Passed 9-0

**ORDINANCE 06-10**

**TO AMEND TITLE 10 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "WASTEWATER"**
**Re: Addition of Chapter 10.20 Prohibiting Illicit Stormwater Connection and Discharge**

WHEREAS, the City of Bloomington, Indiana (the City) has constructed and has in operation a stormwater collection system for the purpose of collecting stormwater within its jurisdiction; and,

WHEREAS, new requirements for stormwater quality affect the City as a direct result of the Federal Stormwater Phase II NPDES permit program administered by the Indiana Department of Environmental Management with the adoption of 327 IAC 15-5 for Storm Water Run-off Associated with Construction Activity, 327 IAC 15-6 for Storm Water Discharges Exposed to Industrial Activity, and 327 IAC 15-13 for Storm Water Run-Off Associated with Municipal Separate Sewer System Conveyances; and,

WHEREAS, 327 IAC 15-13-14 requires the City to pass an ordinance or other local regulatory mechanism prohibiting illicit discharges into the stormwater conveyance system and establish appropriate enforcement procedures and actions; and

WHEREAS, the creation of a new stormwater management program could help address stormwater management problems; and

WHEREAS, the City operates its stormwater system under the provisions of IC 36-9-23;

NOW THEREFORE BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT

SECTION 1. The municipal code shall be amended to add the following Chapter 10.20 to Title 10:

**Chapter 10.20 ILLICIT STORMWATER CONNECTION AND DISCHARGE**

**Section 10.20.010 Purpose and intent**

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the City of Bloomington, Indiana through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Chapter 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 Chapter are:

(a) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user.

(b) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system.

(c) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter.

**Section 10.20.020 Definitions.**

As used in this Chapter, the following words have the following meanings unless otherwise designated. Where words are not defined, they shall have the meanings provided in the *City of Bloomington Utilities Rules, Regulations and Standards of Service*:

(a) "Authorized Enforcement Agency" means employees or designees of the Mayor of the City of Bloomington, Indiana.

(b) "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, general good house keeping 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.

(c) "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

(d) "Construction Activity" means activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of 1 acre or more, as defined in 327 IAC 15-5. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

(e) "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.

(f) "Illegal Discharge" means any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 10.20.060 of this Chapter.

(g) "Illicit Connections" means as either of the following:

(1) 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-storm water 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,

(2) 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.

(h) "Industrial Activity" means activities subject to NPDES Industrial Permits as defined in 327 IAC 15-6.

(i) "National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit" means a permit issued by EPA (or by a State 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.

(j) "Non-Storm Water Discharge" means any discharge to the storm drain system that is not composed entirely of storm water.

(k) "Person" means 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.

(l) "Pollutant" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, 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.

(m) "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(n) "Storm Drainage System" means publicly-owned facilities by which storm water 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.

(o) "Stormwater" means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(p) "Stormwater Pollution Prevention Plan" means a document which describes the Best Management Practices (BMPs) and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

(q) "Wastewater" means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

**Section 10.20.030 Applicability.**

This Chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

**Section 10.20.040 Responsibility for administration.**

The City shall administer, implement, and enforce the provisions of this Chapter. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Mayor of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

**Section 10.20.050 Ultimate responsibility.**

The standards set forth herein are minimum standards; therefore this Chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**Section 10.20.060 Discharge prohibitions.**

(a) Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the municipal storm drain 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 commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this Chapter: water line flushing or 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, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one part per million chlorine), fire fighting activities, irrigation water, street wash water, and any other water source not containing Pollutants.

(2) Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.

(3) Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

(4) The prohibition 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 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 storm drain system.

(b) Prohibition of Illicit Connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) 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.

(3) A person is considered to be in violation of this Chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

**Section 10.20.070 Suspension of MS4 access.**

(a) Suspension due to Illicit Discharges in Emergency Situations. The City of Bloomington 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, or to the health or welfare of persons, or to the MS4 or Waters of the United States. 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 United States, or to minimize danger to persons.

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

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

**Section 10.20.080 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 or to the allowing of discharges to the MS4.

**Section 10.20.090 Monitoring of discharges.**

This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

Access to facilities.

(a) The City shall be permitted to enter and inspect facilities subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter. If a discharger has security measures in force, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

(b) Facility operators shall allow the City 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.

(c) The City 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.

(d) The City 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 flow and quality shall be calibrated to ensure their accuracy.

(e) 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 City and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(f) Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this Chapter. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with 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 Chapter.

(g) If the City 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 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, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

**Section 10.20.100 Requirement to prevent, control, and reduce storm water pollutants by the use of best management practices.**

The City will establish requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S. 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 non-structural 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 municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

**Section 10.20.110 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, excessive vegetation, 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.

**Section 10.20.120 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 which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile 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 Bloomington 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 (3) years.

**Section 10.20.130 Enforcement.**

Notice of Violation. Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, the City of Bloomington Utilities Service Board ("USB") may order compliance by written notice of violation to the responsible person. Emergency notifications may be made by an authorized City employee. Such notice may require without limitation:

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

**Section 10.20.140 Appeal of notice of violation.**

Any person receiving a Notice of Violation may appeal the determination of the USB. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within thirty (30) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

**Section 10.20.150 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 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.

**Section 10.20.160 Cost 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. 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.

**Section 10.20.170 Injunctive relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. If a person has violated or continues to violate the provisions of this Chapter, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Section 10.20.180 Compensatory action.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this Chapter, the authorized enforcement agency may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**Section 10.20.190 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 Chapter 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.

**Section 10.20.200 Civil penalty.**

Any person that has violated or continues to violate this Chapter shall be liable to civil penalties to the fullest extent of the law, and shall be subject to a fine of up to $2,500.00 dollars per violation per day. The authorized enforcement agency may recover all attorney's fees, court costs, consultant costs and other expenses associated with enforcement of this Chapter, including sampling and monitoring expenses.

**Section 10.20.210 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 it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

SECTION 2. **Severability.** If any sections, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 3. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor and publication as required by law.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 5th day of JULY, 2006.

CHRIS STURBAUM, President
Bloomington Common Council

ATTEST:

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 6th day of JULY, 2006.

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 6TH day of JULY, 2006.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

The Federal Stormwater Phase II NPDES permit program administered by the Indiana Department of Environmental Management includes requirements for management of stormwater run-off associated with municipal separate sewer system ("MS4") conveyances. This ordinance brings the City of Bloomington into compliance with the requirements of 327 IAC 15-13-14 regarding enactment of an ordinance prohibiting illicit connections and discharges into the stormwater conveyance system and the establishment of appropriate enforcement procedures and actions.

Signed copies to:
legal (8)
utilities
USB
controller
CA/CA(3)
clerk
file
BUC file (2)
H+T for publication