ORDINANCE NO. 4127

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapter 7.14 of the Kent City Code, entitled “Illicit Discharges,” to establish penalty provisions that apply should an individual violate the illicit stormwater discharge code provisions, to clarify existing code provisions, and to make other changes consistent with federal law.

RECITALS

A. Through its adoption of Ordinance No. 3916 on June 2, 2009, the Kent City Council established an illicit discharge detection and elimination program related to the City’s stormwater system. This program is required as part of the City’s coverage under the National Pollutant Discharge Elimination System (NPDES) Western Washington Phase II Municipal Stormwater Permit administered by the Washington State Department of Ecology. The purpose of the program is to establish a regulatory mechanism that allows the City to effectively prohibit non-stormwater, illegal discharges, and dumping into the municipal separate storm sewer system.

B. When Ordinance No. 3916 was adopted, it enacted a violation and enforcement provision that was codified at Kent City Code (KCC)
section 7.14.150. As currently enacted, KCC 7.14.150 provides that in the event a violation occurs, the City may pursue code enforcement proceedings through Ch. 1.04 KCC. This enforcement provision is different in form from other violation provisions within the Kent City Code that provide for either a civil code enforcement proceeding, or in the alternative, the filing of criminal charges. This departure appears to have been a drafting oversight and not a deliberate decision by staff or the City Council.

C. Relying on the enforcement provisions contained in Ch. 1.04 KCC, however, is not effective in every situation. That code chapter relates to ongoing violations and establishes procedures through which the City may seek to stop a violation and obtain an order requiring the property owner or occupant to clean up the property. However, Ch. 1.04 KCC does not grant the City the authority to file criminal charges unless a repeat violation occurs or the person responsible for the violation fails to clean up the property after being ordered by the Hearing Examiner to do so. In some situations, a violator’s conduct is so egregious that criminal charges are warranted, even if the violator has remedied the violation or cleaned up the property.

D. Amending KCC 7.14.150 to allow the City to file either civil code enforcement proceedings or criminal charges will also make this code section consistent with similar Kent City Code provisions, for example: KCC 6.07.210 regarding violations of the City’s Street Use Permit provisions, KCC 7.03.110 regarding violations of the City’s Solid Waste Collection provisions, KCC 7.05.210 regarding violations of the City’s Storm and Surface Water Utility provisions, KCC 8.01.050 regarding violations to the City’s Public Nuisance provisions, and KCC 8.04.190 regarding violations to the City’s Litter Control provisions.
E. Because the enforcement provisions are currently being revised, it is also appropriate to make further housekeeping changes to clarify the intent or purpose of some code provisions, while revising others to make them consistent with recent changes to federal law.

F. The State Environmental Policy Act (SEPA) responsible official has determined that the proposed Kent City Code amendments are procedural in nature, and further SEPA analysis is not required for these local code amendments. A draft version of this ordinance was submitted to the Washington State Department of Commerce for expedited review on August 20, 2014. The ordinance was considered by the City Land Use and Planning Board after a duly noticed public hearing on October 13, 2014.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. Amendment. Chapter 7.14 of the Kent City Code, entitled “Illicit Discharges,” is amended as follows:

Sec. 7.14.010. Purpose. The purpose of this chapter is to prevent pollutants and nonstormwater from entering the city of Kent municipal separate storm sewer system (the “MS4”) and waters of the state to the maximum extent practicable as required by federal and state law. This chapter establishes the minimum methods required for controlling the introduction of pollutants and preventing their entry into the MS4 and waters of the state in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this chapter are:

Illicit Stormwater Discharges-
Ch. 7.14 KCC
A. To regulate the contribution of pollutants to the MS4 and waters of the state;

B. To prohibit illicit connections and discharges to the MS4 and waters of the state;

C. To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this chapter; and

D. To mitigate impacts to water quality as a result of increased runoff due to urbanization, correct or mitigate existing water quality problems related to stormwater, and to help restore and maintain the chemical, physical, and biological integrity of the city’s waters for the protection of beneficial uses, including salmonid habitat and aquifer recharge; and-

E. To establish the reasonable use of best management practices (BMPs) to prevent pollutants and nonstormwater from entering the MS4 and waters of the state.

Sec. 7.14.020. Definitions. As used in this chapter, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless a different meaning is plainly required.

A. 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 the MS4 or waters of the state to stormwater, receiving waters, or the MS4. BMPs also include treatment practices, structural methods, and operating procedures; and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw
materials storage. BMPs are determined by reference to standard industry practice or applicable state, county, and local government design and pollution prevention manuals.

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

C. **Construction activity** means land-disturbing operations including clearing, grading, or excavation which disturbs the surface of the land. Such activities may include road construction, construction of residential houses, office buildings, or industrial buildings, and demolition activity.

D. **Director** means the city of Kent public works director, or his or her designee.

E. **Groundwater** means water in a saturated zone or stratum beneath the surface of the land or below a surface water body.

F. **Hazardous material** 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.

G. **Hyperchlorinated** means water that contains more than ten (10) mg/liter chlorine. Disinfection of water mains and appurtenances requires a chlorine residual of ten (10) mg/liter at the end of the disinfection period.
HI.  *Illicit connections* means any conveyance that is connected to the MS4 or waters of the state without a permit, excluding roof drains and foundation drains. Examples include sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the MS4. Illicit connections allow an illicit discharge to enter the MS4 and include, but are not limited to, any conveyances that allow any nonstormwater discharge, including sewage, process wastewater, and wash water, to enter the MS4 or waters of the state; any connections to the MS4 from indoor drains and sinks, regardless of whether such drain or connection was previously allowed, permitted, or approved by an authorized enforcement agency; or any drain or conveyance connected from a commercial or industrial land use to the storm drain system MS4 or waters of the state that has not been documented in plans, maps, or equivalent records and approved by the city or another agency of government duly authorized to give such approvals.

IH.  *Illicit discharge* means any direct or indirect nonstormwater discharge, not expressly allowed by this code, to the MS4, waters of the state, or any other location within the city where the discharge has a reasonable likelihood of being washed into the MS4 or waters of the state, except as expressly exempted by this chapter.

J.  *Industrial activity* means activities subject to NPDES industrial permits as defined in 40 CFR 122.26(b)(14).

K.  *Municipal separate storm sewer system (MS4)* means a conveyance, or system of conveyances; including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, flow controls, treatment facilities, or storm drains:
1. Owned or operated by a state, city, town, county, district, port, or other public body created by or pursuant to state law having jurisdiction over disposal of 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 an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the state;

2. Designed or used for collecting or conveying stormwater;

3. That Which is not a combined sewer; and

4. That Which is not part of a publicly-owned treatment works ("POTW") as defined at 40 CFR 122.2.

L. National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits; and imposing and enforcing pretreatment requirements; under sections 307, 402, 318, and 405 of the federal CWA for the discharge of pollutants to surface waters of the state. These permits are referred to as NPDES permits, and, in the State of Washington, are administered by the Washington State Department of Ecology.

stormwater discharge permit means a permit issued by the Environmental Protection Agency (EPA), or by the Washington Department of Ecology under authority delegated pursuant to 33 U.S.C. 1342(b), that authorizes the discharge of pollutants to waters of the state, whether the permit is applicable to an individual, group, or general area-wide basis.

M. Nonstormwater discharge means any discharge to the MS4 or waters of the state that is not composed entirely of stormwater.
N. **Owner/operator** means any of the following: a person or entity with an ownership interest in the premises; a person or entity who occupies or has control over the premises; or real property on which a violation of this chapter occurs; any person or entity who participates in any activity on the premises that is regulated by this chapter; and any person or entity participating in any violation of this chapter.

O. **Person** means any individual, firm, business, association, partnership, corporation, or other legal entity, public or private, however organized. Because "person" shall include both human and non-human entities, any of the following pronouns may be used to describe a person: he, she, or it.

P. **Person responsible for the violation** means any of the following: a person who has titled ownership or legal control of the premises that is subject to the regulation; an occupant or other person in control of the premises that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the premises that is subject to the regulation; or any person who created, caused, or has allowed the violation to occur on the premises.

Q. **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, and accumulations, so that the same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous materials 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.
RP. *Premises* means any real property or interest in real property and any improvement upon real property.

SQ. *RCW* means the state Revised Code of Washington. It is the compilation of all permanent state laws, now in force as currently enacted or as subsequently amended or recodified.

IR. *Sanitary sewage* means domestic and commercial wastewater including flushed toilet water, water from dishwashers, clothes washing machines, and any other used water that generally is disposed of down interior household drains.

US. *Sanitary sewer system* means a conveyance, or system of conveyances, that which is designed to convey domestic and commercial wastewater.

V. *Stormwater system* means facilities through which stormwater is collected, conveyed, or treated, including but not limited to inlets, conveyance pipes, pumping facilities, retention and detention basins, bioinfiltration facilities, drainage channels, and other drainage structures.

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

XU. *Stormwater pollution prevention plan* means a document that which describes the BMPs and activities to be implemented by an owner/operator or business to identify sources of pollution or contamination at a site, and the actions to eliminate or reduce pollutant discharges to stormwater, the MS4, and/or waters of the state receiving waters.
YV. *Waters of the state* means those waters as defined as “waters of the United States” in 40 CFR 122.2, within the geographic boundaries of the State of Washington, and those “waters of the state” as defined in Chapter 90.48 RCW, which includes lakes, rivers, ponds, streams, inland waters, underground waters, groundwater, salt waters, and all other surface waters and water courses within the jurisdiction of the State of Washington.

ZW. Water quality standards means the Water Pollution Control Act, as defined herein; Surface Water Quality Standards – Chapter 173-201A of the Washington Administrative Code ("WAC"); Ground Water Quality Standards – Chapter 173-200 WAC, and Sediment Management Standards – Chapter 173-204 WAC. The water quality standards are established to sustain public health and public enjoyment of the waters and the propagation and protection of fish, shellfish, and wildlife.

AAV. *Wastewater* means any water or other liquid, other than uncontaminated stormwater, discharged from any premises.

**Sec. 7.14.030. Applicability.** This chapter shall apply to all owners/operators as defined herein.

**Sec. 7.14.040. Entry onto premises.** With the consent of the owner/operator of any premises, through permissions granted in a stormwater facility maintenance covenant, or pursuant to a lawfully issued warrant, the director may enter any premises at any reasonable time to perform the duties imposed by this chapter. No consent, warrant, or permission is required to enter those areas open to the public generally or to which no reasonable expectation of privacy exists.
Sec. 7.14.050. Prohibited discharges.

A. No person owner/operator shall discharge, or cause an illicit discharge, or fail to utilize reasonable BMPs to protect against a potential or accidental discharge, of nonstormwater or any other material not expressly allowed by this code, including but not limited to pollutants or waters containing any pollutants, to enter into the MS4 or waters of the state that may reasonably cause or contribute to a violation of applicable water quality standards as herein defined, to enter into the MS4 or watercourses of the state.

B. Prohibited discharges include but are not limited to the following list, provided for informational purposes only, of common substances that which are illicit discharges when discharged to the MS4 or waters of the state:

1. Solid waste, trash or debris;
2. Human and animal waste;
3. Petroleum products in quantities that produce a visible sheen, including but not limited to oil, gasoline, grease, fuel, oil, and heating oil;
4. Antifreeze and other automotive products;
5. Flammable or explosive materials;
6. Radioactive material;
7. Construction materials;
8. Batteries;
9. Acids, alkalis, or bases;
10. Paints, stains, resins, lacquers, or varnishes;
11. Metals in excess of naturally occurring amounts, whether in liquid or solid form;
12. Solvents and degreasers;
13. Drain cleaners: commercial and household cleaning materials;
14. Pesticides, herbicides, or fertilizers;
15. Ink;
16. Steam-cleaning waste;
17. Laundry waste, soap, detergent, and ammonia;
18. Domestic or sanitary sewage;
19. Animal carcasses;
20. Food and food waste including fats, oils, and grease (FOG);
21. Recreational vehicle waste;
22. Swimming pool or spa filter backwash;
23. Chlorine, bromine, or other disinfectants;
24. Heated water;
25. Yard waste, dirt, sand, and gravel;
26. Bark and other fibrous materials;
27. Collected lawn clippings, leaves, or branches;
28. Silt, sediment, concrete, cement, or gravel;
29. Dyes, except as permitted by KCC 7.14.060;
30. Chemicals not normally found in uncontaminated water;
31. Chlorinated swimming pool or hot tub water except as permitted by KCC 7.14.070;
32. Discharges from potable water sources which may include but are not limited to: water line flushing, hyperchlorinated water line flushing, fire hydrant flushing, and pipeline hydrostatic test water, except as permitted by KCC 7.14.070;

33. Any other process-associated discharge except as otherwise allowed in this chapter; or

34. Any hazardous material or waste not listed above.

C. Any person who violates KCC 7.14.050 may be liable, jointly or severally, in accordance with KCC 7.14.150 and KCC 7.14.160. The City may pursue enforcement action against any person responsible for the violation.

Sec. 7.14.060. Allowable discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution—a violation of water quality standards inof the MS4 or waters of the statesurface water or groundwater:

A. Diverted stream flows;
B. Rising groundwaters;
C. Uncontaminated groundwater infiltration, as defined in 40 CFR 35.2005(20);
D. Uncontaminated pumped groundwater;
E. Foundation drains discharging clean stormwater only uncontaminated groundwater or stormwater;
F. Air conditioning condensation;
G. Irrigation water from agricultural sources that is commingled with urban stormwater;
H. Springs;
I. Water from crawl space pumps discharging clean stormwater only;
J. Footing drains discharging clean stormwater only uncontaminated groundwater or stormwater;
K. Flows from riparian habitats and wetlands;
L. Nonstormwater discharges covered by another NPDES permit; or
M. Discharges from emergency firefighting activities;
N. Dye testing using environmentally friendly products for the purpose of testing or tracing source pollution is allowable but requires verbal notification to the city prior to the time of testing.

Sec. 7.14.070. Conditional discharges. The following types of discharges shall not be considered illicit discharges for the purposes of this chapter if they meet the following stated conditions, unless the director determines that the type of discharge, whether singly or in combination with others, is causing or is likely to cause pollution of surface water or groundwater:

A. Potable water, including water from water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing, and pipeline hydrostatic test water. Planned discharges shall be de-chlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the MS4;

B. Lawn watering and other irrigation runoff are permitted but shall be minimized;

C. Dechlorinated swimming pool discharges. These discharges shall be dechlorinated to a concentration of 0.1 ppm or less, pH-adjusted, if
necessary, and in volumes and velocities controlled to prevent resuspension of sediments in the MS4; or

D. Street and sidewalk wash water, water used to control dust, and routine external building wash down that is unheated and does not use detergents—any additives are permitted, if the amount of street wash and dust control water used is minimized.

E. Other nonstormwater discharges. The discharges shall be in compliance with the requirements of a stormwater pollution prevention plan reviewed by the city which addresses such discharges.

Sec. 7.14.080. Illicit connections prohibited.

A. No person owner/operator shall connect a conveyance system that which was not constructed or intended to convey precipitation runoff, or that which has been converted from such usage to another use, to the MS4 or groundwater infiltration system waters of the state. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system MS4 is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. An owner/operator is considered to be in violation of this chapter if the owner/operator connects a line conveying sanitary sewage to the MS4 or allows such a connection to continue.

B. Any person who violates KCC 7.14.080 may be liable, jointly or severally, in accordance with KCC 7.14.150 and KCC 7.14.160. The City may pursue enforcement action against any person responsible for the violation.

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Sec. 7.14.090. Suspension of discharge access to MS4. As permitted by applicable law, the city may suspend MS4 access to an owner/operator when such suspension is necessary to stop an actual or threatened discharge that which—is or would be prohibited under this chapter.

Sec. 7.14.100. Inspections.

A. The director may establish inspection programs to ensure compliance with the requirements of this chapter and to accomplish its purposes. Inspection programs may be established on any reasonable basis including, but not limited to, routine inspections, random inspections, or inspections based upon complaints received or concerns of other notice of possible code violations. Additionally, inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants, inspections may be conducted of businesses or industries with suspicious discharges, a high volume of discharge, or pollutants that appear to be present in the discharge, of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the city’s NPDES stormwater permit, and joint inspections with other agencies inspecting under environmental or safety laws.

B. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, and material or water in the MS4; and evaluating the condition of the MS4 and other BMPs premise’s stormwater system and BMPs.

Sec. 7.14.110. Reinspections. Should a city inspection discover a violation of this chapter or other applicable federal, state, or local code provision, it shall be the duty of the owner/operator to notify the director.
that any noted violations have been corrected, and to request a reinspection. The director may require that such request for reinspection be filed one (1) working day before such inspection. It shall be the duty of the owner/operator to provide safe access to and a means for inspection of any corrective work.

Sec. 7.14.120. Monitoring of discharges. As permitted by applicable law, the city may conduct or cause to be conducted monitoring and/or sampling of the stormwater discharge from any premises, and may recover the costs of so doing from the owner/operator of the premises.

Sec. 7.14.130. Requirements to prevent, control, and reduce stormwater pollutants by the use of BMPs. The owner/operators engaging in industrial activity shall provide, at owner/operator’s expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses of the state through the use of these structural, and nonstructural, and operational BMPs. Further, any owner/operator responsible for premises, that which are, or may be, the source of an illicit discharge, may be required to implement, at owner/operator’s expense, additional structural, and nonstructural, and operational BMPs to prevent the further discharge of pollutants illicit discharges to the MS4 or waters of the state. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Sec. 7.14.140. Industrial or construction activity discharges. Any owner/operator subject to an industrial or construction activity NPDES
stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with such permit may be required in a form acceptable to the city prior to allowing discharge to the MS4 and failure to comply with the provisions of such permit will constitute a violation of this chapter:

Sec. 7.14.150. Violations and enforcement.
A. Any violation of Whenever the city finds that an owner/operator has violated or failed to meet a requirement in any provision of this chapter constitutes a civil violation under, the city may pursue the code enforcement procedures set forth in Ch. 1.04 KCC for which a monetary penalty may be assessed and abatement may be required as provided therein. Any violation of this chapter that is deemed by the director to be a threat or potential threat to the public health, safety and welfare may be abated as a nuisance or pursuant to any other applicable local, state or federal law or regulation. Regulation under this chapter shall not serve as a shield to any action under other applicable laws or regulations of the city, state, or United States.

B. In addition to or as an alternative to any other penalty provided in this chapter or by law, any person who violates any provision of this chapter shall be guilty of a misdemeanor pursuant to KCC 1.01.140.

Sec. 7.14.160. Joint and several responsibility and liability.
Responsibility for violations of this chapter is joint and several, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for a violation.

SECTION 2. - Severability. If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such
decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 3. – Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

SECTION 4. – Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage and publication as provided by law.

ATTEST:

SUZETTE COOKE, MAYOR

RONALD F. MOORE, CITY CLERK

APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY
PASSED: ___ day of November, 2014.
APPROVED: ___ day of November, 2014.
PUBLISHED: ___ day of November, 2014.

I hereby certify that this is a true copy of Ordinance No. 4127 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
RONALD F. MOORE, CITY CLERK

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