

ORDINANCE NO. 2008-14

**AN ORDINANCE AMENDING TITLE 8, CHAPTER 6,
OF THE JONESBOROUGH MUNICIPAL CODE**

CHAPTER 6

ILLICIT DISCHARGE AND ILLEGAL CONNECTION

- 8-601 Short title
 - 8-602 General Provisions
 - 8-603 Applicability
 - 8-604 Definitions
 - 8-605 Prohibition of illicit discharges
 - 8-606 Exemptions
 - 8-607 Prohibition of illegal connections
 - 8-608 Storm drain inlet liability
 - 8-609 Watercourse protection
 - 8-610 Industrial construction activity discharges
 - 8-611 Access and inspection of properties and facilities
 - 8-612 Responsibility for discoveries, containment and cleanup
 - 8-613 Responsibility for notification
 - 8-614 Records required
 - 8-615 Immediate notification of hazardous discharge
 - 8-616 Failure to notify a violation
 - 8-617 Violations
 - 8-618 Violation an immediate danger to public health or safety
 - 8-619 Notice of violation
 - 8-620 Appeal of notice of violation
 - 8-621 Enforcement measures after appeal
 - 8-622 Costs of abatement of the violation
 - 8-623 Penalties
 - 8-624 Remedies not exclusive
 - 8-625 Compatibility with other regulations
 - 8-626 Severability
 - 8-627 Responsibility for administration
- 8-601. Short title. This Chapter shall be known as the “Illicit Discharge Ordinance of the Town of Jonesborough, Tennessee”.
- 8-602. General provisions. The purpose of this chapter is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the Town of Jonesborough storm drain system to the maximum extent practicable as required by federal law. This chapter established methods for controlling the introduction of pollutants into the Town of Jonesborough storm drain system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this chapter are to:

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

8-603. Applicability. The provisions of this chapter shall apply throughout the incorporated areas of the Town of Jonesborough.

8-604. Definitions.

- (1) Accidental Discharge – means a discharge prohibited by this chapter which occurs by chance and without planning or thought prior to occurrence.
- (2) Clean Water Act – means the Federal Water Pollution Control Act (33.U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- (3) Construction Activity – means activities subject to the Town of Jonesborough Stormwater, Erosion and Sediment Control Ordinance or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.
- (4) Enforcement Officer – means the Building Inspector, Director of Public Works, Jonesborough Public Safety Officer or any other person designated by the Town of Jonesborough Board of Mayor and Alderman to enforce the illicit discharge chapter.
- (5) Hot Spots – means sites, developments, or uses that have the potential of discharging pollutants or concentrations of pollutants that are not normally found in stormwater. These sites could include concrete and asphalt facilities, auto repair, auto supply, and large commercial parking lots.
- (6) Illicit Discharge – means any direct or indirect non-stormwater discharge to the Town of Jonesborough storm drain system, except as exempted in 8-606 of this chapter.

- (7) Illegal Connection – means either of the following:
- a. Any pipe, open channel, 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 such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
 - b. Any pipe, open channel, drain or conveyance from a commercial or industrial use connected to the Town of Jonesborough storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
- (8) Industrial Activity – means activities subject to NPDES industrial permits.
- (9) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit – means a permit issued by the State of Tennessee that authorizes the discharge of pollutants to water of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- (10) Non-Stormwater Discharge – means any discharge to the storm drain system that is not composed entirely of stormwater.
- (11) Person – means, except to the extent exempted from this chapter, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the state, any interstate body of any other legal entity.
- (12) Pollutant – means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that the 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; wastes and residues that result from construction a building or structure; concrete and cement; and noxious or offensive matter of any kind.
- (13) Pollution – means the contamination or other alteration of any water’s physical, chemical or biological properties by the addition of any

constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such water, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such water harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

- (14) Premises – means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
 - (15) State Waters – means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Tennessee which are not entirely confined and retained completely upon the property of a single person.
 - (16) Stormwater Runoff or Stormwater – means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
 - (17) Town of Jonesborough Storm Drain System – means any publicly owned or operated facility designed or used for collecting and/or conveying stormwater including, but not limited to, any roads and streets with drainage systems, curbs, gutters, inlets, catch basins, storm drains, structural and non-structural stormwater controls, stormwater management devices such as detention ponds, ditches, swales, natural and man-made or altered drainage channels, streams, creeks, rivers, reservoirs, and other drainage structures.
 - (18) Water Course – means any structural or non-structural stormwater conveyance device including, but not limited to, storm drains, ditches, swales, channels, creeks, streams, rivers, and lakes.
- 8-605. 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 Town of Jonesborough storm drain system any pollutants or waters containing any pollutants, other than stormwater. The Town should identify areas that would be considered “hot spots” for pollution runoff. These sites should be investigated for potential highly contaminated runoff and, if found, enforcement action shall occur.

8-606. Exemptions. The following discharges are exempt from the prohibition § 8-605 above:

- (1) Water line flushing performed by a governmental agency;
- (2) Landscape irrigation or lawn watering with potable water;
- (3) Diverted stream flows permitted by the State of Tennessee;
- (4) Rising ground water;
- (5) Ground water infiltration to storm drains;
- (6) Uncontaminated pumped ground water
- (7) Foundation or footing drains (not including active groundwater dewatering systems);
- (8) Crawl space pumps;
- (9) Air conditioning condensation;
- (10) Springs;
- (11) Natural riparian habitat or wetland flows;
- (12) Discharges or flows from fire fighting;
- (13) Individual residential washing of vehicles;
- (14) Vehicle washing for non-profit fund raising purposes as long as the activity does not negatively impact waters of the State;
- (15) Swimming pools (if de-chlorinated-typically less than one part per million chlorine);
- (16) Street wash waters resulting from normal street cleaning operations as long as the water is cold and does not contain any soap, detergent, degreaser, solvent, emulsifier, dispersant, or other harmful cleaning substance;
- (17) Dye testing permitted by the Town of Jonesborough;
- (18) Any other water source not containing pollutants;
- (19) Other discharges specified in writing by the Town of Jonesborough as being necessary to protect public health and safety;
- (20) Discharges permitted under an NPDES permit or order issued to the discharger and administered under the authority of the state and 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 Town of Jonesborough storm drain system.

8-607. Prohibition of illegal connections. The construction, connection, use, maintenance or continued existence of any illegal connection to the Town of Jonesborough storm drain 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 chapter if the person connects a line conveying sewage to the Town of Jonesborough storm drain system, or allows such a connection to continue.

- (3) Improper connections in violation of this chapter must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the receiving sanitary sewer agency.
- (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 enforcement officer 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 enforcement officer.

8-608. Storm drain inlet liability. Storm drain inlets installed in new public streets whether installed by private parties or the Town of Jonesborough shall be stenciled with the words “Don’t Dump – Drains to Stream” using traffic bearing paint and minimum 2” high letters.

The stenciling shall be placed in a conspicuous location adjacent to or on the inlet. The preferred location for the stenciling is outside of the road pavement on the curb, if applicable, or the top of the inlet structure. Other alternate locations for the stenciling if the top of the curb or structure does not work are the pavement or sidewalk.

Other methods such as storm drain markers or castings in the structures to provide the words “Don’t Dump – Drains to Stream” adjacent to or on the inlets may be used with the building inspector’s approval and as long as the wording is conspicuous and long lasting.

The stenciling or other method of labeling installed by private developers within their new developments shall be guaranteed by the private developer for one (1) year from the time of installation and after this guarantee period the Town of Jonesborough shall be responsible for maintenance. Labeling installed by the Town of Jonesborough or citizen groups in existing public streets shall be maintained by the Town of Jonesborough from the time of installation. Other wording besides “Don’t Dump – Drains to Stream” may be used with the building inspector’s approval and as long as the intent is the same. Any labeling within the historic district must be approved by the Historic Zoning Commission.

- 8-609. 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 boundaries free of trash, debris, and other items and obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse.
- 8-610. Industrial 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 enforcement officer prior to allowing discharges to the Town of storm drain system.
- 8-611. Access and inspection of properties and facilities. The enforcement officer shall be permitted to enter and inspect properties and facilities at reasonable times 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 for representatives of the enforcement officer.
 - (2) The owner or operator shall allow the enforcement officer 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 enforcement officer shall have the right to set up on any property or facility such devices as are necessary in the opinion of the enforcement officer to conduct monitoring and/or sampling of flow discharges.
 - (4) The enforcement officer may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the enforcement officer. 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 enforcement officer 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 enforcement officer access to a facility are a violation of this chapter.

- (7) If the enforcement officer has been refused access to any part of the premises from which stormwater is discharged, and the enforcement officer 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 enforcement officer may seek issuance of a search warrant from any court of competent jurisdiction.
- 8-612. Responsibility for discoveries, containment and cleanup. 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 Town of Jonesborough storm drain system, state waters, or water of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such releases so as to minimize the effects of the discharge.
- 8-613. Responsibility for notification. The person responsible for a facility operation or premises on which a suspected release of pollutants or non-stormwater discharge may be generated shall notify the authorized enforcement agency in person, by phone, or facsimile no later than 24 hours of the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the enforcement officer within three (3) business days of the phone or in person notice.
- 8-614. Records required. 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 (3) years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.
- 8-615. Immediate notification of hazardous discharge. In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified through emergency dispatch services.
- 8-616. Failure to notify a violation. Failure to provide notification of a release as provided above is a violation of this chapter.

8-617. Violations. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter.

(1) Any person who has violated or continues to violate the provisions of this chapter, 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.

(2) 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 chapter 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.

8-618. Violation an immediate danger to public health or safety. In the event the violation constitutes an immediate danger to public health or public safety, the enforcement officer 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. The enforcement officer is authorized to seek costs of the abatement as outlined in § 8-622.

8-619. Notice of violation. Whenever the enforcement officer finds that a violation of this chapter has occurred, the enforcement officer may order compliance by written notice of violation.

(1) 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 and a time schedule for the completion of such remedial action;

(e) 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

(f) A statement that the determination of violation may be appealed to the enforcement officer by filing a written notice of appeal within thirty (30) days of service of notice of violation.

(2) Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit discharges and illegal connections;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of costs to cover administrative and abatement costs; and,
- (f) The implementation of pollution prevention practices.

8-620. Appeal of notice of violation. Any person receiving a notice of violation may appeal the determination of the enforcement officer to the Jonesborough Board of Mayor and Aldermen. A written notice of appeal must be received by the enforcement officer within thirty (30) days from the date of the notice of violation.

8-621. 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 thirty (30) days of the decision of the appropriate authority upholding the decision of the enforcement officer, then representatives of the enforcement officer may enter upon the subject private property and are authorized to taken 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.

8-622. Costs of abatement of the violation. Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs.

(1) The property owner may file a written protest objecting to the assessment or to the amount of the assessment within 30 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 upholds the assessment, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(2) Any person violating any of the provisions of this article shall become liable to the Town of Jonesborough by reason of such violation.

8-623. Penalties. Any person who shall commit any act declared unlawful under this article, who violates any provision of this article, who violates the provisions of any permit issued pursuant to this article, or who fails or refuses to comply with any lawful communication or notice to abate or take corrective action by any authorized enforcement officer, shall be guilty of a violation of this chapter, and each day of such violation or failure to comply shall be deemed a separate offense and punishable accordingly. The person shall be subject to fines of up to \$5,000.00 per day for each day of violation (T.C.A. § 68-221-1101). Citations for violations may be issued by any enforcement officer, public safety director, or a Jonesborough police officer.

8-624. Remedies not exclusive. The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and the enforcement officer may seek cumulative remedies.

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

8-625. Compatibility with other regulations. This chapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this chapter are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law. Where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

8-626. Severability. If the provisions of any section, subsection, paragraph, subdivision or clause of this chapter 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 chapter.

8-627. Responsibility for administration. The enforcement officer as directed by the Board of Mayor and Aldermen, through the Town Administrator, shall administer, implement, and enforce the provisions of this chapter.

This ordinance shall become effective immediately after its passage on second and final reading.

Motion was made by Alderman Gearhart and seconded by Alderman Vest that the preceding ordinance be adopted on first reading. Those voting for the adoption thereof, were: Alderman Gearhart, Alderman Vest, Alderman Countermine, Alderman Fitzgerald
Those voting against: _____.

PASSED ON FIRST READING September 22, 2008

TOBIE BLEDSOE, MAYOR

ATTEST:

ABBAY MILLER, RECORDER

APPROVED AS TO FORM

JAMES R. WHEELER, TOWN ATTORNEY

Motion was made by Alderman Fitzgerald and seconded by
Alderman Countermine that the preceding ordinance be adopted on second and
final reading. Those voting for the adoption thereof, were: Alderman Fitzgerald,
Alderman Countermine, Alderman Fitzgerald, Alderman Vest
Those voting against: _____.

PASSED ON SECOND READING October 13, 2008

TOBIE BLEDSOE, MAYOR

ATTEST:

ABBAY MILLER, RECORDER

APPROVED AS TO FORM

JAMES R. WHEELER, TOWN ATTORNEY