

RESOLUTION NO. 190_____ First Reading on proposed Ordinance Number 2019-02, related to adopting amendments to the Arapahoe County Stormwater Ordinance No. 2012-1, making certain updates to said Ordinance No. 2012-1 for purposes of consistency with Arapahoe County’s current municipal, separate storm sewer system (MS4) permit, and concerning the detection and elimination of illegal discharges to the public storm drainage system and providing enforcement procedures and penalty provisions for violations within unincorporated Arapahoe County, was held, pursuant to Section 30-15-406, C.R.S. Said Ordinance was read into the record. It was moved by Commissioner ___ and duly seconded by Commissioner _____ to set a public hearing on the proposed Ordinance for June 25, 2019 at 9:30 a.m. The proposed Ordinance was ordered to be published in the Villager Newspaper at least ten days prior to May 28, 2019. The text of the proposed Ordinance is as follows:

**ARAPAHOE COUNTY, COLORADO
ORDINANCE NO. 2019-02**

AN ORDINANCE CONCERNING THE DETECTION AND ELIMINATION OF ILLEGAL DISCHARGES TO STORM DRAINAGE SYSTEMS AND PROVIDING ENFORCEMENT PROCEDURES AND PENALTY PROVISIONS FOR VIOLATIONS

WHEREAS, Arapahoe County is required by federal and state law, and as a condition of its State of Colorado Municipal Separate Stormwater System permit (“MS4 permit”), to establish by ordinance methods for controlling the introduction of pollutants into the storm drain system, in order to protect the water quality of the state’s watercourses, water bodies and wetlands in a manner pursuant to and consistent with the provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *e/ seq.*, as amended and the Colorado Water Quality Control Act, § 25-8-101, *ef seq.*, C.R.S., as amended; and

WHEREAS, pursuant to § 30-15-401, C.R.S., the Board of County Commissioners of Arapahoe County, Colorado (“Board”) has the general enabling power to adopt ordinances for the control or licensing of those matters of purely local concern, and to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; and

WHEREAS, § 30-15-401 (11)(a)(I), C.R.S., specifically authorizes counties that have been issued a municipal separate storm sewer system permit (MS4 permit) pursuant to Part 5 of Article 8 of Title 25, C.R.S., to adopt a stormwater ordinance to develop, implement, and enforce the stormwater program required by the permit; and

WHEREAS, it is the opinion of the Board that in order to preserve the public health, safety and welfare of the citizens of Arapahoe County, and in order to comply with federal and state requirements imposed by the County's MS4 permit, the Board should take the following action:

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Arapahoe County as follows:

SECTION 1. INTENT

A. The Colorado Department of Public Health and Environment (“Department”) has issued to Arapahoe County an MS4 permit. As a condition of the issuance of this permit, the Department requires that Arapahoe County implement and enforce a regulatory mechanism to

prohibit non-stormwater discharges into storm drainage systems in unincorporated Arapahoe County.

B. The purpose of this Ordinance is to comply with the Department's condition of permit issuance to Arapahoe County and to provide for the health, safety and general welfare of the residents of Arapahoe County, Colorado by detecting and eliminating to the maximum extent

practicable non-stormwater discharges into storm drainage systems in unincorporated Arapahoe County.

C. The objectives of this Ordinance are:

- (1) To regulate the release of pollutants into the Municipal Separate Storm Sewer System;
- (2) To prohibit illicit connections and illegal discharges into the Municipal Separate Storm Sewer System;
- (3) To establish processes to carry out inspection, monitoring and enforcement necessary to ensure compliance with this Ordinance; and
- (4) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, antifreeze, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.

SECTION 2. APPLICABILITY

This ordinance shall apply in the unincorporated area of Arapahoe County.

SECTION 3. DEFINITIONS

For the purpose of this Ordinance, the following shall mean:

A. Authorized Enforcement Agency: Arapahoe County, Colorado, through its officers, employees and agents.

B. Colorado Discharge Permit System (“CDPS”): The state equivalent of the federal National Pollutant Discharge Elimination System (“NPDES”) Program in compliance with the provisions of the Colorado Water Quality Control Act, § 25-8-101, *ei seq.*, C.R.S., as amended. The CDPS is administered by the Colorado Department of Public Health and Environment — Water Quality Control Division. This is the system that requires and regulates Arapahoe County’s MS4 Permit.

C. 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.

D. Illegal Discharge: Any direct or indirect non-stormwater discharges into the storm drainage system.

E. Illicit Connections: (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drainage system, including but not limited

to, any conveyances which allow any non-stormwater discharge to enter the storm drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system which has not been documented in plans, maps or equivalent records and approved by the authorized enforcement agency.

- F. Municipal Separate Storm Sewer System (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
1. Owned or operated by a State, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to state waters;
 2. Designed or used for collecting or conveying stormwater;
 3. Which is not a combined sewer; and
 4. Which is not part of a Publicly Owned Treatment Works (POTW). See 5 CCR 1002-61.2(62).

G. Non-Stormwater Discharge: Any discharge to the storm drainage system that is not composed entirely of stormwater, including, but not limited to, the following: soil sediments from erosion of soils at construction sites; excessive nutrients such as nitrates and phosphates; paints, varnishes and solvents; 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 that 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; and noxious or offensive matter of any kind. The term "non-stormwater discharge" shall not apply to the following: water line flushing; landscape irrigation or lawn watering; diverted stream flows; irrigation return flow; rising ground waters; uncontaminated ground water infiltration (as defined at 40 C.F.R. 35.2005(2)); uncontaminated pumped ground water (Note: Discharges containing groundwater that comes into contact with construction activity is not considered "uncontaminated" due to the potential for sediment content); spring water; flows from riparian habitats and wetlands; water line flushing in accordance with the division's Low Risk Policy Discharge Guidance: Potable Water; discharges from potable water sources in accordance with the Division's *Low Risk Discharge Guidance: Potable Water*; water from foundation drains; air conditioning condensation; water from crawl space pumps or footing drains; individual residential car washing; dechlorinated swimming pool discharges in accordance with the division's *Low Risk Discharge Guidance: Swimming Pools*; and water incidental to street sweeping (including associated sidewalks and medians) and that is not associated with construction; dye testing in accordance with the manufacturers recommendations; stormwater runoff with incidental pollutants; agricultural stormwater runoff ; discharges from emergency fire-fighting activities; and discharges specifically authorized by a separate CDPS permit, or discharge for which an authorization, or formal commitment to not pursue enforcement actions against under a policy or waste discharge order in issued and administered under the authority of the CDPHE.

H. Person: Any individual, association, organization, partnership, firm, corporation, business or other entity recognized by law.

I. Premises: Any building, lot, parcel of land, or portion of land whether improved or

unimproved including adjacent sidewalks and parking strips.

J. Storm Drainage System: Facilities in unincorporated Arapahoe County by which stormwater is collected and/or conveyed, including but not limited to, any roads with drainage systems, streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, watercourses and other drainage structures. Storm Drainage System is synonymous with the term municipal separate storm sewer system (MS4).

K. Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation, including snowmelt.

L. Watercourse: A channel, natural depression, slough, artificial channel, gulch arroyo, stream, creek, pond, reservoir or lake, including major drainageways in which stormwater and flood water flows either regularly or infrequently.

M. Waters of the State: Any and all surface and subsurface waters which are contained in or flow in or through the State of Colorado, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use and treatment until use and treatment have been completed. (Section 2(81) of the CDPS Regulations).

N. Water Quality Control Division: Means the Water Quality Control Division (WQCD) of the Colorado Department of Public Health and Environment

SECTION 4. DISCHARGE PROHIBITIONS

4.1 Prohibition of Illegal Discharges

- A. No person shall cause a non-stormwater discharge into the storm drainage system.
- B. No person shall dump or deposit any non-stormwater onto public or private premises when such dumping or deposit results in an illegal discharge.

4.2 Prohibitions of Illicit Connections

- A. No person shall construct, use, maintain or continue the existence of an illicit connection to the storm drainage system.
- B. No person shall connect a line conveying sewage into the storm drainage system or allow such a connection to continue.

4.3 Removal of Source of Illegal Discharges and Illicit Connections

- A. Any person causing an illegal discharge or illicit connection must also cease or require the cessation of the illegal discharge or illicit connection. The source of the illegal discharge must be stopped and any surface contamination must be cleaned up by removing all surface residue.

SECTION 5. COMPLIANCE WITH CDPS PERMITS

Any person issued a CDPS permit for stormwater discharge shall comply with all provisions of such permit. Proof of compliance with such permit may be required in a form acceptable to the authorized enforcement agency. Failure to comply with the provisions of such permits is a violation of this Ordinance.

SECTION 6. WATERCOURSE PROTECTION

A. Every person owning, occupying or otherwise responsible for a premises through which a watercourse passes, shall keep and maintain that part of the watercourse within the premises free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse.

B. In addition, the owner, occupant or responsible person shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

SECTION 7. NOTIFICATION OF SPILLS

A. Notwithstanding other requirements of law, as soon as any person who owns, occupies or is otherwise responsible for a premises, or responsible for emergency response for such premises, has information of any known or suspected release of a non-stormwater discharge or hazardous material into stormwater, or into the stormwater drainage system, or into waters of the state, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release.

B. In the event of a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

C. If the discharge of hazardous materials or non-stormwater discharges 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 (3) years.

SECTION 8. ENFORCEMENT

A. Violation: It is unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. Any person who violates any of the provisions of this Ordinance may be subject to one or more of the enforcement actions provided under this Ordinance.

B. Enforcement: The authorized enforcement agency, and the Arapahoe County Sheriff (and his deputies) with respect to criminal enforcement actions, shall have the power to conduct inspections, give verbal direction, issue notices of violations and implement the enforcement actions under this Ordinance.

8.01 Civil Enforcement Action

A. Pursuant to § 30-15-401 (11)(b)(I), C.R.S., the authorized enforcement agency may apply to the Arapahoe County Court or District Court for an administrative entry and seizure warrant authorizing the authorized enforcement agency or its contractor to enter the premises and take any and all actions necessary to abate the conditions violating this Ordinance and for restoration of the affected premises.

B. Such application to the court shall include a copy of this Ordinance, a sworn or affirmed affidavit stating the factual basis for such warrant, evidence that the owner of the premises has received the Notice of Violation, or that reasonable efforts to serve the Notice have been made to no avail, and that the owner has failed to abate the condition within a reasonable prescribed period, a general description of the location of the premises that is the subject of the warrant, and a list of corrective action needed.

C. Within ten (10) days after the date of issuance of an administrative entry and seizure warrant, the authorized enforcement agency shall execute the warrant in accordance with directions by the issuing court, deliver or mail a copy of such warrant to the owner of the premises by both certified mail return receipt requested and by regular mail, and submit proof of the execution of such warrant to the court, including a written inventory of any property impounded by the authorized enforcement agency.

D. The authorized enforcement agency shall submit to the person violating the Ordinance an invoice for the costs of the abatement, plus an additional five percent (5%) for inspection and other incidental costs in connection therewith. Such costs shall be paid within ten (10) days of the date of the invoice. If not paid, the costs shall be a lien against the premises that were the subject of the abatement until paid and shall have priority based upon the lien's date of recording.

E. The Arapahoe County Clerk and Recorder may certify the amount of the lien to the Arapahoe County Treasurer who shall collect the amount of the lien, together with a ten percent (10%) penalty for the cost of collection, in the same manner as other taxes are collected. The laws of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of liens pursuant to this Ordinance.

Section 8.02 Criminal Enforcement

A. Any person who violates this Ordinance commits, pursuant to § 30-15-402(1), C.R.S., a class 2 petty offense, and upon conviction thereof, shall be punished by a fine of \$250 for the first offense, \$500 for the second offense, and \$1000 for the third and subsequent offenses. Each day during which such violation of this Ordinance continues shall be deemed a separate offense.

B. The penalty assessment procedures set out in § 16-2-201, C.R.S., shall be followed in enforcing this Ordinance.

C. All fines and forfeitures collected by the court for violation of this Ordinance shall be paid to the Arapahoe County Treasurer within thirty (30) days of receipt and shall be deposited into the General Fund of the County.

D. In addition to the penalties prescribed above, persons convicted of a violation of this Ordinance shall be subject to a surcharge of ten dollars (\$10) that shall be paid to the clerk of the court by the defendant as provided by § 30-15-402(2)(a), C.R.S.

Section 8.03 Remedies Not Exclusive

The remedies listed in this Ordinance are not exclusive of each other or 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. This shall include remedies available to the Arapahoe County Sheriff's Office, Colorado Department of Public Health and Environment, Colorado Attorney General and Environmental Protection Agency.

SECTION 9. VIOLATIONS DEEMED A PUBLIC NUISANCE

Any condition caused or permitted to exist in violation of any of the provisions of this Ordinance is a threat to public health, safety, and welfare, and is declared a nuisance, and may be summarily abated or restored at the violator’s expense, and/or a civil action to abate, enjoin, or otherwise compel a cessation of such nuisance may be taken.

SECTION 10. SEVERABILITY

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

SECTION 11. PRIOR ORDINANCE SUPERSEDED

This Ordinance supersedes and replaces Arapahoe County Ordinance Number 2012-01.

SECTION 12. EFFECTIVE DATE

This Ordinance shall take effect upon its adoption. This is necessary for the immediate preservation of public health and safety, due in part to the need to control activity subject to this ordinance as soon as possible.

BOARD OF COUNTY COMMISSIONERS
ARAPAHOE COUNTY COLORADO

CERTIFICATE

It is hereby certified that the foregoing Ordinance No. 2019-2 was introduced, read and adopted on first reading at the regular meeting of the Board of County Commissioners on _____, 2019 (Resolution No. _____) and the same was published in full in the Villager, a newspaper of general circulation in Arapahoe County, on _____, 2019, and thereafter was adopted [with amendments(if so)], on second and final reading on _____, 2019 (Resolution No. _____). Said Ordinance, following adoption, was published in full in the Villager on _____, 2019. Said ordinance went into effect on _____, 2019.

Attest: _____
Joan Lopez, Clerk to the Board

Jeff Baker, Chair

The vote was:

Commissioner Baker, ___; Commissioner Conti, ___; Commissioner Holen, ___;
Commissioner Jackson, ___; Commissioner Sharpe, ___.

The Chair declared the motion carried and so ordered.