

**ORDINANCE NO. 823**

**AN ORDINANCE PROVIDING FOR DEFINITIONS; RELATING TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS; PROVIDING FOR CONTROL OF STORMWATER DISCHARGES; PROVIDING FOR THE PROHIBITION OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR RIGHT OF ENTRY, INSPECTION, MONITORING, AND MAINTENANCE OF THE SYSTEM; PROVIDING FOR EXEMPTIONS; ESTABLISHING PENALTIES AND FINES; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Brooksville is vested with home rule authority pursuant to Article VII, Section 2 of the Constitution of the State of Florida and Chapter 166, Florida Statutes, to enact ordinances;

**WHEREAS**, pursuant to Section 1.03 and Section 2.13 of the Charter of the City of Brooksville, the City has the power to enable it to conduct municipal functions and to adopt ordinances;

**WHEREAS**, the City of Brooksville has been designated by the United States Environmental Protection Agency (US EPA) as a regulated local government under Phase 2 of the National Pollutant Discharge and Elimination System (NPDES) Storm water Permitting Program with the revision to Title 40, Code of Federal Regulations;

**WHEREAS**, this designation requires the City to develop and implement a storm water management program which will reduce storm water pollutant discharges to the Municipal Separate Storm Sewer System (MS4), and to develop and implement an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to reduce pollutants in any storm water runoff to the MS4;

**WHEREAS**, the City desires to implement this ordinance to fully comply with the requirements of the designation as a regulated local government under Phase 2 of the National Pollutant Discharge and Elimination System (NPDES) Storm water Permitting Program;

**WHEREAS**, must protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and Municipal Separate Storm Sewer Systems (Chapter 62-624 F.A.C. pursuant to the authority of section 403.0885 Fla. Stat.) by reducing pollutants in storm water discharges to the maximum extent practicable and by prohibiting non-storm water discharges to the storm drain system;

**WHEREAS**, the City finds that it is in the best interest of the safety, health and welfare of the citizens and residents of the City to maintain a storm water system free from pollutants;

**WHEREAS**, the City of Brooksville intends to regulate the contribution of pollutants to the City's municipal separate storm water system by storm water discharges by any user, prohibit illicit connections and discharges to the city's municipal storm water system, and establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with ordinance.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Brooksville, Florida as follows:

### **SECTION 1. INCORPORATION OF RECITALS.**

The Recitals above are acknowledged as true and correct and are incorporated herein as legislative findings of fact.

### **SECTION 2. APPLICABILITY.**

This ordinance shall apply to all incorporated and annexed areas of the City of Brooksville and to water entering the storm water drainage systems within the boundaries of the city that was generated on any developed or undeveloped lands.

### **SECTION 3. DEFINITIONS.**

The following definitions apply:

- A. *Authorized enforcement agency* means the City acting through the department of public works or designated employees of that department, hereinafter referred to in this ordinance as the "department" who is authorized to enforce the provisions of this ordinance.
- 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 storm water, receiving waters, or storm water 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 any activity subject to NPDES construction permits including construction project activities resulting in land disturbance of one acre or more. Such activities include but are not limited to clearing and grubbing, demolition, grading, excavating, utility installation, building erection, paving and landscaping.
- 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. *Illicit or illegal discharge* means any direct or indirect non-storm water discharge into any part of the storm drainage system located within the city limits, except as exempted in section 11 of this ordinance. Illegal discharges are discharges including, but not limited to, municipal sewage (wastewater), process wastewater, wash water and discharges from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the city, as well as any pollutants and hazardous materials or other substances regulated by the U.S. EPA or the Florida Department of Environmental Protection.
- G. *Illicit or illegal connection* means either: (1) any drain or conveyance, whether on the surface or subsurface, that conveys an illegal discharge into the storm drainage system, or (2) any drain or conveyance connected from a commercial or industrial facility to the storm drainage system whose source has not been thoroughly investigated and documented on plans, maps, or equivalent records and approved in writing by the city.
- H. *Industrial activity* means activities which are conducted on properties designated for Industrial Land Use in accordance with the City's Comprehensive Plan or other final zoning action, and facilities identified by the U.S. EPA as requiring a NPDES storm water permit under the definition of "Storm Water Discharge Associated with Industrial Activity" in Title 40, Section 122.26 of the Code of Federal Regulations or any amendment thereto, and under the provisions of Section 403.0885, Florida Statutes, and applicable rules of the Florida Administrative Code pursuant to the Department's federally-approved NPDES storm water regulatory program.
- I. *Inspection* includes, but is not limited to, any on-site physical examination of all facilities and grounds which may discharge to regulated waters, a review of all records on operation and maintenance of facilities and the results of any monitoring performed for compliance with local, state, and federal regulations, and permit conditions.
- J. *Maximum Extent Practicable* means a case-by-case analysis considering all relevant factors for determining whether programs to reduce the discharge of pollutants have been optimized to the highest degree possible, including management practices, control techniques and system, design and engineering appropriate for the control of pollutants.
- K. *Municipal separate storm sewer system (MS4)* means the entire storm drainage system, as hereinafter defined, located within the city limits that is both publicly and privately owned and that has been designed and is used specifically for the collection and conveyance of storm water, as hereinafter defined.
- L. *National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits* are general, group, and individual storm water discharge permits which regulate facilities

defined in federal NPDES regulations pursuant to Sections 307, 402, 318, or 405 of the Clean Water Act, and pursuant to provisions of Chapter 403, Florida Statutes, and applicable rules of the Florida Administrative Code pursuant to the Department's federally-approved NPDES storm water regulatory program.

- M. *Non-storm water discharge* means any discharge to the storm drain system that is not composed entirely of storm water.
- N. *Owner* as applied to a building or land, shall include any owner, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or of a part of such building or land.
- O. *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.
- P. *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.
- Q. *Premises* mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- R. *Regulated waters* are waters of the United States as defined in 40 CFR §122, as amended, and Waters of the State as defined in Chapter 403, Florida Statutes, as amended, that lie within the City's jurisdiction, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.
- S. *Storm drainage system* means the entire infrastructure within the city limits comprised of many components, both publicly and privately owned, by which storm water is collected and conveyed through the city including, but not limited to, city, county, state and private street and road drainage systems comprised of gutters, curbs, inlets, and storm pipes; storm pumping facilities; drainage retention and detention areas/basins, both publicly and privately owned; natural and human-made or altered drainage swales, ditches, channels, and reservoirs; and all other storm water related storm drainage facilities within the city.
- T. *Storm water* means any surface flow, runoff, and drainage consisting entirely of accumulated water from natural precipitation and resulting from such precipitation.

- U. *Storm water management plan* means a document prepared according to Florida Department of Environmental Protection regulations that describes the best management practices and other required activities to be undertaken by a person or business to first identify sources of pollution and/or contamination at a site and the follow-up actions to be taken by such persons or businesses to eliminate or reduce pollutant discharges into municipal storm water, storm drainage systems, and/or receiving waters to the maximum extent practicable.
  
- V. *Wastewater* means any waters that are discharged from residential, commercial or industrial sanitary facilities including toilets, sinks, showers and wash-down operations.
  
- W. *Watercourse* means either:
  - 1. Any stream, river, creek, slough or other naturally occurring storm water conveyance feature in which water usually flows over the surface of the land, or
  - 2. Any artificial or man-made swale, ditch, channel or other man-made storm water conveyance feature in which water usually flows in a defined bed or bottom.

#### **SECTION 4. MINIMUM STANDARDS.**

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, nor unauthorized discharge of pollutants into Regulated Waters caused by such person. This ordinance shall not create liability on the part of the City, or any agent or employee thereof, for any damages that result from any person's reliance on this ordinance or any administrative decision lawfully made hereunder.

#### **SECTION 5. 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. 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 6. CONTROL OF STORM WATER DISCHARGES.**

- A. *Storm Water Discharges to the MS4 and to Regulated Waters.* Discharges to the City's MS4 shall be controlled so that they do not impair the operation of the City's MS4 or contribute to the failure of the City's MS4 to meet any applicable local, state, or federal law or regulation. Discharges to Regulated Waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or federal law or regulation. Any person responsible for discharges determined by the City to be contributing to the degradation of the City's MS4, Regulated Waters, or Waters of the State of Florida,

either directly or through the a MS4, shall provide corrective measures in accordance with a schedule approved by the City and may be subject to paying fines and damages.

- B. *Storm Water Discharges from Industrial Facilities.* Storm water from areas of Industrial Activity shall be treated and managed on-site using BMPs to protect water quality prior to discharge to the City's MS4, Regulated Waters or Waters of the State. All erosion, pollution, and sediment controls required by any applicable local, state, or federal permit, including elements of a Storm Water Pollution Prevention Plan required under a NPDES permit, shall be properly implemented, installed, operated, and maintained. All storm water discharges from Industrial Facilities shall be of a quality that will not adversely impact existing water quality or beneficial uses of the receiving waters.
- C. *Storm Water Discharges from Construction Activities.* Storm water from sites upon which Construction Activities occur shall be controlled on-site using BMPs to protect water quality to the Maximum Extent Practicable prior to discharge to the City's MS4 or to Regulated Waters. All erosion, pollution, and sediment controls required by any applicable local, state, or federal permit, including elements of a Storm Water Pollution Prevention Plan required under a NPDES permit, shall be properly implemented, installed, operated, and maintained. Storm water discharges from Construction Activities shall be of a quality that will not adversely impact existing water quality or beneficial uses of the receiving waters.
- D. *Control of Pollutant Contributions From Interconnected MS4s.* The discharge of storm water between interconnected state, county or other MS4s shall not impair the quality of the discharge of the receiving MS4. Owners of sections of an interconnected MS4 shall be responsible for the quality of discharge from their portion of the system and shall coordinate with the owners of the downstream segments prior to discharging.

**SECTION 7. BEST MANAGEMENT PRACTICES.** The City will establish and implement best management practices (BMPs) requirements for all activities, operations, and/or facilities within the City which may cause or contribute to pollution or contamination of storm water, the storm drainage system, or waters of the United States. The owner or operator of such activity, operation, or facility 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. 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, Regulated Waters and Waters of the State. Compliance with all terms and conditions of a valid Florida Department of Environmental Protection issued NPDES permit authorizing the discharge of storm water associated with commercial or industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a storm water management plan (SWMP) as necessary for compliance with requirements of any NPDES permit.

## SECTION 8. PROHIBITION OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS

- A. *Prohibition of Illicit Discharge.* Unless expressly exempted by Section 11 of this ordinance, no person shall discharge or cause to be discharged directly or indirectly into the City's MS4, Regulated Waters, or Waters of the State any materials other than storm water, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards. Throwing, draining, or otherwise causing, or permitting others under one's control to throw, drain, or otherwise discharge into the Regulated Waters or Waters of the State any liquids, solids or waters containing any wastewater, pollutants or hazardous materials other than storm water is prohibited.
- B. *Prohibition of Illicit Connection.* Any point source discharge to the City's MS4, Regulated Waters or Waters of the State that is not composed entirely of storm water or specifically permitted through a NPDES permit, is considered an illicit connection and is prohibited. The construction, use, maintenance or continued existence of illicit connections to the City's MS4 is prohibited. Failure of an Industrial Facility or Construction Activity site to notify the City of a connection to the City's MS4 prior to discharging constitutes an illicit connection.
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 article if the person connects a line conveying sanitary sewage to the MS4, or allows such a connection to continue.
  4. Improper connections in violation of this article shall be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the municipal 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.

- C. *Control of Illicit Discharges or Illicit Connections.* 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 illicit discharge or illicit connection to the MS4 or to Regulated Waters from said facility, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. Persons responsible for illicit discharges or illicit connections shall, immediately upon discovery, initiate procedures to cease discharging and provide suitable containment facilities. Such procedures shall include a requirement to obtain approval from the City of a schedule for implementing proposed corrective measures.

## **SECTION 9. REPORTING OF ILLICIT DISCHARGES OR ILLICIT CONNECTIONS.**

Notwithstanding other requirements of applicable 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 the City's MS4, Regulated Waters or Waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

- A. In the event of a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
- B. In the event of a release of non-hazardous materials, said person shall notify the City 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 department within two business days of the phone notice.
- C. If the discharge of prohibited materials emanates from a commercial or industrial facility, the owner or operator of such facility shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrent. Such records shall be retained for at least ten years.
- D. Failure to provide notification of discharges or connections as provided herein is a violation of this ordinance.

## **SECTION 10. INSPECTION, MONITORING, AND MAINTENANCE.**

- A. *Right of Entry - Inspection for Compliance.* The City shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with the requirements this ordinance. City personnel shall be granted access to inspect permitted facilities discharging or reasonably suspected of discharging to the MS4 or Regulated Waters in violation of applicable permits, in order to effectuate this Ordinance and to investigate potential violations of this Ordinance. In the case of non-permitted facilities discharging or reasonably suspected of discharging to the MS4 or Regulated Waters in violation of the requirements of this ordinance or any applicable federal or state statute, rule or

regulation shall be subject to inspection by City personnel for monitoring of the quality of the discharges upon request for access or presentation of an administrative inspection warrant obtained pursuant to state statutory requirements.

1. 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 the City access to the facility.
  2. Facility operators shall allow the department 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 storm water, and the performance of any additional duties as defined by state and federal law.
  3. 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 department and shall not be replaced. The costs of clearing such access shall be borne by the operator.
  4. Unreasonable delays in allowing the City access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the department reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
  5. The City may seek a search warrant from any court of competent jurisdiction if the City has been refused access to any part of the premises from which storm water is discharged, and city can demonstrate probable cause to believe that: (1) there may be a violation of this article; or (2) there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder or to protect the overall public health, safety and welfare of the community.
- B. *Monitoring, Analysis and Reporting to Determine Compliance.* The City may require, by written notice of requirement, that any person engaged in any activity and/or owning or operating any facility that may cause or contribute to storm water pollution, illicit discharges, and/or non-storm water discharges to the City's MS4, Regulated Waters, Waters of the U.S., or Waters of the State to undertake at said person's expense such monitoring and analysis and furnish such reports to the City as deemed necessary to determine compliance with this Ordinance. The City shall have the right to set-up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's storm water discharge. 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 storm water flow quantity and quality shall be calibrated to ensure their accuracy.

- C. *Maintenance of Structural Controls and BMPs.* Structural controls and other BMPs used to reduce or eliminate pollution in storm water discharges shall be operated and maintained at all times by the person owning and/or operating the facility so as to function in accordance with the permitted design or performance criteria of all applicable permits and regulations.

## SECTION 11. EXEMPTIONS.

The following activities shall be exempt from the requirements of this Ordinance:

- A. Discharges from:
1. potable water line flushing
  2. uncontaminated groundwater infiltration
  3. uncontaminated pumped groundwater
  4. discharges from potable water sources
  5. irrigation water
  6. lawn and landscape watering
  7. diverted stream flows
  8. rising ground waters
  9. uncontaminated foundation and footing drains
  10. uncontaminated water from crawl space pumps
  11. air conditioning condensation
  12. uncontaminated non-industrial roof drains
  13. footing drains
  14. building foundation drains;
  15. natural springs
  16. individual residential car washing
  17. car washing done on private property on a single day conducted by a charitable, school related or church related organization;
  18. flows from riparian habitats and wetlands
  19. dechlorinated swimming pool discharges
  20. street maintenance wash water; and flows from fire fighting (except that such flows may be addressed where they are identified as significant sources of pollutants to the City's MS4 or to Regulated Waters.)
- B. Discharges that meet State Water Quality Standards of Chapter 62-302 F.A.C., and any amendments thereto.
- C. Discharges or water flow from firefighting operations or other similar discharges expressly specified in writing by the city engineer as being necessary to protect public health and safety.
- D. Discharges associated with investigatory dye-testing however this activity requires a 24-hours prior written notification to the department prior to the time of the dye test.

- E. Discharges of non-storm water permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), 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.

## **SECTION 12. NOTICE TO CITY OF NPDES PERMITS OR INTENT TO PROCEED WITH DISCHARGE.**

- A. Any person who holds a National Pollutant Discharge Elimination System permit, which authorizes storm water discharge to the City's MS4, shall provide a copy of such storm water discharge permit to the City no later than sixty (60) calendar days after the effective date of this Ordinance or sixty (60) calendar days after the issuance of said storm water discharge permits.
- B. Any person subject to an industrial or construction 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 form acceptable to the City prior to the allowing of discharges to the MS4.
- C. The owner or operator of a facility, including construction activity sites, required to have an NPDES permit to discharge storm water associated with industrial activity shall submit a copy of the notice of intent to the city at the same time the operator submits the original notice of intent to the Florida Department of Environmental Protection. The copy of the notice of intent shall be delivered to the City either in person, by US Postal Service Registered Mail, or by FedEx/UPS registered delivery.
- D. Any person commits a violation of this ordinance if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the notice of intent to do so to the city.

## **SECTION 13. ENFORCEMENT, PENALTIES AND LEGAL PROCEEDINGS.**

- A. *Regulatory Consistency.* This ordinance shall be construed to assure consistency with the requirements of the Clean Water Act and any amendments or supplements thereto, or any applicable implementing regulations.
- B. *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 department 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.

C. *Enforcement.* This Ordinance may be enforced by any method prescribed by law or ordinance. Violations of this ordinance may be punished as described in the City of Brooksville Code of Ordinances, as amended from time to time. Each day any violation of any provision of this ordinance continues shall constitute a separate offense, unless otherwise provided.

1. Any authorized law enforcement officer, code enforcement officer, or City authorized agent has authority to issue notices and citations for violations hereof.
2. The City is authorized to issue cease and desist orders in the form of written official notices sent by registered mail to the person(s) responsible for the violation. Specific activities and operations may be ordered to be ceased based upon the following conditions:
  - a. In a situation that may have a serious effect on the health, safety, or welfare of the public or the environment, including the operation of and quality of storm water in the City's MS4.
  - b. When irreversible or irreparable harm may result, in the reasonable opinion of the City, and immediate cessation of the activity is necessary to protect the public or the environment, including the operation of and quality of storm water in the City's MS4.
  - c. If the person(s) so noticed fails to comply with any such order, the City has the right to take remedial action. The person(s) responsible for the illicit discharge or illicit connection shall reimburse all costs incurred by the City in taking such actions. Such reimbursement may be ordered in any appropriate enforcement proceedings under this ordinance.
3. In addition to the remedies provided herein, the City is authorized to make application in a court of appropriate jurisdiction for an injunction restraining any person from violating, or continuing to violate, any provisions of this Ordinance. The City may also seek entry of a court order requiring restoration and mitigation for any impacted land or waters or request any other appropriate, applicable legal remedy, including reimbursement of court costs.
4. The City may elect any or all of the above remedies concurrently, and the pursuance of one shall not preclude the pursuance of another.

D. *Penalties.* The following penalties, fines and charges may apply:

1. *Warning notice.* When the City finds that any person has violated, or continues to violate, any provision of this ordinance, or any order issued hereunder, the City may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the warning notice in no

way relieve the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this subsection shall limit the authority of the City to take any action, including emergency action or any other enforcement action, without first issuing a warning notice.

2. *Notice of violation.* Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the City may order compliance by written notice of violation to the responsible person.

a. The notice of violation shall contain:

- (1.) The name and address of the alleged violator;
- (2.) The address when available or a description of the building, structure or land upon which the violation is occurring or has occurred;
- (3.) A statement specifying the nature of the violation;
- (4.) A description of the remedial measures necessary to restore compliance with this article and a time schedule for the completion of such remedial action;
- (5.) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6.) A statement that the determination of violation may be appealed to the City by filing a written notice of appeal within five business days of service of notice of violation; and
- (7.) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by the city, or agent retained by the City and the expense thereof shall be charged to the violator.

b. Such notice of violation may require without limitation:

- (1.) The performance of monitoring, analyses, and reporting;
- (2.) The elimination of illicit connections or discharges;
- (3.) That violating discharges, practices, or operations shall cease and desist;
- (4.) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5.) Payment of a fine to cover actual administrative and remediation costs; and
- (6.) The implementation of source control or treatment BMPs.

3. *Compensatory action.* In lieu of enforcement proceedings, penalties, and other remedies authorized by this ordinance, the City may impose upon a violator one or more alternative compensatory actions such as, but not

limited to, storm drain inlet stenciling, attendance at compliance workshops, watercourse and/or drainage retention area cleanup, etc.

4. *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, Regulated Waters, Waters of the State 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. Promptly comply with all requirements of this article; 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, Regulated Waters, Waters of the State 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. The City may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this ordinance. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the City within five business days of receipt of the emergency order. 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.
5. *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, Regulated Waters, Waters of the State 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, Regulated Waters, Waters of the State, or Waters of the United States, or to minimize danger to persons.

6. *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 City will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for reconsideration and hearing. 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.
7. *Sampling and Monitoring Costs.* In addition to any fines which may be imposed pursuant to this Ordinance, persons responsible for a discharge which adversely impacts a receiving water shall be liable for all sampling and analytical costs incurred in monitoring the discharge, any state or federal fines imposed as a result of the discharge and the cost of removing or properly treating the discharge for complete restoration of the quality of all receiving waters.
8. *Civil penalties.* In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within five business days, or such greater period as the City shall deem appropriate, after the City has taken one or more of the actions described above, the City may impose a penalty not to exceed \$1,000.00 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
9. *Criminal prosecution.* To the extent permitted by law, any person that has violated or continues to violate one or more provisions of this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to any applicable criminal penalties. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

### **SECTION 13. PAYMENT OF COSTS OF ABATEMENT OF THE VIOLATION.**

Within fifteen (15) business 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 fifteen (15) business days. If the amount due is not paid within a timely manner as determined by the decision of the City 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. Any person violating any of the provisions of this ordinance shall become liable to the city for costs of abatement of said violations by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the permissible statutory rate shall be due and payable on the costs of abatement and will be assessed on the outstanding balance due the day after the expiration of the protest period.

**SECTION 14. ADMINISTRATIVE RESPONSIBILITY; AUTHORIZED ENFORCEMENT AGENCY.**

The City Manager shall appoint a designated City official to serve as the authorized enforcement representative for the City for this ordinance. Any powers granted or duties imposed under this ordinance may be delegated in writing by the City Manager to individuals or entities acting in the beneficial interest of or in the employ of the City. The City Manager is authorized to promulgate rules, regulations and procedures necessary to administer compliance with and enforcement of this ordinance.

**SECTION 15. APPLICABILITY TO PENDING CONTRACTS AND PERMITS.**

- A. The City recognizes that certain parcel owners and duly licensed contractors have entered or will enter into bona fide contracts for construction activities affected by this ordinance prior to its effective date, without actual or sufficient constructive notice of the potential enactment thereof. Any parcel owner or contractor who files a true copy of such construction contract, together with a notarized affidavit in a form acceptable to the City (swearing under penalty of perjury as to the authenticity and execution date of said construction contract), with the City no later than October 1, 2011 shall be deemed exempted from the requirements of section 6(C) of this ordinance with respect to any construction activities directly related to such contract, provided that a complete building permit application pertaining to said parcel has been accepted for filing by the City on or before September 19, 2011. Any parcel owner or contractor who has filed their construction contract and building permit application with the City under this provision and who has not obtained a building permit issued by the building department during one additional one-hundred-eighty-day period running from the filing of a complete building permit application shall no longer be exempted from the requirements of this ordinance and shall be subject thereto.
- B. The City further recognizes that imposing all of the obligations of this ordinance on construction activities begun prior to or otherwise without sufficient actual or constructive notice of the ordinance requirements would be inequitable. Accordingly, construction activities pursuant to building permits issued prior to September 19, 2011 shall be exempted from section 6(C) of this ordinance.
- C. Nothing in this section shall be construed to exempt any construction activities from any and all other requirements of the City's Code of Ordinances or from any applicable county, state or federal laws, rules or regulations.

**SECTION 16. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 17. CONFLICTS AND REPEALER.**

This Ordinance shall be cumulative of all provisions of the ordinances of the City of Brooksville, Florida, except where provisions of this Ordinance are in direct conflict with the provisions of such ordinance(s), in which event all ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 18. AMENDMENT TO CODE.**

This Ordinance shall be and become a part of the Code of the City of Brooksville, Florida, to amend and supplement Chapter 90 and become part of a new Article III Storm Water Management.

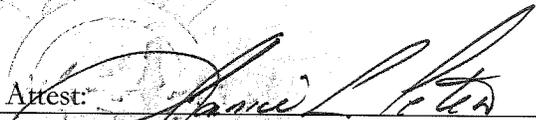
**SECTION 19. CODIFICATION.**

The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Brooksville, Florida* and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections 15, 16, 17, 18, 19, and 20 shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

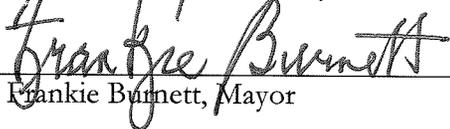
**SECTION 20. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon its adoption.

Attest:

  
Janice Peters, City Clerk

**CITY OF BROOKSIVLLE, FLORIDA**

By:   
Frankie Burnett, Mayor

PASSED on First Reading August 15, 2011

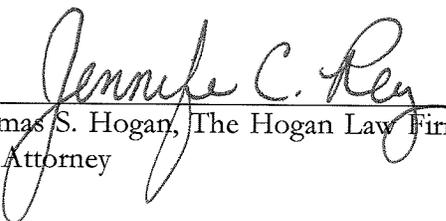
NOTICE Published on September 9, 2011

PASSED on Second & Final Reading September 19, 2011

Approved as to form for the reliance of the City of Brooksville only:

VOTE OF COUNCIL:

|            |               |
|------------|---------------|
| Bernardini | <u>Absent</u> |
| Bradburn   | <u>AYE</u>    |
| Burnett    | <u>AYE</u>    |
| Hohn       | <u>AYE</u>    |
| Johnston   | <u>AYE</u>    |

  
Thomas S. Hogan, The Hogan Law Firm, LLC,  
City Attorney