ARTICLE V. Prohibition of Illicit Discharges to the Storm Drain System

29-134 Purpose

(a) Increased and contaminated stormwater runoff is a major cause of impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding. Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the natural resources and infrastructure of the City of Newton (hereafter the "city"), and to safeguard the public health, safety, welfare and the environment.

(b) The objectives of this article are:

1. To prevent pollutants from entering the city’s municipal storm drain system (MS4);
2. To prohibit illicit connections and unauthorized discharges to the (MS4);
3. To require the removal of all such illicit connections;
4. To comply with state and federal statutes and regulations relating to stormwater discharges; and
5. To establish the legal authority to ensure compliance with the provisions of this article through inspection, monitoring, and enforcement.

Editor’s Note: The term "MS4" as used in federal and state regulations is an acronym for "municipal separate storm sewer systems." As used in this article, "MS4" refers to the city’s municipal storm drain system.

29-135 Definitions

For purposes of this article, the meaning of the terms used shall be as follows:

Best Management Practice (BMP): An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.


CFR: The Code of Federal Regulations

CMR: The Code of Massachusetts Regulations

Commissioner: The commissioner of the department of public works or his/her designee.

Discharge of Pollutants: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.
Discharger: A person or persons who discharge or allows to be discharged any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

Groundwater: Water that comes from or resides in the ground.

Illicit Connection: A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed or approved before the effective date of this article.

Illicit Discharge: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted herein. The term does not include a discharge in compliance with an NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit or to discharges or flows exempted pursuant to the provisions of section 29-141 hereof.

Impervious Surface: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and roof tops.

MS4: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, or other drainage structure(s) that together comprise the storm drainage system owned or operated by the city. MS4 is an acronym for “municipal separate storm sewer system.” As used in this article, MS4 refers to the city’s municipal storm drain system.

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth of Massachusetts that authorizes and regulates the discharge of pollutants to waters of the United States.

Non-Stormwater Discharge: Discharge to the MS4 not composed entirely of stormwater.

Notice of Violation: A written notice given to a person by the commissioner that states that said person has violated the provisions of this article on any specified occasion.

Outfall: the terminus of a storm drain or other stormwater structure where stormwater is discharged.

Person: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person, or any other entity.

Pollutant: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

(1) paints, varnishes, and solvents;
(2) oil, gasoline and other automotive fluids;

(3) non-hazardous liquid and solid wastes and yard wastes;

(4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;

(5) pesticides, herbicides, and fertilizers;

(6) hazardous materials and wastes;

(7) sewage, septage, fecal coliform and pathogens;

(8) dissolved and particulate metals;

(9) animal wastes;

(10) rock, sand, salt, soils;

(11) construction wastes and residues; and

(12) noxious or offensive matter of any kind.

Process Wastewater: Water which during manufacturing or processing comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

Recharge: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

Stormwater: Runoff from precipitation or snow melt.

Surface Water Discharge Permit: A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorize the discharge of pollutants to water of the Commonwealth of Massachusetts.

Toxic or Hazardous Material or Waste: Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under G.L. c.21C and c.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Watercourse: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.
Waters of the Commonwealth: All waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

Wastewater: Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

29-136 Applicability

This article shall apply to flows entering the MS4, a watercourse, and any waters of the Commonwealth located within the boundaries of the City of Newton. The provisions of this article shall take precedence over any conflicting provisions of any ordinances or parts of ordinances of the city.

29-137 Authority

This article is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule Procedures Act, and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34.

29-138 Responsibility for Administration and Enforcement

The commissioner of the department of public works or his/her designee shall administer, implement and enforce the provisions of this article.

29-139 Regulations

The commissioner may promulgate rules and regulations to effectuate the purposes of this article. Failure by the commissioner to promulgate such rules and regulations shall not have the effect of suspending or invalidating the provisions of this article.

29-140 Prohibited Activities

(a) Illicit Discharges. No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the MS4, into a watercourse, or into the waters of the Commonwealth.

(b) Illicit Connections. No person shall construct, use, allow, maintain or continue any illicit connection to the MS4, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

(c) Obstruction of the MS4. No person shall obstruct or interfere with the normal flow of stormwater into or out of the MS4 without prior consent from the commissioner. No person shall dump or dispose of yard waste (leaves, grass clippings, etc.) into the open watercourses (swales, brooks and streams) that make up the MS4.

29-141 Exemptions

The following non-stormwater discharges or flows are exempt from the prohibition of non-stormwaters
provided that the source is not a significant contributor of a pollutant to the MS4, as determined by the commissioner:

(1) Waterline and hydrant flushing;

(2) Flow from potable water sources;

(3) Discharge of flow resulting from fire fighting activities;

(4) Discharge from de-chlorinated swimming pool water (less than one part per million chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;

(5) Discharge from landscape irrigation or lawn watering;

(6) Water from individual residential car washing;

(7) Discharge from street sweeping;

(8) Dye testing, provided verbal notification is given to the commissioner prior to the time of the test;

(9) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;

(10) Flow from springs;

(11) Natural flow from riparian habitats and wetlands;

(12) Diverted stream flow;

(13) Rising groundwater;

(14) Non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the written approval, waiver, or order and applicable laws and regulations; and

(15) Discharge for which advanced written approval is received from the commissioner as necessary to protect public health, safety, welfare or the environment. In particular, this exemption shall apply to sand and salt that is applied to driveways, sidewalks, streets and parking lots for de-icing and public safety purposes.

29-142 Emergency Suspension of Storm Drainage System Access

(a) The commissioner may suspend MS4 access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any
person fails to comply with an emergency suspension order, the commissioner may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

(b) No person shall reinstate MS4 access that has been suspended or terminated without the prior written approval of the commissioner.

29-143 Industrial or Construction Activity Discharges

Any person subject to an industrial or construction activity NPDES storm water discharge permit may be required to provide proof of compliance with said permit in a form acceptable to the commissioner prior to the allowance of discharges to the MS4. The commissioner shall be permitted to enter and inspect facilities subject to regulation as often as may be necessary to determine compliance with this article.

29-144 Watercourse Protection and Maintenance

Every person owning or in control of property through which a watercourse passes, 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 restrict the flow of water through the watercourse. The provisions in this section are intended to complement, not replace, maintenance responsibilities of the city where a drainage easement has been established.

29-145 Notification of Spills

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the MS4, a watercourse, or waters of the Commonwealth, said person shall take all necessary steps to ensure containment, and cleanup of the release in accordance with the provisions of this article and any regulations promulgated pursuant to this article. Further, in the event of a release of oil or hazardous materials, the person shall immediately notify the city's fire department and the commissioner. In the event of a release of other pollutants, the person shall notify the commissioner no later than the next business day. Notification of a release to the commissioner shall include all pertinent information regarding the release including proof of notification to the Massachusetts Department of Environmental Protection if such notification was required.

29-146 Enforcement

(a) The commissioner shall enforce the provisions of this article and any regulations promulgated hereunder and may issue and prosecute violation notices and enforcement orders and may pursue all civil and criminal remedies for such violations.

(b) Entry to Perform Duties Under This Article: To the extent permitted by state law, upon reasonable notice to the owner or other party in control of the property, or if authorized by the owner or other party in control of the property, the commissioner, his/her agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this article and the regulations promulgated hereunder and may make or cause to be made such examinations, surveys or sampling as the commissioner deems reasonably necessary. What constitutes reasonable notice shall be determined by the commissioner in his/her sole discretion, based upon the nature and the imminence of a threat to the city's natural resources, environment, infrastructure, public health,
public safety or public welfare.

(c) Civil Relief: The commissioner may seek injunctive relief in a court of competent jurisdiction to restrain a person from continued violations of the provision of this article or the regulations promulgated hereunder, or any notices, orders or written approvals or to compel said person to abate or remediate violations hereunder.

(d) Orders: The commissioner may issue a written order to enforce the provisions of this article and the regulations promulgated hereunder, which may include:

1. elimination of illicit connections or discharges to the MS4;
2. performance of monitoring, analyses, and reporting;
3. that unlawful discharges, practices, or operations shall cease and desist;
4. remediation of contamination in connection therewith;
5. payment of a fine to cover administrative and remediation costs; and
6. implementation of source control or treatment BMPs.

(e) If the commissioner determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the city may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

(f) Within thirty (30) days after completion by the city of all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the city, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the commissioner within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the commissioner affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall accrue on any unpaid costs in accordance with the provisions of Massachusetts law.

(g) Notices of Violation and Orders shall be written and shall be served by the city upon the persons to whom or to which they apply.

(h) Criminal Penalty: Any person who violates any provision of this article, the regulations promulgated hereunder, or an order or written approval issued hereunder, shall be subject to a fine not to exceed three hundred dollars ( $300.00). Each day or part thereof that such violation occurs or continues shall constitute a separate offense. Violations may result in the revocation of city licenses.

(i) Non-Criminal Disposition: As an alternative to criminal prosecution or civil action, the city may elect to utilize the non-criminal disposition procedure set forth in G.L. c. 40, §21D.
(j) Appeals: The decisions or orders of the commissioner shall be final. Further relief shall be to a court of competent jurisdiction.

(k) Remedies Not Exclusive: The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

29-147 Severability

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