

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 1/25/10

Item No.: 13 . b

Department Approval



City Manager Approval



Item Description: Discuss Storm water Illicit Discharge and Connections Ordinance

BACKGROUND

Since 2003, the City of Roseville has had a permit to operate as an MS4 (municipal separate storm sewer system) city. Under this federally mandated storm water program, MS4s are required to develop and implement a Storm Water Pollution Prevention Program (SWPPP). The SWPPP must cover six minimum control measures:

- Public education and outreach;
- Public participation/involvement;
- Illicit discharge, detection and elimination;
- Construction site runoff control;
- Post-construction site runoff control; and
- Pollution prevention/good housekeeping.

The City has had to identify best management practices (BMPs) and measurable goals associated with each of these six minimum control measure. As required by our permit, we submit an annual report to the Minnesota Pollution Control Agency (MPCA) on the implementation of the SWPPP each spring.

As described above, our SWPPP is required to include procedures to detect and remove illicit discharges and improper disposal into the MS4 to the maximum extent practicable within the City. Our current practice is two pronged. We inspect all of our storm sewer outfalls for evidence of illicit discharges and investigate reports of illicit discharges. During our investigations of reported discharges, we have discovered that our existing ordinances are not always clear enough to enforce in some situations. This proposed ordinance is to address identified deficiencies within our existing ordinances to ensure that they adequately address the requirements of our SWPPP.

Attached is the proposed Storm Water Illicit Discharge and Connections ordinance. Staff has been working with the Public Works Environment and Transportation Commission (PWETC) on this final draft since June 2009. This final draft has been reviewed by the City Attorney since the start of the year.

POLICY OBJECTIVE

In drafting this ordinance, the PWETC and staff had extensive discussions about each individual section of the ordinance and asking critical questions about enforceability and “maximum extent

31 practicable”.

32 **FINANCIAL IMPACTS**

33 Financial impacts include staff time to enforce the code. Enforcement of this ordinance will be
34 the responsibility of the Public Works Department. We estimate that staff invests up to 200
35 hours annually responding to citizen reports of illicit discharges into the storm sewer system.

36 **STAFF RECOMMENDATION**

37 Staff will be presenting this ordinance to the City Council at the January 25th meeting and
38 requesting that a public hearing be set up for its adoption in February.

39 **REQUESTED COUNCIL ACTION**

40 None at this time.

Prepared by: Debra Bloom, City Engineer

Attachments: A: Storm Water Illicit Discharge and Connections Ordinance Draft

CITY OF ROSEVILLE
STORM WATER ILLICIT DISCHARGE AND CONNECTIONS ORDINANCE

803.03: STORM WATER ILLICIT DISCHARGE AND CONNECTIONS

A. Purpose:

The purpose of the ordinance is to promote, preserve and enhance the natural resources within the City and protect them from adverse effects caused by non-storm water discharged by regulating discharges that would have an adverse and potentially irreversible impact on water quality and environmentally sensitive land. This ordinance will provide for the health, safety, and general welfare of the citizens of the City of Roseville 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 ordinance 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:

1. To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by storm water discharges by any person.
2. To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
3. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

B. Definitions:

For the purposes of this ordinance, the following terms, phrases, words and their derivatives shall have the meaning stated below.

1. **BEST MANAGEMENT PRACTICE (BMP):** Erosion and sediment control and water quality management practices that are the most effective and practicable means of controlling, preventing, and minimizing the degradation of surface water, including construction-phasing, minimizing the length of time soil areas are exposed, prohibitions, and other management practices published by state or designated area-wide planning agencies.
 - (i) **Non-structural BMP:** Practices that focus on preserving open space, protecting natural systems, and incorporating existing landscape features such as wetlands and stream corridors to manage storm water at its source. Other practices include clustering and concentrating development, minimizing disturbed areas, and reducing the size of impervious areas.
 - (ii) **Structural BMP:** a physical device that is typically designed and constructed to trap or filter pollutants from runoff, or reduce runoff velocities.
2. **DISCHARGE:** Adding, introducing, releasing, leaking, spilling, casting, throwing, or emitting any pollutant, or placing any pollutant in a location where it is likely to pollute waters of the state.
3. **EQUIPMENT:** Implements used in an operation or activity. Examples include, but are not limited to; lawn mowers, weed whips, shovels, wheelbarrows and construction equipment.
4. **EROSION:** any process that wears away the surface of the land by the action of water, wind, ice, or gravity. Erosion can be accelerated by the activities of man and nature.
5. **GROUNDWATER:** Water contained below the surface of the earth in the saturated zone including, without limitation, all waters whether under conned, unconfined, or perched conditions, in near surface unconsolidated sediment or regolith, or in rock formations deeper underground.
6. **ILLEGAL/ ILLICIT DISCHARGE:** Any direct or indirect non-storm water discharge to the storm drainage system, except as exempted in this chapter.
7. **ILLICIT CONNECTION:** Either of the following:
 - (i) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system (including any non-storm water discharge) including wastewater, process wastewater, and wash water 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 the City; or,

- (ii) Any drain or conveyance connected from a residential, commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the City.
8. IMPERVIOUS SURFACE: A hard surface area which either prevents or retards the entry of water into the ground. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, or other surfaces which similarly impede the natural infiltration of surface and storm water runoff.
9. MAXIMUM EXTENT PRACTICABLE (MEP): A standard for water quality that applies to all MS4 operators regulated under the NPDES program. Since no precise definition of MEP exists, it allows for maximum flexibility on the part of MS4 operators as they develop and implement their programs to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of pollutants.
10. MECHANICAL CLEANING TECHNIQUES: Arranging the collision between the substance being removed and some object. Mechanical cleaning techniques include: sweeping, shoveling, or blowing. This does NOT include using water to clean the surface.
11. MPCA: The Minnesota Pollution Control Agency.
12. MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4): The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.
13. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES): The national program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under sections 307, 318, 402, and 405 of the Clean Water Act, United States Code, title 33, sections 1317, 1328, 1342, and 1345.
14. PERSON: Any individual, firm, corporation, partnership, franchise, association or governmental entity.
15. PERVIOUS SURFACE: Pervious areas permit water to enter the ground by virtue of their porous nature or by large voids in the material. Commonly pervious areas have vegetation growing on them.
16. POLLUTANT: Any substance which, when discharged has potential to or does any of the following:
- (i) Interferes with state designated water uses;
 - (ii) Obstructs or causes damage to waters of the state;
 - (iii) Changes water color, odor, or usability as a drinking water source through causes not attributable to natural stream processes affecting surface water or subsurface processes affecting groundwater;
 - (iv) Adds an unnatural surface film on the water;
 - (v) Adversely changes other chemical, biological, thermal, or physical condition, in any surface water or stream channel;
 - (vi) Degrades the quality of groundwater; or
 - (vii) Harms human life, aquatic life, or terrestrial plant and wildlife; A Pollutant includes but is not limited to dredged soil, solid waste, incinerator residue, garbage, wastewater sludge, chemical waste, biological materials, radioactive materials, rock, sand, dust, industrial waste, sediment, nutrients, toxic substance, pesticide, herbicide, trace metal, automotive fluid, petroleum-based substance, wastewater, and oxygen-demanding material.
17. POLLUTE: To discharge pollutants into waters of the state.
18. POLLUTION: The direct or indirect distribution of pollutants into waters of the state.
19. PREMISES: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips

- 1 20. SANITARY SEWER: a pipe, conduit, or sewer owned, operated, and maintained by the City and
2 which is designated by the Public Works Director as one dedicated to the exclusive purpose of
3 carrying sanitary wastewater to the exclusion of other matter
- 4 21. STATE DESIGNATED WATER USES: Uses specified in state water quality standards.
- 5 22. STORM DRAINAGE SYSTEM: Publicly-owned facilities by which storm water is collected and/or
6 conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters,
7 curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and
8 human-made or altered drainage channels, reservoirs, and other drainage structures.
- 9 23. STORM WATER: Any surface flow, runoff, or drainage consisting entirely of water from any form of
10 natural precipitation and resulting from such precipitation.
- 11 24. SURFACE WATERS means all waters of the state other than ground waters, which include ponds,
12 lakes, rivers, streams, wetlands, ditches, , and public drainage systems except those designed and used
13 to collect, convey, or dispose of sanitary sewage.
- 14 25. STORM WATER POLLUTION PREVENTION PLAN (SWPPP): A document which describes the
15 Best Management Practices and activities to be implemented by a person or business to identify
16 sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant
17 discharges to Storm water, Storm water Conveyance Systems, and/or Receiving Waters to the
18 Maximum Extent Practicable.
- 19 26. VEHICLE: Any "motor vehicle" as defined in Minnesota Statutes. Also includes watercraft, trailers
20 and bicycles.
- 21 27. WATERCOURSE: A natural channel for water; also, a canal for the conveyance of water, a running
22 stream of water having a bed and banks; the easement one may have in the flowing of such a stream in
23 its accustomed course. A water course may be dry sometimes.
- 24 28. WATERS OF THE STATE: All streams, lakes, ponds, marshes, watercourses, waterways, wells,
25 springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or
26 accumulations of water, surface or underground, natural or artificial, public or private, which are
27 contained within, flow through, or border upon the state or any portion thereof.
- 28 29. WASTEWATER: Any water or other liquid, other than uncontaminated storm water, discharged from
29 a facility or the by-product of washing equipment or vehicles

30 C. Applicability

31 This ordinance shall apply to all water entering the storm drain system generated on any developed and
32 undeveloped lands unless explicitly exempted by the City Council.

33 D. Administration

34 The Public Works Director is the principal City official responsible for the administration,
35 implementation, and enforcement of the provisions of this ordinance. The Director may delegate any or
36 all of the duties hereunder

37 E. Exemptions

38 No person shall cause any illicit discharge to enter the storm sewer system or any surface water unless
39 such discharge:

- 40 1. Consists of non-storm water that is authorized by an NPDES point source permit obtained from the
41 MPCA;
- 42 2. Is associated with fire fighting activities or other activities necessary to protect public health and safety;
- 43 3. Is one of the following exempt discharges: water line flushing or other potable water sources, landscape
44 irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm
45 drains, uncontaminated pumped groundwater, foundation or footing drains (not including active
46 groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-
47 commercial washing of vehicles, natural riparian habitat or wetland flows, dechlorinated swimming pools
48 and any other water source not containing pollutants;

- 1 4. Consists of dye testing discharge, as long as the Public Works Director is provided a verbal notification
2 prior to the time of the test.

3 F. Illegal Disposal and Dumping

- 4 1. No person shall throw, deposit, place, leave, maintain, or keep any substance upon any street, alley,
5 sidewalk, storm drain, inlet, catch basin, or other drainage structure, business place, or upon any public or
6 private land, so that the same might be or become a pollutant, unless the substance is in containers,
7 recycling bags, or any other lawfully established waste disposal device.
- 8 2. No person shall intentionally dispose of grass, leaves, dirt, or landscape material into a water resource,
9 buffer, street, road, alley, catch basin, culvert, curb, gutter, inlet, ditch, natural watercourse, flood control
10 channel, canal, storm drain or any fabricated natural conveyance.

11 G. Illicit Discharges and Connections

- 12 1. No person shall use any illicit connection to intentionally convey non-storm water to the City's storm
13 sewer system.
- 14 2. The construction, use, maintenance or continued existence of illicit connections to the storm sewer system
15 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past
16 regardless of whether the connection was permissible under law or practices applicable or prevailing at
17 the time of connection.
- 18 3. A person is considered to be in violation of this ordinance if the person connects a line conveying
19 wastewater to the storm sewer system, or allows such a connection to continue.

20 H. General Provisions: All owners or occupants of property shall comply with the following general
21 requirements:

- 22 1. No person shall leave, store, deposit, discharge, dump, or otherwise expose any chemical or septic waste
23 in an area where discharge to streets or storm sewer system may occur. This section shall apply to both
24 actual discharges and situations in which a reasonable person could expect to become a discharge.
- 25 (i) Private sanitary sewer connections and appurtenances must be maintained to prevent failure, which has
26 the potential to pollute surface water.
- 27 (ii) Recreational vehicle sewage shall be disposed to a proper sanitary waste facility. Waste shall not be
28 discharged in an area where drainage to streets or storm sewer systems may occur.
- 29 (iii) For pools, water must be allowed to sit long enough without the addition of chlorine to allow for
30 chlorine to evaporate before discharging in an area where drainage to streets or storm sewer systems
31 may occur.
- 32 (iv) Unsealed receptacles containing chemicals or other hazardous materials shall not be stored in areas
33 susceptible to runoff.
- 34 2. The washing down of equipment and vehicles shall be conducted in a manner so as to not directly
35 discharge wastewater where drainage to streets or storm sewer system may occur.
- 36 3. Runoff of water into the storm sewer system shall be minimized to the maximum extent practicable.
- 37 4. Removal of pollutants such as grass, leaves, dirt and landscape material from impervious surfaces shall be
38 completed to the maximum extent practicable using mechanical cleaning techniques. Runoff of water
39 into the storm sewer system from the washing down of impervious surfaces is prohibited unless necessary
40 for health or safety purposes.
- 41 5. Mobile washing companies (carpet cleaning, mobile vehicle washing, etc) shall dispose of wastewater to
42 the sanitary sewer. Wastewater must not be discharged where drainage to streets or storm sewer system
43 may occur.
- 44 6. Storage of materials, machinery and equipment shall comply with the following requirements:
- 45 (i) Objects, such as motor vehicle parts containing grease, oil or other hazardous substances, and unsealed
46 receptacles containing chemicals or other hazardous materials shall not be stored in areas susceptible to
47 runoff.
- 48 (ii) Any machinery or equipment that is to be repaired or maintained in areas susceptible to runoff shall be
49 placed in a confined area to contain leaks, spills, or discharges.

7. Debris and residue shall be removed as follows:

- (i) All motor vehicle parking lots and private streets shall be swept at least once a year in the spring to remove debris. Such debris shall be collected and disposed of according to state and federal laws governing solid waste.
- (ii) Fuel and chemical residue or other types of potentially harmful material, such as animal waste, garbage or batteries shall be contained immediately, removed as soon as possible and disposed of according to state and federal laws governing solid waste.

I. Industrial or Construction Activity Discharges.

Any person subject to an industrial activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a manner acceptable to the Public Works Director prior to the allowing of discharges to the storm sewer system. Any person responsible for a property or premise, who 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 storm sewer system. These BMPs shall be part of a storm water pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

J. Access to Facilities

1. When the City has determined that there is a danger to the health, safety or welfare of the public, city representatives shall be permitted to enter and inspect facilities subject to regulation under this ordinance to determine compliance with this ordinance. 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 city representatives.
2. In lieu of an inspection by a City representative, the property owner shall furnish a certificate from a licensed plumber, in a form acceptable to the City, certifying that the property has not discharged prohibited material into the municipal storm sewer system. Failure to provide such certificate of compliance shall make the property owner immediately subject to the suspension of storm sewer access as provided for in section M of this section until the property is inspected and/or compliance is met, including any penalties and remedies as set forth in section N below.
3. Unreasonable delays in allowing city representatives access to a permitted facility is a violation of a storm water discharge permit and of this ordinance.
4. The City may seek issuance of a search warrant for the following reasons:
 - (i) If city representatives are refused access to any part of the premises from which storm water is discharged, and there is probable cause to believe that there may be a violation of this ordinance; or
 - (ii) 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
 - (iii) to protect the overall public health, safety, and welfare of the community.

K. Watercourse Protection

Every person owning property through which a watercourse passes or is directly adjacent to a watercourse, shall keep and maintain that part of the watercourse free of trash, debris, and other obstacles that would pollute, contaminate, or 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.

L. Notification of Spills

Notwithstanding other requirements of law, as soon as any person has information of release of materials which result or may result in illegal discharges of pollutants into the storm sewer system, or water of the state, said person shall take all necessary steps to ensure the discovery, containment, and

cleanup of such release according to state and federal laws.

M. Suspension of Storm Sewer System Access

1. Suspension due to illicit discharges in emergency situation: The City may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, to the storm sewer or waters of the state. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the storm sewer system or the waters of the state, or to minimize danger to persons.
2. Suspension due to the detection of illicit discharge: All persons discharging to the MS4 in violation of this ordinance may have their access terminated if such termination serves to abate or reduce an illicit discharge. It is a violation of this ordinance to reinstate access to premises that have been terminated pursuant to this section without the prior approval of the City.

N. Enforcement

1. NOTICE OF VIOLATION: A violation of this ordinance is a Public Nuisance. When it has been determined that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Public Works Director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (i) The performance of monitoring, analysis, and reporting;
- (ii) The elimination of illicit connections or discharges;
- (iii) That violating discharges, practices, or operations shall cease and desist;
- (iv) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (v) Payment of a fine to cover administrative and remediation costs; and
- (vi) The implementation of source control or treatment BMPs; and
- (vii) The development of a corrective action plan to prevent repeat discharges; and
- (viii) Any other requirement deemed necessary.

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.

2. APPEAL OF NOTICE OF VIOLATION: Any person receiving a Notice of Violation may appeal the determination of the Public Works Director. The notice of appeal must be received within 7 days from the date of the Notice of Violation. Hearing on the appeal before the appropriate municipal authority or his/her designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.
3. 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 7 days of the decision of the municipal authority upholding the decision of the Public Works Director, then city representatives 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 city representatives to enter upon the premises for the purposes set forth above.
4. COST OF ABATEMENT OF THE VIOLATION: Within 15 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 amount of the assessment within 7 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 pursuant to Minnesota Statute § 429.101, Subd. 1(3).

- 1 5. INJUNCTIVE RELIEF: It shall be unlawful for any person to violate any provision or fail to comply
2 with any of the requirements of this Ordinance. If a person has violated or continues to violate the
3 provisions of this ordinance, the City may petition for a preliminary or permanent injunction restraining
4 the person from activities which would create further violations or compelling the person to perform
5 abatement or remediation of the violation.
- 6 6. COMPENSATORY ACTION: In lieu of enforcement proceedings, penalties, and remedies authorized by
7 this Ordinance, the City may impose upon a violator alternative compensatory actions such as storm drain
8 stenciling, attendance at compliance workshops, creek cleanup, etc.
- 9 7. VIOLATIONS DEEMED A PUBLIC NUISANCE: In addition to the enforcement processes and
10 penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this
11 Ordinance is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and
12 may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or
13 otherwise compel the cessation of such nuisance may be taken.
- 14 8. CRIMINAL PROSECUTION: A violation of this ordinance is a misdemeanor.
- 15 9. COSTS AND EXPENSES: The City may recover all attorney's fees, court costs, staff expenses, clean-up
16 costs, and any other expenses associated with enforcement of this ordinance including, but not limited to,
17 sampling and monitoring expenses.
- 18 10. REMEDIES NOT EXCLUSIVE: The remedies listed in this ordinance are not exclusive of any other
19 remedies available under any applicable federal, state or local law and it is within the discretion of the
20 City to seek cumulative remedies.

21 O. Effective Date

22 This ordinance is effective immediately upon adoption and publication according to law.
23