

Ordinance



City Council
City of Wilmington
North Carolina

Introduced By: Sterling B. Cheatham, City Manager

Date: 09/15/2009

Ordinance Amending Chapter 12 of the City Code to Address Illicit discharges to the Stormwater System and Protect Public Water and Sewer Systems (OBG-1-0809)

LEGISLATIVE INTENT/PURPOSE:

WHEREAS, the city is authorized by G.S. 160A-459 to adopt a stormwater control ordinance implementing illicit discharge and elimination controls; and

WHEREAS, the amendment set out below is intended to promote the public health, safety and welfare by amending Chapter 12 of the City Code to ensure compliance with the city's NPDES Phase II Stormwater Permit requirements and the state's Coastal Stormwater Rules; and

WHEREAS, the amendment makes further changes to ensure the protection of public water and sewer systems in the city.

THEREFORE, BE IT ORDAINED:

SECTION 1: Chapter 12, "Utilities" of the Wilmington City Code is hereby amended to read as follows:

"Chapter 12

UTILITIES

ARTICLE I. IN GENERAL

Sec. 12-1. Penalties and remedies.

- (a) A violation of any of the provisions of this chapter shall constitute a misdemeanor, punishable as provided in G.S. § 14-4.
- (b) A violation of the provisions of Article II of this chapter shall also subject the offender to a civil penalty of five hundred dollars (\$500.00).
- (c) A violation of the provisions of Part 1 of Division 2 of Article III of this Chapter shall also subject the offender to a civil penalty of up to ten thousand dollars (\$10,000.00) per violation.

CERTIFIED TO BE A TRUE COPY
CITY CLERK
Debra Spivey

(d) A violation of the provisions of Part 2 of Division 2 of Article III of this Chapter shall also subject the offender to a civil penalty of two hundred and fifty dollars (\$250.00). Each occurrence as set forth in Part 2 shall be a separate violation.

(e) Each day that a violation continues after the offender has been notified of the violation shall constitute a separate violation.

(f) If a person fails to pay a civil penalty within ten (10) days after being cited for a violation, the city may seek to recover the penalty by filing a civil action in the nature of debt.

(g) The city may seek to enforce this chapter through any appropriate equitable action. The city also may apply for and the court may enter an order to abate any unlawful condition existing upon real property to take any action that is necessary to bring property into compliance with this chapter. The city may seek an order requiring a person responsible for a violation to restore all areas affected by the violation to their pre-violation condition in order to minimize the detrimental effects of the violation.

(h) A violation of the provisions of Division 2 of Article III of this chapter shall be deemed to be dangerous and prejudicial to the public health or public safety and shall constitute a public nuisance. Such violations may be abated in accordance with the procedures set forth in Article II of Chapter 10 of the City Code.

(i) The city may seek to enforce this chapter by using any one (1) or any combination of the foregoing remedies as laid out in this section.

(j) Persons responsible for violations of this chapter and subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person who has control over, or responsibility for, the use or development of the property on which the violation occurs.

(k) In determining the amount of the civil penalty for violations of Part 1 of Division 2 of Article III of this Chapter, the City Manager shall consider the following factors:

(1) Nature of the violation and the degree and extent of the harm, including at least the following:

- a. type of violation;
- b. type of waste involved;
- c. duration of the violation;
- d. cause (whether resulting from a negligent, reckless or intentional act or omission);

- e. potential effect on public health and the environment;
- f. effectiveness of responsive measures taken by the violator; and
- g. damage to private property.

(2) Cost of rectifying any damage;

(3) Responsiveness of the violator to correcting the situation;

(4) The violator's previous record in complying or not complying with this ordinance.

Sec. 12-2. Appeal process.

(a) Any person who has been served a notice of civil penalty assessment may appeal to the City Manager. The appellant's obligation to remedy a violation will not be delayed by a request for appeal. An appeal must be made to the City Manager in writing within 30 days after the date the notice is received.

(b) The City Manager shall hold a hearing and make a decision on the appeal within 90 days of the receipt of the appeal. At the hearing, the appellant shall be given the opportunity to present evidence about whether a violation occurred and whether the civil penalty assessment factors were applied properly.

(c) All decisions of the City Manager shall be served on the appellant personally or by certified mail, return receipt requested. Service shall be based upon the address included in the notice of appeal.

(d) If the City Manager determines that a penalty was assessed properly, the appellant must provide payment within thirty (30) days of receipt of the City Manager's decision.

(e) The decision of the City Manager shall be subject to review by the New Hanover County Superior Court by proceedings in the nature of certiorari. Any petition for review shall be filed within 30 days after the City Manager's decision is delivered to the appellant.

Sec. 12-3. Enforcement of Chapter.

(a) The City Manager shall enforce the provisions of this chapter.

(b) The City Manager shall have the right to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing and taking other actions to determine compliance with this chapter. If the owner or occupant of any property refuses to permit such entry, the City Manager shall obtain an administrative search warrant to enter the property.

(c) No person shall obstruct, hamper or interfere with the City Manager while he is carrying out official duties.

Sec. 12-4. Definitions.

For the purposes of this chapter, certain terms are hereby defined as follows:

NPDES Permit: A national pollutant discharge elimination permit issued pursuant to the Federal Water Pollution Control Act.

Stormwater System: A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, detention/retention facilities, curbs, gutters, ditches, constructed channels or storm drains) owned and operated by the city and designed for collecting or conveying stormwater.

Illicit Connection: Any unlawful connection which allows the discharge of non-stormwater to the stormwater conveyance system or waters of the state in violation of this chapter.

Illicit Discharge: Any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping, pouring, emission, or other discharge of any substance other than stormwater, except discharges pursuant to an NPDES permit, allowable non-stormwater discharges, and discharges resulting from fire-fighting activities into a stormwater conveyance, the waters of the state, or upon the land in such proximity to the same, such that the substance is likely to reach a stormwater conveyance or the waters of the state.

Secs. 12-5 Reserved.

ARTICLE II. PROTECTION OF PUBLIC WATER SUPPLY AND PUBLIC WATER AND SEWER SYSTEMS.

Sec. 12-6. Injury to or interference with public water or sewer system.

It shall be unlawful for any person to remove, damage, break, injure or interfere with any pipe, meter, reservoir, tank, manhole or fixture that is part of or used in connection with the water or sewer system of Cape Fear Public Utility Authority.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-7. Protection of reservoirs from pollution.

It shall be unlawful for any person to throw, place or deposit any trash, urine, excrement or filth of any kind in the waters of any raw water intake or reservoir of Cape Fear Public Utility Authority, or to throw, place or deposit, in or around any such intakes or reservoirs, any substance or article of any kind which shall pollute or is likely to pollute the waters of any such reservoir or entering such intakes.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-8. Public sewer use required.

(a) Except as provided in this section, when the owner of a property inside the city limits shall use such property in any manner which results in the generation of wastewater, such wastewater shall be discharged into a public sanitary sewer.

(b) The construction, repair, reconstruction or use of any facility other than the public sanitary sewer for the treatment and/or disposal of wastewater inside the city limits shall be prohibited except when:

(1) Cape Fear Public Utility Authority has determined that property cannot be served by the

public sanitary sewer system or any extension thereof and there is a reasonable expectation that a septic tank or similar facility can function effectively without harm to the public health or environment.

(2) Any septic tank or similar facility installed and operating prior to the availability of the public sanitary sewer may continue in operation until such time as the premises are required to be connected to the public sanitary sewer in accordance with the ordinances and policies of Cape Fear Public Utility Authority or until such time as the septic tank or facility shall require repair, reconstruction or relocation, whichever event first occurs.

(3) A facility for the treatment and/or disposal of non-domestic wastewater within the city limits pursuant to a NPDES permit may be permitted subject to approval by the city and Cape Fear Public Utility Authority.

Secs. 12-9 – 12-10. Reserved.

ARTICLE III. STORMWATER UTILITY AND ILLICIT DISCHARGES

Division 1. Stormwater Utility and Fees.

Sec. 12-11. Authority.

Pursuant to Article 16 of Chapter 160A of the North Carolina General Statutes, the City of Wilmington is authorized to create a stormwater utility and establish a schedule of stormwater fees for property in the corporate limits.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-12. Stormwater utility.

A stormwater utility is hereby established to provide stormwater management services, as authorized by state law. Stormwater service charges will be determined and modified from time to time so that the total revenues generated by said charges will be used to pay the principal of and interest on the debt incurred for stormwater purposes and such expenses as are reasonably necessary or convenient in the planning, construction, operation, and maintenance of the stormwater system.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-13. Service charges, rates and fee schedule.

(a) Stormwater service charges shall accrue beginning on July 1, 1998. Stormwater service charges shall apply to all property within the city limits that is served by the City's stormwater system without regard to ownership, except as set forth in section 12-14. Such charges shall be based on the amount of impervious surface on each parcel as determined by the equivalent residential unit standard. For purposes of this article, an "equivalent residential unit (ERU)" is two thousand five hundred (2,500) square feet of impervious surface.

(b) The City Council shall set a base rate for single-family residential uses and charges for non-single-family residential uses shall be calculated utilizing the equivalent residential unit. For purposes of this article, a "non-single-family residential use" shall be any land use other than single-family residential, except for undeveloped land.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-14. Exemptions and credits.

Except as provided in this section, no public or private property shall be exempt from stormwater service charges or receive a credit against such charges.

(a) Only undeveloped land shall be exempt from stormwater service fees. All other parcels including public road rights-of-way maintained by the City of Wilmington shall not be exempt from stormwater service charges.

(b) Properties subject to stormwater service fees may be granted credits against the fees in accordance with a credit policy manual developed by the City Manager and referenced in the City of Wilmington Fee Schedule. Any non-single-family residential use that provides measures to mitigate the impacts of runoff on the stormwater system shall be eligible for a maximum credit of forty percent (40%) of the service fee. The amount of the credit shall be proportional to the extent the measures address the impacts on peak discharge, total runoff volume and water quality as compared to applicable city, state and federal standards. Water quantity and water quality measures shall each be eligible for a twenty percent (20%) maximum credit. Any credit allowance shall be conditional on continuing compliance with applicable standards, including requirements for operation and maintenance. Subject to approval in accordance with the credit policy, any credits shall be effective on the date of application therefore.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-15. Billing method, responsible parties.

(a) Bills for stormwater service fees shall be sent at regular, periodic intervals. Stormwater service fees may be billed on a combined utility bill that also contains charges for water, sewer and/or refuse service. Stormwater service fees that are shown on a combined utility bill may be for a different service period than that used for water, sewer and/or refuse service.

(b) Townhouse and condominium developments and other similar properties containing impervious surface in common ownership shall be charged for the total impervious surface of all commonly owned and individually owned property within the development. The stormwater service bill shall be sent to the homeowners' association or, upon official request of the association reflecting a vote in accordance with the association's bylaws, may be billed on a pro rata basis to all townhouse and condominium owners.

(c) The property owner is responsible for payment of all stormwater service fees.

(d) Stormwater fees are billed and collected by Cape Fear Public Utility Authority on behalf of the city. Stormwater fees are due and payable simultaneously with any other fees included on the bill, including fees for solid waste, sewer and water. Payments on such bills are applied first to stormwater fees, second to solid waste fees, third to sewer fees and last to water fees.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-16. Back billing.

Failure to receive a bill is not justification for nonpayment. The owner of each parcel of developed land shall be ultimately obligated to pay such fee. If a customer is under-billed or if no bill is sent for developed land, the city may back bill up to two (2) years.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-17. Complaints regarding a bill.

(a) A customer having a grievance or complaint that a bill is excessive must file a written or verbal notice with the Cape Fear Public Utility Authority following their procedure for filing an inquiry. The notice must be sent within ten (10) days after the bill or notification of an assessment for a violation and/or service termination was received, or the complainant may pay the charges and inquire about them prior to the mailing of the next bill. If it is determined that the bill is in error, an adjustment will be made accordingly.

(b) No adjustment will be made for more than a two (2)-year period immediately preceding the date that the customer's notice was received.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Sec. 12-18. Appeal.

Any customer who believes the provisions of this article have been applied in error may appeal in the following manner:

(a) An appeal must be filed in writing with the City Manager. At the discretion of the City Manager, surface area and any other features or conditions which influence the hydrologic response of the property to rainfall events may be considered.

(b) A technical review shall be performed to determine the accuracy of the information in the city's impervious surface database. The City Manager may adjust the fee or credit as long as the adjustment is in conformance with the intent of this article. At the conclusion of the review, the City Manager shall issue a written determination stating whether an adjustment to the service rate is appropriate, and if so, the amount of such adjustment.

(c) All decisions of the City Manager shall be served on the customer personally or by registered or certified mail. Service shall be based upon the billing address of the customer.

(d) The City Manager may make no adjustment to a customer's bill for more than the two-year period immediately preceding the date that the customer's appeal is received by the City Manager.

(Ord. No. O-2008-63, § 1, 8-5-2008)

Secs. 19-19 – 12-21. Reserved.

Division 2. Illicit Discharge and Other Prohibited Waste.

PART 1: ILICIT DISCHARGE

Sec. 12-22. Illicit Discharges Prohibited

(a) *General.* No person shall cause or allow the discharge, emission, disposal, pouring, or pumping of any liquid, solid, gas, or other substance, other than stormwater directly or indirectly to any stormwater conveyance, the waters of the state, or upon the land or exposed to wind and rain, in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the state. Non-stormwater discharges associated with the following activities are allowed provided that they are not a significant contributor of pollutants to the stormwater system:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Uncontaminated springs;
- (12) Water from crawl space and basement pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) Dechlorinated swimming pool discharges;
- (18) Street sweeper wash water;
- (19) Fund raiser car washes;
- (20) Flows from emergency fire and rescue operations, provided, however, that the person who owned or controlled the pollutant shall not be released from liability or responsibility for the discharge under this chapter;
- (21) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the stormwater system shall be authorized by the city; and
- (22) Dye testing, using suitable dyes for verifying cross connections, tracing plumbing

lines, determining flow direction or rate and for similar purpose.

(b) Prohibited substances include but are not limited to oil, wastewater, automotive fluids, household or industrial chemicals, animal waste, paint, garbage, yard debris, animal waste or carcasses, and litter.

Sec. 12-23. Illicit connections

No person shall install, maintain or use any connection to the stormwater system or waters of the state for the discharge of non-stormwater or shall cause non-stormwater to be discharged or conveyed through a connection to the stormwater system or waters of the state unless the discharge is a permitted discharge listed in Section 12-22. This prohibition includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under the law at that time. Any illicit connections shall be disconnected and permanently and properly closed.

Sec. 12-24. Accidental discharge or spills

Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be immediately contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

If an accidental discharge to the stormwater system occurs, the responsible person shall immediately begin to collect and remove the discharge and restore all affected areas to their pre-discharge condition. The responsible person shall immediately notify emergency personnel and other authorities as appropriate, of the accidental discharge by telephone or other mode of instantaneous communication. The notification shall include the location of the discharge, type of pollutant, volume, time of discharge and corrective action taken. Such notification shall not relieve the responsible person of any of the expenses related to restoration, loss, damages or any other liability that may be incurred as a result; nor shall such notification relieve the responsible party from other liability that may be imposed by this article or other applicable law.

Any NPDES permitted entity that has an unauthorized release from their facility or from their operations that has the potential to reach the stormwater system shall report any and all releases to the city within forty-eight (48) hours of the release. The report will include all information that is required to be reported to the state under the terms of the permit and any other information deemed necessary by the city.

Secs. 12-25 – 12-27. Reserved.

PART 2. OTHER PROHIBITED WASTE

Sec. 12-28. Domestic animal waste.

(a) *Findings.* Pet waste is a serious water quality and public health issue for the Wilmington community. Stormwater runoff washes bacteria, parasites, viruses, and nutrients from pet waste directly into our waterways. Poor water quality caused by pet waste can cause recreational

swimming advisories, shellfish bed closures, algal blooms, low dissolved oxygen levels, and impaired aquatic habitat. Fecal coli form bacteria, found in the feces of warm-blooded animals, can indicate that water is unsafe for human contact like fishing, swimming, and drinking. Many diseases can be spread to humans from pet waste as well. A strong pet waste ordinance encourages citizens to be responsible for cleaning up their animal's waste in order to keep our waterways clean and safeguard public health.

(b) *Restrictions on domestic animal waste.*

(1) No person in custody or control of any animal shall allow said animal to discharge any fecal matter on any public property unless the person in custody or control of said animal immediately and fully removes and disposes of the feces. Such public properties include, but are not limited to, streets, sidewalks, plazas, parks, rights-of-way, paths, public access areas, storm drains, ditches, streams, creeks, drainageways, other publicly owned property, and dedicated and officially accepted easements.

(2) It shall be unlawful for the owner or custodian of any animal to take it off its own property without the means to properly and immediately remove and dispose of the animal's feces from any public property. "Means to properly and immediately remove and dispose of the animal's feces" shall consist of having on one's person a device such as a plastic bag or other suitable "scooper," that can be used to fully clean up and contain the animal's waste until it can be deposited in a closed trash receptacle or other appropriate refuse container. Such a device must be produced and shown upon request to anyone authorized to enforce this ordinance.

(3) This provision shall not apply to a service animal accompanying a person with a disability or to an animal being used by law enforcement officers when doing so would prevent the officers from carrying out their official responsibilities.

(4) Animal waste, referred to as "manure" in the Cape Fear Public Utility Authority Ordinances, shall not be flushed down a toilet into the sanitary sewer system in accordance with that ordinance.

(5) "Public nuisance" is defined to include "any animal which deposits feces on public property when the person owning, possessing, harboring or having the care, charge, control, or custody of the animal fails to remove the feces so deposited.

Sec. 12-29. Debris in stormwater drainage system.

(a) *Findings.* Yard waste such as leaves, grass clippings, and soil/sediment can cause significant water quality problems when it is blown or directed into the stormwater system. Water quality problems include algal blooms and aquatic weed growth, oxygen depletion, fish kills, and impaired aquatic habitat. In addition, when the stormwater system is clogged with yard waste it can cause street and property flooding.

(b) *Restrictions on debris.*

(1) It shall be unlawful for any person to rake, sweep, blow, wash, direct or place any debris, including but not limited to yard waste, grass clippings, leaves, sediment, trash, or debris of any kind into the storm drainage system of the city, including any streets, storm drains, ditches, swales, streams, lakes, culverts, rights of way, dedicated easements, or in any other area where it might impede the flow of water through the storm drainage system of the city.

(2) It shall be the duty of all property owners within the city to take adequate precautions on their property to ensure positive drainage on their property. Such drainage may be provided either through natural or artificial drains found to be adequate by the City Engineer. The owner shall keep all ditches, drains, swales, and drainage routes free from obstructions which would impede the flow of water.

(3) When it shall appear to the City Manager that drainage facilities or drainageways on any private property are, for any reason, inadequate and prior notice has not resulted in correction of problem conditions, he shall notify the owner of the property by registered or certified mail what corrective measures are required to render the drainage adequate. The notice to the owner shall specify a reasonable time within which the corrective measures should be taken. Notice to the owner whose address is unknown shall be given to the person in whose name the property is listed for taxation at the address shown on the tax records or to the agent of the owner whose name appears upon the tax records.

(4) If such corrective measures are not taken as required in the notice to the owner, the City Manager, upon approval by the City Council, may enter upon such premises and take the corrective measures required and the City Council may assess the cost thereof against the owner of the property and such assessment shall become a lien on the property with the same pro-rating to be collected as unpaid ad valorem taxes.

(5) Any condition in violation of this section shall constitute a public nuisance, subject to abatement as set forth in Article II of Chapter 10 of the City Code.

(6) The following are preferred best management practices (BMPs) for yard waste and debris:

- a. Prevent yard waste and debris from entering the street, storm drain, ditch, or other parts of the drainage system.
- b. Direct or blow yard waste back onto a lawn or landscape area.
- c. Sweep, rake, and/or collect yard waste instead hosing/sweeping off of driveways, sidewalks or other impervious surfaces.
- d. Leave grass clippings on the lawn to decompose quickly and act as a natural fertilizer and soil conditioner ("grass cycle").
- e. Compost yard debris for use in the lawn, garden, or landscape.
- f. Collect and contain yard waste for city collection service according to

specific yard waste collection policies. Do not use the city trash cart for yard waste or debris.

g. Collect and dispose of waste at a legally authorized yard waste collection facility."

SECTION 4: That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5: That if any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 6: That this ordinance shall be effective on and after November 1, 2009.

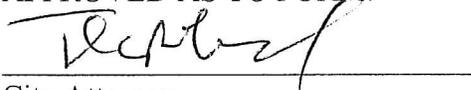

Bill Saffo, Mayor

Adopted at a regular meeting
on September 15, 2009

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

