

**ORDINANCE NO. 2022-04**

AN ORDINANCE OF THE TOWN OF MALABAR, FLORIDA, AMENDING THE TITLE OF ARTICLE VIII OF THE MALABAR LAND DEVELOPMENT CODE; CREATING CHAPTER 1; PROVIDING FOR A CHAPTER 2; CREATING NEW SUB-SECTION 2-8.01 THROUGH 2-8.14; PROVIDING FOR REGULATION OF NON-STORMWATER DISCHARGES TO THE STORM DRAINAGE SYSTEM; PROVIDING FOR FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROHIBITION OF ILLICIT DISCHARGE; PROVIDING FOR PROHIBITION OF ILLICIT CONNECTION; PROVIDING FOR REPORTING OF ILLICIT DISCHARGES AND ILLICIT CONNECTIONS; PROVIDING FOR ENFORCEMENT, PENALTIES, AND LIABILITY FOR POLLUTION ABATEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Malabar, Brevard County, Florida, that:

**Section 1.** Article VIII of the Town Land Development Code is hereby amended to read as follows:

**“Article VIII Surface Water, Natural Resources, and Stormwater Management**

**Chapter 1. Surface Water Management (1-8.1 through 1-8.19)**

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**Chapter 2. Illicit Discharge and Connection (2-8.01 through 2-8-14)**

**Sec. 2-8.01. – Short title, Purpose, Findings and Intent.**

This article shall be known and may be cited as the “Town of Malabar Illicit Discharge Code.

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the Town of Malabar, Florida through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law

This Chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process

The objectives of this Chapter are:

a) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;

b) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system; and

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

**Sec. 2-8.02. – Definitions.**

- a. Authorized Enforcement Agency means the department within the town that is designated by the town manager as having the responsibility to enforce this article, or the town's code enforcement department.
- b. Best Management Practices (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.
- c. Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- d. Construction activity means activities that will result in the creation of new stormwater discharge, including but not limited to building, assembling, expansion, modification, or alteration of the existing contours of a site, the erection of buildings or other structures, clearing and grubbing, grading, excavating, and demolition.
- e. 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.
- f. Illicit connection means either:
  - (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-stormwater 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.
- g. Illicit discharge or illegal discharge means any direct or indirect non-stormwater discharge to the storm drain system or to waters of the United States, except as exempted in section 2-8.09 of this article, or discharge to the storm drain system or to waters of the United States which is not in compliance with federal, state, or local permits. Illicit discharges are declared a serious threat to the public health, safety, and due to their nature are irreparable or irreversible in nature.

- h. 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.
- i. Municipal separate storm sewer system (MS4) or storm drain system means a conveyance, storage area or system of conveyances and storage areas (including, but not limited to, roads with drainage systems, streets, 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 MS4s, that are designed solely for collecting, treating or conveying stormwater and that are not part of publicly owned treatment works (POTW) as defined by 40 CFR 122.2, or any amendments thereto.
- j. 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.
- k. Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.
- l. Person means an individual, corporation, governmental agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other entity recognized by law.
- m. 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; nonhazardous 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.
- n. Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.
- o. Receiving bodies of water means any water bodies, watercourses and wetlands into which surface waters flow.
- p. Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- q. Stormwater management system means the designed features of the property that collect, convey, channel, hold, inhibit or divert the movement of stormwater.
- r. Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- s. Water body means any natural or artificial pond, lake, reservoir, or other area which ordinarily or intermittently contains water and which has a discernible shoreline.

- t. 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.

**Sec. 2.8.03. – Applicability.**

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

**Sec. 2.8.04. – Compatibility with other regulations.**

This chapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article 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.

**Sec. 2-8.05. – Ultimate responsibility.**

The standards set forth herein and promulgated pursuant to this chapter 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.

**Sec. 2-8.06. – Control of pollutant contributions from interconnected MS4s.**

Interconnected MS4s, including MS4s 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 MS4 to meet any applicable local, state, or federal law or regulation. Owners of sections of an interconnected MS4 shall be responsible for the quality within their portion of the system and shall coordinate with the owners of the downstream segments.

**Sec. 2-8.07. – Prohibitions.**

- (a) Illicit/illegal discharges. No person shall throw, drain, dump, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 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;
- (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) water from a commercial car wash;
  - (16) any liquids in quantity or quality that are capable of causing a violation of the town's NPDES stormwater permit; and
  - (17) solids in such quantities or of such size capable of causing interference or obstruction to the flow of the town's storm drain 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, town 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 MS4, 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.

**Sec. 2-8.08. – Stormwater discharges from commercial, industrial, or construction activities to the MS4 or regulated waters.**

- (a) Stormwater from areas of any commercial activity, industrial activity, or construction activity 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 MS4 or regulated waters.
- (b) All erosion, pollutant, and sediment controls required by article II of this chapter, or by any applicable local, state, or federal permit, including elements of a stormwater pollution prevention plan required under an NPDES permit and the town's land development regulations, shall be properly implemented, installed, operated, and maintained.
- (c) Authorized discharges to the town's MS4 shall be controlled so that they do not impair the operation of the town's MS4 or contribute to the failure of the town's MS4 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 MS4 shall submit a complete copy of the permit to town engineering department within 30 days after the issuance of a permit.

**Sec. 2-8.09. – Authorized exemptions.**

- (a) The commencement, conduct, or continuance of any illicit or illegal discharge to the storm drain system is prohibited except as described 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) dechlorinated swimming pool discharges;
  - (10) uncontaminated ground water infiltration (as defined at 40 CFR 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 residual car washing
  - (18) flows from riparian habitat and wetlands; and
  - (19) discharges or flows from emergency firefighting activities and emergency response activities done in accordance with an adopted spill response/action plan.
- (b) 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 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.

**Sec. 2-8.10. – Emergency conditions and suspension of MS4 access.**

Notwithstanding any other provisions of this article, whenever the 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.

- (a) Suspension due to illicit discharges in emergency situations. The authorized enforcement agency may, without prior notice, suspend MS4 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 MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

- (b) Suspension due to the detection of illicit discharge. Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing. It is considered an offense of this article if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the authorized enforcement agency.

**Sec. 2-8.11. – 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 MS4 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 MS4, as well as records relating to them, shall be made accessible to town personnel and town agents for this purpose.

**Sec. 2-8.12. – Reporting requirements.**

Any person owning or occupying a premises or facility who has knowledge of a discharge of pollutants from those premises or facilities, or other type of evidence which might result in a violation of the prohibitions found in section 2-8.07, shall immediately take action to abate the discharge of pollutants, and shall notify the authorized enforcement agency within 24 hours of the discharge of pollutants. The initial notification may be by telephone, but the person responsible shall submit a written report within 72 hours of discovery. The written report shall include a description of the discharge volume, content, frequency, discharge point location to the MS4, 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 county public safety office, the county health department, and the Florida Department of Environmental Protection.

**Sec. 2-8.13. – Enforcement.**

(a) Notice of violation.

- (1) For any violation which does not involve an illicit discharge, the authorized enforcement agency finds that a person has violated a prohibited act or failed to meet a requirement of this article, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:
- a. the performance of monitoring, analyses, and reporting;
  - b. the elimination of illicit connections;
  - c. the issuance of cease and desist orders;
  - d. the abatement or remediation of stormwater pollution or contamination hazards and restoration of any affected property;

- e. advice as to the possible amount of fines; and
  - f. the implementation of source control or treatment BMPs.
- (2) 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) If the violation is not corrected by the date assigned, the authorized enforcement agency may file charges with the special magistrate or prosecute the violations in court. Fines for the violation of a municipal ordinance shall be subject to consideration of the factors set forth in F.S. § 162.09, if the offense is prosecuted before the special magistrate.
  - (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, 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. The determination of the reasonableness of such costs shall be brought before the special magistrate, either as an independent hearing or in conjunction with a code enforcement hearing. The determination regarding the reasonableness of the cost of abatement shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment if such amount is not paid within ten days from the date of the special magistrate's decision regarding the abatement costs.
  - (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 special magistrate of the town, pursuant to this Code. 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.
  - (g) In the event of an illicit discharge, the Town shall not be required to send a Notice of Violation and may cause a Hearing to be immediately scheduled before the Special Magistrate with notice of such hearing provided to the violator.
  - (h) The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Town to seek cumulative remedies. The Town may recover all attorney's fees court costs and other expenses associated with enforcement of this Chapter in court.

**Sec. 2-8.14. – Use of penalty awards.**



Any funds received by the Town as a result of the enforcement of this code which are not used for specific purposes set forth in this code shall be deposited in the stormwater utility fund."

**Section 2. Severability.** The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, such decision shall not affect the validity of the remaining terms, provisions, clauses, sentences, or sections of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

**Section 3. Inclusion in Code.** It is the intention of the Town Council of the Town of Malabar that the provisions of this ordinance shall be made a part of the Town of Malabar Code of Ordinances, and the sections may be renumbered to accomplish such intention.

**Section 4. Effective Date.** This ordinance shall take effect immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member Acquaviva. The motion was seconded by Council Member Hofmeister and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Steve Rivet	<u>Aye</u>
Council Member David Scardino	<u>Aye</u>
Council Member Mary Hofmeister	<u>Aye</u>

This ordinance was then declared duly passed and adopted this 18th day of April 2022.

**TOWN OF MALABAR**

By: Patrick T. Reilly  
Mayor Patrick T. Reilly, Council Chair

**ATTEST:**

Debby K. Franklin  
Debby K. Franklin, C.M.C., Town Clerk/Treasurer

Approved for Legal Sufficiency:  
Karl Bohne, Jr.  
Karl Bohne, Jr, Town Attorney

First Reading: 04/04/2022 Vote 4 to 0.  
Second Reading: 04/18/2022

