

ORDINANCE NO. 5141-24

AN ORDINANCE AMENDING THE CODE OF THE CITY OF NEWTON, KANSAS, TO ADOPT AND INCLUDE A NEW CHAPTER 24 THERETO PERTAINING TO STORMWATER POLLUTION PREVENTION.

WHEREAS the governing body of the City desires to maintain, improve and protect the stormwater drainage system within the City; and

WHEREAS such maintenance, improvement and protection of the stormwater drainage system of the City necessitates the prevention of the discharge of contaminated stormwater runoff and illicit discharges from industrial, commercial, residential and construction sites into the stormwater drainage system; and

WHEREAS the establishment of regulations in this regard is necessary not only to facilitate compliance with state and federal standards and permits by owners of construction sites within the City, but also to enable the City to comply with all federal and state laws and regulations applicable to the National Pollution Discharge Elimination Systems (NPDES);

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF NEWTON, KANSAS:

SECTION 1. The Code of the City of Newton, Kansas, is hereby amended to include a Chapter 24 thereto reading as follows:

CHAPTER XXIV

ARTICLE 1. GENERAL PROVISIONS

24-101. DEFINITIONS. For the purpose of this Chapter, and unless the context otherwise requires, the following words, terms and phrases shall be defined as follows:

- (a) **“Authorized Public Officer”** means the person or persons designated under Section 24-102 to implement, administer and enforce the provisions of this Chapter.
- (b) **“Best Management Practices”** and **“BMPs”** means a defined set of activities, prohibitions, pollution prevention and educational practices, maintenance procedures, and other management practices designed to prevent or reduce the discharge of pollutants directly or indirectly into stormwater, receiving waters, or stormwater conveyance systems. **“Best Management Practices”** and **“BMPs”** also include treatment practices, operating procedures, and practices to control site runoff, spillage and leaks, sludge and water disposal, and drainage from raw materials storage.
- (c) **“City”** means the City of Newton, Kansas.

- (d) **“City BMPs”** means the Best Management Practices established by the Authorized Public Officer for the City under the authority of this Chapter.
- (e) **“Construction Activity”** means any activity, including clearing, grading and excavating, which results in disturbance of any land surface.
- (f) **“Contaminated”** means containing substances regarded under state or federal law as being pollutants.
- (g) **“Discharge”** means the release, addition or introduction of any substance directly or indirectly into the Municipal Stormwater Drainage System.
- (h) **“EPA”** means the United States Environmental Protection Agency.
- (i) **“Hazardous Waste”** means any substance, material or waste identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.
- (j) **“Household Hazardous Waste”** means any substance, material or waste identified or listed as a household hazardous waste pursuant to K.A.R. 28-29-23b.
- (k) **“Illicit Discharge”** means any occurrence prohibited under the provisions of Section 24-201(a) and (b).
- (l) **“Illicit Connections”** means either of the following:
 - (1) Any drain or conveyance, whether on the surface or subsurface, that allows an Illicit Discharge to enter the Municipal Stormwater Drainage System either directly or indirectly; or
 - (2) Any drain or conveyance connected from a commercial or industrial land use to the Municipal Stormwater Drainage System, either directly or indirectly, and which has not been documented in any approved plans, maps or equivalent records, or which has not otherwise been approved by the Authorized Public Officer of the City.
- (m) **“KDHE”** means the Kansas Department of Health and Environment, or any duly authorized official of the Kansas Department of Health and Environment acting on its behalf.
- (n) **“Municipal Stormwater Drainage System”** means the system of conveyances (including sidewalks, roads, streets, curbs, gutters, ditches, designated drainage easements, inlets, drains, catch basins, pipes, tunnels, culverts, channels, creeks, rivers, streams, detention basins and ponds owned, operated or otherwise utilized by the City for collecting or conveying stormwater and stormwater drainage, and that is not intended for the collection or conveyance of sewage.

- (o) **“National Pollutant Discharge Elimination System”** and **“NPDES”** means the national system for the issuance of permits under 42 U.S.C. Section 1342, and includes any state or interstate program which has been approved by the administrator, in whole or in part, pursuant to 42 U.S.C. Section 1342.
- (p) **“NPDES Stormwater Discharge Permit”** means an NPDES Stormwater Discharge Permit issued by the EPA, or issued by a State under authority delegated pursuant to 33 USC § 1342(b), which permit authorizes and regulates discharges into surface waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.
- (q) **“Non-Stormwater Discharge”** means any discharge to the storm drain system that is not composed entirely of stormwater.
- (r) **“Person”** means any individual, association, organization, partnership, firm, corporation or other legal entity.
- (s) **“Pollutant”** means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of water, including changes in the temperature, taste, odor, turbidity or color of water. **“Pollutant”** includes, but is not limited to the following: dredged spoil; spoil waste; incinerator residue; animal waste; trash, refuse and garbage; sewage and sewage sludge; chemical waste; biological materials; radioactive materials; wrecked or discarded objects and equipment; rock, sand and soil; yard waste; hazardous waste and household hazardous waste; oil and petroleum products or waste; paints, varnishes and solvents; automotive fluids; non-hazardous liquid and solid wastes and yard wastes; pesticides, herbicides, and fertilizers; fecal coliform and pathogens; dissolved and particulate metals; and wastes and residues which result from the construction or demolition of any building or structure.
- (t) **“Premises”** means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
- (u) **“Release”** means to dump, spill, leak, pump, pour, emit, empty, inject, leach, dispose, add or otherwise introduce any substance, directly or indirectly, or intentionally or unintentionally, into the Municipal Stormwater Drainage System.
- (v) **“Stormwater”** means any surface flow, runoff or drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (w) **“Uncontaminated”** means not containing pollutants.
- (x) **“Wastewater”** means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

- (y) **“Watercourse”** means any body of water, including but not limited to lakes, ponds, rivers, creeks, streams, and bodies of water delineated by the City.

24-102. DESIGNATION OF AUTHORIZED PUBLIC OFFICER. The Director of Public Works of the City is hereby designated as the Authorized Public Officer, and as such is authorized and directed to implement, administer and enforce the provisions of this Chapter, and to perform all functions and duties, and to exercise such authority and discretion, of the Authorized Public Officer as prescribed under this Chapter. The Director of Public Works, with the approval of the City Manager, may delegate any of the powers, duties or functions of the Authorized Public Officer.

24-103. APPLICABILITY. This Chapter shall apply to all substances entering the Municipal Stormwater Drainage System generated on any developed and undeveloped lands unless explicitly exempted under the provisions of this Chapter.

24-104. COMPATIBILITY WITH OTHER REGULATIONS. The provisions of this Chapter are not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this Chapter are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this Chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

24-105. SEVERABILITY. If for any reason any section, subsection, sentence, clause or phrase of this Chapter or the application thereof to any person or circumstance is declared to be unconstitutional or invalid or unenforceable, such decision shall not affect the validity of the remaining portions of this Chapter.

ARTICLE 2. STORMWATER MANAGEMENT

24-201. PROHIBITIONS.

- (a) No person shall discharge or release, or cause or permit to be discharged or released, into the Municipal Stormwater Drainage System, any substance which is not composed entirely of uncontaminated stormwater, except as allowed in Section 24-203.
- (b) Notwithstanding the provisions of Section 24-203, any discharge or release shall be prohibited by this Section if the discharge or release in question has been determined by the Authorized Public Officer to be a source of pollutants or contamination to the Municipal Stormwater Drainage System and has given notice thereof.
- (c) The construction, use, maintenance or continued existence of Illicit Connections as defined in Section 24-204 is prohibited. This prohibition expressly includes, without limitation, connections made in the past, regardless of whether the

connection was permissible under the law or practices applicable or prevailing at the time of the connection.

- (d) No person shall connect a line conveying sewage, domestic sewage or industrial waste to the Municipal Stormwater Drainage System, or allow any such existing connection to continue.
- (e) No person shall intentionally destroy, damage or otherwise interfere with the effectiveness of any BMP implemented pursuant to this Chapter.

24-202. SPECIFIC ILLICIT DISCHARGES PROHIBITED. Except as permitted in Section 24-203, Illicit Discharges prohibited under the provisions of Section 24-201(a) include, but are not limited to, the following:

- (a) Motor oil, antifreeze or any other petroleum product or waste;
- (b) Industrial waste;
- (c) Hazardous waste, including household hazardous waste;
- (d) Domestic sewage, septic tank waste, grease trap waste, or grit trap waste;
- (e) Garbage, rubbish or yard waste (including grass trimmings, leaves, weeds and all other vegetation or portions, trimmings or wastes thereof or therefrom);
- (f) Wastewater which contains soap, detergent, degreaser, solvent, surfactant, emulsifier, dispersant or other cleaning substances;
- (g) Wastewater (i) from any commercial facility for the washing of vehicles, such as carwash facilities, or (ii) from any similar facility associated with any new or used vehicle distributorship, rental agency, body shop, repair shop or maintenance facility, or (iii) from any similar facility maintained by any business or institution for the washing, cleaning or maintenance of its own business or commercial vehicles or heavy equipment;
- (h) Wastewater from the cleaning of the portion of vehicles or equipment which contained ready-mixed concrete, mortar, ceramic, asphalt-based material or hydromulch material;
- (i) Wastewater from the washdown or other cleaning of any pavement where any spill, leak or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred;
- (j) Effluent from a cooling tower, condenser, compressor, emissions scrubber or emission filter, or the blowdown from a boiler;

- (k) Runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area;
- (l) Swimming pool water which has not been de-chlorinated in accordance with the specifications of the Authorized Public Officer
- (m) Swimming pool or fountain filter backwash;
- (n) Any substance or material which will damage, block or clog the Municipal Stormwater Drainage System;
- (o) Any release from a petroleum storage tank, or any leachate or runoff from soil contaminated by a petroleum storage tank leakage;
- (p) Pesticides or fertilizers, including runoff from the improper storage, discarding, transportation or application of pesticides or fertilizers;
- (q) Runoff, washdown or wastewater which contains any of the above; or
- (r) Non-Stormwater Discharge from a Construction Activity site.

24-203. ILLICIT DISCHARGE EXCEPTIONS. The following non-stormwater discharges are deemed acceptable and not a violation of Sections 24-201 or 24-202 above:

- (a) Uncontaminated discharge from water line flushing;
- (b) Uncontaminated discharge or flow from a diverted stream flow or a natural spring;
- (c) Uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers;
- (d) Discharge of flow from uncontaminated pumped groundwater or rising groundwater;
- (e) Discharge or flow from contaminated groundwater if specifically authorized by KDHE and the City;
- (f) Uncontaminated discharge or flow from potable water sources;
- (g) Uncontaminated discharge or flow from a foundation drain, a crawl space pump, a footing drain or a sump pump;
- (h) Uncontaminated discharge or flow from air-conditioning condensation which is not mixed with water from a cooling tower, emissions scrubber, emissions filter or any other source of any pollutant;

- (i) Infrequent and uncontaminated discharge or flow from lawn watering, landscape irrigation or other irrigation water;
- (j) Discharge from the occasional, non-commercial washing of vehicles upon a residential premises;
- (k) Uncontaminated discharge of flow from riparian habitat or wetland;
- (l) Swimming pool discharges (excluding filter backwash) which have first been dechlorinated pursuant to specifications of the Authorized Public Officer;
- (m) Discharge or flow from street washing which is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant or other harmful cleaning substance;
- (n) Discharge or flow from emergency fire fighting activities, or which results from actions taken under emergency conditions which are reasonably necessary to mitigate damages to life and property;
- (o) Uncontaminated residential heat pump discharge waters;
- (p) Treated wastewater meeting requirements of a NPDES permit;
- (q) Non-point agricultural discharge, excluding discharges from confined animal feeding operations; and
- (r) Other discharges determined by the Authorized Public Officer not to be a significant source of pollutants to waters of the State;

provided, however, that if the Authorized Public Officer determines that any discharge or flow of a type identified above is a source of pollutants to the waters of the Municipal Stormwater Drainage System, and gives direct oral or written notice thereof to the person or party responsible for such property or for such discharges or flows, then the exception herein provided shall no longer apply.

24-204. ILLICIT CONNECTIONS PROHIBITED. It shall be unlawful for any person to cause or permit to exist on any property which is under such person's ownership or control any Illicit Connections to the Municipal Stormwater Drainage System. This includes, but is not limited to, 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. Illicit Connections in violation of this Chapter must be disconnected and either eliminated or redirected in a lawful manner to an approved onsite wastewater management system or to the sanitary sewer system, which such work shall be performed in accordance with all permit and code requirements.

24-205. PROTECTION OF WATERCOURSES AND DRAINAGE EASEMENTS. Every person owning property through which a watercourse or drainage easement passes, and any lessee of such property, shall keep and maintain that part of the watercourse or drainage easement

within the property free of trash, debris, excessive vegetation, grass clippings and other yard waste, and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse or drainage easement. In addition, the owner and lessee shall maintain existing privately owned structures within or adjacent to a watercourse or drainage easement so that such structures will not become a hazard to the use, function or physical integrity of the watercourse or drainage easement in the collection and discharge of stormwater.

24-206. SUSPENSION DUE TO EMERGENCY SITUATIONS. During an active emergency situation involving an illicit discharge, the city may suspend MS4 discharge access to a person when it is deemed necessary to stop an imminent danger to the environment, civilian health or welfare, or the waters of the community. The Authorized Public Officer shall use their discretion to make this determination.

24-207. SUSPENSION DUE TO ILLICIT DISCHARGE NON-EMERGENCY. Any person discharging to the MS4 in violation of this article may be deemed to be maintaining a nuisance and may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency 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 authorized enforcement agency.

ARTICLE 3. CONSTRUCTION SITE MANAGEMENT

24-301. ESTABLISHMENT OF CONSTRUCTION ACTIVITIES BEST MANAGEMENT PRACTICES (BMPs) AND STORMWATER POLLUTION PREVENTION PLAN CONTENTS AND ELEMENTS. The Authorized Public Officer is hereby authorized and directed to establish BMPs for construction site erosion and sediment control, to establish and prescribe the required contents and elements of Stormwater Pollution Prevention Plans, and to amend any of the same from time to time as the Authorized Public Officer may deem appropriate and necessary to implement the provisions of this Chapter. The Authorized Public Officer shall maintain the same in manual form, not less than three copies of which shall be provided to the City Clerk to be made available for public inspection, and with copies also being kept available for examination by all persons or parties who make application or are considering making application for a building permit in relation to a project which would be subject to the BMPs.

24-302. SUBMISSION OF STORMWATER POLLUTION PREVENTION PLANS FOR CONSTRUCTION ACTIVITIES.

- (a) The owner of a site of any Construction Activity, and any contractor or contractors applying for permits on the owner's behalf, shall each be responsible for compliance with the requirements of this Section.

- (b) No permit shall be issued for any project involving any Construction Activity until the permit applicant or the owner of the property has submitted to and obtained the Authorized Public Officer's approval of a Stormwater Pollution Prevention Plan. This requirement shall also be applicable to the issuance of any amended or subsequent permit as to a site where this requirement was not initially applicable, but where the overall project as to which all such permits relate has come to constitute a Construction Activity.
- (c) Submission of a Stormwater Pollution Prevention Plan shall be accompanied by a fee of \$75.00, in addition to any other applicable permit fees; and, further, an additional fee of \$75.00 shall be paid upon each anniversary date of the approval of the SWPPP until such time as the applicable Construction activities under such SWPPP have been satisfactorily completed and the site surface properly stabilized or covered as determined by the Authorized Public Officer.
- (d) If the proposed Construction Activity relates to a site which is less than one-acre in total area, does not involve any activities which require an NPDES Stormwater Discharge Permit, and the Authorized Public Officer determines that it is not necessary for the effective implementation of the requirements of this Article that a Stormwater Pollution Prevention Plan be submitted which is in full compliance with all of the required contents and elements thereof prescribed as part of the City BMPs, then the Authorized Public Officer may allow in substitution thereof the illustration or description of the City BMPs which will be utilized at the Construction Activity site as a part of a site plan submission. An approved site plan with such illustrations or descriptions shall nevertheless have the status of a Stormwater Pollution Prevention Plan for all other purposes of this Article.

24-303. SUBMISSION OF STORMWATER POLLUTION PREVENTION PLANS FOR SUBDIVISION DEVELOPMENTS.

- (a) Where construction of any residential, commercial or industrial subdivision development will involve one or more Construction Activities during the life of the development project, the owner of a site of any Construction Activity, and any developer on the owner's behalf, shall submit for approval a Stormwater Pollution Prevention Plan as part of the plans for the public improvements necessary for such development. The Stormwater Pollution Prevention Plan shall provide for all phases of development, including sanitary sewer construction, storm drainage system construction, construction of waterlines, streets and sidewalks, general grading, and the construction of individual buildings within the development.
- (b) The subdivision owner shall provide a copy of the approved Stormwater Pollution Prevention Plan to all contractors and utility companies prior to their working within the subdivision.

- (c) The subdivision owner shall be responsible for implementation of the approved Stormwater Pollution Prevention Plan as to all Construction Activity within the development, excluding construction under the control of a subsequent owner of an individual lot or parcel or as to construction managed by utility companies.
- (d) Any subsequent owner of an individual lot or parcel with such a subdivision shall be responsible for continued implementation of the approved Stormwater Pollution Prevention Plan for all construction activity within or related to that owner's lot or parcel, excluding construction managed by utility companies.

24-304. STORMWATER POLLUTION PREVENTION PLAN SUBMISSION AND APPROVAL; AMENDMENTS.

- (a) The Stormwater Pollution Prevention Plan shall be prepared by a professional engineer licensed by the Kansas State Board of Technical Professions; provided, however, that the Authorized Public Officer may waive this requirement as to submissions accepted in substitution for a formal Stormwater Pollution Prevention Plan pursuant to subsection (d) below.
- (b) The Stormwater Pollution Prevention Plan shall be in compliance with the required form, contents and elements for Stormwater Pollution Prevention Plans as prescribed in the City BMP manual. The Stormwater Pollution Prevention Plan shall address the facilities, procedures and BMPs which will be utilized as part of the project to prevent Illicit Discharges, and shall address all phases of development, including sanitary sewer construction, storm management system construction, waterline, street and sidewalk construction, general grading and the construction of individual homes. One or more City BMPs adopted pursuant to Section 24-301 above may be incorporated by reference into a Stormwater Pollution Prevention Plan. The applicant will not be required to provide a Stormwater Pollution Prevention Plan for the activities of any contractor, subcontractor or utility company within a Construction Activity site to the extent such activities are covered by a Stormwater Pollution Prevention Plan submitted by and approved for such contractor, subcontractor or utility company.
- (c) Submission of a Stormwater Pollution Prevention Plan shall be accompanied by a fee of \$75.00, in addition to any other applicable permit fees; and, further, an additional fee of \$75.00 shall be paid upon each anniversary date of the approval of the SWPPP until such time as the applicable Construction Activities under such SWPPP have been satisfactorily completed and the site surface properly stabilized or covered.
- (d) If the proposed Construction Activity relates to a site which is less than one-acre in total area, does not involve any activities which require an NPDES Stormwater Discharge Permit, and the Authorized Public Officer determines that it is not necessary for the effective implementation of the requirements of this Article that a Stormwater Pollution Prevention Plan be submitted which is in full compliance

with all of the required contents and elements thereof prescribed as part of the City BMPs, then the Authorized Public Officer may allow in substitution thereof the illustration or description of the City BMPs which will be utilized at the Construction Activity site as a part of a site plan submission. An approved site plan with such illustrations or descriptions shall nevertheless have the status of a Stormwater Pollution Prevention Plan for all other purposes of this Article.

- (e) The Authorized Public Officer shall review all Stormwater Pollution Prevention Plan submittals and give written approval or request for revisions within fifteen working days (excluding weekends and recognized City holidays). The Authorized Public Officer shall withhold the issuance of any related building, construction or other such permit until approval is given to the Stormwater Pollution Prevention Plan.

- (a) If there is any change in the design of a project under a Stormwater Pollution Prevention Plan which the Authorized Public Officer determines could affect the potential of Illicit Discharges to occur, or if by inspection the Authorized Public Officer determines that any provisions of the Stormwater Pollution Prevention Plan are deficient to prevent Illicit Discharges, or if Illicit Discharges occur from a site subject to an approved Stormwater Pollution Prevention Plan despite compliance with the Stormwater Pollution Prevention Plan provisions, or if in the Authorized Public Officer otherwise determines that amendments are necessary to the Stormwater Pollution Prevention Plan in order to prevent Illicit Discharges, then in any such event the Authorized Public Officer is authorized to take any or all of the following actions:
 - (1) Issue an order requiring the submission and approval of amendments to the Stormwater Pollution Prevention Plan;
 - (2) Issue such partial or total stop-work orders as may be necessary to prevent further Illicit Discharges; and
 - (3) Take other enforcement actions as may be deemed appropriate and as authorized under this Chapter.

24-305. REQUIREMENTS APPLICABLE TO UTILITY COMPANIES.

- (a) As an alternative to the submission of a Stormwater Pollution Prevention Plan for an individual Construction Activity by a utility company which activity is not subject to an approved Stormwater Pollution Prevention Plan for such Construction Activity site, a utility company may develop and implement BMPs generally applicable to its activities within the City which are sufficient to prevent Illicit Discharges occurring or arising from such activities. In addition, the Authorized Public Officer may adopt and impose BMPs on utility construction activities.

- (b) Utility companies shall implement or abide by all applicable BMPs as to any Construction Activity undertaken within the City.

24-306. REQUIREMENTS GENERALLY APPLICABLE.

- (a) No contractor, subcontractor or utility company shall enter the site subject to an approved Stormwater Pollution Prevention Plan for the purpose of engaging in any work thereof prior to obtaining a copy of that Stormwater Pollution Prevention Plan for the site or project, and without taking such steps as necessary so that its activities on that site are in compliance with the Stormwater Pollution Prevention Plan.
- (b) Each contractor, subcontractor and utility company is responsible for taking all reasonable steps necessary to avoid damaging any BMP devices once in place. Any person whose actions or neglect have resulted in the alteration, damage or impairment of any BMP devices in place pursuant to the Stormwater Pollution Prevention Plan shall immediately repair or remedy the same, and shall be responsible for all costs necessary for such repair and remediation.
- (c) It shall be unlawful for any person responsible for performance of and/or adherence to an approved Stormwater Pollution Prevention Plan to fail to comply with the requirements of that Plan. The requirements under an approved Stormwater Pollution Prevention Plan shall remain applicable until such time as the Construction Activities under the Plan have been satisfactorily completed and the site surface properly stabilized or covered as determined by the Authorized Public Officer.
- (d) Any person who is required to have a construction or industrial activity NPDES Stormwater Discharge Permit shall comply with all provisions of such permit, and further shall be required to do the following:
 - (1) Submit to the Authorized Public Officer a copy of the Notice of Intent required under the NPDES Stormwater Discharge Permit, submitting the same at the same time the original Notice of Intent is submitted to the EPA or KDHE.
 - (2) Provide proof of compliance with the provisions of the NPDES Stormwater Discharge Permit when requested by and in a form acceptable to the Authorized Public Officer.
- (e) The fact that a person has conducted all activities in conformance with an approved Stormwater Pollution Prevention Plan or in conformance with approved or established BMPs shall not constitute a defense to a violation of the Illicit Discharge prohibitions of this Article.

ARTICLE 4. ENFORCEMENT

24-401. RIGHT OF ENTRY, INSPECTION AND SAMPLING.

- (a) Whenever the Authorized Public Officer has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Article, the Authorized Public Officer shall have the right to enter the premises at any reasonable time for the purpose of conducting such inspections and sampling as may be necessary to determine whether any violations exist and to determine the nature and extent of any remedial actions necessary by virtue thereof. In the event the owner or occupant of the premises refuses such entry after a request to enter has been made, the Authorized Public Officer is hereby empowered to seek assistance from a court of competent jurisdiction to permit or compel such entry.
- (b) The Authorized Public Officer shall have the right to set up on any such premises such devices as may be deemed necessary to conduct sampling of any discharges or of the soils or any substances from which such discharges may occur.
- (c) Investigation of any such matter shall in no way relieve any party from liability or responsibility for any violations occurring before, during or after the conduct of any such investigation. Nothing in this Section shall limit the authority of the Authorized Public Officer to take any other action or actions, including emergency action or any other enforcement action, while also undertaking any such investigation.

24-402. NOTICE OF VIOLATION.

- (a) If the Authorized Public Officer determines that any person has violated any provision of this Chapter, or has failed to meet any requirement of this Chapter or of any approved Stormwater Pollution Prevention Plan, or has failed to comply with any order issued by the Authorized Public Officer as authorized under this Chapter, then the Authorized Public Officer may serve upon that person a Notice of Violation, which shall contain the following:
 - (1) The name and address of the alleged violator;
 - (2) The date and location of the violation;
 - (3) A description of the violation;
 - (4) A description of the remedial measures necessary to restore compliance with this Chapter and a time schedule for the completion of each such remedial measures; and
 - (5) A description of further enforcement actions which may be taken by the City.

- (b) Any person aggrieved by such Notice of Violation of the Authorized Public Officer may appeal the same to the Environmental Hearing Officer as designated pursuant to Section 6-1103 of the Newton City Code. Such appeal shall be taken by filing a written notice of appeal with the Environmental Hearing Officer within ten (10) days of the service of the written order. The Environmental Hearing Officer shall then schedule and conduct a hearing upon such appeal and, within ten (10) days of the conclusion thereof, shall issue a written order affirming, modifying or rescinding the Notice of Violation. The decision of the Environmental Hearing Officer shall be final.

- (d) The pendency of any such proceedings upon a Notice of Violation shall in no way relieve any party from liability or responsibility for any violations occurring before, during or after the conduct of any such proceedings. Nothing in this Section shall limit the authority of the Authorized Public Officer to take any other action or actions, including emergency action or any other enforcement action, while any such proceedings are also being conducted, and nothing in this Section shall limit the authority of the Authorized Public Officer to take any action, including emergency action or any other enforcement action, without first issuing a Notice of Violation.

24-403. ACTIONS WITHOUT PRIOR NOTICE. The Authorized Public Officer is authorized to enter upon any premises without prior notice, to issue stop-work orders as may be necessary, and to take such further actions as are necessary to prevent, eliminate or remediate any violations or Illicit Discharges in any of the following circumstances:

- (a) If a violation constitutes an imminent or immediate danger to the environment or to the public health, welfare or safety;
- (b) If a person to whom a Notice of Violation has been issued and has become final and such person has failed to comply with the directed corrective actions within the time provided therefor; or
- (c) If all reasonable attempts to contact a responsible person as to a violation have failed.

24-404. COST OF ABATEMENT OF VIOLATION.

- (a) Whenever the City undertakes the correction or abatement of any violation, or the remediation of any damage caused by any violation, either under emergency circumstances, or due to a person's failure to comply with any lawful notices or orders issued by the Authorized Public Officer or the governing body of the city, the person or persons responsible for such violation shall be liable to the City for the costs of such corrective, abatement or remedial actions, and payment thereof shall be due within thirty (30) days following written notice of such costs.

- (b) The property owner may appeal the assessment of such costs to the governing body

of the City by filing a written notice of appeal with the City Clerk within thirty (30) days of the service of the written notice of costs. Pendency of such an appeal shall suspend the obligation becoming due until such time as a final determination of the appeal has been made. The governing body shall then schedule and conduct a hearing upon such appeal and, within ten (10) days of the conclusion thereof, shall issue a written order affirming, modifying or rescinding the cost assessment. The decision of the governing body shall be final.

- (c) If any such costs remain unpaid for more than thirty (30) days after becoming due, then in addition to other collection alternatives the City Clerk may also certify such costs to the County Clerk to be assessed against the property as to which the violation relates.

24-405. VIOLATIONS DEEMED A PUBLIC NUISANCE. Notwithstanding the other enforcement processes, procedures and penalties provided in this Chapter, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is hereby declared to be a threat to the public health, welfare and safety, and is hereby declared and deemed to be a public nuisance. Instead of or in addition to any other remedies or procedures hereunder, the City may commence a civil action to abate, enjoin or otherwise compel the cessation of any such public nuisance.

24-406. 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 Authorized Public Officer or of the City Manager or City governing body to seek cumulative remedies. The City shall be entitled to recover all attorney fees, court costs and other expenses associated with enforcement of this Chapter, including sampling and monitoring expenses. These remedies may also include criminal penalties such as incarceration in the county jail for up to 6 months if deemed necessary by the Municipal Court Judge.

24-407. VIOLATIONS; PENALTIES. The violation of any provision of this Chapter, or of any order or directive lawfully issued under authority of the provisions of this Chapter, is hereby declared to be a municipal ordinance infraction. In the event any party fails to take the remedial measures set forth in the Notice of Violation described in Section 24-402, a fine may be levied against them, as outlined below:

- (a) A fine per day the violation remains unremedied of between \$75.00 up to \$750.00, against any failure to install stormwater BMPs as indicated on the site map required under the KDHE construction stormwater program.
- (b) A fine per day the violation remains unremedied of between \$50.00 up to \$500.00, against any failure to submit a stormwater pollution prevention plan prior to construction.
- (c) A fine per day the violation remains unremedied of between \$50.00 up to \$500.00, against any failure to notify the Authorized Public Officer before commencement of construction.

- (d) A fine per day the violation remains unremedied of between \$75.00 up to \$750.00, against any failure to maintain, repair or replace construction stormwater BMP within 5 days of notification.
- (e) A fine per day the violation remains unremedied of between \$50.00 up to \$500.00, against any failure to cease illicit discharges.
- (f) A fine per day the violation remains unremedied of between \$100.00 up to \$1,000.00, against any illicit discharge in the storm sewer system and shall be levied against each additional illicit discharge occurrence. The person responsible for the illicit discharge shall also be liable for the reasonable costs to the city to abate the nuisance caused by the illegal dumping.

SECTION 2. This ordinance shall take effect and be in force from and after its publication in THE NEWTON KANSAN, the official newspaper of said City.

PASSED AND ADOPTED this 27th day of February, 2024.



Rod Kreie, Mayor

ATTEST:



Denise R. Duerksen, City Clerk