

Committee Substitute for Bill No.7648

Introduced in Council:

March 2, 2015

Introduced by:

JOSEPH DENEAL

Adopted by Council:

March 16, 2015

Referred to:

STREETS AND TRAFFIC

1 **Committee Substitute for Bill No. 7648-** A BILL to enact Division 1 of Article VIII, Chapter
2 102 of the Municipal Code of the City of Charleston, as amended, to be known as the “City of
3 Charleston Illicit Discharge Detection and Elimination Ordinance.”
4

5 **WHEREAS**, the 1972 amendments to the Federal Water Pollution Control Act (referred to as the
6 Clean Water Act or "CWA"), 33 U.S.C. §§ 1251-1387, prohibit the discharge of any Pollutant to
7 navigable waters of the United States from a point source unless the discharge is authorized by a
8 permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES")
9 required by CWA § 402, 33 U.S.C. §§ 1342; and
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11 **WHEREAS**, Municipal Separate Storm Sewer Systems ("MS4s") which convey urban runoff,
12 including, but not limited to Stormwater runoff, are point sources under the CWA; and
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14 **WHEREAS**, the US EPA reports that in some municipalities illicit connections of sanitary,
15 commercial and industrial discharges to storm sewer systems have had a significant adverse
16 impact on the water quality of receiving waters; and
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18 **WHEREAS**, pursuant to the CWA, the US EPA has defined "illicit discharges" as any discharge to
19 a MS4 that is not composed entirely of Stormwater or not covered by a NPDES permit; and
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21 **WHEREAS**, Section 402(p)(3)(B) of the CWA requires that NPDES permits for discharges from
22 MS4s are to include a requirement to "effectively prohibit" Non-stormwater discharges into
23 MS4s; and
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25 **WHEREAS**, US EPA regulations implementing the CWA require a municipality to demonstrate that
26 it has the authority to control, through ordinance or other authority, discharge to the MS4 of spills,
27 dumping or disposal of materials other than stormwater; and
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29 **WHEREAS**, the City of Charleston, as the owner and operator of its MS4, has the right and the duty
30 to protect the integrity of its MS4 against Pollutants entering the MS4; and
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32 **WHEREAS**, under the Constitution of West Virginia, West Virginia Code, and the City of
33 Charleston Municipal Code, the City of Charleston has the authority to define public nuisances

34 and to protect the environment and the public health and safety of the residents of and visitors to
35 the City, by abating public nuisances.

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38 **Now, therefore, be it Ordained by the Council of the City of Charleston, West Virginia:**

39 That Division I, Article VIII, Chapter 102 of the Municipal Code of the City of Charleston is
40 hereby enacted to read as follows:

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43 **CHAPTER 102 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**
44 **ARTICLE VIII – STORMWATER POLLUTION PREVENTION**
45 **DIVISION 1 – ILLICIT DISCHARGE DETECTION AND ELIMINATION**

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47 **Sec. 102-290. – Purpose/Intent.**

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49 The purpose of this Division is to provide for the protection of the health, safety, and
50 general welfare of the citizens of the City of Charleston (“City”) through the regulation of Non-
51 stormwater discharges into the Municipal Separate Storm Sewer System (“MS4”) to the Maximum
52 Extent Practicable as required by federal and state law. This Division establishes methods for
53 controlling the introduction of Pollutants into the MS4 in order to comply with the City’s National
54 Pollutant Discharge Elimination System (“NPDES”) permit. The objectives of this Division are:

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56 (a) To regulate the contribution of Pollutants to the MS4 by Non-stormwater
57 discharges;
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59 (b) To prohibit Illicit Connections and Discharges to the MS4;
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61 (c) To establish legal authority to carry out all inspection, enforcement, surveillance
62 and monitoring procedures necessary to ensure compliance with this Division; and
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64 (d) To comply with applicable federal and state statutory and regulatory requirements
65 and schedules regarding the City’s Stormwater management requirements.
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67 **Sec. 102-291. – Definitions.**

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69 The following words, terms and phrases when used in this Division shall have the meanings
70 ascribed to them in this Section except where the context clearly indicates a different meaning:

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72 (a) *Best Management Practices (BMPs)* means schedules of activities, prohibitions of
73 practices, general good housekeeping practices, Pollution prevention and
74 educational practices, maintenance procedures, and other management practices
75 that, when used singly or in combination, contribute to the control of the discharge
76 of Pollutants directly or indirectly into Stormwater, receiving waters, or the MS4.
77 BMPs also include treatment practices, operating procedures, and practices to
78 contribute to the control of: site runoff of spillage or leaks, sludge or water disposal,
79 or drainage from raw materials storage. BMPs can be non-structural, which is an

80 action that does not require construction, or structural, which involves constructed
81 facilities or measures.

82
83 (b) *Clean Water Act* (“CWA”) means the federal Water Pollution Control Act (33
84 U.S.C. §1251 et seq.), and any subsequent amendments thereto.

85
86 (c) *Construction* means the act of building, grading, shaping, removing, demolishing,
87 repairing, erecting, extending, installing equipment, or enlarging any building,
88 structure, grounds, or Premises.

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90 (d) *Facility* means, for the purposes of this Division, a building, structure, installation,
91 construction site or Premises in which Pollutants are produced and/or generated as
92 a result of an activity conducted within or around such building, structure,
93 installation, construction site or Premises.

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95 (e) *Hazardous materials* means any material, including any substance, waste, or
96 combination thereof, which because of its quantity, concentration, or physical,
97 chemical, or infectious characteristics may cause, or significantly contribute to, a
98 present or potential hazard to human health, safety, property, or the environment
99 when improperly treated, stored, transported, disposed of, or otherwise managed.

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101 (f) *Illicit discharge* means any discharge to the MS4 or the waters of the state that does
102 not consist entirely of Stormwater, is not a discharge containing no Pollutants
103 covered under the City’s NPDES MS4 Permit, or is not one of those discharges
104 listed in Section 5 of this Division.

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106 (g) *Illicit connection* means (1) any drain or conveyance, whether on the surface or
107 subsurface, which allows an Illicit discharge to enter the MS4 or waters of the state
108 including, but not limited to, conveyances which allow any Non-stormwater
109 discharge to enter the MS4 and any connection to the MS4 from indoor drains and
110 sinks, regardless of whether said drain or connection was previously allowed,
111 permitted, or approved by the City or the WV Department of Environmental
112 Protection (DEP) or (2) any drain or conveyance connected from a commercial or
113 industrial land use to the MS4 which has not been documented in plans, maps, or
114 equivalent records and approved by a Stormwater Compliance Officer after the
115 effective date of this ordinance and which has not been located, identified,
116 documented, and provided to a Stormwater Compliance Officer after written notice.

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118 (h) *Industrial activity* means an activity subject to NPDES Industrial Permits as defined
119 in 40 CFR, Section 122.26(b)(14).

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121 (i) *Maximum Extent Practicable* means a standard set forth in the CWA that requires
122 NPDES permittees to have controls in place that are designed to reduce the
123 discharge of Pollutants to the MS4 and waters of the state, including management
124 practices, control techniques and system, design and engineering methods.

- 126 (j) *Municipal Separate Storm Sewer System (MS4)* means a conveyance or system of
127 conveyances (including roads with drainage systems, municipal streets, catch
128 basins, curbs, gutters, ditches, man-made channels, or storm drains) that are:
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130 (1) owned or operated by the City;
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132 (2) designed or used for collecting or conveying Stormwater;
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134 (3) not a combined sewer; and
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136 (4) not part of a Publicly Owned Treatment Works (POTW) as defined in 40
137 CFR, Section 122.2
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- 139 (k) *National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge*
140 *Permit* means a permit issued by the Federal Environmental Protection Agency
141 (EPA) or by a state under authority delegated pursuant to 33 USC §1342(b) that
142 authorizes the discharge of Pollutants into waters of the United States.
143
- 144 (l) *Non-stormwater discharges* means, unless otherwise provided in Section 5, those
145 discharges that include, but are not limited to, sanitary Wastewater, car wash
146 Wastewater, radiator flushing disposal, spills from roadway accidents, carpet
147 cleaning Wastewater, effluent from septic tanks, improper oil disposal, laundry
148 Wastewater/gray water, improper disposal of auto and household toxics.
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- 150 (m) *Person* means any individual, association, organization, partnership, firm,
151 corporation or other entity recognized by law and acting as either the owner or as
152 the owner's agent.
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- 154 (n) *Pollutant* means anything that causes or contributes to Pollution and may include,
155 but is not limited to:
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157 (1) paints, varnishes, and solvents;
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159 (2) oil and other automotive fluids;
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161 (3) non-hazardous liquid and solid wastes and yard wastes;
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163 (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects;
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165 (5) floatables;
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167 (6) pesticides, herbicides, and fertilizers;
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169 (7) hazardous substances and wastes;
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171 (8) sewage, fecal coliform and pathogens;

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- (9) dissolved and particulate heavy metals;
 - (10) animal wastes;
 - (11) wastes and residues that result from constructing or renovating a building or structure;
 - (12) noxious or offensive matter of any kind;
 - (13) hyperchlorinated water; and
 - (14) commercial car and building wash water.
- (o) *Pollution* means the degradation of the physical, thermal, chemical, biological or radioactive properties of the Watercourses and water supplies located in or running through the City and/or the discharge of any Pollutant into the Watercourses and water supplies located in or running through the City which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to impair the beneficial use of the water and/or the water environment.
 - (p) *Premises* means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.
 - (q) *Stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation, including groundwater discharge and floodwater.
 - (r) *Stormwater Compliance Officer* (hereinafter referred to as “*Compliance Officer*”) means an employee of the City of Charleston City Engineer’s Office or City Building Department designated by the City to administer, implement and enforce this article.
 - (s) *Stormwater Pollution Prevention Plan (SWPPP)* means a document that describes the Best Management Practices and activities to be implemented by a Person to identify sources of Pollution or contamination at a site and the actions to eliminate or reduce Pollutant discharges into Stormwater, the MS4, and/or receiving waters to the Maximum Extent Practicable.
 - (t) *Wastewater* means any water or other liquid, other than uncontaminated Stormwater, discharged from a Facility.
 - (u) *Watercourse* means a body of water flowing in a reasonably defined channel with a bed and banks.

218 **Sec. 102-292. – Applicability.**
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220 This Division shall apply to all Stormwater and Non-stormwater discharges entering the
221 MS4 from any Premises located within the City unless explicitly exempted by the City or the West
222 Virginia Department of Environmental Protection (WVDEP).
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224 **Sec. 102-293. – Responsibility for administration.**
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226 City of Charleston Stormwater Compliance Officers shall administer, implement, and
227 enforce the provisions of this ordinance.
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229 **Sec. 102-294. – Illicit discharge and connection prohibitions.**
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231 (a) Prohibition of Illicit Discharges.
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233 (1) Except for Stormwater, no Person shall discharge or cause to be discharged
234 into the MS4 or waters of the state any materials, including, but not limited
235 to, Pollutants or waters containing any Pollutants that cause or contribute to
236 a violation of applicable water quality standards or any other federal, state,
237 or local regulations.
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239 (2) The commencement or continuation of any Illicit discharge to the MS4 is
240 prohibited except as described as follows:
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242 a. discharges not containing Pollutants from the following:
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- 244 1. potable water sources including waterline flushings from
245 which chlorine has been removed to the Maximum Extent
246 Practicable;
- 247 2. landscape irrigation or lawn watering with potable water;
- 248 3. diverted stream flows;
- 249 4. rising ground water;
- 250 5. groundwater infiltration to storm drains;
- 251 6. pumped groundwater;
- 252 7. foundation or footing drains where flows are not
253 contaminated with Pollutants (e.g. do not contain process
254 materials such as solvents, heavy metals, etc.);
- 255 8. crawl space pumps;
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9. air conditioning condensation;
 10. uncontaminated groundwater or spring water;
 11. springs;
 12. dewatering of work areas of collected Stormwater and ground water (filtering or chemical treatment may be necessary prior to discharge);
 13. water used to control dust;
 14. routine external building washdown that does not use detergents or other chemicals;
 15. waters used to wash vehicles (of dust and soil, not process materials such as oils, asphalt or concrete) where detergents are not used and detention and/or filtering is provided before the water leaves the wash site;
 16. non-commercial washing of vehicles;
 17. natural riparian habitat or wetland flows;
 18. swimming pools (if dechlorinated to a concentration of one PPM chlorine or less);
 19. firefighting activities; or
 20. any other water source not containing Pollutants.
- b. discharges approved in writing by a Compliance Officer as being necessary to protect public health and safety.
 - c. dye testing is an allowable discharge, but requires written notification to a Compliance Officer prior to the time of the test.
 - d. 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 the EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge into the MS4.

- 310 (b) Prohibition of Illicit Connections.
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312 (1) The construction, use, maintenance or continued existence of Illicit
313 connections to the MS4 is prohibited.
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315 (2) This prohibition expressly includes, without limitation, Illicit connections
316 made in the past, regardless of whether the connection was previously
317 permitted by the City and/or permissible under law or practices applicable
318 or prevailing at the time of connection. Where such connections exist in
319 violation of this ordinance and said connections were made prior to the
320 effective date of this ordinance or any other ordinance prohibiting such
321 connections, the property owner or the Person using said connection shall
322 remove the connection within six months following the effective date of this
323 ordinance. However, the six-month grace period shall not apply to
324 connections which pose an immediate threat to health and safety, or are
325 likely to result in immediate injury and harm to real or personal property,
326 natural resources, wildlife or habitat.
327
328 (3) This prohibition includes any drain or conveyance connected from a
329 commercial or industrial land use to the MS4 that has not been documented
330 in plans, maps, or equivalent records and approved by a Compliance Officer
331 after the effective date of this ordinance unless or until such drain or
332 conveyance is located, identified, documented, and the documentation is
333 provided to and approved by a Compliance Officer. The property owner or
334 Person using such drain or conveyance shall locate the same upon receipt
335 of written notice from a Compliance Officer. Such notice will specify a
336 reasonable time period within which the location of the drain or conveyance
337 is to be determined, that the drain or conveyance be identified as storm
338 sewer, sanitary sewer or other, and that the outfall location or point of
339 connection to the storm sewer system, sanitary sewer system or other
340 discharge point be identified. Results of these investigations are to be
341 documented and provided to the requesting Compliance Officer.
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343 (4) A Person shall be in violation of this Division if the Person connects a line
344 conveying sewage to the MS4, or allows such a connection to continue.
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347 **Sec. 102-295. – Watercourse protection.**

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349 Every Person owning property through which a Watercourse passes, or such Person's lessee
350 as a condition of its lease, shall keep and maintain that part of the Watercourse located within the
351 property free of trash, debris, excessive vegetation, and other obstacles that would pollute,
352 contaminate, or cause the flow of water through the Watercourse to back up. In addition, the owner
353 or lessee shall maintain existing privately owned structures within or adjacent to a Watercourse,
354 so that such structures will not become a hazard to the use, function, or physical integrity of the
355 watercourse.

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357 **Sec. 102-296. – Industrial or Construction activity discharges.**

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359 Any Person subject to an Industrial or Construction activity NPDES Stormwater discharge
360 permit shall comply with all provisions of such permit. Proof of compliance with said permit may
361 be required in a form acceptable to a Compliance Officer prior to the allowance of discharges into
362 the MS4.

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364 **Sec. 102-297. – Requirement to prevent control, and reduce Stormwater Pollutants by the**
365 **use of Best Management Practices.**

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367 The City's will adopt requirements identifying Best Management Practices for any activity,
368 operation, or Facility which may cause or contribute to Pollution or contamination of Stormwater,
369 the MS4, or waters of the State. The owner or operator of a commercial or industrial establishment
370 shall provide, at his or her own expense, reasonable protection from accidental discharge of
371 prohibited materials or other wastes into the MS4 or Watercourses through the use of these
372 structural and non-structural BMPs. Further, any Person responsible for a property or premise,
373 which is, or may be, the source of an Illicit discharge, may be required to implement, at said
374 Person's expense, additional structural and non-structural BMPs to prevent the further discharge
375 of Pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit
376 authorizing the discharge of Stormwater associated with Industrial Activity, to the extent
377 practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall
378 be part of a Stormwater Pollution Prevention Plan (SWPPP) as is necessary for compliance with
379 requirements of the NPDES permit.

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381 **Sec. 102-298. – Access to Facilities for inspection, monitoring, sampling, measuring, testing**
382 **or copying records.**

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384 (a) Applicability:

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386 This section applies to all Facilities that have Stormwater discharges associated
387 with Industrial activity, including Construction activity.

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389 (b) Access to Facilities:

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- 391 (1) To the fullest extent permitted by law, Compliance Officers bearing proper
392 identification are authorized by this Division to enter and inspect regulated
393 Facilities to determine compliance with this Division.
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- 395 (2) Facility operators shall allow Compliance Officers reasonable access to all
396 parts of the premises for the purposes of inspecting, monitoring, sampling,
397 measuring, or testing the Facility's Stormwater discharge. Compliance
398 Officers shall also be allowed reasonable access for the purpose of copying
399 records that must be kept under the conditions of an NPDES permit.
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- 401 (3) If a Compliance Officer has been refused access to any part of the premises
402 of a Facility from which Stormwater is discharged, and he/she is able to
403 demonstrate probable cause to believe that there may be a violation of this
404 Division involving Illicit discharges or Pollutants discharging into
405 Stormwater, the MS4 or waters of the State; or that there is a need to inspect
406 and/or sample as part of a routine inspection and sampling program
407 designed to verify compliance with this Division or any order issued
408 hereunder; or to protect the overall public health, safety, and welfare of the
409 community, then the Compliance Officer may seek issuance of a search
410 warrant from any court of competent jurisdiction to conduct of an
411 investigation concerning compliance with the terms of this Division.
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413 **Sec. 102-299. – Notification of spills.**
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415 Notwithstanding other requirements of state or federal law, as soon as any Person
416 responsible for a Facility or responsible for emergency response for a Facility, has information of
417 any known or suspected release of materials which are resulting, or may result, in Illicit discharges
418 or Pollutants discharging into Stormwater, the MS4, or waters of the State, said Person shall take
419 all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event
420 of such a release of Hazardous materials said Person shall immediately notify emergency response
421 agencies of the occurrence via emergency dispatch services. In the event of a release of all other
422 Illicit discharges, said Person shall notify the City's Stormwater Management Department in
423 person or by phone or email, no later than the next business day. All relevant contact information
424 shall be listed on the City's website. Notifications in person or by phone shall be confirmed by
425 written notice addressed and mailed to the Stormwater Management Department within three
426 business days of the notice. If the Illicit discharge emanates from a commercial or industrial
427 establishment, the owner or operator of such establishment shall also retain an on-site written
428 record of the discharge and the actions taken to prevent its recurrence. Such records shall be
429 retained for at least three years.
430

431 **Sec. 102-300. – Stormwater Management Board created.**
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- 433 (a) There is hereby created in and for the City, the City of Charleston Stormwater
434 Management Board, which shall hear and decide appeals of any order or decision
435 of a Compliance Officer or any denial of a request for reconsideration by the City
436 Engineer issued pursuant to this Division.

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- (b) The Stormwater Management Board shall be comprised of the City Manager, the City Director of Emergency Services, and three persons appointed by the Mayor, two of whom must be current members of Charleston City Council (one of whom must serve on the Environmental and Recycling Committee) and one person not employed by the City who is qualified by knowledge and experience in matters pertaining to construction and/or engineering. Members of the Board shall serve for terms of three years and do not receive compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
 - (c) Notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with an owner or Person that regularly conducts business in front of the Stormwater Management Board may also serve as a member of the Stormwater Management Board and shall not be disqualified from serving as a member because of a conflict of interest as defined in West Virginia Code §61-10-15 and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the owner or Person. The member must, however, recuse himself or herself from any vote, discussion, participation or other activity regarding any colorable conflict recognized under West Virginia law.
 - (d) Notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with an owner or Person that regularly conducts business in front of the Stormwater Management Board may also serve as a member of the Stormwater Management Board and shall not be in violation of WV Code §6B-2-5(g) if the member recuses himself or herself from any vote, discussion, participation or other activity regarding any conflict: *Provided*, That such members do not constitute a majority of the members of the Stormwater Management Board at the same time.

468 **Sec. 102-301. – Notice of violation.**

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- (a) When a Compliance Officer determines after reasonable observation or investigation that a Person has violated a prohibition or failed to meet a requirement of this Division, he/she may order compliance by written notice of violation to that Person. Such notice may require, without limitation:
 - (1) the performance of monitoring, analyses and reporting;
 - (2) the elimination of Illicit connections or discharges;
 - (3) that discharges, practices or operations that are in violation shall cease and desist;

- 482 (4) the abatement or remediation of Stormwater Pollution or contamination
483 hazards and the restoration of any affected property; and/or
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485 (5) the implementation of source control or treatment BMPs.
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- 487 (b) Notice(s) of violation shall be served in accordance with the law of the State of
488 West Virginia concerning the service of process in civil actions, except that a
489 method of service effectuated by a mailing by the clerk of a court (e.g., service
490 pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D)) shall be deemed to
491 be effectuated by a mailing by a Compliance Officer. If service is made by certified
492 mail consistent with West Virginia Rule of Civil Procedure 4(d)(1)(D) and delivery
493 of the notice of the violation is refused, the Compliance Officer, promptly upon the
494 receipt of the notice of such refusal, shall mail to the Person being noticed, by first
495 class mail, postage prepaid, (1) a copy of the notice of the violation(s) (2) a notice
496 that despite such refusal, the notice of the violation(s) is valid, and (3) advising that
497 the City will proceed to enforce the notice of violation(s). So long as such first class
498 mailing is not returned as undeliverable by the U.S. Postal Service, service of the
499 notice of violation(s) will be conclusively presumed to have been effectuated. Proof
500 of service shall be made at the time of service by a written declaration, under oath,
501 executed by the enforcement official effecting service and shall declare the time,
502 date and manner by which service was made.
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- 504 (c) Any notice of violation(s) under this section shall be in writing and shall contain
505 the following:
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- 507 (1) the date the notice of violation is given;
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509 (2) the name and address of the Person(s) charged with the violation;
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511 (3) the nature of the violation;
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513 (4) a statement of the action required to be taken in order to correct the
514 violation and further prevent it;
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516 (5) the time period allowed for the violation to be corrected. When
517 determining the time period allowed for correction, a Compliance Officer
518 shall take into consideration the threat posed by the violation to the
519 health, safety and welfare of the public and the nature of the work
520 required to correct the violation;
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522 (6) the maximum fines that may be assessed if the violation is not corrected
523 and a citation is issued; and
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525 (7) the name, address and telephone number of the Compliance Officer
526 issuing the notice of violation.
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528 (d) Nothing in this section shall limit the authority of Compliance Officers to take
529 any other lawfully prescribed enforcement action, including emergency actions or
530 any other enforcement action, without first issuing a notice of violation.
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532 **Sec. 102-302. – Request for reconsideration; appeal of decision of the City Engineer.**
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534 (a) Any Person receiving a notice of violation from a Compliance Officer may submit
535 a written request for reconsideration to the City Engineer by mailing said request
536 to The Office of the City Engineer, City of Charleston, P.O. Box 2749, Charleston,
537 WV 25330, or by hand delivering said request to the Office of the City Engineer,
538 114 Dickenson Street, Charleston, West Virginia. The request for reconsideration
539 must be received within 10 days from the date of the notice of violation and shall
540 include a written explanation of the basis for the request. Upon receipt of a timely
541 request for reconsideration, the City Engineer shall review the request and shall (1)
542 uphold the notice of violation (2) reverse the notice of violation or (3) modify the
543 notice of violation and shall provide written notice by certified mail of his or her
544 decision to the Person within 15 days of receipt thereof. .
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546 (b) When a notice of violation is upheld by the City Engineer as outlined in (a) above,
547 the Person may appeal the decision of the City Engineer to the City of Charleston
548 Stormwater Management Board by mailing a notice of appeal to City of Charleston
549 Stormwater Management Board, c/o Office of the City Manager, P.O. Box 2749,
550 Charleston, WV 25330, or by hand delivering said request to the City of Charleston
551 Stormwater Management Board, Office of the City Manager, 501 Virginia Street
552 East, Charleston, West Virginia. When appealing a decision by the City Engineer,
553 the notice of appeal to the Stormwater Management Board must be received within
554 10 days from the date of the receipt of the written notice of the City Engineer’s
555 decision. Hearing on the appeal shall be before the City of Charleston Stormwater
556 Management Board and said hearing shall take place within 30 business days from
557 the date of receipt of the notice of appeal. At the conclusion of the hearing, the
558 Stormwater Management Board shall either grant or deny the appeal in writing
559 within 10 days, and provide written notice by certified mail of its decision to the
560 Person who appealed. The decision of the Stormwater Management Board shall be
561 final. Failure to file a notice of appeal within the period set forth herein shall
562 constitute a waiver of the right to appeal to the Stormwater Management Board,
563 shall result in the decision of the City Engineer being final, and the notice of
564 violation shall be fully enforceable as set forth in this Division.
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566 **Sec. 102-303. – Appeal of notice of violation.**
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568 Any Person receiving a notice of violation who chooses not to request reconsideration by
569 the City Engineer may appeal the notice of violation directly to the City of Charleston Stormwater
570 Management Board by mailing a notice of appeal to the City of Charleston Stormwater
571 Management Board, c/o Office of the City Manager, P.O. Box 2749, Charleston, WV 25330, or
572 by hand delivering said request to the City of Charleston Stormwater Management Board, Office
573 of the City Manager, 501 Virginia Street East, Charleston, West Virginia. When appealing a notice

574 of violation where no reconsideration by the City Engineer has been requested, the notice of appeal
575 to the Stormwater Management Board must be received within 10 days from the date of the notice
576 of violation. Hearing on the appeal shall be before the City of Charleston Stormwater Management
577 Board and said hearing shall take place within 30 business days from the date of receipt of the
578 notice of appeal. At the conclusion of the hearing, the Stormwater Management Board shall either
579 grant or deny the appeal in writing within 10 days, and provide written notice by certified mail of
580 its decision to the Person who appealed. The decision of the Stormwater Management Board shall
581 be final. Failure to file a notice of appeal within the period set forth herein shall constitute a waiver
582 of the right to appeal to the Stormwater Management Board and the notice of violation shall be
583 fully enforceable as set forth in this Division.

584

585 **Sec. 102-304. – Enforcement measures after appeal.**

586

587 (a) If the violation has not been corrected within 10 days or any other period specified
588 by the Stormwater Management Board in its decision, then the Compliance Officer
589 shall request the owner’s permission for access to the subject private property to
590 take any and all measures reasonably necessary to abate the violation and/or bring
591 the property into compliance.

592

593 (b) If refused access to the subject property, the Compliance Officer may seek a
594 warrant in a court of competent jurisdiction to be authorized to enter upon the
595 property.

596

597 **Sec. 102-305. – Injunctive relief.**

598

599 It shall be unlawful for any Person to violate any provision or fail to comply with any of
600 the requirements of this Division. If a Person has violated or continues to violate the provisions of
601 this Division, the City may petition a court of competent jurisdiction for a preliminary or
602 permanent injunction restraining the Person from activities which would create further violations
603 or compelling the Person to perform abatement or remediation of the violation. Any such Person
604 against whom such an injunction is issued shall be responsible for paying all costs of the City in
605 obtaining and enforcing such injunction, including the court costs and attorney’s fees.

606

607 **Sec. 102-306. – Violations deemed a public nuisance.**

608

609 (a) In addition to the enforcement processes and penalties provided in this article, any
610 condition caused or permitted to exist in violation of any of the provisions of this
611 Division shall be considered a threat to the public health, safety, welfare and the
612 environment, may be declared and deemed a nuisance, and may be summarily
613 abated and/or restored by, or at the direction of, the City, by and through its
614 Compliance Officer. The City may initiate any administrative and civil actions as
615 necessary to abate, enjoin or otherwise compel the cessation of such nuisance.

616

617 (b) The cost of such abatement and/or restoration shall be the sole responsibility of the
618 owner of the property and the cost thereof shall be a lien upon and against the
619 property. Such lien shall continue in existence until the same shall be paid.

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Sec. 102-307. – Criminal prosecution.

In addition to, and not in lieu of, any administrative remedy provided in this Division, violations of this Division shall be a criminal misdemeanor, subject to criminal citation and punishable by a fine of not less than Five Hundred Dollars (\$500.00). Every day or portion thereof that a Person fails or refuses to remedy a violation shall be considered a separate offense. Fines may be reduced by the municipal court only upon agreement of the City by and through its prosecutor.

Sec. 102-308. – Remedies not exclusive.

The remedies listed in this Division are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies.

Sec. 102-309. – Severability.

The provisions of this Division are hereby declared to be severable. If any provision, clause, sentence, or paragraph 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 Division.