



ORDINANCE NO. 22-707

AN ORDINANCE OF THE CITY OF WINSTON, OREGON, CITY COUNCIL, ADOPTING RULES AND REGULATIONS REGARDING ILLICIT DISCHARGE INTO THE CITY'S MUNICIPAL STORM SYSTEM IN CONJUNCTION WITH THE REQUIREMENTS FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ).

WHEREAS the City of Winston is required by Oregon Department of Environmental Quality to effectivity prohibit non-stormwater discharges into the City's municipal stormwater system; and,

WHEREAS the Department of Environmental Quality requires the City to develop, implement, and enforce a program to monitor and if possible eliminate illicit discharges into the City's municipal stormwater conveyance system; and,

WHEREAS the City of Winston regulates, by requirement from DEQ, its Total Maximum Daily Load program in order to report protection and restoration efforts on the stormwater system along with the river and riparian vegetation areas; and,

WHEREAS, in order to protect river and aquatic life in addition to riparian vegetation areas the City finds it imperative to adopt such provisions that will allow for investigative measures to validate the existence of illicit discharges and for compliance steps to mitigate such activity; and,

WHEREAS the City of Winston Municipal Code, Chapter 90: "Nuisances, Environment and Sanitation" section has been identified as an appropriate area to institute and implement the new regulations regarding illicit discharge.

NOW, THEREFORE, THE CITY OF WINSTON, OREGON, CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. An addition to the City of Winston Municipal Code Section 90.093, to establish illicit (non-stormwater) discharge requirements.

SECTION 2. The City of Winston, City Council has authority to amend the Winston Municipal Code pursuant to ORS Chapter 221 and the City of Winston Charter.

SECTION 3. The City of Winston Section 90.093 is hereby adopted as shown in "Exhibit 1".

FIRST READING BY THE CITY OF WINSTON, OREGON, CITY COUNCIL, ON THIS 19TH DAY OF SEPTEMBER 2022.


SECOND READING BY THE CITY OF WINSTON, OREGON, CITY COUNCIL, ON THIS 10TH DAY OF OCTOBER 2022

APPROVED BY THE MAYOR ON THIS 10TH DAY OF OCTOBER 2022.



David S. Rutter, Mayor

Attest:



Cindy M. Sarti, City Recorder

Exhibit 1

Section 90.093 Addition to the Winston Municipal Code

§ 90.093 ILLICIT (NON-STORMWATER) DISCHARGES

GENERAL PROVISIONS

(A) Purpose and Intent: The purpose of this chapter is to protect the public health, safety, general welfare, environment, water quality and waterways through the regulation of non-stormwater discharges to the City of Winston municipal stormwater system to the maximum extent practicable consistent with the Federal Clean Water Act (33 U.S.C. §1251 et seq. (1972)).

(B) This chapter establishes methods for controlling the introduction of pollutants into the municipal stormwater system in order to comply with requirements of the Department of Environmental Quality. The purpose of this chapter is to meet the following objectives to the maximum extent practicable:

(1) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping, excessive erosion or disposal of pollutants that degrade the natural environment; and

(2) To establish legal authority to carry out inspection, investigation, monitoring and enforcement procedures necessary to ensure compliance with this chapter. [Ord. 22-707]

(C) Applicability

(1) The provisions of this Section 90.093 shall apply within the City of Winston corporate limits and urban growth boundary, as regulated by the Oregon Department of Environmental Quality.

(2) The City of Winston shall administer, implement, interpret, and enforce the provisions of this Section 90.093 under the direction of the Public Works Director with assistance from the Community Development Director and Code Enforcement Officer.

(D) Definitions

ACCIDENTAL DISCHARGE means a discharge prohibited by this chapter which occurs by chance and without planning or thought prior to occurrence.

BEST MANAGEMENT PRACTICES (BMPS) means schedules of activities, prohibitions of practices, general good housekeeping 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 means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY means activities subject to the Oregon Phase II Municipal Stormwater Program or NPDES General Construction Permits or the City of Winston Erosion and Sediment Control Permit requirements.

DISCHARGE PERMIT means a permit issued by the Oregon Department of Environmental Quality 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.

FEDERAL URBANIZED AREA is a land area determined by the US Census Bureau, one or more places, central place(s), and the adjacent densely settled surrounding area — urban fringe — that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile.

GROUNDWATER INTERCEPTOR means any natural or artificial groundwater or surface water drainage system, including drain tile, curtain drain, foundation drain, cut banks, and ditches, that intercept and divert groundwater or surface water from the area of an onsite wastewater treatment absorption facility.

HAZARDOUS MATERIALS means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLICIT DISCHARGE means any direct or indirect non-stormwater discharge to the City's municipal stormwater system, except as exempted.

ILLEGAL CONNECTION means either of the following:

(A) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal 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, or

(B) 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.

MUNICIPAL STORMWATER SYSTEM means a conveyance or system of conveyances including but not limited to any roads with drainage systems, county streets, state roads, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made drainage channels, reservoirs, and other drainage structures, and which is:

(A) Owned or maintained by the City of Winston or Douglas County and the State of Oregon;

(B) Designed or used for collection or conveying stormwater;

(C) Not part of a publicly-owned treatment works as defined by 40 CFR §122.2.

NONPOINT SOURCE means causes of water pollution that are not associated with point sources. Examples may include: fertilizer/pesticide runoff; sediment runoff from construction. Nonpoint sources may enter a discrete conveyance system and become a point source.

NON-STORMWATER DISCHARGE means any discharge to the storm drain system that is not composed entirely of stormwater (rain).

OUTFALL means a point source as defined by 40 CFR, § 122.2 at the point where municipal stormwater discharges to waters of the United States.

PERSON means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, governmental entity, any interstate body or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.

POLLUTANT means a contaminant(s) that enters the natural environment that causes harm and its severity is based on its chemical nature, the concentration and the persistence. Examples of pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents; degreasers; cleaning chemicals; garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; sediment.

POLLUTION means the human-made or human-induced alteration of the quality of waters by waste to a degree that unreasonably affects or has the potential to unreasonably affect the waters of the state.

PREMISES mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

WATERS OF THE STATE lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters) that are located wholly or partially within or bordering the state or within its jurisdiction.

WATERS OF THE U.S. means current definition under 40 CFR 230.3(s)

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

STRUCTURAL STORMWATER CONTROL means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow. [Ord. 22-707]

§ 90.094 PROHIBITIONS

No person shall discharge any pollutants or waters containing any pollutants, into the City of Winston municipal stormwater system. To “discharge” includes any means of causing pollutants to enter the subject waters, including allowing others under the person’s control to discharge pollutants. [Ord. 22-707]

Exemptions

The following discharges are exempt from the prohibition section above:

- (1) Water line flushing performed by a government agency;
- (2) Dye testing necessary to protect public health and safety;
- (3) Other potable water sources;
- (4) Landscape irrigation or lawn watering;
- (5) Diverted stream flows;
- (6) Rising groundwater;
- (7) Groundwater infiltration to storm drains;

- (8) Uncontaminated pumped groundwater;
- (9) Roof drains, foundation or footing drains (including active groundwater interceptors);
- (10) Crawl space pumps;
- (11) Air conditioning condensation;
- (12) Natural springs;
- (13) Natural riparian habitat or wetland flows;
- (14) Discharges or flows from fire fighting, and other discharges necessary to protect public health and safety;
- (15) Any non-stormwater discharges permitted under an NPDES permit or order issued to the discharger and administered under the authority of the State, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations;
- (16) Residential car washing;
- (17) Discharges resulting from forest practices performed pursuant to the Oregon Forest Practices Rules and from accepted farm practices;
- (18) Any road Maintenance activities performed by public agencies pursuant to accepted Best Management Practices.
- (19) Discharges resulting from excavations for gas or oil facilities for which the operator demonstrates compliance with 40 CFR §122.26;
- (20) Emergency measures to protect life, property, public infrastructure, or essential services, documented as soon as possible after the fact;
- (21) Any other water source not containing pollutants. [Ord. 22-707]
- (22) Floodwaters

CONNECTIONS

The unlawful discharge of non-stormwater to illegal connections and other connections to the municipal separate stormwater system is prohibited. In addition:

(1) A person violates this chapter if the person connects a line or other conveyance of pollution to the municipal separate stormwater system or uses an existing connection to convey non-stormwater discharges.

(2) Improper connections in violation of this chapter shall not be allowed to discharge. If necessary to appropriately treat discharge, it shall be redirected to an approved onsite wastewater treatment system or the sanitary sewer system upon approval of the sanitary sewer agency.

(3) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which might be connected to the stormwater system, shall be located by the owner or occupant of that property upon receipt of written notice from the City of Winston requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified (for example, "stormwater" or "sanitary sewer"), and that the outfall location or point of connection to the storm water system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City of Winston. [Ord. 22-707]

INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity stormwater discharge permit (City of Winston Erosion and Sediment Control Permit) shall comply with all provisions of such permit. Proof of compliance with said industrial activity permit may be required in a form acceptable to Oregon Department of Environmental Quality, prior to allowing discharges to the municipal stormwater system. The City of Winston Public Works Director, Community Development director and/or Code Enforcement Officer may require proof of compliance with applicable construction activity. [Ord. 22-707]

§ 90.095 INVESTIGATION AND NOTICE

Illicit Discharge Investigation Procedure

(1) When reported illicit discharge related incidents occur within the corporate limits or urban growth boundary, Code Enforcement will lead investigation, coordination, and illicit discharge related responses. This includes identifying a responsible party to pay for the cleanup of the illicit discharge. Code Enforcement will coordinate with local law enforcement and fire departments to receive critical information to identify the responsible party, and determine if spills or illicit discharges occur that are in reportable quantities under the Oregon Emergency Response System. Code Enforcement will take the lead role with punitive action. This includes identifying a responsible party to pay for the cleanup of the illicit discharge. These are currently limited to activities, facilities, and related illicit discharge issues associated with:

- (a) failing septic systems;
- (b) restaurants;
- (c) public swimming pools and spas;

- (d) private pool and spas;
- (e) hotel/motel;
- (f) recreational parks;
- (g) public water systems;
- (h) schools;
- (i) bed and breakfasts; and
- (j) solid waste;

(2) City of Winston Public Works and Code Enforcement will coordinate reporting hazardous materials related incidents to the State Department of Environmental Quality and the Oregon Emergency Response System when occurrences are known. [Ord. 22-707]. All reported issues must be placed on the agenda before the City of Winston TMDL Committee.

(3) The Code Enforcement Officer shall conduct a full compliance report to be filed with the City as public record. The report shall include documentation on the derision of the violation, compliance measures for mitigation and a conclusion illustrating resolution. All materials, records, correspondence and documentation shall be included in the report and be available and transparent to City staff and the public.

§ 90.096 ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES

City of Winston Public Works, Community Development or Code Enforcement staff may enter and inspect properties and facilities identified in section 90.095(2) at reasonable times and as often as may be necessary to determine compliance with this chapter.

(1) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the City of Winston.

(2) Inspection of the property may include but is not limited to interviews, testing (including tracing dye), sampling, photography, videotaping, and examination and copying of any records pertaining to a potential violation.

(3) The City of Winston shall have the right to set up on any property or facility such devices as are necessary, as deemed necessary by the City, to conduct monitoring and/or sampling of flow discharges.

(4) The City may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the City. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy and the owner/operator shall maintain records of calibration and make these records available to the City upon request.

(5) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

(6) Unreasonable delays in allowing the City access to a facility, as determined by the City, are a violation of this section.

(7) If the City has been refused access to any part of the premises from which illicit discharges are occurring, and the City is able to demonstrate probable cause to believe that there may be a violation of this chapter, 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 chapter or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the City may seek issuance of an administrative search warrant from any court of competent jurisdiction.

(8) In the event the violation constitutes an immediate danger to public health or public safety, the City is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation. The City is authorized to seek costs for the abatement as outlined in Winston Municipal Code [Ord. 22-707]

§ 90.097 NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or other non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into the municipal stormwater system, waters of the state, or waters of the U.S., said person shall notify the City and all other entities as required by state and federal law, including the Oregon Emergency Response System, by phone, or by email or in person no later than the next business day. The nature, quantity and time of occurrence of the discharge shall be provided. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City within three (3) business days of the 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. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill. In the event of such a

release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

Failure to provide notification of an illicit discharge as provided above is a violation of this chapter. [Ord. 22-707]

§ 90.098 VIOLATIONS, ENFORCEMENT AND PENALTIES

(1) The City of Winston, upon finding that a violation of this section has occurred, may order compliance by written notice of violation. The notice of violation shall contain:

- (a) The name and address of the alleged violator;
- (b) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to restore compliance with this chapter,
- (e) A time schedule for the completion of such remedial action;
- (f) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,

(2) Such notice may require without limitation:

- a. A professional or credentialed professional to complete remediation requirements;
- b. The performance of monitoring, analyses, and reporting;
- c. The elimination of illicit discharges and illegal connections;
- d. That violating discharges, practices, or operations shall cease and desist;
- e. The abatement or remediation of stormwater pollution or contamination hazards;
- f. The restoration of any affected property;
- g. Payment of costs to cover administrative, follow up inspections, abatement, and cleanup costs; and,
- h. The implementation of pollution prevention practices.

(3) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this section. Any person, who has violated or continues to violate the provisions of this chapter, may be subject to the enforcement actions outlined in the City of Winston Municipal Code, or any other legal remedies available to the City. A person responsible for a violating a provision of 90.093 or an order issued under the authority of 90.093 shall upon conviction, be punished by fine not too exceed \$250 a day for each offense.

(4) This chapter shall not establish responsibility on the part of the City to abate or clean up private property, or for the City to incur costs related thereto. [Ord. 22-707]

(5) Ultimate Responsibility: The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the waters of the state caused by said person. This chapter shall not create liability on the part of the City, or any agent or employee thereof for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made thereunder. [Ord. 22-707]

(6) Severability: The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Section 90.093 or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Section 90.093. [Ord. 22-707]



Staff Report

Com. Dev. 22-014

- Subject:** Ordinance 22-707
- Date:** September 8, 2022
- Prepared by:** Thomas McIntosh, Community Development Director
- Title:** Illicit Discharge
- Background:** The City has an existing stormwater conveyance system that carries water from residential, commercial, and industrial areas of the city subgrade where to a discharge station in the river. It's the City's responsibility to govern how this system is utilized and its imperative the usage is limited to only stormwater activity. In order to regulate activity, the City finds it necessary to enact provisions that will help investigate, mitigate and resolve illicit discharge or misuse of the stormwater system.
- Analysis:** The Department of Environmental Quality requires an annual total maximum daily load report that illustrates how the City is orchestrating their program. Illicit discharge is in intricate part of this reporting process. The underlying goal is to keep the rivers and riparian areas healthy and safe. There have been several historical cases that help give relevance to the subject ordinance. In the effort of keeping all malicious material from entering the system, a method for investigating and resolving these situations is imperative.
- Recommendation:** Staff recommends City Council review the ordinance and exhibit in order to offer questions, suggestions and feedback prior to it going on next agenda for a first reading.
- Financial Impact:** There will be no negative impacts in a financial capacity.