

ORDINANCE NO. 2008-04

AN ORDINANCE OF THE TOWN OF MELBOURNE BEACH, BREVARD COUNTY, FLORIDA, RELATING TO STORMWATER; MAKING FINDINGS; AMENDING CHAPTER 27 OF THE TOWN CODE OF ORDINANCES; ADDING ARTICLE II, SECTIONS 27-20 THROUGH 27-36 RELATING TO ILLEGAL AND ILLICIT DISCHARGES AND CONNECTIONS; PROVIDING A SHORT TITLE, OBJECTIVES, AND DEFINITIONS; PROVIDING FOR APPLICABILITY AND COMPATIBILITY WITH OTHER REGULATIONS; PROVIDING FOR SEVERABILITY AND ULTIMATE RESPONSIBILITY; REQUIRING CONTROL OF POLLUTANT CONTRIBUTIONS FROM INTERCONNECTED MUNICIPAL SEPARATE STORM SEWER SYSTEMS; SETTING FORTH PROHIBITIONS; REGULATING STORMWATER DISCHARGES FROM COMMERCIAL, INDUSTRIAL, OR CONSTRUCTION ACTIVITIES TO THE MUNICIPAL SEPARATE STORM SEWER SYSTEM OR REGULATED WATERS; SETTING FORTH AUTHORIZED EXEMPTIONS AND EMERGENCY CONDITIONS; REQUIRING INSPECTION AND MONITORING FOR COMPLIANCE; PROVIDING REPORTING REQUIREMENTS; PROVIDING FOR VIOLATION, ENFORCEMENT, AND ASSESSMENT OF A PENALTY; PROVIDING A SCHEDULE OF PENALTIES AND PROVIDING FOR THE USE OF PENALTY AWARDS; PROVIDING FOR INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Commission has determined that it is in the Town's best interest to regulate non-stormwater discharges to the municipal storm sewer system to the maximum extent practicable as required by Federal and Florida law; and

WHEREAS, the Town Commission has determined that it is in the Town's best interest to establish methods for controlling the introduction of pollutants into the Town's municipal storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit; and

WHEREAS, the Town Commission finds that this Ordinance will promote the public health, safety, welfare, economic order and public interest.

BE IT ENACTED BY THE TOWN OF MELBOURNE BEACH, FLORIDA:

SECTION 1. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-20, which said section read as follows:

ARTICLE III. ILLICIT DISCHARGE AND CONNECTION

§ 27-20. Short title.

This article shall be known and may be cited as "The Town of Melbourne Beach Illicit Discharge (IDO) Code."

SECTION 2. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-21, which said section read as follows:

§ 27-21. Objectives.

(a) The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the Town of Melbourne Beach through the regulation of non-stormwater discharges to the municipal separate storm sewer system to the maximum extent practicable as required by federal and state law. This code establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

(b) The objectives of this article are:

(1) To regulate the contribution of pollutants to the municipal separate storm sewer system by stormwater discharges by any user;

(2) To prohibit illicit connections and discharges to the municipal separate storm sewer system; and

(3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article.

SECTION 3. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-22, which said section read as follows:

§ 27-22. Definitions.

For the purposes of this article, the following terms, phrases, words, and their derivations shall have the meaning given herein:

Authorized enforcement agency means the department within the Town of Melbourne Beach that is designated by the town manager as having the responsibility to enforce this article.

Best Management Practices or BMPs means 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 practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

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

Construction activity means any on-site activity which will result in the creation of a new stormwater discharge, including the building, assembling, expansion, modification or alteration of the existing contours of the site, the erection of buildings or other structures, or any part thereof, or land clearing.

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

Illicit Discharge or Illegal Discharge means any discharge to the town's municipal separate storm sewer system or to waters of the United States which is not entirely of stormwater, unless exempted pursuant to section 27-28, or the discharge to the town's municipal storm separate sewer system or to waters of the United States which is not in compliance with Federal, Florida, or local permits.

Illicit Connection means either of the following: 1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal or illicit discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain 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 drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activities means activities at facilities identified by the United States Environmental Protection Agency as requiring an NPDES stormwater permit in accordance with 40 CFR 122.26(b)(14) or amendments thereto, or any unit operation, complex, area or multiple of unit operations that produce, generate, handle, process or cause to be processed, any materials which may cause water pollution.

Municipal Separate Storm Sewer System means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads or streets with drainage systems, catch basins, curbs, gutters, ditches, manmade channels, storm drains, treatment ponds and other structural BMPs) owned and operated by a local government that discharge to waters of the United States or to other municipal separate storm sewer systems, that is designed solely for collecting, treating or conveying stormwater and that is not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2 or any amendments thereto.

National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit means a permit issued by the Florida Department of Environmental Protection (FDEP) that authorizes the discharges of pollutants to waters of the United States.

Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two (2) or more persons having a joint or common interest, or any other legal entity.

Pollutant means anything that causes or contributes to pollution. Pollutants may include, but are not limited to 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, ordnances, 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; and noxious or offensive matter of any kind.

Receiving bodies of water means any water bodies, watercourses and wetlands into which surface waters flow.

Stormwater management system means the designed features of the property that collect, convey, channel, hold, inhibit or divert the movement of stormwater.

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

Watercourse means any natural or artificial stream, creek, channel, ditch, canal, waterway, gully, ravine or wash in which water flows in a definite direction, either continuously or intermittently, and which has a definite channel, bed or banks.

Water body mean any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

SECTION 4. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-23, which said section read as follows:

§ 27-23. Applicability.

This article shall apply to all water entering the municipal separate storm sewer system on any developed and undeveloped lands unless explicitly exempted by this article or an authorized enforcement agency.

SECTION 5. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-24, which said section read as follows:

§ 27-24. Compatibility with other regulations.

This article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article 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 6. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-25, which said section read as follows:

§ 27-25. Severability.

The provisions of this article are hereby declared to be severable. If any word, 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 ordinance.

SECTION 7. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-26, which said section read as follows:

§ 27-26. 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 8. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-27, which said section read as follows:

§ 27-27. Control of pollutant contributions from interconnected municipal separate storm sewer systems.

Interconnected municipal separate storm sewer systems, including municipal separate storm sewer systems not owned by the town, shall be controlled so that they do not impair the operation of or contribute to the failure of the receiving municipal separate storm sewer systems to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected municipal separate storm sewer systems shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

SECTION 9. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-28, which said section read as follows:

§ 27-28. Prohibitions.

(a) Illicit/Illegal Discharges. No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the municipal separate storm sewer systems any pollutants or waters containing any pollutants, other than stormwater, whether such discharges occur through piping connections, runoff, exfiltration, infiltration, seepage or leaks. Polluting matter includes, but is not limited to, the following:

- (1) petroleum products, including, but not limited to oil, gasoline, grease;
- (2) solid waste (as defined in s. 403.702, F.S.);
- (3) paints;
- (4) steam cleaning waste;
- (5) pesticides, herbicides or fertilizers;
- (6) degreasers, solvents;
- (7) sanitary sewage;
- (8) chemically treated cooling water;

(9) antifreeze and other automotive products;

(10) lawn clippings, leaves, branches, etc.;

(11) animal carcasses;

(12) recreational vehicle waters;

(13) dyes;

(14) construction materials;

(15) any liquids in quantity or quality that are capable of causing a violation of the town's NPDES stormwater permit; and

(16) Solids in such quantities or of such size capable of causing interference or obstruction to the flow of the town's separate storm sewer system.

(b) *Illicit Connections.*

(1) No person may maintain, use or establish any direct or indirect connection to any storm sewer owned by the town that results in any discharge in violation of any provision of federal, state, city or other laws or regulations.

(2) This subsection is retroactive, and applies to illicit connections made prior to the effective date of the article from which this subsection is derived; regardless of whether made under a permit or other authorization, or whether permissible under laws or practices applicable or prevailing at the time the connection was made.

(3) A person is considered to be in violation of this article if the person connects a line conveying sewage to the municipal separate storm sewer system, or allows such a connection to continue.

(c) *Violation of Permits.* Any discharge into the stormwater system of the town in violation of any Federal, state, county, municipal or other governmental law, rule, regulation or permit is prohibited, except those discharges set forth in this section or as in accordance with a valid NPDES permit.

SECTION 10. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-29, which said section read as follows:

§ 27-29. Stormwater discharges from commercial, industrial or construction activities to the municipal separate storm sewer system or regulated waters.

(a) Stormwater from areas of any commercial activity, industrial activity or construction activities shall be controlled, treated and managed on-site using best management practices so as not to cause an illicit or illegal discharge to the town's municipal separate storm sewer system or regulated waters.

(b) All erosion, pollutant, and sediment controls required by the town code, or by any applicable local, state, or Federal permit, including elements of a stormwater pollution prevention plan required under a NPDES permit and the town's land development regulations in appendix A of the town code, shall be properly implemented, installed, operated, and maintained.

(c) Authorized discharges to the town's municipal separate storm sewer system shall be controlled so that they do not impair the operation of the town's municipal separate storm sewer system or contribute to the failure of the town's municipal separate storm sewer system to meet any applicable local, state, or federal law or regulation.

(d) Authorized discharges to regulated waters shall be controlled so that they do not adversely impact the quality or beneficial uses of those waters or result in violation of any applicable local, state, or Federal law or regulation.

(e) Any person who has been issued an NPDES permit authorizing discharges to the municipal separate storm sewer systems shall submit a complete copy of the permit to town building official by not later than June 30, 2008, (thirty (30) days after the effective date of this article), or within thirty (30) days after the issuance of a permit.

SECTION 11. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-30, which said section read as follows:

§ 27-30. Authorized exemptions.

(a) The commencement, conduct or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as follows:

- (1) water line flushing;
- (2) flushing of reclaimed water lines;
- (3) street cleaning;
- (4) construction dust control;
- (5) landscape irrigation;
- (6) diverted stream flows;
- (7) rising ground waters;
- (8) foundation and footing drains;
- (9) uncontaminated swimming pool discharges;
- (10) uncontaminated ground water infiltration (as defined at 40 C.F.R.35.205(20));
- (11) uncontaminated pumped ground water;
- (12) discharges from potable water sources;
- (13) air conditioning condensate;
- (14) irrigation water;
- (15) springs;
- (16) lawn watering;
- (17) individual residential car washing;
- (18) flows from riparian habitat and wetlands; and
- (19) discharges or flows from emergency fire fighting activities and emergency response activities done in accordance with an adopted spill response/action plan.

(b) The prohibitions contained in this article 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 Florida Department of Environmental

Protection, 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 to the storm drain system.

SECTION 12. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-31, which said section read as follows:

§ 27-31. Emergency conditions.

(a) Notwithstanding any other provisions of this article, whenever the town or an authorized enforcement agency determines that conditions or activities requiring immediate action to protect public health, safety or welfare, or to provide for compliance with these regulations, rules promulgated hereunder, or town approved construction plans, town forces are authorized to enter at a reasonable time in or upon any property for the purpose of testing, inspecting, investigating, measuring, sampling and correcting such emergency conditions. Failure to admit personnel responding to emergency conditions, as determined and authorized by the authorized enforcement agency, shall constitute a separate violation of this article.

(b) Suspension due to illicit discharges in emergency situations. The town or other authorized enforcement agency may, without prior notice, suspend municipal separate storm sewer system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the municipal separate storm sewer system or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the town or other authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the municipal separate storm sewer systems or waters of the United States, or to minimize danger to persons.

(c) Suspension due to the detection of illicit discharge. Any person discharging to the municipal separate storm sewer system in violation of this article may have their municipal separate storm sewer system access terminated if such termination would abate or reduce an

illicit discharge. The town or other authorized enforcement agency will notify a violator of the proposed termination of its municipal separate storm sewer system access. The violator may petition the town or other authorized enforcement agency for a reconsideration and hearing. It is considered an offense of this article if the person reinstates municipal separate storm sewer systems access to premises terminated pursuant to this section without the prior approval of the authorized enforcement agency.

SECTION 13. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-32, which said section read as follows:

§ 27-32. Inspection and monitoring for compliance.

Town personnel and town agents shall be granted access for inspection of facilities discharging or suspected of discharging to the town's municipal separate storm sewer system or waters of the United States in order to effectuate the provisions of this article and to investigate violations or potential violations of any of the terms herein. All structures and processes which allow discharges to the town's municipal separate storm sewer system, as well as records connecting them, shall be made accessible to town personnel and town agents for this purpose.

SECTION 14. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-33, which said section read as follows:

§ 27-33. Reporting requirements.

Illicit discharges to the municipal separate storm sewer system are prohibited. Any person owning or occupying a property, premise, or facility who has knowledge of a discharge of pollutants from said property, premise, or facility or other type of evidence which might result in a violation of the prohibitions found in section 27-28 of this article shall immediately take action to abate the discharge of pollutants, and shall notify the authorized enforcement agency within twenty-four (24) hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within seventy-two (72) hours of discovery. The written report shall include a description of the discharge volume, content,

frequency, discharge point location to the municipal separate storm sewer system, measures taken or to be taken to terminate the discharge, and the name, address and telephone number of the person who may be contacted for additional information. Hazardous materials discharges shall be reported to the town, the Brevard County Public Safety Office, the Brevard County Health Department, and the Florida Department of Environmental Protection.

SECTION 15. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-34, which said section read as follows:

§ 27-34. Violations, enforcement, and penalties.

(a) Notice of violation. Whenever the town or an authorized enforcement agency finds that a person has violated a prohibited act or failed to meet a requirement of this article, the town or the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The elimination of illicit connections or discharges.
- (2) The issuance of cease and desist orders.
- (3) The abatement or remediation of storm water pollution or contamination hazards and restoration of any affected property.
- (4) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work may be done by a designated governmental agency or a contractor and the expenses thereof shall be charged to the violator.

(b) Appeal of notice of violation. Any person receiving a notice of violation may appeal the determination of the authorized enforcement agency. The notice of appeal must be received within ten (10) days from the date of the notice of violation. Hearing on the appeal shall be before

the town code enforcement board and shall take place within thirty (30) days from the date of receipt of the notice of appeal. The decision of the town shall be final.

(c) In addition to any fines that may be imposed, any person responsible for illicit or illegal discharges, or noncompliance with BMPs at industrial and/or construction sites, and who fails to correct any prohibited condition or discontinue any prohibited activity at the order of the authorized enforcement agency shall be liable to the town for the expenses incurred in abating pollution, including expenses incurred in testing, measuring, sampling, collecting, removing, treating, and disposing of the polluting materials and preventing further noncompliance and/or illicit discharges.

(d) Persons responsible for violation of this article shall be liable for all costs incurred by the town in sampling, analyzing and/or monitoring the discharge, together with all state and/or Federal fines imposed as a result of the discharge and cost of removing, remedying or properly treating the discharge.

(e) Any person found in violation and/or who fails to comply with the requirements of any provision of the article shall, without limitation on the town's legal recourse, be subject to prosecution before the town's Code Enforcement Board. Each day of violation shall constitute a separate violation.

(f) The town may elect to take any or all of the above remedies concurrently, and the pursuit of one shall not preclude the pursuit of another.

SECTION 16. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-35, which said section read as follows:

§ 27-35. Schedule of penalties. A person who has been convicted of an offense under this article may be required to pay a fine in addition to any punishment of incarceration as described in s. 1-99.

Fines for designated violations shall not exceed:

Section	Description	Penalty
<u>27-28</u>	<u>Failure to comply with IDO prohibitions</u>	<u>\$200 per day/per</u>

		<u>occurrence</u>
<u>27-29</u> <u>(a)(c)(d)(e)</u>	<u>Failure to comply with IDO industrial activities and construction site requirements.</u>	<u>\$125 per day/per occurrence</u>
<u>27-33</u>	<u>Failure to comply with IDO reporting requirements.</u>	<u>\$125 per occurrence</u>
<u>27-34</u>	<u>Failure to comply with IDO site remediation and monitoring requirements</u>	<u>\$200 per day/per occurrence</u>
<u>27-29(b)</u>	<u>Failure to comply with IDO erosion and sedimentation control measures</u>	<u>\$50 per day/per occurrence</u>

SECTION 17. That the Town Code of Melbourne Beach, Florida, is hereby amended by adding a section, to be numbered 27-36, which said section read as follows:

§ 27-36. Use of penalty awards.

Any money recovered by the town in an action against any person who has caused pollution in the town in violation of this article or state law shall be used for water quality improvement projects in the town.

SECTION 18. Interpretation Clause. In interpreting the provisions of this Ordinance, the following rules and symbols shall apply:

- (1) Words underlined are additions to existing text.
- (2) ~~Words stricken through~~ are deletions from existing text.
- (3) Asterisks (* * *) indicates a deletion from the Ordinance of text existing in the Code

of Ordinances. It is intended that the text in the Code of Ordinance denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 19. Effective Date. That this ordinance shall become effective June 1, 2008.

This Ordinance was passed on first reading at a regular meeting of the Town Commission on the 19th day of March, 2008, and adopted on the second and final reading at a regular

meeting of the Town Commission on the 16th day of April, 2008.

TOWN OF MELBOURNE BEACH,
FLORIDA, a Florida Municipal
Corporation

By: William G. Stacey
William G. Stacey, Mayor

ATTEST:

Lenore Milan
Lenore Milan, CMC, Town Clerk

(TOWN SEAL)

Ordinance No. 2008-04