ORDINANCE NO. 2009-12

AN ORDINANCE, of the City of Wenatchee regulating non-stormwater discharges to the storm drainage system, prohibiting illicit connections and discharges to the storm sewer system, providing for inspection, surveillance, monitoring and enforcement procedures to ensure compliance with the ordinance, and establishing penalties for violations thereof.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wenatchee, as follows:

SECTION I – STORMWATER ILLICIT DISCHARGE DETECTION AND ELIMINATION

The following chapter entitled "Stormwater Illicit Discharge Detection and Elimination," to be codified at Chapter 4.10 WCC, shall be added to the Wenatchee City Code:

4.10.010 PURPOSE

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Wenatchee through the regulation of non-stormwater 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 MS4.
(2) To prohibit illicit connections and discharges to the MS4.
(3) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this ordinance.

4.10.020 DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

1) "Best Management Practices (BMPs)" shall mean schedules of activities, prohibitions of practices, general good housekeeping practices, maintenance procedures, and structural and/or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants directly or indirectly to stormwater, receiving waters or stormwater conveyance systems.

2) "City" shall mean the city of Wenatchee, Washington, a municipal corporation of the state of Washington, acting by and through its city council, unless such authority shall be delegated to other persons.

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

4) "Director" shall mean the city of Wenatchee public works director who is charged with certain duties and responsibilities by this chapter, or any other person the director may appoint.

5) "Hazardous Materials" shall mean 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.

6) "Illicit Discharge" shall mean any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Wenatchee City Code 4.10.050.

7) "Illicit Connection" shall mean either of the following:

   (a) 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 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 the city or,

   (b) 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 the city.

8) "Municipal Separate Storm Sewer System (MS4)" shall mean the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Wenatchee and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

9) "National Pollutant Discharge Elimination System (NPDES) Permit" shall mean the national 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.

10) "Non-Stormwater Discharge" shall mean any discharge to the storm drain system that is not composed entirely of stormwater.

11) "Person" shall mean any individual, association, organization, partnership, firm, corporation or other entity public or private and acting as either the owner or as the owner's agent.

12) "Pollutant" shall mean 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.

13) "Premises" shall mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

14) "Storm Drainage System" shall mean publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, 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.

15) "Stormwater" shall mean runoff during and following precipitation and snowmelt events, including surface runoff, drainage and interflow.

4.10.030 APPLICABILITY.

This ordinance shall apply to all discharges entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the city of Wenatchee.

4.10.040 RESPONSIBILITY FOR ADMINISTRATION.

The city of Wenatchee shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the city may be delegated by the Public Works Director to persons or entities acting in the beneficial interest of or in the employ of the agency.

4.10.050 DISCHARGE PROHIBITIONS.

(A) 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 MS4 any pollutants or waters containing any pollutants, other than stormwater. The commencement, conduct or continuance of any illicit 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 ordinance:

a) Diverted stream flows,

b) Rising ground waters,
c) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)),
d) Uncontaminated pumped ground water,
e) Foundation drains,
f) Air conditioning condensation,
g) Irrigation water from agricultural sources that is commingled with urban stormwater,
h) Springs,
i) Water from crawl space pumps,
j) Footing drains, and
k) Flows from riparian habitats and wetlands,
l) Emergency firefighting activities.

(2) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit issued to the discharger and administered under the authority of the Washington State Department of Ecology, provided that the discharger is in full compliance with all requirements of the permit and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system by the city.

(3) The following non-stormwater discharges are prohibited unless the stated conditions are met:

a) Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4;

b) Discharges from lawn watering and other irrigation runoff shall be kept to a minimum and shall not cause damage to public streets or sidewalks;

c) Swimming pool discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted and reoxygenated if necessary, and volumetrically and velocity controlled to prevent resuspension of sediments in the MS4. Swimming pool cleaning wastewater and filter backwash are prohibited from discharge to the MS4;

d) Street and sidewalk wash water, water used to control dust, and routine external building wash down shall not contain soaps or detergents and shall be kept to a minimum. Practices shall be implemented prior to washing to reduce pollutants from entering the MS4 including but not limited to sweeping, picking up litter and controlling velocity of discharge.

e) Other non-stormwater discharges shall be in compliance with the requirements of a stormwater pollution prevention plan reviewed by the city which addresses control of such discharges.

(4) Non-stormwater discharges listed above shall be prohibited if identified as a significant source of pollutants to waters of the state.

(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 ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
(4) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the city.
(5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the city 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 determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the city.

4.10.060 COMPLIANCE MONITORING
(A) Right of Entry: Inspection and Sampling.
The director shall be permitted to enter and inspect premises subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

(1) The director shall be allowed 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.
(2) The director shall have the right to set up on any premise such devices as are necessary to conduct monitoring and/or sampling of discharges from the site.
(3) The director has the right to require the owner or operator to install monitoring equipment as necessary. The sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator. All devices used to measure flow and quality shall be calibrated to ensure accuracy.
(4) Any temporary or permanent obstruction to safe and easy access to the premises shall be promptly removed by the owner or 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 owner of the premise.

(B) Search Warrants.
If the director has been refused access to any part of the premises from which a discharge has occurred or is likely to occur, and the director 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 city may seek issuance of a search warrant from any court of competent jurisdiction.

4.10.070 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The owner or operator of such activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater or the storm drainage system shall provide, at his or her 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 structural and non-structural BMPs. Further, any person responsible for a property or premises that 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, to the extent practicable, shall be deemed compliance with the provisions of this section.

4.10.080 SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the storm drain system, or waters of the United States, 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. In the event of a release of non-hazardous materials, said person shall notify the city in person or by phone, email or facsimile.

4.10.090 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

(A) Violations.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. Any person who has violated or continues to violate the provisions of this ordinance, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law. In the event the violation constitutes an immediate danger to public health or public safety, the city 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 city is authorized to seek costs of the abatement in accordance with Wenatchee City Code 4.10.100.

(B) Enforcement

Enforcement action for a first offense shall be taken in accordance with Wenatchee City Code 2.11 Civil Infractions.

(C) Compensatory Action.
In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the city may impose alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, cleanup, or other alternative actions deemed appropriate by the city.

(D) Suspension of MS4 Access.
(1) Emergency Cease and Desist Orders
When the city finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the city may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:
(a) Immediately comply with all ordinance requirements; and
(b) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge. Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the city may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(2) Suspension due to Illicit Discharges in Emergency Situations
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 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 city 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.

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

(4) Criminal Prosecution.

Any person that has violated or continues to violate this ordinance two or more times shall be liable to criminal prosecution to the fullest extent of the law, and shall be guilty of a misdemeanor punishable by a fine of not more than $1000 per violation per day and/or imprisonment for a period of time not to exceed ninety (90) days per violation per day. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

4.10.100 COST OF ABATEMENT OF THE VIOLATION.
The owner of the property or person responsible for the violation will be notified of the cost of abatement, including administrative costs. Payment in full shall be due within thirty (30) days and on the 31st day interest may be applied at a rate of eight percent per annum. After ninety (90) days, if payment in full has not been received, a lien may be filed on the property and foreclosed as provided in Chapter 35.67 RCW. The director may approve a payment plan of equal payments evenly spaced over no more than twelve (12) months.

4.10.110 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 city to seek cumulative remedies. The city may recover all attorneys' fees, court costs and other expenses associated with enforcement of this ordinance, including but not limited to sampling and monitoring expenses.

4.10.120 COMPATIBILITY WITH OTHER REGULATIONS.
This ordinance is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

4.10.130 ULTIMATE RESPONSIBILITY.
The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

SECTION II - SEVERABILITY

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this ordinance.

SECTION III – EFFECTIVE DATE

This ordinance shall take effect from and after its passage thirty (30) days after publication as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF WENATCHEE, at a regular meeting thereof, this 23rd day of July, 2009.

CITY OF WENATCHEE, a Municipal Corporation

By: _____
DENNIS JOHNSON, Mayor

ATTEST:

By: _____
BRENDA GUSKE, Interim City Clerk

APPROVED:

By: _____
STEVE SMITH, City Attorney