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ELECTED OFFICIALS:

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Councilor At Large

Susan G. Falkoff,
Councilor At Large

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Councilor At Large

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District B Councilor

Vincent J. Piccirilli, Jr.,
District C Councilor

John J. Lawn, Jr.,
District D Councilor

ORDINANCE # 23 **0-2011-23**

ADOPTION OF AN ORDINANCE REGARDING THE PROHIBITION OF ILLICIT DISCHARGES TO THE STORM DRAINAGE SYSTEM

Whereas, the purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Watertown through the regulation of all discharges to the storm drainage system, and

Whereas, the National Pollutant Discharge Elimination System (NPDES) permit process requires adoption of an ordinance to prohibit illicit discharges into out stormwater system, and

Whereas, adoption of the ordinance regarding the prohibition of illicit discharges to the storm drainage system will help to protect the Watertown municipal separate storm sewer system in accordance with the following objectives

(1) To prevent the contribution of pollutants to the MS4 by stormwater discharges by any user
(2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
(3) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance
(4) To require the removal of all such illicit connections
(5) To comply with state and federal statutes and regulations relating to stormwater discharges,
and

Whereas, several public meetings have been conducted to discuss the merits of adopting this ordinance, including meetings of the Stormwater Advisory Committee, and the Public Works Subcommittee of the Town Council, and

Whereas, the Town Council of Watertown has conducted a public hearing on these amendments on May 11, 2011, and

NOW THEREFORE BE IT ORDAINED by the Town Council of the City known as Town of Watertown that the Watertown Code of

Ordinances, Chapter 97: Stormwater Regulations, is hereby amended by adding Sections 97.01 – 97.17 as follows:

Prohibition of Illicit Discharges to the Storm Drainage System Watertown, Massachusetts

97.01 PURPOSE/INTENT

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Watertown through the regulation of all discharges to the storm drainage system. 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. The objectives of this ordinance are:

(2) To prevent the contribution of pollutants to the MS4 by stormwater discharges by any user

(2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system

(3) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance

(4) To require the removal of all such illicit connections

(5) To comply with state and federal statutes and regulations relating to stormwater discharges.

97.02 DEFINITIONS

For the purposes of this ordinance, the following shall mean:

Authorized Enforcement Agency: The Watertown Department of Public Works and its employees and agents designated to enforce this ordinance.

Best Management Practices (BMPs): any measure that reduces the quantity or improves the quality of stormwater runoff including, but not limited to: schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

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

Construction Activity. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 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.

Illicit Discharge. Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 7 of this ordinance.

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

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including, but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency before the

effective date of this ordinance, (2) any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

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

National Pollutant Discharge Elimination System (NPDES) Stormwater 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-Stormwater Discharge. Any discharge to the storm drain system that is not composed entirely of stormwater.

Person : An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

Pollutant. Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained or otherwise introduced into any sewerage system, treatment works, or waters of the Commonwealth.

Pollution. The presence in the environment of pollutants in quantities or characteristics which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property throughout such areas as may be affected thereby.

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

Municipal Separate Storm Sewer System (MS4) or Municipal Storm Drain System. Publicly-owned facilities 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 that together comprise the storm drainage system owned or operated by the Town of Watertown.

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

Stormwater Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Watercourse. A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Waters of the Commonwealth. All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

97.03 APPLICABILITY

This ordinance shall apply to flows entering the municipally owned storm drainage system, a watercourse, and any waters of the Commonwealth located within the boundaries of the Town of Watertown.

97.04 AUTHORITY

This ordinance is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34.

97.05 RESPONSIBILITY FOR ADMINISTRATION

The Watertown Department of Public Works shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed in compliance with this Ordinance may be delegated in writing by the Superintendent of Public Works to persons or entities acting in the beneficial interest of or as the authorized agent of the Department of Public Works.

97.06 ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore compliance with the requirements of this ordinance or regulations promulgated thereunder shall not relieve a person from being subject to such enforcement actions as may be required to correct contamination, pollution, and/or unauthorized discharge of pollutants.

97.07 DISCHARGE PROHIBITIONS

Prohibition of Illicit Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses 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 stormwater.

The commencement, conduct or continuance of any illicit discharge to the storm drain system is prohibited. Discharges or flow resulting from fire fighting activities are exempt. The following discharges are also exempt provided they are not significant sources of pollution:

(a) Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water,

foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (provided the water is left untreated for one week prior to draining), and any other water source not containing Pollutants.

(b) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety or the environment.

(c)Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

(d) Street sweeping activities that use water spray to suppress dust.

(e)The prohibition 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 Federal Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge 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 storm drain system.

Prohibition of Illicit Connections.

(a)The construction, use, maintenance or continued existence of illicit connections to the storm drain system 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) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the storm drainage system, or allows such a connection to continue.

97.08 SUSPENSION OF MS4 ACCESS

Suspension due to Illicit Discharges in Emergency Situations

The Watertown Department of Public Works may, without prior notice, suspend access to the MS4 when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent danger to the environment, the health or welfare of persons, the MS4 or Waters of the Commonwealth. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the Commonwealth, or to minimize danger to persons or the environment.

Suspension or Termination due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access suspended or terminated if such action would abate or reduce an illicit discharge.

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.

97.09 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Watertown Department of Public Works prior to the allowing of discharges to the MS4.

97.10 MONITORING OF DISCHARGES

A. Applicability.

This section applies to industrial facilities that are regulated and are required to have a permit to discharge under the EPA Multi-Sector General Permit (MSGP) and have stormwater discharges impacting or suspected of impacting on the Watertown MS4. It also applies to any person subject to obtaining a NPDES Permit for construction activities.

B. Access to Facilities.

(a)To the extent permitted by state law and if probable cause exists, or if authorized by the owner or other party in control of the property, the Watertown Department of Public Works shall be permitted to enter and inspect facilities subject to regulation under this ordinance for the purpose of performing their duties 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 authorized enforcement agency.

(b) Under the conditions for access stated in Section 10(B) (a) above, facility operators shall allow the Watertown Department of Public Works ready access to all parts of the premises for the purposes of inspection, sampling and examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(c)The Watertown Department of Public Works shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.

(d) The Watertown Department of Public Works 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 stormwater 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 Watertown Department of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(f)Unreasonable delays in allowing the Watertown Department of Public Works access to a permitted facility is a violation of this ordinance. The operator of a facility required to have a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Town reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

(g) If the Watertown Department of Public Works has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this 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 authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

97.11 WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee 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.

97.12 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 illicit discharges or pollutants discharging into stormwater, the storm drain system, or Waters of the Commonwealth 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 oil or hazardous materials said person shall immediately notify the Watertown Fire Department and the Massachusetts Department of Environmental Protection of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Watertown Department of Public Works 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 Watertown Department of Public Works 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.

97.13 ENFORCEMENT

The Watertown Department of Public Works or an authorized agent of the Department shall enforce the provisions of this Ordinance and any regulations promulgated hereunder and may issue and prosecute violation notices and enforcement orders and may pursue all civil and criminal remedies for such violations.

A. Civil Relief

The Department of Public Works may seek injunctive relief in a court of competent jurisdiction to restrain a person from continued violations of the provision of this Ordinance or the regulations promulgated hereunder, or any notices, orders or written approvals or to compel said person to abate or remediate the violations hereunder.

B. Orders

The Department of Public Works or an authorized agent of the Department may issue a written order to enforce the provisions of this Ordinance and the regulations promulgated hereunder, which may include:

(a) Elimination of illicit connections or discharges to the MS4;

(b) Performance of monitoring, analysis, and reporting

(c)That unlawful discharges, practices, or operations shall cease and desist;

(d) Remediation of contamination in connection therewith;

(e)Payment of a fine to cover administrative and remediation costs; and

(f) Implementation of source control or treatment BMPs.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Watertown Department of Public Works may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

C. Criminal Penalty

Any person who violates any provision of this Ordinance, the regulations promulgated hereunder, or an order or written approval issued hereunder shall be subject to a fine after an Order or Notice of Violation is given up to $300.00 per violation. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

D. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, §21D and Section 35.05 of the Code of Ordinances.

E. Appeals

The decisions or orders of the Superintendent of Public Works shall be final. Further relief shall be to a court of competent jurisdiction.

F. Remedies Not Exclusive

The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

97.14 SEVERABILITY

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

97.15 REGULATIONS

The Watertown Department of Public Works may promulgate rules and regulations to effectuate the purposes of this ordinance. Failure to promulgate such rules and regulations shall not have the effect of suspending or invalidating this ordinance.

97.16 TRANSITIONAL PROVISIONS

Residential property owners shall have sixty (60) days from the effective date of this ordinance to comply with its provisions, provided good cause is shown for the failure to comply with its provisions during that period.

97.17 ADOPTION OF ORDINANCE

This ordinance shall be in full force and effect 15 days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Council Member

I hereby certify that at a regular meeting of the Town Council for which a quorum was present, the above Ordinance was adopted by unanimous vote on May 11, 2011.

Valerie Papas, Council Clerk

Mark S. Sideris, Council President