washington Phase II Municipal Stormwater Permit (the "Permit"); and

WHEREAS, the Permit became effective in February 2007 and contains various requirements for stormwater management and operations that must be implemented over the 5-year permit term ending February 15, 2012; and

WHEREAS, the Permit broadly applies to City activities that include maintenance and operations of City facilities, permitting of development, inspections and enforcement of regulations, and other activities conducted in the City's Municipal Separate Storm Sewer System; and

WHEREAS, the City will be adopting code policies and procedures as needed to comply with the Permit; and

WHEREAS, to meet the conditions of the Permit, a Stormwater Management Program ("SWMP") has been prepared that outlines all requirements of the Permit and a summary of the City's work program to meet those requirements over the 5-year permit term, and will be updated annually to incorporate progress on implementing the SWMP and changes to projected future work efforts; and

WHEREAS, the repealing of Sections 14.20.580 and 14.20.590 of the Gig Harbor Municipal Code and the proposal for the new Illicit Discharge Detection and Elimination chapter is intended to meet Condition S5.C.3 of the Permit with the goal of improving and maintaining water quality in compliance with the Clean Water Act; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS
AS FOLLOWS:

Section 1. Sections 14.20.580 and 14.20.590 of the Gig Harbor Municipal Code relating to illicit discharges are hereby deleted in their entirety.

Section 2. A new Chapter 14.30 is added to Title 14 of the Gig Harbor Municipal Code to read as follows:

Chapter 14.30

ILLICIT DISCHARGE DETECTION AND ELIMINATION

Sections:

- 14.30.010Purpose**
- 14.30.020Definitions**
- 14.30.030Applicability**
- 14.30.040Administration**
- 14.30.050General Provisions**
- 14.30.060General Requirements**
- 14.30.070Inspections and Investigations**
- 14.30.080Enforcement**

14.30.010 Purpose.

The purpose of this chapter is to regulate the city's municipal separate storm sewer system ("MS4 or stormwater drainage system") regarding the introduction of pollutants that would adversely impact surface and groundwater quality of the state of Washington. The intent of this chapter is to:

- A. Control the introduction of pollutants to the stormwater drainage system by any person and/or entity.
- B. Prohibit illicit connections and discharges to the stormwater drainage system and receiving waters.
- C. Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.

14.30.020 Definitions.

"Best Management Practices" or "BMPs" means physical, structural, and/or managerial practices that, when used singly or in combination, prevent and/or reduce pollution of water. BMPs are listed and described in the Stormwater Management Manual for Western Washington and the

Gig Harbor Stormwater Management and Site Development Manual, most recent version.

“Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

“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.

“Illegal Discharge” means any direct or indirect non-stormwater discharge to the stormwater drainage system, except as permitted or exempted in GHMC 14.30.050.

“Illicit Connection” is defined as either of the following:

- A. Any drain, conveyance, or hydraulic connection whether surface or subsurface, which allows an illegal discharge to enter the stormwater drainage system including but not limited to any conveyances which allow sewage, process wastewater, or wash water to enter the stormwater drainage system and any connections to the stormwater drainage system from indoor drains and sinks, regardless of whether the connection had been previously allowed, permitted, or approved by the city or other authorized public agency.
- B. Any drain or conveyance connected from a residential, commercial or industrial land use to the stormwater drainage system which has not been documented in plans, maps, or equivalent records and approved by the city.

“Municipal Separate Storm Sewer System (MS4)” or “stormwater drainage system” means the system of conveyances including sidewalks, roads with drainage systems, municipal streets, catchbasins, curbs, gutters, ditches, manmade channels, or storm drains owned and operated by the city and design or used for collecting or conveying stormwater.

“National Pollutant Discharge Elimination System (NPDES) Phase II Permit” means the “Western Washington Phase II Municipal Stormwater Permit” issued by the Washington State Department of Ecology with an effective date of February 16, 2007 and subsequent reissues.

“Non-Stormwater discharge” means any discharge to the stormwater drainage system that is not composed entirely of stormwater.

“Pollutant” or “Pollution” shall be construed to mean such contamination or other alteration of the physical, chemical, or biological properties of any of the waters of the state including, change in temperature, taste, color, turbidity, or odor of the waters or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious, to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life; as defined in by Federal regulatory requirements and RCW 90.48.020, as now existing or hereafter amended.

“Stormwater” means surface water runoff resulting from rainfall, snowmelt, or other precipitation.

“Storm Drainage System” – see “Municipal Separate Storm Sewer System (MS4)”.

“Wastewater” or “Process wastewater” means any liquid or water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

“Watercourse” and “river or stream” means any portion of a channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state including areas in which fish may spawn, reside, or through which they may pass, and tributary waters with defined bed or banks, which influence the quality of fish habitat downstream. This includes watercourses which flow on an intermittent basis or which fluctuate in level during the year and applies to the entire bed of such watercourse whether or not the water is at peak level. This definition does not include irrigation ditches, canals, stormwater run-off devices, or other entirely artificial watercourses, except where they exist in a natural watercourse which has been altered by humans.

“Waters of the state” means all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Washington as defined in RCW 90.48.

14.30.030 Applicability.

This chapter shall apply to all water entering the stormwater drainage system and waters of the state within the MS4.

14.30.040 Administration.

The public works director or designee shall administer this chapter and shall be referred to as the administrator. The administrator shall have the authority to develop and implement procedures to administer and enforce this chapter.

14.30.050 General Provisions.

A. Prohibition of Illegal Discharges.

1. No person shall discharge or cause to be discharged into the city's stormwater drainage system or waters of the state, any materials, including but not limited to, pollutants or waters containing any pollutants.
2. Prohibited discharges include, but are not limited to, the following:
 - a. Trash or debris;
 - b. Construction materials;
 - c. Petroleum products including, but not limited to, oil, gasoline, grease, fuel oil, heating oil;
 - d. Antifreeze and other automotive products;
 - e. Metals in excess of naturally occurring amounts, in either particulate or dissolved form;
 - f. Flammable or explosive materials;
 - g. Chemicals not normally found in uncontaminated water;
 - h. Acids, alkalis, or bases;
 - i. Painting products;
 - j. Degreasers and/or solvents;
 - k. Drain cleaners;
 - l. Commercial and household cleaning products;
 - m. Pesticides, herbicides, or fertilizers;
 - n. Steam cleaning wastes;
 - o. Pressure washing wastes;
 - p. Soaps, detergents, or ammonia;
 - q. Chlorinated water, including spa or swimming pool water;
 - r. Domestic or sanitary sewage;
 - s. Animal carcasses;
 - t. Food wastes;
 - u. Yard wastes;
 - v. Silt, sediment, or gravel;
 - w. Any hazardous material or waste;
 - x. Wastewater or process wastewater (including filtered or purified wastewaters).
3. The following discharges are allowed by this chapter if the discharges do not contain pollutants. The administrator may evaluate and

remove any of the exemptions if it is determined that they are causing an adverse impact.

- a. Diverted stream flows (i.e., channeled or piped streams);
 - b. Rising ground waters and springs;
 - c. Flows from riparian habitats and wetlands.
 - d. Uncontaminated ground water infiltration (as defined in 40 C.F.R. 35.2005(20));
 - e. Uncontaminated pumped ground water;
 - f. Foundation and footing drains;
 - g. Air conditioning condensation;
 - h. Irrigation water from agricultural sources that is commingled with urban stormwater;
 - i. Water from crawl space pumps;
 - j. Non-stormwater discharges covered by another NPDES permit;
 - k. Discharges from emergency fire fighting activities;
 - l. Discharges specified in writing by the administrator as being necessary to protect public health and safety.
4. The following types of discharges shall only be permitted if the stated conditions are met:
 - a. Discharges from potable water sources, including 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 volumetrically and velocity controlled to prevent re-suspension of sediments in the storm drainage system;
 - b. Discharges from lawn watering and other irrigation runoff; these shall be minimized through water conservation efforts;
 - c. Dechlorinated spa or swimming pool discharges; the discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent re-suspension of sediments in the storm drainage system. The temperature of the discharge water shall not exceed 65 degrees Fahrenheit. Spa or swimming pool cleaning wastewater and filter backwash shall not be discharged to the storm drainage system.
 - d. Street and sidewalk wash water, water used to control dust, and routine external building wash down that does not use detergents; the amount of street wash, dust control, and building wash water shall be minimized. At active construction sites, street sweeping must be performed prior to washing the street.
 - e. Dye testing with verbal notification to the city at least twenty-four (24) hours prior to the time of the test;
 - f. Discharges resulting from maintenance, repair, or operation of fire fighting equipment and facilities that are not directly associated with public fire fighting, including discharges from public fire

- fighting training exercises, unless city-approved best management practices are implemented.
5. Discharge prohibitions shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Environmental Protection Agency or Washington State Department of Ecology, 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 stormwater drainage system.

B. Prohibition of Illicit Connections.

1. The construction, use, maintenance or continued existence of illicit connections to the storm drain system 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.

C. Waste Disposal.

No person shall throw, deposit, leave, maintain, or keep in or upon any public or private property, the stormwater drainage system, or waters of the state, any refuse, rubbish, garbage, litter, or other discarded or abandon objects, articles, or accumulations that may cause or contribute to pollution. Wastes deposited in proper waste receptacles for the purposes of collection are exempt from this prohibition.

14.30.060 General Requirements.

A. Requirement to Eliminate Illegal Discharges.

The administrator may require by written notice that a property owner or person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge, clean up the polluting matter and, if necessary, take measures to eliminate the source of the discharge to prevent the reoccurrence of discharges. The administrator may charge all associated costs thereof to the property owner or responsible party.

B. Requirement to Eliminate Illicit Connections.

The administrator may require by written notice that a property owner or person responsible for an illicit connection to the stormwater drainage system eliminate the connection by a specified date, regardless of whether or not the connection had been established or approved previously.

C. Requirement to Implement Best Management Practices.

The owner or operator of a commercial or industrial establishment and property owners shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the stormwater drainage system or waters of the state through the use of structural and non-structural BMPs (as defined in GHMC 14.30.020). The administrator may require any person responsible for a property or premise, which is, or may be, the source of an illicit discharge to implement, at their own expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the stormwater drainage system.

D. Watercourse Protection.

Any person owning property through which a watercourse passes shall keep and maintain that part of the watercourse within the property free of trash, debris, and other items that would pollute or contaminate the flow of water through the watercourse.

E. Notification of Illegal Discharges.

1. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation has information of any known or suspected illegal discharges into the stormwater drainage system or waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.
2. In the event of an illegal discharge of hazardous materials into the stormwater drainage system or waters of the state, said person shall immediately notify the appropriate public agency identified by the city. A list of appropriate agencies is available on the city's website or in person. The alternative notification agencies are the emergency dispatch services (911) and the city's Public Works Department.
3. In the event of an illegal discharge of non-hazardous materials into the stormwater drainage system or waters of the state, said person shall notify the city's Public Works Department by phone, by facsimile, or in person within forty-eight (48) hours after said discharge.
4. 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 kept and maintained on a permanent basis from the effective date of this chapter.

14.30.070 Inspections and Investigations.

A. Facility and Property Inspections.

The administrator shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a property owner has security measures in force which require proper identification and clearance before entry into its premises, the property or facility owner/operator shall make the necessary arrangements to allow access to the administrator.

B. Facility and Property Access.

1. Facility operators shall allow the administrator 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/or federal law.
2. 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 property owner at the written or oral request of the administrator and shall not be replaced. The costs of clearing such access shall be borne by the property owner.

C. Monitoring and Sampling.

1. The administrator has the right to install or require the property owner to install monitoring equipment as is reasonably necessary in the opinion of the administrator to conduct appropriate monitoring and/or sampling of the facility's stormwater discharge. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the property owner at his/her own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
2. All data shall be collected in accordance with a sampling and analysis plan that is approved by the administrator.

14.30.080 Enforcement.

A. Failure to Comply.

It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any activity or action caused or permitted to exist in violation of this chapter is a violation subject to enforcement under Chapter 12.17 GHMC.

B. Emergency Access and Reparation.

In the event the violation constitutes an immediate danger to public health or safety, the administrator is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking further relief or applying other penalties as outlined in Chapter 12.17 GHMC.

C. Civil Infraction.

Except as provided in subsection D of this section, conduct made unlawful by this chapter shall constitute a civil infraction and is subject to enforcement and fines as provided in Chapter 12.17 GHMC.

D. Misdemeanor.

Any person who again violates this chapter within twelve (12) months after having been found by the Gig Harbor Municipal Court to be in violation of this chapter, commits a misdemeanor and any person who is convicted thereof shall be punished as provided in Chapter 1.16 GHMC and fined as provided in Chapter 12.17 GHMC.

E. Civil Penalty.

In addition to any civil infraction fine, criminal penalty, and/ or other available sanction or remedial procedure, any person engaging in conduct made unlawful by this chapter shall be subject to a cumulative civil penalty in the amount of \$1,000 per day for each violation from the date set for compliance until the date of compliance. Any such civil penalty shall be collected in accordance with Chapter 12.17 GHMC.

F. Additional Remedies.

1. In addition to any other remedy provided by this chapter or under the Gig Harbor Municipal Code, the city may initiate injunction or abatement proceedings or any other appropriate action in courts against any person who violates or fails to comply with any provision of this chapter to prevent, enjoin, abate, and/or terminate violations of this chapter and/or to restore a condition which existed prior to the violation. In any such proceeding, the person violating and/or failing to comply with any provisions of this chapter shall be liable for the costs and reasonable attorneys' fees incurred by the city in bringing, maintaining and/or prosecuting such action.
2. The administrator may provide the option for compensation of all or part of any penalties incurred by any person(s) to be made in the form of community service approved by the administrator that will be of

benefit to the environment and the city. The person(s) and administrator will enter into a formal, written agreement providing for the community service. This agreement shall include in detail description of the service(s) to be rendered by the person(s) in penalty for noncompliance of this chapter. The description shall include a completion date with a mutually agreed compensation structure to offset the above mentioned penalties.

3. Any person who violates any provision of this chapter may also be in violation of the Federal Clean Water Act, NPDES Phase II Permit, and/or RCW 90.48 and may be subject to sanctions including civil and criminal penalties. Any enforcement action authorized under this chapter shall also include written notice to the violator of such potential liability."

Section 3. Severability. If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

Section 4. Effective Date. This ordinance shall take effect on and be in force as of August 14, 2009.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 10th day of August, 2009.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 06/17/09
PASSED BY THE CITY COUNCIL: 08/10/09
PUBLISHED: 08/12/09
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