

**ORDINANCE NO. 2532**

**AN ORDINANCE DESCRIBING POLICIES TO PREVENT ILLICIT DISCHARGE TO SURFACE WATERS AND/OR THE STORMWATER COLLECTION SYSTEM OF THE CITY OF GARDNER, KANSAS; AMENDING TITLE 14 OF THE MUNICIPAL CODE OF THE CITY OF GARDNER, KANSAS 2008 EDITION UNDER THE PROVISIONS OF K.S.A 12-3009 THROUGH 12-3012 AND K.S.A. 12-3301 AND 12-3302.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS;

**SECTION ONE:** That Title 14 of the Gardner Municipal Code, Floodplain and Stormwater Management, is hereby amended to add the following:

CHAPTER 14.20  
ILLICIT DISCHARGES

**Sections:**

14.20.010	Purpose
14.20.020	Definitions
14.20.030	General Provisions
14.20.040	Specific Prohibitions
14.20.050	Inspection and Detection Program
14.20.060	Release Reporting and Cleanup
14.20.070	Enforcement

**14.20.010 Purpose**

The purpose of this Chapter is to prevent the discharge of pollutants from land and activities within the City into the municipal separate storm sewer system (MS4) and/or into surface waters:

- (a) The Governing Body of the City hereby finds that this ordinance will promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.
- (b) Further, the Governing Body of the City hereby finds that a reasonable establishment of restrictions and regulations on activities within the City is necessary to eliminate or minimize the discharges of pollutants, to protect the health and safety of citizens, to preserve economic and ecological value

of existing water resources within the City and within downstream communities, and to comply with the provisions of the City's responsibilities under the Clean Water Act and the NPDES program.

#### **14.20.020 Definitions**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the same meaning they have in common usage and to give these regulations their most reasonable application.

"Best Management Practices" (BMP) means physical facilities, construction activities, maintenance procedures, and other management practices used to control erosion and sediment on a project and prevent or reduce the pollution of surface waters or the City's MS4.

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

"City" means the City of Gardner, Kansas.

"Director" means the Director of Public Works for the City of Gardner, or the Director's authorized representative.

"Discharge" means the addition or introduction, directly or indirectly, of any pollutant, water, stormwater, or any other substance into the MS4 or surface waters.

"Domestic sewage" means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from industrial waste.

"Fertilizer" means a substance or compound that contains a plant nutrient element in a form available to plants and is used primarily for its plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

"Hazardous household waste (HHW)" means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261 or K.A.R 28-29-23b.

"Hazardous substance" means any substance listed in Table 302.4 of 40 CFR Part 302.

"Hazardous waste" means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

"Industrial waste" means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

"Municipal Separate Storm Sewer System" (MS4) means the system of conveyances, owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

"National Pollutant Discharge Elimination System" (NPDES) means the Environmental Protection Agency (EPA) program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the federal Clean Water Act.

"NPDES Permit" means a permit issued by the EPA or the state of Kansas that authorizes the discharge of stormwater to waters of the United States.

"Oil" means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

"Person" means any individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.

"Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

"Petroleum Product" means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle, boat or aircraft including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil and diesel fuel.

"Pollutant" means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of the waters including changes in temperature, taste, odor, turbidity, or color of the water. Such substance or material may include but is not limited to, dredged spoil, spoil waste, incinerator residue, sewage, pet and livestock waste, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, oil and petroleum products, used motor oil, anti-freeze, litter, pesticides, and industrial, municipal, and agricultural waste discharged into water.

"Property Owner" shall mean the named property owner as indicated by the records of the Johnson County Kansas Records and Tax Administration;

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 and/or surface waters.

"Sanitary sewer" means the system of pipes, conduits, and other conveyances which carry industrial wastewater and domestic wastewater from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a wastewater treatment plant and to which stormwater, surface water, and groundwater are not intentionally admitted.

"Septic tank waste" means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

"Sewage" means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

"Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial establishments, industrial facilities, and institutions, whether treated or untreated.

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Surface waters" means any body of water classified as "surface waters" by the state of Kansas, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs, oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as "waters of the United States".

"Waste" means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under the State of Kansas. This includes the Federal definition of solid waste found at 40 CFR 257.2.

"Water quality standard" means the law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality

criteria that are necessary to protect the use or uses of that particular water body, and an anti-degradation statement.

#### **14.20.030 General Prohibitions**

- A. No Person shall release or cause to be released into the MS4, or into any surface water within the City, any discharge that is not composed entirely of stormwater that is free of pollutants, except as allowed in subsection B.
  
- B. Unless identified by the City or KDHE as a significant source of pollutants to surface water, the following non-stormwater discharges are deemed acceptable and not a violation of this section:
  - 1. Potable water line flushing;
  - 2. Diverted stream flow;
  - 3. Rising groundwater;
  - 4. Uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers;
  - 5. Uncontaminated pumped groundwater;
  - 6. Contaminated groundwater if authorized by KDHE and approved by the City;
  - 7. Discharges from potable water sources;
  - 8. Foundation drains;
  - 9. Air conditioning condensate;
  - 10. Irrigation waters;
  - 11. Springs;
  - 12. Water from crawl space pumps;
  - 13. Footing drains;
  - 14. Individual residential motor vehicle washing;
  - 15. Flows from riparian habitats and wetlands;
  - 16. De-chlorinated swimming pool discharges excluding filter backwash;
  - 17. Street wash waters (excluding street sweepings which have been removed from the street);
  - 18. Discharges or flows from emergency firefighting activities;
  - 19. Heat pump discharge waters (residential only);
  - 20. Treated wastewater or other discharges meeting requirements of a NPDES permit;
  - 21. Other discharges determined not to be a significant source of pollutants to waters of the state, a public health hazard or a nuisance; and
  - 22. Discharges specified in writing by the Director as being necessary to protect public health and safety.
  
- C. Notwithstanding the provisions of subsection B of this section, any discharge shall be prohibited by this section if the discharge in question has been determined by the Director to be a source of pollutants to the MS4 or to surface waters, written notice of

such determination has been provided to the property owner or person responsible for such discharges, and the discharge has occurred more than ten days beyond such notice.

#### **14.20.040 Specific Prohibitions**

The specific prohibitions and requirements in this section are not inclusive of all discharges prohibited, but are provided to address specific discharges that are frequently found or are known to occur.

A. No person shall release or allow to be released any of the following substances into the MS4:

1. Any new or used petroleum product or oil.
2. Any industrial waste.
3. Any hazardous substance or hazardous waste, including household hazardous waste.
4. Any domestic sewage or septic tank waste, grease trap or grease interceptor waste, holding tank waste, or grit trap waste.
5. Any garbage, rubbish or other waste.
6. Any new or used paints, including latex-based paints, oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products.
7. Any yard wastes which have been moved or gathered by a person.
8. Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial motor vehicle wash facility; aircraft wash facility, from any vehicle washing, cleaning, or maintenance at any new or used motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment.
9. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant based cleaner.
10. Any wastewater from commercial floor, rug, or carpet cleaning.
11. Any wastewater from the wash-down or other cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all such materials have been previously removed.
12. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler.
13. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material.
14. Any runoff, wash-down water or waste from any pet containment area, kennel, or any pet wastes generally.

15. Any filter backwash from a swimming pool or fountain, except that nothing in these regulations shall be construed as to require the alteration of the filter discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable state, federal, and local regulations at the time of construction.
  16. Any swimming pool, fountain or spa water containing a harmful level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the water or during cleaning of the facility.
  17. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or surface waters.
  18. Any contaminated runoff from a vehicle wrecking or storage yard.
  19. Any substance or material that will damage, block, or clog the MS4.
  20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state.
  21. Any other discharge that causes or contributes to causing the City to violate a state water quality standard, the City's NPDES stormwater permit, or any state-issued discharge permit for discharges from its MS4.
- B. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures.
- C. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4. No property owner shall allow such a connection to continue in use on their property.
- D. No person shall use pesticides, herbicides or fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides and fertilizers shall be stored transported and disposed of in a manner to prevent release to the MS4.
- E. No person shall tamper with, destroy, vandalize, or render inoperable any BMPs which have been installed for the purpose of eliminating or minimizing pollutant discharges, nor shall any person fail to install or fail to properly maintain any BMPs which have been required by the City or by other local, state, or federal jurisdictions.

#### **14.20.050 Inspection and Detection Program**

The Director is authorized to develop and implement a plan to actively detect and eliminate prohibited discharges and connections to the MS4 or surface waters within the City. Such plan may include, but is not limited to, periodic and random inspections of facilities and businesses, particularly those most associated with potentially prohibited discharges; visual surveys of exterior practices; inspection, sampling and analyses of discharges from outfalls of the MS4, particularly during dry weather periods; manhole and pipe inspections to trace

discharges through the system to point of origin; education on pollution prevention; and receipt of complaints and information from the public regarding known or suspected discharges.

#### **14.20.060 Release Reporting and Cleanup**

- A. Any person responsible for the release of any prohibited material that may flow, leach, enter, or otherwise be introduced into the MS4 or surface waters shall take all necessary steps to ensure the containment and cleanup of such release.
- B. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911).
- C. In the event of a release of non-hazardous materials, said person shall notify the Director 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 Director within three (3) business days of the phone notice.

#### **14.20.070 Enforcement; Abatement**

- A. **Generally.** The Director or his or her appointed representative shall be designated as the public officer charged with the administration and enforcement of these Regulations. The Director shall authorize the investigation of violations of these Regulations.
- B. **Violations, Enforcement, Notice.**
  - 1. **Complaints Regarding Violations.** Whenever a violation of this Article occurs or is alleged to have occurred, any person may file a complaint of such alleged violation with the Director stating fully the facts or grounds upon which the complaint is based. The Director shall promptly record and investigate such complaint and take appropriate action as provided by this Article.
  - 2. **Enforcement Procedure.** Whenever the Director finds that any provisions of this Article are being violated, the Director shall promptly notify in writing the person(s) responsible for such violations, indicating in such notice the nature of the violation and the actions, if any, ordered to correct it. The Director shall in all cases take such actions or issue such orders or directives as are authorized by this Article to insure compliance with or to prevent violations of its provisions.
  - 3. **Actions, Orders and Directives.** The Director shall have the authority to establish priorities for the abatement of violations and implement appropriate procedures or remedies as provided herein to abate violations. The Director shall issue appropriate



written orders or directives to any person deemed to be responsible for a violation of this Article. A failure to promptly comply with such lawful orders or directives shall be deemed a violation of this Article, punishable as provided herein.

4. Remedies. The Director shall have the following remedies, without limitations, available:
  - a. No Action. After careful consideration of the facts and circumstances, the Director may authorize no action be taken on a complaint of an alleged violation.
  - b. Informal Contact. The Director shall have the authority to effectuate abatement through informal meetings or conversations.
  - c. Agreement to Abate. The Director may enter into an agreement with a violator whereby the violator agrees to abate the violation within a certain time frame based upon certain conditions within the agreement. This time frame shall not exceed a period of 1 month from date of execution of the abatement agreement.
  - d. Notice and Order. The Director may issue a notice and order to the violator ordering the cessation of illegal condition within a specified period of time based upon the nature of the violation following receipt of notice as outlined in the Notification Procedures.
  - e. Municipal Court Action. The Director may pursue action in Municipal Court.
  - f. Other Action. The Director may take any other action permitted by law.
5. Notification Procedures. Whenever the Director determines to issue a notice as specified above, written notice of such violation shall be sent by certified mail, return receipt requested, to the person(s) responsible for such violation. Such person(s) may include the owner and the occupant of the premises. The letter shall direct that ten (10) days shall be granted for the abatement of said violation following the mailing of the written notice. If after such time, such violation continues or reoccurs, the City may pursue action in Municipal Court. It should be noted that, if a violation occurs, notification is sent, and said violation is abated but occurs again at a later date, the Director is not required to notify said violator a second time of the same violation.

C. **Right of Entry.** Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the Director has reasonable cause to believe that there exists in any building or upon any premises any violation, the Director or an authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any necessary sampling or tests or to perform any duty imposed upon the Director by this Article, provided that if such building or premises be occupied, the Director shall first present proper credentials and request entry; and if such building or premises be unoccupied, the Director shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Director or his

authorized representative shall have recourse to every remedy provided by law to secure entry.

**D. Administration of Provisions.** The provisions of this Ordinance shall be administered and enforced by the Director, defined to include the Director, or his or her appointed representative and/or any other authorized City official or his or her appointed representative.

**E. Penalties and Remedies.**

1. Remedies. In addition to other remedies, the City may institute any appropriate action or proceedings to halt or prevent the violation of this Article.
2. Abatement. In addition to other remedies, the Director may order City representatives to terminate any illicit connection to the MS4. Any expense related to such abatement shall be fully reimbursed by the property owner. Such reimbursement may be enforced by court order in any court of competent jurisdiction or may be enforced under the City's provisions regarding abatement of nuisances.

Additionally, if a property owner is not available, not able or willing to correct a violation, then, in the case of an emergency, the Director may order City representatives to enter private property to take any and all measures necessary to abate the violation. If the violation does not present an immediate hazard, then the Director shall follow those procedures for the abatement of nuisances. In any event, the owner and/or occupant of the property shall reimburse the City for the full amount of the cost of the abatement and such reimbursement may be enforced by court order in any court of competent jurisdiction or may be enforced under the City's provisions regarding the abatement of nuisances.

Additionally, if it is determined that a violation of this Code exists, then the officer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in Title 8 of the Municipal Code of the City of Gardner.

3. Penalties, Fines, Imprisonment. The owner, occupant or general agent of a building or premises where a violation of any provision of this Chapter has been committed or shall exist, or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist, shall be guilty of a misdemeanor punishable by a fine of not less than \$250.00 and not more than \$1,500.00 for each and every day that such violation continues, or by imprisonment for 10 days for each and every day such violation shall continue, but in no case to exceed 3 months of imprisonment, or by both such fine and imprisonment in the discretion of the Court. Each separate day on which a violation is committed or continues shall constitute a separate offense.

4. Performance Bonds. Where necessary for the reasonable implementation of this Article, the Director may, by written notice, order any owner of a construction site or subdivision development to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance with this Article. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such a performance bond has been filed.

**SECTION TWO:**

SEVERABILITY. If any part or parts of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining. The Governing Body hereby declares that it would have passed the remaining parts of this Ordinance if it had known that such part or parts thereof would be declared invalid.

**SECTION THREE:**

SAVINGS CLAUSE. Neither the adoption of this Ordinance, nor the future repeal or amendment of any section or part or portion thereof, shall in any manner affect the prosecution for violation of this Ordinance, nor be construed as a waiver of any license, fee or penalty at said effective date and unpaid under either Chapter or Ordinance, nor be construed as affecting any of the provisions of these Chapters relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any Chapter, and all rights and obligations thereunder shall continue in full force and effect.

**SECTION FOUR:**

EFFECTIVE DATE. This Ordinance shall take effect and be in full force and effect on and after November 7, 2016.

PASSED by the Governing Body this 7<sup>th</sup> day of November, 2016.

APPROVED by the Mayor, this 7<sup>th</sup> day of November, 2016.

CITY OF GARDNER, KANSAS

(SEAL)

/s/ Chris Morrow  
Chris Morrow, Mayor

Attest:

/s/ Jeanne Koontz  
Jeanne Koontz, City Clerk

Approved as to form:

/s/ Ryan B. Denk  
Ryan B. Denk, City Attorney