

ORDINANCE NO. 12-54

AN ORDINANCE OF THE CITY OF RICHMOND PROVIDING FOR THE PROHIBITION, ELIMINATION, AND CONTROL OF ILLICIT DISCHARGES TO THE STORM SEWER SYSTEM AND REPEALING ORDINANCE NO. 04-12.

WHEREAS, the City of Richmond now operates under the requirements of the Kentucky Pollutant Discharge Elimination System (KPDES), and

WHEREAS, the City of Richmond has a storm water permit which provides authorization to discharge under the KPDES general permit for small municipal separate storm sewer systems (MS4), and

WHEREAS, one of the six (6) minimum control measures required is Illicit Discharge Detection and Elimination, and

WHEREAS, the City of Richmond is required to effectively prohibit non-stormwater discharges from entering the municipal separate storm sewer system (MS4), and

WHEREAS, the City of Richmond must be compliant with the MS4 storm water permit and finds it necessary to enact an ordinance to prohibit illicit discharges within its City limits.

NOW, THEREFORE BE IT ORDAINED by the City of Richmond Board of Commissioners:

Description:

An illicit discharge is defined as any discharge to the municipal storm sewer system (stormwater drainage system) that is not composed entirely of stormwater runoff (except for discharges allowed under an NPDES and/or KPDES permit or non-polluting flows). These non-stormwater discharges occur due to illegal dumping or illegal connections to the stormwater drainage system. This ordinance provides the authority to deal with illicit discharges and establishes enforcement actions for those persons or entities found to be in noncompliance or that refuse to allow access to their facilities.

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Introduction

It is hereby determined that:

Discharges to the MS4 that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters;

These non-stormwater discharges occur due to spills, dumping, and improper connections to the MS4 from residential, industrial, commercial or institutional establishments.

These non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters.

The impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish and other aquatic life, property values and other uses of lands and waters;

These impacts can be minimized through the regulation of spills, dumping, and discharges into the MS4;

Localities in the State of Kentucky are required to comply with a number of State and Federal laws, regulations and permits which require a locality to address the impacts of stormwater runoff quality and nonpoint source pollution due to improper non-stormwater discharges to the MS4;

Therefore, the City of Richmond adopts this ordinance to prohibit such non-stormwater discharges to the MS4. It is determined that the regulation of spills, improper dumping, and discharges to the MS4 is in the public interest and will prevent threats to public health and safety, and the environment.

Section 1. Authority

1. This ordinance shall be adopted pursuant to the powers granted and limitations imposed by Kentucky laws, including the enforcement authority granted to Kentucky cities in KRS 83A.065.
2. This ordinance and all references made herein is adopted pursuant to the powers granted and limitations imposed by the Federal Clean Water Act, and in particular those parts that authorize local governments to require any state or federal department or agency to comply with all local water pollution control requirements.

3. The Planning and Zoning Department for the City of Richmond and their duly authorized designees are responsible for implementing all the provisions within and referenced by this ordinance.

Section 2. General Provisions

2.1. Purpose and Intent

The purpose of this ordinance is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the municipal separate storm sewer system to the maximum extent practicable as required by Federal law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are to:

- (1) Regulate the contribution of pollutants from stormwater discharges to the MS4 system by any user;
- (2) Prohibit illicit discharges and connections to the MS4;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the MS4; and,
- (4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this ordinance

The requirements of this ordinance should be considered minimum requirements, and where any provision of this ordinance imposes restrictions different from those imposed by any other applicable ordinance, rule, or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

2.2. Applicability

The provisions of this ordinance shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Richmond or other authorized enforcement agency...

2.3. Compatibility with Other Regulations

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, other provision of law. The requirements of this ordinance are in addition to the

requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance 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.

2.4. Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

Section 3. Prohibitions

3.1 Prohibition of Illicit Discharges

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the municipal separate storm sewer 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 following discharges are exempt from the prohibition provision above:

- (1) Water line flushing performed by a government agency, 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, swimming pools, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants (NOTE: Swimming pool water may be discharged only if dechlorinated – below 0.1 milligrams per liter (mg/L), which can typically be achieved through discontinuing chlorination for a minimum period of 48 hours);
- (2) Discharges or flows from fire fighting, and other discharges specified in writing by the City of Richmond as being necessary to protect public health and safety;
- (3) The prohibition provision above 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 State and the Federal

Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

3.2 Prohibition of Illicit Connections

The construction, connection, use, maintenance or continued existence of any illicit connection to the municipal separate storm sewer system is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person violates this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (3) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Richmond Utility Board.
- (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the City of Richmond 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 as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City Engineer.

Section 4. 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 City Engineer prior to allowing discharges to the MS4.

Section 5. Access and Inspection of Properties and Facilities

The City of Richmond and/or its personnel or authorized agents shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

- (1) If a property or facility has security measures in force that 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 Richmond.
- (2) The owner or operator shall allow the City of Richmond ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater.
- (3) The City of Richmond shall have the right to set up on any property or facility such devices as are necessary in the opinion of the City Engineer to conduct monitoring and/or sampling of flow discharges.
- (4) The City of Richmond 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.
- (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 of Richmond 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 of Richmond access to a facility are a violation of this ordinance.
- (7) If the City of Richmond has been refused access to any part of the premises from which stormwater is discharged, and the City 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, environment and welfare of the community, then the City of Richmond may seek issuance of a search warrant from any court of competent jurisdiction.

Section 6. 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 non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the MS4, Waters of the Commonwealth, or Waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

In the event of such a release of hazardous materials, said person shall immediately notify the authorized enforcement agency in person or by phone, facsimile or in person of the nature, quantity and time of occurrence of the discharge. In the event of a release of non-hazardous materials, said person shall notify the City of Richmond in person or by phone (859-623-1000) no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Richmond (239 West Main Street) within three (3) 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 and be made available to the City of Richmond upon request. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

Failure to provide notification of a release as provided above is a violation of this ordinance.

Section 7. Violations, Enforcement and Penalties

7.1. Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. The City of Richmond shall be responsible for the enforcement of this Ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law. Duly authorized representatives of the City of Richmond have the authority to issue Notices of Violation (NOV), citations and levy fines as prescribed below.

In the event the violation constitutes an immediate danger to public health, environment, or public safety, the City of Richmond is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property including the issuance of immediate Stop Work Orders. The City of Richmond is authorized to seek costs of the abatement as outlined in Section 7.5.

7.2. Notice of Violation

Whenever the City of Richmond finds that a violation of this ordinance has occurred, the City may order compliance by written notice of violation.

A. The notice of violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) 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,
- (6) A statement that the determination of violation may be appealed to the City of Richmond Ordinance Enforcement Board by filing a written notice of appeal within thirty (30) days of service of notice of violation.

B. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges and illegal connections;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of costs to cover administrative and abatement costs; and,
- (6) The implementation of pollution prevention practices.

7.3. Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination of the Violation. The notice of appeal must be received within thirty (30) calendar days from

the date of the Notice of Violation. Hearing on the appeal before the Ordinance Enforcement Board or its designee shall take place within 30 days from the date of receipt of the notice of appeal. The decision of the appropriate authority or their designee shall be final.

7.4. Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 14 calendar days of the decision of the appropriate authority upholding the decision of the violation, then representatives of the City of Richmond may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

7.5 Costs of Abatement of the Violation

Within 30 Calendar days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within seven (7) calendar days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within thirty (30) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the City of Richmond by reason of such violation.

7.6 Civil Penalties

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within ten (10) days, or such greater period as the City of Richmond shall deem appropriate, after the City has taken one or more of the actions described above, the City may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

7.7 Criminal Penalties

For intentional and flagrant violations of this ordinance, the City of Richmond may issue a citation to the alleged violator requiring such person to appear in circuit court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or imprisonment for sixty (60) days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

7.8 Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by law.

7.9 Remedies Not Exclusive

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law and the City of Richmond may seek cumulative remedies.

The City of Richmond may recover attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

Section 8 Ordinance No. 04-12 is hereby repealed in its entirety

This ordinance shall be in full force and effect upon second reading, adoption and publication according to law.

DATE OF FIRST READING: November 27, 2012

MOTION BY: Commissioner Baird

SECONDED BY: Commissioner Blythe

DATE OF SECOND READING: December 11, 2012

MOTION BY: Commissioner Blythe

SECONDED BY: Commissioner Baird

VOTE	YES	NO
Commissioner Baird	x	
Commissioner Blythe	x	
Commissioner Morgan	x	
Commissioner Thomas	x	
Mayor Barnes	x	

Attest:

City Clerk

Mayor