

ORDINANCE NO. 873

AN ORDINANCE OF THE CITY OF CALLAWAY FLORIDA CREATING CHAPTER 8.5 OF THE CODE OF ORDINANCES OF THE CITY OF CALLAWAY, FLORIDA REGULATING STORMWATER AND ILLICIT DISCHARGES; STATING INTENT; PROVIDING DEFINITIONS, APPLICABILITY, RESPONSIBILITY FOR ADMINISTRATION, AND COMPATIBILITY WITH OTHER REGULATIONS; PROHIBITING ILLICIT DISCHARGES; PROVIDING FOR INVESTIGATION OF SUSPECTED ILLICIT DISCHARGES; REQUIRING CITIZEN RESPONSE TO SUSPECTED ILLICIT DISCHARGES; PROVIDING FOR VIOLATIONS DESPITE FOLLOWING BEST MANAGEMENT PRACTICES; PROVIDING FOR SUSPENSION OF MUNICIPAL SEPARATE STORM SEWER SYSTEM ACCESS; DEEMING VIOLATION TO BE NUISANCE AND PROVIDING FOR ENFORCEMENT AND ENFORCEMENT PROCEDURES; PROVIDING FOR APPEAL OF NOTICE OF VIOLATION; PROVIDING AUTHORITY FOR ABATEMENT BY THE CITY; PROVIDING THAT REMEDIES NOT EXCLUSIVE AND PROVIDING FOR OTHER RELIEF; PROVIDING FOR SEVERABILITY; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

NOW THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF CALLAWAY, FLORIDA:

SECTION 1. AUTHORITY AND PURPOSE. This ordinance is adopted pursuant to Sections 166.021 and 166.041, Florida Statutes, and other applicable provisions of law, to provide for the health, safety and welfare of the citizens of the City of Callaway, Florida and to implement the City of Callaway's National Pollution Discharge Elimination System Municipal Separate Storm Sewer System permit.

SECTION 2. AMENDMENTS. From and after the effective date of this ordinance, Chapter 8.5 of the Code of Ordinances of the City of Callaway, Florida entitled Stormwater and Illicit

Discharges, is created to read as follows:

SECTION 8.5-1. INTENT.

The intent of this Chapter is to reduce the discharge of pollutants from the municipal separate storm sewer system (“MS4”) to surface waters of the State to the maximum extent practicable. This Chapter establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (“NPDES”) permit process.

SECTION 8.5-2. DEFINITIONS.

For the purposes of this Chapter, the following shall mean:

Authorized Enforcement Agency. City of Callaway Public Works Department including its director and any designees of the director or of the City Manager.

Best Management Practices. Schedules of activities, prohibitions of practices, general good house keeping 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. Best Management Practices 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.

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.

Illicit Discharge. Any discharge to the MS4 that is not composed entirely of Stormwater except discharges pursuant to an NPDES permit and the following categories of non-Stormwater discharges provided they do not cause a violation of water quality standards: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensate, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering runoff, water from individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, residual street wash water, and discharges or flows from fire fighting activities.

Municipal Separate Storm Sewer System or MS4 . A conveyance or system of conveyances including roads with Stormwater systems, municipal streets, catch basins, curbs, gutters, ditches, constructed channels, or storm drains owned or operated by the City of Callaway, designed or used for collecting or conveying Stormwater, and which is not a combined sewer or part of a Publicly Owned Treatment Works.

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

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Publicly Owned Treatment Works. Any device or system used in the treatment of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a Publicly Owned Treatment Works providing treatment.

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

SECTION 8.5-3. APPLICABILITY.

This Chapter shall apply to all water entering the MS4.

SECTION 8.5-4. RESPONSIBILITY FOR ADMINISTRATION.

The Authorized Enforcement Agency shall administer, implement, and enforce the provisions of this Chapter. Powers granted or duties imposed upon the Authorized Enforcement Agency may be delegated by the Director of the City of Callaway Public Works Department or the City Manager, but only if done so in writing.

SECTION 8.5-5. COMPATIBILITY WITH OTHER REGULATIONS.

This Chapter is not intended to modify or repeal any other federal, state, or local law. The requirements of this Chapter are in addition to the requirements of any other federal, state, or local law.

SECTION 8.5-6. PROHIBITION OF ILLICIT DISCHARGES.

No Person shall make or cause to be made an Illicit Discharge except an Illicit Discharge specified in writing by the Authorized Enforcement Agency as being necessary to protect public health or a Illicit Discharge necessary for dye testing after notification to the Authorized Enforcement Agency. If the Authorized Enforcement Agency determines that a discharge allowed under the definition of Illicit Discharge or under this section is causing adverse impacts to the MS4, it shall request that the City Commission modify the Illicit Discharge definition or eliminate the exception that allows the discharge.

SECTION 8.5-7. INVESTIGATION OF SUSPECTED ILLICIT DISCHARGES.

When the Authorized Enforcement Agency suspects that an Illicit Discharge has occurred or is occurring, it shall investigate the discharge and the Premises from which the discharge has occurred or is occurring. The Authorized Enforcement Agency shall set up devices on public property, such as on a public right of way, as are necessary in the opinion of the Authorized Enforcement Agency to monitor and sample the Premises's Stormwater discharge in order to evaluate the suspected Illicit Discharge. It shall be a violation of this Chapter to interfere with or damage such devices. If the owner or operator of the Premises does not consent to entry and inspection of a building or the area immediately surrounding it by the Authorized Enforcement Agency, the Authorized Enforcement Agency may still enter to inspect or sample the suspected illicit discharge if exigent circumstances exist, there is a violation of this Chapter occurring in plain sight, or after obtaining a search warrant upon probable cause of a violation.

SECTION 8.5-8. CITIZEN RESPONSE TO SUSPECTED ILLICIT DISCHARGES.

Notwithstanding other requirements of law, as soon as any who is Person responsible for a property or operation or who is responsible for emergency response for a property or operation has information regarding any known or suspected release of materials which are resulting or may result in an Illicit Discharge, that Person shall take all necessary steps to contain, minimize, and abate the release. In the event of a release of Hazardous Materials that Person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-Hazardous Materials, that Person shall notify the Authorized Enforcement Agency in person or by phone or facsimile no later than the next business day.

SECTION 8.5-9. VIOLATIONS DESPITE FOLLOWING BEST MANAGEMENT PRACTICES.

The City of Callaway has adopted Best Management Practices intended to prevent Illicit Discharges, which are in addition to any Best Management Practices required by any federal, state, or local permit or authorization. Compliance with these Best Management Practices is required independent of this Chapter. An Illicit Discharge that occurs despite compliance with these Best Management Practices is still a violation of this Chapter unless such Illicit Discharge is allowed pursuant to Section 8.5-6. The Authorized Enforcement Agency shall recommend to the City Commission any other Best Management Practices that should be adopted by the City Commission in order to continue to meet the requirements of the City's NPDES MS4 permit.

SECTION 8.5-10. SUSPENSION OF MS4 ACCESS.

A Person commits an offense if the Person reinstates MS4 access to Premises terminated pursuant to any part of this Section, without the prior approval of the Authorized Enforcement Agency.

Suspension due to Illicit Discharges in Emergency Situations

In the event of an actual or threatened discharge which presents an imminent and substantial danger to the environment, or to the health or welfare of Persons, or to the MS4 or waters of the State, the Authorized Enforcement Agency shall issue an emergency order to the Person responsible for the Premises or the discharge to suspend all discharges as necessary to prevent the imminent and substantial danger. If the Person fails to immediately comply with the emergency order or if the violator or Person responsible for the Premises cannot be contacted, the Authorized Enforcement Agency may take such steps as necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to Persons, including immediate suspension of a facility's

water supply, sewer connection, or both, or other reasonable actions to suspend the facility's access to the MS4.

Suspension due to the Detection of Illicit Discharge

After issuing a notice of violation, which includes notice of a proposed suspension, and the expiration of the time to appeal, the Authorized Enforcement Agency may suspend access to the MS4, including suspension of a facility's water supply, sewer connection, or both, or other reasonable actions to suspend the facility's access to the MS4, if such suspension would abate or reduce an Illicit Discharge.

SECTION 8.5-11. ENFORCEMENT.

An Illicit Discharge, whether continuing or wholly in the past, constitutes a nuisance under Chapter 9.7 of the Code of Ordinances of the City of Callaway, Florida. Whenever abatement or remediation ordered will be in the nature of environmental cleanup or restoration or repair to the MS4 or waters of the State, the Authorized Enforcement Agency shall proceed either under Chapter 9.7 nuisance abatement procedures, in a civil action in a court of law, or both. Regardless, whenever the Authorized Enforcement Agency finds that a Person has violated a prohibition or failed to meet a requirement of this Chapter, the Authorized Enforcement Agency shall issue under this Chapter a written notice of violation to the responsible Person ordering any continuing or threatened Illicit Discharge to immediately cease and ordering compliance with this Chapter.

The notice of violation shall also contain:

- (1) The name and address of the alleged violator;

- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of any remedial measures necessary to restore compliance with this Chapter and a time schedule for the completion of such remedial measures;
- (5) A statement that an Illicit Discharge, whether continuing or wholly in the past, constitutes a nuisance under Chapter 9.7 of the Code of Ordinances of the City of Callaway, Florida and that the violator and the property may be subject to a nuisance abatement action at any time and that in a nuisance abatement action, the Authorized Enforcement Agency's cost of abatement and remediation of the Illicit Discharge, including any including any abatement or remediation of any damage to the MS4 or waters of the State, and including any administrative and legal fees and costs, may be assessed against the Person to whom the notice of violation is directed and, if not paid, may become a lien against the real property; and,
- (6) A statement that the determination of violation may be appealed to Authorized Enforcement Agency by filing a written notice of appeal to the Authorized Enforcement Agency on or before the fifth (5th) business day following receipt of the notice of violation.

Such notice may require:

- (1) Any penalty consistent with Section 1-12 of the Code of Ordinances of Callaway, Florida;
- (2) Suspension of access to the MS4;
- (3) Performance of monitoring, analyses, and reporting;

(4) Implementation of source control or treatment Best Management Practices.

(5) Any other measure consistent with this Chapter.

SECTION 8.5-12. 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 on or before the fifth business day from receipt of the Notice of Violation. Hearing on the appeal before the Authorized Enforcement Agency or its designee shall take place within fifteen (15) business days from the date of receipt of the notice of appeal. The decision of the Authorized Enforcement Agency or its designee shall be the final decision of the City but the named violator may appeal this decision to a court of appropriate jurisdiction in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.

SECTION 8.5-13. ABATEMENT BY THE CITY.

The Authorized Enforcement Agency may abate and remediate any damage to the MS4 or waters of the State at any time. Whenever the Authorized Enforcement Agency will seek to recover its costs of abatement and remediation of the Illicit Discharge, including any including any abatement or remediation of any damage to the MS4 or waters of the State, and including any administrative and legal fees and costs, it shall do so by proceeding either with a nuisance abatement action under Chapter 9.7 of the Code of Ordinances of Callaway, Florida, a civil action in a court of law, or both. Any such action shall be in addition to the issuance of a notice of violation under this Chapter and enforcement of this Chapter. If an Illicit Discharge has not been corrected pursuant to the requirements set forth in a notice of violation before the time for appeal expires, or, in the event of

an appeal, on or before the third business day following the date of a decision upholding the existence of a violation, then the Authorized Enforcement Agency or its designee may enter the premises and is authorized to take any and all measures necessary to abate and remediate the Illicit Discharge. It shall be unlawful for any Person, owner, agent or Person in possession of any property to refuse to allow the Authorized Enforcement Agency or its designee to enter the Premises for this purpose.

SECTION 8.5-14. AVAILABILITY OF OTHER RELIEF.

It shall be unlawful for any Person to violate any provision or fail to comply with any of the requirements of this Chapter. 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 Authorized Enforcement Agency to seek cumulative remedies or to petition for a preliminary or permanent injunction restraining the Person from violations or compelling the Person to perform abatement or remediation including environmental cleanup or restoration or repair to the MS4 of waters of the State. In lieu of enforcement proceedings, assessment of penalties, and remedies authorized by this Chapter, the Authorized Enforcement Agency may impose upon a violator alternative compensatory actions, such as, but not limited to, storm drain stenciling, maintenance or improvement; ditch maintenance or improvement; attendance at compliance workshops; or stream or bay cleanup.

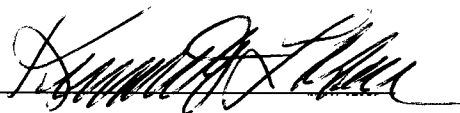
SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held invalid or unconstitutional by the decision of any court or

regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The City Commission hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared illegal, invalid, or unconstitutional.


SECTION 5. EFFECTIVE DATE. This ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Commission of the City of Callaway, Florida, this 28th day of October, 2008.

CITY OF CALLAWAY


Kenneth L. Meer, Mayor

ATTEST:


Genette R. Bernal, City Clerk

First Reading: 10-14-08
Second Reading: 10-28-08