

PENDING

ORDINANCE NUMBER 256

BE IT ORDAINED AND ENACTED by the Town of Mount Carmel, Tennessee as follows:

AN ORDINANCE TO ENSURE THE PROPER CONTROL NON-STORMWATER DISCHARGES TO THE STORMWATER DRAINAGE SYSTEM OF THE TOWN OF MOUNT CARMEL, TENNESSEE

CHAPTER 1. ILLICIT DISCHARGE AND CONNECTION CONTROL

- XXX-101. SHORT TITLE.
- XXX-102. PURPOSE.
- XXX-103. DEFINITIONS.
- XXX-104. APPLICABILITY
- XXX-105. RESPONSIBILITY FOR ADMINISTRATION.
- XXX-106. DISCHARGE PROHIBITIONS.
- XXX-107. ILLICIT CONNECTION PROHIBITED.
- XXX-108. SUSPENSION OF MS4 ACCESS.
- XXX-109. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.
- XXX-110. MONITORING OF DISCHARGES.
- XXX-111. REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BMPs.
- XXX-112. WATERCOURSE PROTECTION.
- XXX-113. NOTIFICATION OF SPILLS.
- XXX-114. ENFORCEMENT.
- XXX-115. APPEAL OF NOTICE OF VIOLATION.
- XXX-116. ENFORCEMENT MEASURES APPEAL.
- XXX-117. COST OF ABATEMENT OF THE VIOLATION.
- XXX-118. INJUNCTIVE RELIEF.
- XXX-119. COMPENSATORY ACTION.
- XXX-120. VIOLATIONS DEEMED A PUBLIC NUISANCE.
- XXX-121. REMEDIES NOT EXCLUSIVE.
- XXX-122. ULTIMATE RESPONSIBILITY.
- XXX-123. LEGAL STATUS PROVISIONS.

XXX-101. **SHORT TITLE.** This Chapter shall be known as the *Illicit Discharge and Connection Control Ordinance of the Town of Mount Carmel, Tennessee*.

XXX-102. **PURPOSE.** The purpose of this chapter is to provide for the health, safety and general welfare of the citizens of the Town of Mount Carmel through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practical as required by Federal and State law. This Ordinance will serve as a companion document to the *Stormwater, Erosion and Sedimentation Control Ordinance*, and establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4)

in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- 102.1.** To regulate the contribution of pollutants to the MS4 due to the stormwater discharges of any user;
- 102.2.** To prohibit illicit connections and discharges to the MS4; and
- 102.3.** To establish legal authority to carry out all inspections, surveillance and monitoring procedures necessary to ensure compliance with this Ordinance.

XXX-103. DEFINITIONS. For the purpose of this chapter, the following definitions apply:

- 103.1. AUTHORIZED ENFORCEMENT AGENCY.** Employees or designees of the Mount Carmel Board of Mayor and Aldermen (BMA).
- 103.2. BEST MANAGEMENT PRACTICES (BMPs).** 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.
- 103.3. CLEAN WATER ACT (CWA).** The Federal water pollution control act (33 CFR § 1251 et. Seq.) and any subsequent amendments thereto.
- 103.4. CONSTRUCTION ACTIVITY.** Activities subject to NPDES Construction Stormwater General Permits. These include construction projects resulting in land disturbances of 1 acre or more, and in certain other instances as defined in the Mount Carmel Stormwater Ordinance (Town of Mount Carmel Municipal Code Ordinance No. 240). Such activities include but are not limited to clearing, grubbing, grading, excavating and demolition.
- 103.5. HAZARDOUS MATERIALS.** Any material, including any substance, waste or combination thereof, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

103.6. ILLEGAL DISCHARGE. Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section XXX of this Ordinance.

103.7. ILLICIT CONNECTIONS. An illicit connection is defined as either of the following:

103.71. Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the storm drain system, including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater and wash (gray) waters to enter the storm drain system. Also prohibited are any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had previously been allowed by any agency or entity.

103.72. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

103.8. INDUSTRIAL ACTIVITY. Activities subject to NPDES Industrial Permits as defined in 40 CFR § 122.26(b)(14).

103.9. NPDES STORMWATER DISCHARGE PERMIT. This means a permit issued by the USEPA or the Tennessee Department of Environment and Conservation's (TDEC) Division of Water Pollution Control pursuant to 33 United States Code (USC) § 1342(b) that authorizes the discharge of pollutants to waters of the United States (or "Waters of the State") whether the permit is applicable to an individual, group or general area-wide basis.

103.10. NON-STORMWATER DISCHARGE. Any discharge to the storm drain system that is not composed entirely of stormwater.

103.11. PERSON. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

103.12. POLLUTANT. Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents, rubbish, garbage, litter or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables, pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a

building or structure; and noxious or offensive matter of any kind.

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

103.14.STORM DRAINAGE SYSTEM. Publicly owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs and other drainage structures. Drainage from privately owned and maintained stormwater facilities must also meet the criteria specified herein for discharge to the town's storm drainage system.

103.15.STORMWATER. Any surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation or rain event, and resulting from such precipitation.

103.16.STORMWATER POLLUTION PREVENTION PLAN. Also known as a "Drainage Plan", this is a document that describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions necessary to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems and/or receiving waters to the maximum extent practical.

103.17.WASTEWATER. Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

XXX-104. APPLICABILITY. This Ordinance shall apply to all waters entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

XXX-105. RESPONSIBILITY FOR ADMINISTRATION. The Town of Mount Carmel shall administer, implement and enforce the provisions of this Ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Mayor at the direction of the BMA to persons or entities acting in the beneficial interests of or in the employ of the Town.

XXX-106. DISCHARGE PROHIBITIONS. No person shall discharge or cause to be discharged into the MS4 or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as follows:

- 106.1.** The following discharges are exempt from the prohibitions established in this Ordinance: water line flushing or other potable water source discharges; landscape irrigation or lawn watering; diverted stream flows; rising groundwater; groundwater infiltration to storm drains; uncontaminated pumped groundwater; foundation or footing drains (not including active groundwater dewatering systems); crawl space pumps; air conditioning condensations; springs; non-commercial washing of vehicles; natural riparian habitat or wetland flows; swimming pools (if de-chlorinated to typically less than 1 mg/L); fire fighting activities and any other water source not containing pollutants.
- 106.2.** Discharges permitted in writing from the authorized enforcement agency as being necessary to protect public health and safety.
- 106.3.** Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
- 106.4.** These prohibitions 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 USEPA or TDEC, 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 storm drain system.

XXX-107. ILLICIT CONNECTIONS PROHIBITED. The construction, use, maintenance or continued use of illicit connections to the MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. In addition, a person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

XXX-108. SUSPENSION OF MS4 ACCESS.

108.1. Suspension due to Illicit Discharges in Emergency Situations. The Town of Mount Carmel may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, health or welfare of persons or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.

108.2. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this Ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency shall notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to the Section, without the prior approval of the authorized enforcement agency.

XXX-109. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of said permit and/or the Mount Carmel Stormwater Ordinance No. 240. Proof of said permit may be required by the Town of Mount Carmel prior to allowing a discharge to the MS4.

XXX-110. MONITORING OF DISCHARGES. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity, which is more thoroughly covered in Ordinance No. 240.

110.1. Access to facilities.

110.10. The Town of Mount Carmel shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this Ordinance. If a discharger has security measures in force that require proper identification and clearance before entry in/onto its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

110.12. Facility operators shall allow the Town of Mount Carmel ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater and the performance of any additional duties as defined by State and Federal Law.

110.13. The Town of Mount Carmel shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.

110.14. The Town of Mount Carmel has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater quantity and quality shall be calibrated to ensure their accuracy.

110.15. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Town of Mount Carmel and shall not be replaced. The costs of clearing such access shall be borne by the operator.

110.16. Unreasonable delays in allowing the Town of Mount Carmel access to a permitted facility is a violation of this Ordinance. A person who is the operator of a stormwater facility with an NPDES permit to discharge stormwater associated with an industrial activity commits an offense if the person denies the authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

110.17. If the Town of Mount Carmel has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

XXX-111. REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BMPs.

The Town of Mount Carmel will identify BMPs for any activity, operation or facility that may cause or contribute to pollution or contamination of stormwater, the storm drain system or Waters of the State. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of

these structural and nonstructural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practical, shall be deemed compliance with the provisions of this Section. These BMPs shall be part of a stormwater pollution prevention plan (or "Drainage Plan as per Ordinance 240) as necessary for compliance with requirements of the NPDES permit.

XXX-112. WATERCOURSE PROTECTION. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse.

XXX-113. NOTIFICATION OF SPILLS. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials that are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or Waters of the State, said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Town of Mount Carmel within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

XXX-114. ENFORCEMENT.

114.1. Notice of Violation. Whenever the Town of Mount Carmel finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of a violation to the responsible person. Such notice may require without limitation:

114.11. The performance of monitoring, analyses and reporting;

114.12. The elimination of illicit connections or discharges;

114.13. That violating discharges, practices or operations shall cease and desist;

114.14. The abatement and remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

114.15. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

XXX-115. APPEAL OF NOTICE OF VIOLATION. Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within fifteen (15) days from the Notice of Violation. Hearing on the appeal before the appropriate authority of his/her designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

XXX-116. 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 municipal authority upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measure 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.

XXX-117. COST OF ABATEMENT OF THE VIOLATION. Within fifteen (15) days after the 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 amount of the assessment within thirty (30) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an 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.

XXX-118. INJUNCTIVE RELIEF. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this Ordinance, the authorized representative agency may petition for a preliminary or permanent injunction restraining the person from activities that would create further violations.

XXX-119. COMPENSATORY ACTION. In lieu of enforcement proceedings, penalties and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanups, etc.

XXX-120. 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, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

XXX-121. 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 it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

XXX-122. ULTIMATE RESPONSIBILITY. The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore, this Ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

XXX-123. LEGAL STATUS PROVISIONS.

123.1. Conflict with Other Ordinances. In case of conflict between this Ordinance or any part thereof, and the whole or part of any existing or future Ordinance of the Town of Mount Carmel, the most restrictive shall in all cases apply.

123.2. Severability. If any provision of this Ordinance is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any remaining provisions which are not of themselves invalid or unconstitutional.

123.3. Effective Date. This ordinance shall become effective upon passage and publication, the public welfare requiring it.

Approved by the Planning Commission: _____
Date

Date of Public Hearing: _____
Date

Passed on First Reading: _____
Date

Passed on Second Reading: _____
Date

Signed: _____
Mayor

Attest: _____
Recorder

Approved as to Form: _____
Town Attorney