

ORDINANCE NO. 10-2184

***An ordinance of the City of Hoover to adopt
an Illicit Discharge Detection and Elimination Ordinance***

WHEREAS, discharges to the City of Hoover's municipal separate stormwater system ("MS4") that are not composed entirely of stormwater runoff contribute to increased nonpoint source pollution and degradation of receiving waters;

WHEREAS, these non-stormwater discharges occur due to spills, dumping and improper connections to the municipal MS4 from residential, industrial, commercial or institutional establishments;

WHEREAS, these non-stormwater discharges not only impact waterways individually, but geographically dispersed, small volume non-stormwater discharges can have cumulative impacts on receiving waters;

WHEREAS, the impacts of these discharges adversely affect public health and safety, drinking water supplies, recreation, fish, and other aquatic life, property values and other uses of lands and waters;

WHEREAS, these impacts can be minimized through the regulation of spills, dumping and discharges into the City of Hoover's MS4;

WHEREAS, as authorized by the United States Environmental Protection Agency's ("EPA") Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the State and waters of the United States;

WHEREAS, the Alabama Department of Environmental Management ("ADEM") has been authorized by the EPA to implement the EPA's Phase I NPDES stormwater permitting program in Alabama applicable to MS4s located in urbanized areas as delineated by the U.S. Census Bureau in the most recent census;

WHEREAS, the City of Hoover has applied for a Phase I NPDES stormwater permit with the Alabama Department of Environmental Management ("ADEM") and is authorized to regulate sites discharging stormwater into its MS4 by §11-89C-1, *et seq.* of the *Code of Alabama*;

WHEREAS, under federal and state law, the City of Hoover is required to include an Illicit Discharge Detection and Elimination ("IDDE") program as a control measure in its NPDES stormwater program to regulate (with certain exceptions) discharges that are not composed entirely of stormwater to the City's MS4;

WHEREAS, the City Council of the City of Hoover desires to incorporate such IDDE control measures to comply with federal and state law to prohibit the discharge of pollutants into the MS4 to the maximum extent practicable; and

WHEREAS, the regulation of spills, improper dumping and discharges to the MS4 is in the public interest and will prevent threats to public health and safety and to the environment.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the City Council of the City of Hoover, in regular meeting duly assembled, a quorum being present, as follows:

SECTION 1. ILLICIT DISCHARGE AND DETECTION PROGRAM ADOPTED. The following section is hereby added to the *Municipal Code of the City of Hoover, Alabama* as Chapter 12, Article V:

ARTICLE V. ILLICIT DISCHARGE DETECTION AND ELIMINATION (IDDE)

Section 12-150. PURPOSE/INTENT.

The purpose of this article is to protect the health, safety, and general welfare of the citizens of the City of Hoover, Alabama through the regulation of non-stormwater discharges to the City's municipal separate stormwater system ("MS4") to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the City of Hoover's MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System ("NPDES") permit. The objectives of this article are:

- (1) To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user;
- (2) To prohibit Illicit Connections and Non-Stormwater Discharges to the MS4;
- (3) To prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the City's MS4; and
- (3) To establish legal authority to carry out all inspection, surveillance monitoring and restoration necessary to ensure compliance with this article.

Section 12-151. DEFINITIONS.

For the purposes of this article, the following words and terms shall have the meaning assigned to them in this section.

Accidental Discharge. A discharge prohibited by this article into the MS4 which occurs by chance and without planning or thought prior to occurrence.

Adverse impact. Any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property or to biological productivity, diversity or stability, or which would unreasonably interfere with the enjoyment of life or property.

Alabama Department of Environmental Management (herein abbreviated as "ADEM"). The State regulatory agency, created under *Code of Alabama* (1975) § 22-22A-1, *et seq.*, responsible for administering and enforcing the stormwater laws of the United States of America and the State.

Alabama Water Pollution Control Act ("AWPCA"). The state act found in *Code of Alabama* §22-22-1 *et seq.* and any subsequent amendments thereto.

Best Management Practices ("BMPs"). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage and construction sites.

City. The City of Hoover, Alabama, a municipal corporation organized under the laws of the State of Alabama.

Clean Water Act ("CWA"). The Federal Water Pollution Control Act (33 U.S.C. §§ 1251, *et seq.*) and any subsequent amendments thereto.

Commercial facility. Any facility associated with commercial and/or industrial activity which is not subject to an individual NPDES permit or an ADEM general stormwater permit.

Construction Activity. Activities that require a land disturbing activity permit and are subject to the City's Erosion and Sedimentation Control provisions and/or NPDES Construction Permits. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Discharge. The passing of water or other liquid through an opening or along a pipe, conduit or channel; the rate of flow of water, silt, or other mobile substance which emerges from a pipe, conduit or channel, usually expressed as cubic feet per second, gallons per minute or million gallons per day.

EPA. United States Environmental Protection Agency.

Hazardous Materials. 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.

High-risk facility. Municipal landfills; other treatment, storage, or disposal facilities for municipal waste; hazardous waste treatment, storage, disposal and recover facilities; facilities subject to Emergency Planning & Community Right-to-Know Act (EPCRA), Title III, Section 313; and any other industrial or commercial facility that the Official determines may make or has made a substantial pollutant contribution to the MS4.

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

- (1) Any pipe, drain, open channel, connection or conveyance, whether on the surface or subsurface, that allows an Illicit Discharge to enter the City's MS4 including but not limited to any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said pipe, drain, open channel, connection or conveyance had been previously allowed, permitted, or approved by the Official; or
- (2) Any pipe, drain, open channel, connection or conveyance connected from a commercial or industrial land use to the City's MS4 which has not been documented in plans, maps, or equivalent records and approved by the Official.

Illicit Discharge. Any discharge (whether direct or indirect) to the City's MS4 that is not composed entirely of stormwater, except discharges as exempted in Section 12.156 of this article.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 C.F.R. §122.26 (b)(14) by the EPA.

Municipal Separate Storm Sewer System ("MS4" or "storm drainage system"). A conveyance or system of conveyances (including, but not limited to, sidewalks, highways, roads with drainage systems, municipal streets, inlets, catch basins, curbs, gutters, ditches, natural and man-made or altered drainage channels, reservoirs, pumping facilities, structural stormwater controls, swales, or piped storm drains) owned, operated or maintained by the City of Hoover, Alabama; designed or used for collecting and/or conveying stormwater; not used for collecting or conveying sewage; and not part of publicly-owned sewage treatment works as defined in 40 C.F.R. §122.2.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. A permit issued by EPA (or by a state under authority delegated pursuant to 33 USC 1342(b)) that authorizes the discharge of pollutants to waters of the United States and waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-stormwater discharge. Any discharge to the City's MS4 that is not composed entirely of stormwater.

Official. Director of the municipal department or municipal agency designated to enforce this article and/or his/her designee.

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as the owner or owner's agent of a Premises or as a lessee of a Premises.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; cleaning chemicals; degreasers; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects 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; concrete and cement; detergents (biodegradable or otherwise); and noxious or offensive matter of any kind. Also includes pollutants specified in *Code of Alabama* (1975) § 22-22-1(b)(3) and any other effluent characteristics specified in a permit.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including facilities, adjacent sidewalks and parking strips located thereon and includes all land uses.

State. The state of Alabama.

Stormwater. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation. It is that portion of the rainfall and resulting surface flow that is in excess of that which can be absorbed through the infiltration capacity of the surface of the basin.

Stormwater Pollution Prevention Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the maximum extent practicable.

Structural Stormwater Control. A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff, including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

Wastewater. Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Waters of the State. Ground-water (percolating or otherwise), lakes, bays, ponds, impounding reservoirs, springs, rivers streams, creeks, wetlands, marshes, inlets, canals inside the territorial limits of the State, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the bed and banks of all watercourses and bodies of surface water that are wholly or partially inside or bordering the State or inside the jurisdiction of the State.

Waters of the United States. Surface watercourses and water bodies as defined in 40 CFR §122.2, including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry stormwater at and during all times and seasons.

Section 12-152. APPLICABILITY.

This article applies to all Premises (whether developed or undeveloped) that have stormwater discharges associated with any and all land uses within the City of Hoover, including but not limited to, residential, industrial, commercial, agricultural and construction activity.

Section 12-153. ADMINISTRATION.

The Director of the Building Inspections Department of the City of Hoover shall administer, implement, and enforce the provisions of this article and shall act as the Official for the provisions of this article. Any powers granted or duties imposed upon the Official may be delegated in writing by the Director of Building Inspections to persons or entities acting in the beneficial interest of or in the employ of the City.

Section 12-154. REGULATORY CONSISTENCY.

This article shall be construed to assure consistency with the requirements of the CWA and the AWPCA and acts amendatory thereof or supplementary thereto or any other applicable regulations.

Section 12-155. ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

Section 12-156. PROHIBITIONS.

(a) **Prohibition of Illicit Discharges.**

(1) PROHIBITION. Unless otherwise excepted herein, no person shall spill, dump, throw, drain, make, cause to be made or continue to be made; allow others under such person's control to spill, dump, throw, drain, make, cause to be made or continue to be made; or otherwise discharge and/or dispose of into the City's MS4 or watercourses any Illicit Discharge, including but not limited to pollutants or waters containing any pollutants, other than stormwater.

(2) EXCEPTIONS. Discharges from the following activities will not be considered a source of pollutants to the MS4 and to waters of the United States when properly managed to ensure that no potential pollutants are present, and therefor shall not be considered Illicit Discharges unless determined to cause a violation of the provisions of the AWPCA, CWA or this article:

- i. water line flushing (including fire hydrant testing);
- ii. landscape irrigation water and/or lawn watering;

- iii. diverted stream flows;
- iv. rising ground water;
- v. residential building wash water without detergents;
- vi. uncontaminated ground water infiltration to storm drains;
- vii. uncontaminated pumped ground water;
- viii. discharges from potable water sources;
- ix. foundation and/or footing drain water (not including active groundwater dewatering systems);
- x. water from crawl space pumps;
- xi. air conditioning condensation;
- xii. springs;
- xiii. street wash water;
- xiv. non-commercial or charity car washes;
- xv. individual residential washing of vehicles;
- xvi. discharges from natural riparian habitat and/or wetlands;
- xvii. swimming pool discharges (only if dechlorinated);
- xviii. discharges or flow from firefighting activities and other discharges specified in writing by the Official as being necessary to protect public health and safety; and
- xix. any other water source not containing Pollutants.

Discharges associated with dye testing are also allowable discharges under the terms of this section, but this activity requires written notification to and approval in writing by the Official at least fourteen (14) days prior to the date of the test.

(3) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of ADEM, 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 by the City for any discharge to the storm drainage system/MS4.

(b) **Prohibition of Illicit Connections.**

(1) **PROHIBITION.** The construction, use, maintenance or continued existence of Illicit Connections to the storm drainage system is prohibited.

(2) **PAST CONNECTIONS PROHIBITED.** 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 sewage to the MS4 or allows such an Illicit Connection to continue.

(4) Improper connections in violation of this article must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or a sanitary sewer system upon approval of the City of Hoover.

(5) Any drain or conveyance that has not been documented in plans, maps or the equivalent and which may be connected to the MS4 shall be located by the owner or occupant of that Premises upon receipt of written notice of violation from the Official requiring that such locating be completed. Such notice will specify a reasonable time within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm drainage system, sanitary sewer, or other, and that the outfall location or point of connection to the storm drainage system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided in writing to the Official.

Section 12-157. WATERCOURSE PROTECTION.

No person owning a Premises or leasing a Premises through which a watercourse passes shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained or kept in any part of a watercourse any trash, debris, excessive vegetation and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. A person shall keep and maintain that part of the watercourse on the Premises owned or leased by such person free from any such trash, debris, excessive vegetation and other obstacles that would pollute, contaminate or significantly retard the flow of water through the watercourse. A person shall only be liable under this article for trash, debris, excessive vegetation and other obstacles that originate from the Premises owned or leased by such person. In addition, the owner or lessee of a Premises shall maintain existing privately owned structures within or adjacent to a watercourse on such Premises, so that such structures will not become a hazard to the use, function or physical integrity of the watercourse.

Section 12-158. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

(a) **NPDES permit.** Any person subject to an industrial or construction activity NPDES permit shall comply with all terms and provisions of such NPDES permit. Any person with a NPDES permit shall provide to the Official a copy of the permit, a copy of the stormwater pollution prevention plan and copies of all monitoring data and reports submitted to ADEM as required by the NPDES permit.

Proof of compliance with said permit is required in a form acceptable to the Official prior to the allowing of discharges to the MS4. Compliance with an NPDES permit authorizing the discharge of stormwater associated with industrial activity shall be deemed compliance with the provisions of this article.

(b) **Notice of Intent (NOI).** The owner and/or operator of a facility, including construction sites, required to have an NPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the NOI to the Official. The copy of the NOI may be delivered to the Official either in person or by mailing to:

Notice of Intent to Discharge Stormwater
Building Inspections Department of the City of Hoover
2020 Valleydale Road, Suite 103
Hoover, Alabama 35244

(c) A person commits an offense under this article if such person operates a facility on a Premises that is discharging stormwater associated with industrial and/or construction activity without having obtained an NPDES permit and/or submitted a copy of the original NOI to discharge to the Official.

Section 12-159. COMPLIANCE MONITORING.

(a) **Right of Entry; Inspection and Sampling.** Upon reasonable notice to the Premises owner and person in possession thereof, the Official shall be permitted to enter and inspect Premises and facilities subject to regulation under this article during normal business hours as often as may be necessary to determine compliance with this article. Identification issued by the City shall be presented by the Official at the time of entry.

(1) If security measures are in force on a Premises, then the Premises owner shall make the necessary arrangements to allow access to representatives of the Official for the purposes of this article. Proof of an Illicit Discharge or an Illicit Connection is not required for entry onto a Premises.

(2) Owners and/or operators of a Premises shall allow the Authorized enforcement agency ready access to all parts of the Premises for the purposes of inspection, sampling, photography, videotaping, testing, and examination; for the copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater; and for the performance of any additional duties as required by State and federal law.

(3) The Official shall have the right to set up on any Premises such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the Premises' surface flow discharges.

(4) The Official may require the owner and/or operator of a Premises to install monitoring equipment as necessary and to make monitoring data available to the local enforcement authority. This sampling and monitoring equipment shall be maintained at all times in a safe, calibrated and proper operating condition by the owner and/or operator at his/her/its own expense.

(5) Any temporary or permanent obstruction to safe and easy access to the Premises to be inspected and/or sampled shall be promptly removed by the owner of the Premises at the written or oral request of the authorized enforcement agency and shall not be replaced. The costs of clearing such access shall be borne by the owner and/or operator of the Premises.

(6) Unreasonable delays in allowing the Official access to a Premises is a violation of this article. A person who is the operator of a Premises with a NPDES permit to discharge stormwater commits an offense if such person denies the Official reasonable access to the permitted Premises for the purpose of conducting any activity authorized or required by this article.

(b) **Search Warrants.** If the Official has been refused access to any part of a Premises from which stormwater is discharged, and the authorized enforcement agency is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

(c) **Emergency Discharge.** The Official shall have the right to enter upon any and all parts of a Premises for the purposes of inspection, sampling, and/or examination in the case of an emergency Illicit Discharge or a suspected emergency discharge as is necessary in the opinion of the Official to contain an Illicit Discharge. Reasonable notice of such entry under the circumstances must be given to the owner and occupant of a Premises. Entry must be made during normal business hours, if possible. Identification issued by the City shall be presented at the time of entry by Official personnel.

Section 12-160. REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS THROUGH THE USE OF BEST MANAGEMENT PRACTICES.

(a) **BMPs required.** All commercial, industrial and high-risk facilities shall identify, implement and maintain BMPs for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the MS4, waters of the State and/or waters of the United States. Non-compliance with such BMPs will constitute a violation of this article.

(1) **EXCEPTIONS:**

(i) Where BMPs are promulgated by the City or any federal, State or regional agency for any specific activity, operation, or facility which would otherwise cause the discharge of pollutants to the City's MS4 or waters of the United States, every person undertaking such activity or operation or owning or operating such facility shall comply with such requirements. Compliance with such BMPs shall be deemed compliance with the provisions of this article.

(ii) Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with construction and/or industrial activity shall be deemed compliance with the provisions of this section.

(b) **Responsibility to Implement Best Management Practices.** Except as set forth herein, any person engaged in activities or operations, or owning facilities or property which will or may result in pollutants entering stormwater, the MS4 or the waters of the United States shall implement BMPs to the extent they are technologically achievable to prevent and reduce such pollutants.

The owner or operator of a commercial, industrial or high risk facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which 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.

Section 12-161. NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS.

Notwithstanding other requirements of law, as soon as any Premises owner or person responsible for a Premises, facility or operation, or responsible for emergency response for a Premises, facility or operation has information of any known or suspected release of materials which is resulting or may result in Illicit Discharges or pollutants discharging into stormwater, the MS4, waters of the State or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

(a) **Release of hazardous materials.** In the event of a release of hazardous pollutants or materials into the MS4, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (911) and shall also notify the Official in person or by phone or facsimile not later than twenty-four (24) hours from the date and time of the release as to the occurrence of and the quantity of the release.

(b) **Release of non-hazardous materials.** In the event of a release of non-hazardous materials, said person shall notify the fire department and the Official in person or by phone or facsimile no later than the twenty four (24) hours from the date and time of the release as to the occurrence of and the quantity of the release.

(c) Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Official within three (3) business days of date of the phone or in person notice.

(d) If the discharge of prohibited pollutants or materials emanates from a commercial or industrial establishment, the owner or operator of such establishment

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 from the date of the discharge. Said person shall also take immediate steps to ensure no reoccurrence of the discharge or spill.

(e) Failure to provide notification of a release as provided above is a violation of this article.

Section 12-162. VIOLATIONS, ENFORCEMENT AND PENALTIES.

(a) **Violations.** It shall be unlawful for any person to violate any provision of or fail to comply with any requirement of this article. Any person who has violated or continues to violate any provision of this article may be subject to the enforcement actions outlined in this article or may be restrained by injunction or otherwise abated in a manner provided by law.

(b) **Warning Notice.** When the Official determines that any person has violated or continues to violate any provision of this article or any order issued hereunder, the Official may serve upon that person a written Warning Notice specifying the particular violation believed to have occurred and requesting that the discharger immediately investigate the matter and seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice does not 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 Official to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

(c) **Notice of Violation.** Whenever the authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this article, the Official may order compliance by written notice of violation to the responsible person. This Notice of Violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address of the Premises (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 and/or restoration measures necessary to restore compliance with this article and a deadline for the completion of such remedial and/or restoration 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 Hoover Code Appeals Board (“Board”) by filing a written notice of appeal with the Board within seven (7) days of service of a notice of violation; and
- (7) A statement specifying that, should the violator fail to restore compliance with this article within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator as allowed hereunder and collected as allowed by law.

Such notice may require without limitation:

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

The failure of a person to comply with any lawful notice to abate issued by the Official, which has not been appealed within the time allowed herein, shall be deemed a violation of this article.

(d) **Emergency Abatement.** The Official is authorized to require immediate abatement of any violation of this article that constitutes an immediate threat to the health, safety or well-being of the public. When the Official finds that any person has violated, or continues to violate, any provision of this article, and that the person’s violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4, 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 Official may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (1) Immediately comply with all article requirements; and
- (2) 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 illicit discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Official may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including taking any and all measures required to abate and remediate the violation. Any expense related to abatement and remediation undertaken by the Official shall be fully reimbursed to the City by the property owner and/or responsible party as provided herein. Any relief obtained under this section shall not prevent the Official from seeking other and further relief authorized under this article.

(e) **Injunctive Relief and/or Civil Remedies.** It shall be unlawful for any person to violate any provision or fail to comply with any requirement of this article. If a person has violated or continues to violate the provisions of this article, the Official may petition the appropriate court for a preliminary and/or permanent injunction restraining the person from activities which would create violations of this article or compelling the person to perform abatement or remediation of any violation.

The City, with the consent of the City Council, may also initiate civil proceedings in any court of competent jurisdiction seeking monetary damages for any damages caused to the MS4 by any person, and may seek other equitable relief to enforce compliance with the provisions of this article or to force compliance with any lawful orders of the authorized enforcement agency.

Any and all costs of such action, including attorneys' fees, trial expenses, court costs and damages to the MS4 shall be paid by the violator as provided in Section 12-166 herein.

(f) **Compensatory Actions.** In lieu of enforcement proceedings, penalties, and remedies authorized by this article, the Official may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

(g) **Criminal Penalties.** Any person that has violated or continues to violate this article shall be guilty of a violation and shall be liable to criminal prosecution to the fullest extent of the law, and upon conviction, shall be subject to a criminal penalty of not greater than Five Hundred Dollars (\$500) dollars per violation and/or imprisonment for a period of time not to exceed six (6) months. Each act of violation and/or each day upon which any violation shall occur shall constitute a separate offense.

(h) **Abatement and Restoration of Premises by the City.** If a violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within seven (7) days of the decision of the Hoover Code Appeals Board upholding the decision of the Official, then representatives of the Official may enter upon the Premises and are authorized to take any and all measures necessary to abate the violation and/or restore the property. Such entry shall be made during normal business hours, after giving reasonable notice to the owner and person in possession thereof, and after the presentation of proper City credentials by the Official. It shall be unlawful and a violation of this article for any person, owner, agent or person in

possession of any premises to refuse to allow the Official or designated contractor to enter upon the Premises for the purposes set forth in this article.

Section 12-163. APPEAL OF NOTICE OF VIOLATION.

Notwithstanding the provisions of 12-162(d), any person receiving a Notice of Violation may appeal the determination of the Official to the Hoover Code Appeals Board. The notice of appeal must be received within seven (7) days following the date of the Notice of Violation. A hearing on the appeal before the Hoover Code Appeals Board shall take place within fourteen (14) days from the date of receipt of the notice of appeal. The decision of the Hoover Code Appeals Board shall be final.

Section 12-164. COST OF ABATEMENT OF THE VIOLATION. Within thirty (30) days after abatement of the violation by the Official and/or its designee, the owner of the property shall be notified by the Official of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within seven (7) days.

If the amount due is not paid within thirty (30) days, then the City shall proceed to collect such amounts as allowed by law. Any person violating any of the provisions of this article shall become liable to the City by reason of such violation.

Section 12-165. VIOLATIONS; PUBLIC NUISANCE. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. 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. The Official may take all appropriate measures to abate the nuisance and may institute a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance as allowed by law.

Section 12-166. REMEDIES NOT EXCLUSIVE; COSTS RECOVERABLE BY CITY. 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 authorized enforcement agency to seek cumulative remedies.

The City may recover all attorney=s fees, trial expenses, court costs and any and all other costs and expenses associated with enforcement of this article, including, but not limited to, sampling and monitoring expenses, ADEM fines, EPA fines and other losses resulting directly or indirectly from a violation of this article.

SECTION II. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City of Hoover hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional. Any provision found herein to be in direct contravention with State law or federal law either presently existing or enacted after the date of passage of this ordinance shall be superseded by such law and rendered unenforceable without effect to those provisions found herein that are not

in contravention with State and/or federal law.

SECTION III. LEGAL RIGHTS NOT IMPAIRED. That nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

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

SECTION V. PUBLICATION OF ORDINANCE. That the City Clerk of the City of Hoover is hereby ordered and directed to cause this ordinance to be published and that a copy of this Ordinance be entered upon the Minutes of the meeting of the City Council.

SECTION VI. EFFECTIVE DATE OF ORDINANCE. That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect on February 1, 2010 and shall continue in full force and effect from month to month and year to year from its effective date until repealed.

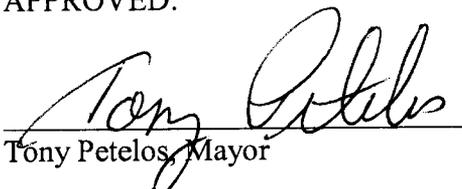
THEREFORE, BE IT RESOLVED, that the City Council of the City of Hoover does hereby ordain, resolve, and enact the foregoing Ordinance for the City of Hoover.

Done this the 7 day of Jan., 2010.



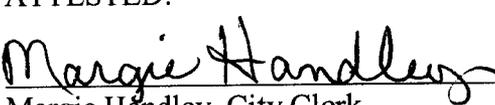
Gary M. Ivey
President of the City Council

APPROVED:



Tony Petelos, Mayor

ATTESTED:



Margie Handley, City Clerk