

AN ORDINANCE AMENDING CHAPTER 23 OF THE CODE OF ORDINANCES TO REGULATE ILLICIT DISCHARGES AND ILLICIT CONNECTIONS TO THE STORMWATER DRAINAGE SYSTEM (2016-11-14/O-1)

BE IT ORDAINED by the Council of the Town of Chapel Hill as follows:

Section 1. A new Article V., Chapter 23 is hereby added to the Town Code to read as follows:

“ARTICLE V. ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE)

Sec. 23-78. - Title.

This article shall be known and may be cited as the Town of Chapel Hill’s “Illicit Discharge Ordinance.”

Sec. 23-79. – Purpose/Intent.

The purpose of this article is to provide for the health, safety and general welfare of the citizens of the Town of Chapel Hill, through the regulation of non-stormwater discharges to the stormwater drainage system to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the stormwater drainage system, including the municipal separate storm sewer system (MS4) and waters of the State, in order to comply with the requirements set forth in the Town’s National Pollutant Discharge Elimination System (NPDES) Phase II permit.

The intent of this article is:

- (1) To regulate the contribution of pollutants to the stormwater drainage system, including the MS4 and waters of the State;
- (2) To prohibit illicit discharges and connections to the stormwater drainage system;
- (3) To prevent improper disposal of materials that degrade water quality; and
- (4) To establish legal authority to carry out all inspection, detection, monitoring procedures and enforcement necessary to ensure compliance with this ordinance.

Sec. 23-80. - Definitions.

For the purposes of this article, the following words, terms, and phrases shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

Authorized enforcement staff means any Town employee designated by the Town Manager to enforce this article.

Best management practices (BMPs) means controls, including both nonstructural and structural measures, which are designed to reduce the flow of stormwater runoff, or to reduce or eliminate the amount or concentration of pollutants that enter stormwater and/or the stormwater drainage system. Examples of nonstructural BMPs include inspections for leaks and spills, general maintenance and good housekeeping practices to prevent pollution, education, and on-site maintenance of a spill cleanup kit. Examples of structural BMPs are facilities such as roofed sheds or elevated storage areas to keep precipitation or runoff from reaching raw material storage areas, and stormwater control measures (SCMs), such as bioretention cells, and retention and detention ponds.

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

Discharge means to put, place, dump, spill, pump, pour, or otherwise deposit any solid or liquid material.

Discharger means any person or entity engaged in activities or operations or owning facilities, which will or may result in pollutants entering stormwater, the stormwater drainage system, or receiving waters; and the owners of real property on which such activities, operations or facilities are located; provided, however, that a local government or public authority is not a discharger as to activities conducted by others in public rights-of-way.

Facility means any building, structure, installation, or activity, including, but not limited to, commercial, industrial and residential land uses, and any other source, including motor vehicles and rolling stock, which may directly or indirectly contribute, cause or permit the contribution of any discharge, illicit or otherwise, to the stormwater drainage system.

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.

Illicit connections. An illicit connection is defined as either of the following:

- (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the stormwater drainage system, including but not limited to conveyances which allow any non-stormwater discharge including sewage, wastewater, and wash water to enter the stormwater drainage system and any connections to the stormwater drainage system from indoor drains and sinks, elevator sump pumps, or interior parking area drains, regardless of whether said drain has been previously allowed, permitted, or approved by the Town or other governmental entity.
- (2) Any drain, pipe, ditch or other conveyance connected to the stormwater drainage system which has not been documented in construction or site plans, a building permit, maps, or other equivalent records and approved by the Town or other governmental entity.

Illicit discharge means any direct or indirect non-stormwater discharge or contaminated stormwater discharge to the stormwater drainage system, including the MS4 and waters of the State, except as exempted in section 23-84 of this article.

Industrial activity means activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

Municipal separate storm sewer system (MS4) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures or storm drains) within the Town's jurisdictional area. Additionally, an MS4 is:

- (1) Owned or operated by a city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, that discharges to waters of the United States or waters of the State.
- (2) Designed or used for collecting or conveying stormwater;
- (3) Not a combined sewer; and
- (4) Not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit shall mean a permit issued by the United States Environmental Protection Agency (USEPA) (or by a state under authority delegated pursuant to 33 U.S.C. § 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.

Non-stormwater discharge means any discharge to, or pollution of, the stormwater drainage system that is composed not entirely from a form of natural precipitation.

Person means any individual or group of individuals, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes and solvents; gasoline and other petroleum fuels; oil and other automotive fluids; detergents; food waste, including cooking oil and grease; non-hazardous liquids and solid wastes and yard wastes; pool filter backwash; refuse, rubbish, garbage, litter, or other discarded or abandoned objects; floatables; insecticides, fungicides, herbicides, and other pesticides; fertilizers; soot, slag, and ash; hazardous substances and wastes; sewage, animal wastes, fecal coliform, *Escheria coli*, and pathogens; dissolved and particulate metals; hot water; wastes and residues that result from constructing a building or structure (including, but not limited to, sediments, slurries, and concrete rinsates); eroded soils, sediments, and particulate matter; and noxious or offensive matter of any kind.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved.

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

Stormwater Control Measure (SCM) means a permanent structural device that is designed, constructed, and maintained to:

- (1) remove pollutants from stormwater runoff by promoting settling or filtration; and
- (2) mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

Stormwater drainage system means the system of natural and constructed conveyances for collecting and transporting stormwater, whether publicly or privately owned. It includes lakes, ponds, rivers, streams, connected wetlands, and other waterbodies; open ditches, catch basins and other inlets, pipes, sewers, drains, culverts, and stormwater control measures (SCMs) that provide partial treatment by passive means, such as wet detention ponds, detention basins, and stormwater wetlands. The MS4 and waters of the State

within the Town’s municipal and extra-territorial jurisdiction (ETJ) are components included within the stormwater drainage system, among other components.

Stormwater Management Division means the town agency created and/or designated to manage the Town's stormwater management program pursuant to G.S. 160A-311(10).

Stormwater manager means the Town employee, or his/her designee, authorized by the Town Manager to implement responsibilities stated in this article.

Town means the Town of Chapel Hill, a North Carolina municipal corporation.

Town Manager means the town manager as appointed by the Town Council of the Town of Chapel Hill, or his/her designee.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility after use. Examples include water used for washing, flushing, cleaning, or in a manufacturing process.

Watercourse means any channel, ditch, gully, swale or stream, which sole purpose is to convey the flow of water.

Waters of the State means all creeks, streams, rivers, brooks, lakes, ponds, swamps, marshes, water courses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of North Carolina or any portion thereof.

Sec. 23-81. - Acronyms.

The following acronyms when used in this article shall have the designated meanings:

BMP	Best Management Practice
CFR	Code of Federal Regulations
ETJ	Extraterritorial Jurisdiction
G.S.	North Carolina General Statutes
IDDE	Illicit Discharge Detection and Elimination
MS4	Municipal Separate Storm Sewer System
NCDWR	North Carolina Division of Water Resources
NPDES	National Pollutant Discharge Elimination System

SCM	Stormwater Control Measure
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency

Sec. 23-82. – Jurisdiction, applicability and administration.

The illicit discharge detection and elimination (IDDE) ordinance, (hereinafter "this article"), shall apply to all facilities and dischargers within the Town's corporate limits and the Town's ETJ. All persons or dischargers whose facility is subject to this ordinance, regardless of whether the person's or discharger's facility is managed or operated by another person, shall comply with this article as well as any permits, enforcement actions or orders issued hereunder.

The Stormwater Management Division shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed on the Town Manager may be delegated to the stormwater manager and to other Stormwater Management Division personnel or other designated personnel as may be necessary.

Nothing in this article shall be interpreted to impose an obligation on the Town to construct, maintain, repair or operate a stormwater drainage system, or any part thereof, located on another person's property.

Sec. 23-83. - Abrogation.

This article is not intended to repeal, abrogate, annul, impair or interfere with any existing agreements, covenants, rules, regulations or permits previously adopted or issued. However, if any provisions or requirements of this article conflict with any existing regulations or ordinances, the more restrictive provisions shall apply.

Sec. 23-84. – Prohibited Discharges and Connections.

(a) *Illicit discharges*

- (1) No person shall cause or allow the discharge, emission, disposal, pouring or pumping directly or indirectly to the stormwater drainage system, including the MS4 or waters of the State, or upon the land in a manner and amount that the substance is likely to reach the stormwater drainage, any liquid, solid, gas or other substance, other than stormwater.
- (2) Non-stormwater discharges associated with the following activities are allowed provided that the discharges do not significantly impact water quality or cause or contribute to a violation of applicable water quality standards and are discharged in accordance with the best management practices (BMPs) in the Town's Design Manual:
 - a. Water line flushing.
 - b. Landscape irrigation.
 - c. Diverted stream flows.
 - d. Rising groundwaters.

- e. Uncontaminated groundwater infiltration.
- f. Uncontaminated pumped groundwater.
- g. Discharges from uncontaminated potable water sources.
- h. Foundation or footing drains.
- i. Air conditioning condensation (commercial/residential only)
- j. Irrigation waters
- k. Springs.
- l. Water from crawl space pumps.
- m. Individual residential car washing.
- n. Flows from riparian habitats and wetlands.
- o. Discharge of street wash waters.
- p. Firefighting activities.
- q. Discharges from *dechlorinated* swimming pools. These discharges do not include pool filter backwash discharge or saltwater pool discharge, which are prohibited.
- r. Discharges associated with emergency removal and treatment activities for hazardous materials if authorized by the federal, state or local government on-scene coordinator.
- s. Maintenance activities of the stormwater drainage system requiring flushing or cleaning with potable water.
- t. Illicit discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the USEPA, or NCDWR, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations.
- u. Discharges specified in writing by the Town Manager as being necessary to protect public health and safety or discharges that have been filtered through an approved pretreatment system that consistently demonstrate no discharge of pollutants.

(3) If any of the above-listed exceptions to the discharge prohibition are found to be polluted and may therefore negatively impact the quality of the waters of the State, the polluted illicit discharge exception shall be deemed unlawful and shall not be discharged into the stormwater drainage system. These conditions shall be determined by the Town Manager. These discharges, though listed as an exception above, shall be regulated as an illicit connection or discharge.

(b) *Illicit connections.*

- (1) The construction, use, maintenance or continued existence of illicit connections is prohibited. Except as provided in the following subsection, 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.
- (2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection immediately or within the time specified by the notice of violation or an approved compliance schedule.

Sec. 23-85. - Requirement to prevent, control and reduce stormwater pollutants by the use of best management practices.

All dischargers shall provide, at their own expense, reasonable protection from illicit discharges into the stormwater drainage system through the use of structural and non-structural BMPs. The Town Manager or authorized enforcement staff may require BMPs for any facility which may cause or contribute to an illicit discharge to the stormwater drainage system, including the MS4 or waters of the State.

Stormwater discharge associated with an industrial activity, to the extent practicable, and which is authorized and in conformity with all terms and conditions of a valid NPDES permit, shall be deemed in compliance with the provisions of this section.

Sec. 23-86. - Spill Response and Notification.

- (a) *Spill response.* Notwithstanding other requirements of law, as soon as any discharger has information of any known or suspected illicit discharge into the stormwater drainage system, including the MS4 or waters of the State, the discharger shall take all necessary steps to minimize and contain the spill. Additionally, the discharger is responsible for taking appropriate and timely action to clean up spilled material. Appropriate action may include contracting with a third party that is licensed by the state to handle and dispose of the spilled material.

- (b) *Notification.* In the event of a known or suspected illicit discharge of hazardous materials into the stormwater drainage system, the discharger shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911). In the event of a non-hazardous illicit discharge, the discharger shall notify the Stormwater Management Division in person, by phone (919-969-RAIN), or by email (stormwater@townofchapelhill.org) as soon as possible or no later than 24 hours from discovery of the spill. If an illicit discharge emanates from a commercial or industrial land use, the discharger shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Sec. 23-87. – Emergencies.

If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, or damage to the stormwater drainage system, including the MS4 and waters of the State, then the Town Manager may order the immediate cessation of the violation without utilizing the procedures described. Any person ordered to cease such violation or to remedy such violation shall do so immediately. The Town Manager may seek immediate enforcement through any remedy or penalty authorized in this article or other applicable law, including steps as deemed necessary to remove, abate or remedy the actual or threatened discharge.

The discharger shall reimburse the Town the full cost of such removal, abatement or remedy according to the terms of subsection 23-89(c). The discharger may appeal the decision pursuant to section 23-90, but discharger may not resume discharge or reconnection to the stormwater drainage system without the prior written approval of the Town Manager.

Sec. 23-88. - Right of entry/access to facilities.

- (a) The Town Manager or authorized enforcement staff shall be permitted to enter and inspect facilities as often as may be necessary to determine compliance with this article.

- (b) Dischargers shall allow the Town Manager or authorized enforcement staff immediate access to all parts of the facility for the purposes of inspection, sampling and examining all discharges into the stormwater drainage system and for copying records that must be kept under the conditions of an NPDES permit or to enforce compliance with any additional duties mandated by this article, state or federal law.

- (c) The Town Manager shall have the right to install or to require the discharger to install on any facility such devices as are necessary, in the opinion of the Town Manager, to monitor and/or sample the facility's discharges into the stormwater drainage system, including the MS4 or waters of the State. The discharger shall maintain such sampling and monitoring equipment in a safe and proper operating

condition at the discharger's expense. All devices used to measure the flow and quality of discharges to the stormwater drainage system shall be calibrated to ensure their accuracy.

- (d) Upon the Town Manager's or authorized enforcement staff's request, a discharger shall immediately remove any temporary or permanent obstruction to the safe and easy access to a facility. The obstruction shall not be replaced. The discharger shall bear the costs of clearing the access. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Town Manager and authorized enforcement staff.
- (e) If the Town Manager or authorized enforcement staff has been refused access to any part of a facility and if the Town Manager is able to demonstrate probable cause to believe that the portion of the facility to which access has been refused contains a discharge into the stormwater drainage system, including the MS4 or waters of the State, and that there is a need to inspect and/or sample the discharge as part of a routine sampling and inspection program or probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such a search or inspection of that property, then the stormwater manager may seek issuance of an administrative search warrant pursuant to G.S. 15-27.2.

Sec. 23-89. – Violations and Enforcement.

(a) *General*

- (1) *Violation.* Failure to comply with the provisions of this article or the guidelines, conditions, plans, permits, approvals, or other similar authorizations issued pursuant to this article is a violation of this article, unlawful, and subject to all remedies authorized under law, including, but not limited to, those described in this article.
 - (2) *Separate offense.* Each day of a violation shall constitute a separate violation or offense.
 - (3) *Responsible persons.* Responsible persons are all persons or dischargers who participate in, assist, direct, create, cause, or maintain a condition that constitutes a violation of this article, or fails to take appropriate action so that a violation of this article results or persists. All persons or dischargers are considered under the definitions of this article to be responsible for a violation shall be considered responsible persons. Responsible persons include, but are not limited to, owners of property where a violation occurs; persons in the design or construction field who have created, directed, or assisted in the design or construction of an improvement or feature in violation of the requirements of this article; and persons who have control over the use or maintenance of property or the activities occurring on property where a violation has occurred. Multiple violations may be charged against multiple individuals or entities for an action that violates this article.
 - (4) *Public nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the responsible person's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.
- (b) *Notice of violation.* Whenever the Town Manager finds that a discharger has violated this article, the Town Manager shall notify the discharger, in writing by certified mail, personal service, or posting of said notice at the facility where the alleged violation occurred. The notice shall specify the violation

and actions needed to be taken to comply. The notice may also indicate a requirement for the discharger to perform any or all of the following:

- (1) Cease and desist all violating discharges, practices or operations;
- (2) Eliminate illicit connections or discharges;
- (3) Abate or remedy the stormwater pollution or contamination hazards and restore any affected property;
- (4) Install equipment or perform testing necessary to monitor, analyze and report on the condition of the discharger's stormwater drainage system;
- (5) Implement source control or treatment BMPs; and/or
- (6) Pay a civil penalty.

If abatement of a violation and/or restoration of affected property are required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the discharger fail to remediate or restore within the established deadline, authorized enforcement staff shall enter upon the facility and are authorized to take any and all measures necessary to abate the violation and/or restore the facility and the expense thereof shall be charged to the discharger and collected pursuant to subsection 23-89(c) below. Refusal to accept the notice shall not relieve the discharger of the obligations set forth herein.

(c) *Remedies*

- (1) *Recovery of costs and fines.* As authorized by G.S. 160A-193, the responsible person(s) shall be liable to the Town of Chapel Hill for the civil penalty, all costs incurred by the Town while enforcing this article, including, but not limited to, abatement costs, remedying the damage caused by the illicit discharge, restoring the facility, sampling, cleanup, the Town of Chapel Hill's costs, costs of court, and costs of litigation, to include reasonable attorney's fees. Within 30 days after the Town of Chapel Hill has completed its abatement of the violation, restoration of the facility and/or its investigation and inspection, the violating discharger or person will be notified of the Town of Chapel Hill's total costs and the civil penalty, if any. The total amount due shall be paid within 30 days of the date of notice. If the amount due is not paid within 30 days, the charges shall constitute a lien on the land or premises where the nuisance and/or violation occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes. The total amount due is also a lien on any other real property owned by the discharger within the Town limits or within one mile of the Town limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. The discharger may avoid the lien on any other real property owned by the discharger within the Town limits or within one mile of the Town limits only if the discharger can show that the actual or threatened discharge was created solely by another person. In the event that the discharger is able to pass the liability onto another person, the other person shall be liable to the Town pursuant to this section.
- (2) *Mandatory security for compliance.* The Town Manager may require a responsible person to post a bond or provide other financial security of a type, form, and amount as specified in the discretion of the director, to assure performance of any actions required to bring a property into compliance with this article.
- (3) *Withholding of inspections, permits, certificate of occupancy or other approvals.* Building inspections; permits for development or other improvements; requests for plan approval for

zoning, subdivision, other development or construction; and certificates of occupancy may be withheld or conditioned upon compliance with this article until a responsible person with ownership or management of the property for which permits or approvals are sought has fully complied with this article and all actions taken pursuant to this article.

- (4) *Compensatory action.* In lieu of a civil penalty for first time offenders, the Town Manager may impose upon a violator alternative compensatory actions, such as storm drain stenciling, creek cleanup, etc.
- (5) *Remedies not limited.* The remedies provided herein, whether civil, criminal, or administrative, are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under the law; and may be exercised in any order.
- (6) *Remedies not exclusive.* The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town to seek cumulative remedies.

(d) *Civil Penalties*

- (1) Any person who violates or fails to act in accordance with any of the provisions of this article or rules or orders adopted or issued pursuant to this article shall be subject to a civil penalty. A civil penalty for a violation may be assessed in an amount not to exceed ten thousand dollars (\$10,000.00) per day. If any violation for which a penalty may be assessed is continuous, a civil penalty may be assessed for each day of the violation in an amount not to exceed twenty-five thousand dollars (\$25,000.00) per day for as long as the violation occurs. Each day of a continuing violation shall constitute a separate violation under this subsection. Failure to comply with the requirements of this article may result in imposition of enforcement measures as authorized by G.S. 143-215.6B.
- (2) *Procedures for assessing penalties.* Said penalties shall be assessed by the Town Manager or his/her designee. No penalty shall be assessed until the person alleged to be in violation is served in writing by certified mail, personal service, or posting of said notice at the facility where the alleged violation occurred.
- (3) In the event the Town is fined by the state or federal governments resulting from an illicit discharge or connection made by a discharger or other person, the discharger or other person at fault shall reimburse the Town for the full amount of the civil penalty assessed by the state and/or federal governments as well as for the abatement costs incurred by the Town during the investigation and restoration process pursuant to 23-89(c) above.
- (4) Civil penalties collected pursuant to this article shall be used or disbursed as directed by law.
- (5) *Illicit discharges.* Any responsible person who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of this article shall be subject to civil penalties as follows:
 - a. For first time offenders, if the quantity of the discharge is equal to or less than five (5) gallons and consists of domestic or household products in quantities considered ordinary for household purposes, said person shall be assessed a civil penalty not to exceed one thousand dollars (\$1,000.00) per violation or per day for any continuing violation, and if the quantity of the discharge is greater than five (5) gallons or contains non-domestic substances, including but not limited to process waste water, or if said person cannot provide clear and convincing evidence of the volume and nature of the substance discharged, said person shall be assessed a

civil penalty not to exceed five thousand dollars (\$5,000.00) per violation or per day for any continuing violation.

- b. For repeat offenders, the amount of the penalty shall be double the amount assessed for the previous penalty, not to exceed twenty-five thousand dollars (\$25,000.00) per violation or per day for any continuing violation.

(6) *Illicit connections.* Any person found with an illicit connection in violation of this article and any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the establishment of an illicit connection in violation of this article, shall be subject to civil penalties as follows:

- a. First time offenders shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) per day of continuing violation.
- b. Repeat offenders shall be subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000.00) per day of continuing violation.

(7) *Other violations.* Any person found in violation of other provisions of this article, not specifically enumerated elsewhere, shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000.00) per violation or per day for any continuing violation.

(8) In determining the amount of the penalty, the Town Manager or his/her designee shall consider:

- a. The degree and extent of harm to the environment, the public health, and public and private property;
- b. The duration of the violation;
- c. The effect on ground or surface water quality or on air quality or on flood hazard;
- d. The cost of remedying the damage;
- e. The amount of money saved by the violator through his, her, or its noncompliance;
- f. Knowledge of the requirements by the violator, and/or reasonable opportunity or obligation to obtain such knowledge;
- g. Whether the violation was willful;
- h. Whether the violation was corrected within the specified time period (the penalty shall be assessed from the date of the violation and each day of continuing violation thereafter shall constitute a separate violation under this article);
- i. The prior record of the person responsible for the violation in complying or failing to comply with this article; and
- j. The costs of enforcement to the Town.

(e) *Judicial Actions*

(1) *Criminal penalties.* Any violation of any provision of this article shall constitute a misdemeanor and shall subject the violator to a penalty of five hundred dollars (\$500.00) or imprisonment for not more than thirty (30) days. Each day of a continuing violation shall constitute a separate violation under this subsection. Failure to comply with the requirements of this article may result in imposition of enforcement measures as authorized by G.S. 143-215.6B. The Town may recover all attorney's fees, court costs, and other expenses associated with enforcement of this article.

(2) *Injunctive relief*

- a. *Civil action in superior court.* Whenever the Town Manager has reasonable cause to believe that any person is violating or threatening to violate this section or any rule or order adopted or issued pursuant to this section, the Town Manager may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action in the name of the town for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of Orange County.
- b. *Order to cease violation.* Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this section.

Sec. 23-90. – Appeals.

(a) *Appeal of civil penalties*

- (1) Any person assessed civil penalties may appeal to the Town Manager. The notice of appeal must be received by the Town Manager within 15 days from the date of the notice of assessed civil penalties. Hearing on the appeal before the Town Manager shall take place within 15 days from the date of receipt of the notice of appeal.
- (2) The decision of the Town Manager may be appealed to the Town Board of Adjustment. The notice of appeal must be received by the Town Manager within 15 days from the date of the Town Manager's decision pursuant to subsection 23-90(a)(1) above. Hearing on the appeal before the Town Board of Adjustment shall be in accordance with the procedures indicated in section 4.12.1 of Appendix A of the Town's Code of Ordinances (Land Use Management Ordinance).

(b) *Enforcement measures after appeal*

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 30 days of the final decision, then the Town Manager shall enter upon the facility and is authorized to take any and all measures necessary to abate the violation and/or restore the facility and the expense thereof shall be charged to the discharger and collected pursuant to subsection 23-89(c). It shall be unlawful for any discharger or person to refuse to allow the Town or its designated contractor to enter upon the facility for the purposes set forth above.

Secs. 23-91—23-99. - Reserved. "

Section 2. This ordinance shall become effective November 14, 2016.

This the 14th day of November, 2016.