

COUNTY ORDINANCE NO. 07-01, as amended

AN ORDINANCE PROHIBITING ILLICIT DISCHARGES INTO THE COUNTY STORM SEWER SYSTEM

WHEREAS, as a condition of its Stormwater Discharges Associated with Municipal Separate Storm Sewer Systems (MS4) permit issued by the Colorado Department of Public Health and Environment, El Paso County is required to implement and enforce a regulatory mechanism to prohibit non-stormwater discharges into the storm sewer system; and

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

WHEREAS, Section 30-15-401 (11)(a)(I), C.R.S., specifically authorizes El Paso County to adopt a stormwater ordinance to develop, implement and enforce the stormwater management program required by the MS4 permit.; and

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

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of El Paso County, Colorado:

Section 1: Purpose.

The purpose of this Ordinance is to protect the public health, safety, and welfare of the citizens and residents of El Paso County, Colorado, by detecting and eliminating, to the extent possible, illicit discharges into the County’s storm sewer system, which, if not eliminated, can result in water pollution detrimental to the health of the County’s citizens and natural resources and in substantial sanctions imposed by the Colorado Department of Public Health and Environment.

Section 2: Authority and Effect.

- 2.1 This Ordinance is authorized pursuant to, inter alia, C.R.S. §§30-11-101, *et seq.*, and §§ 30-15-401, *et seq.*
- 2.2 Nothing in this Ordinance shall be construed to preclude the enforcement of other applicable county, state and federal laws and regulations.

Section 3: Applicability.

- 3.1 This Ordinance shall apply throughout the unincorporated area of El Paso County.

Section 4: Definitions.

Board: the Board of County Commissioners of El Paso County, Colorado.

County: the unincorporated areas of El Paso County.

County Engineer: the El Paso County Engineer, or his or her authorized designee(s).

County storm sewer system: the system of structures owned or operated by El Paso County designed or used for collecting or conveying stormwater, including but not limited to roads with drainage systems, inlets, catch basins, curbs, gutters, pipes, man-made channels, ditches, detention and water quality basins, or storm drains.

Division: The Water Quality Control Division of the Colorado Department of Public Health and Environment.

Illicit Discharge: any discharge to any portion or component of the County storm sewer system that is not composed entirely of stormwater except discharges specifically authorized by a Colorado Discharge Permit System (CDPS) or NPDES permit and discharges resulting from emergency firefighting activities. An illicit discharge also does not include water from the following sources: landscape irrigation; lawn watering; diverted stream flows; irrigation return flow; rising ground waters; uncontaminated ground water infiltration, as defined at 40 CFR 35.2005 (20); uncontaminated pumped ground water; springs; flows from riparian habitats and wetlands; water line flushing and discharges from potable water sources in accordance with the Division's Low Risk Policy Discharge Guidance: Potable Water; foundation drains; air conditioning condensation; water from crawl space pumps; footing drains; individual residential car washing; dechlorinated swimming pool discharges in accordance with the Division's Low risk Policy Discharge Guidance: Swimming Pools; water incidental to street sweeping, including associated sidewalks and medians and that is not associated with construction; dye testing in accordance with manufacturer's recommendations; stormwater runoff with incidental pollutants; agricultural stormwater runoff; or any discharge consistent with the Division's Low Risk Discharge Policy Guidance, or other Division policies and guidance documents where the Division has stated it will not pursue permit coverage or enforcement for specified point source discharges.

Owner: the owner of record, whether person, partnership, firm, corporation, governmental agency, or other association of persons, or any authorized agent or representative of the owner of record.

Person: any individual, association of individuals, partnership, firm, corporation, agency, or agent or representative thereof.

Public or private property: any land or real property, including but not limited to the right-of-way of any road or highway and any body of water or watercourse.

Section 5: Unlawful Acts.

5.1 It shall be unlawful for any person to cause an illicit discharge by knowingly, recklessly or negligently dumping or depositing any non-stormwater material directly into any portion or component of the County storm sewer system.

5.2 It shall be unlawful for any person to knowingly, recklessly or negligently dump or deposit any non-stormwater material onto public or private property when such dumping or deposit results in an illicit discharge.

5.3 It shall be unlawful for any owner to allow any non-stormwater material originating from any lot, parcel or tract of land in the County under such owner's control, possession or ownership to enter into any portion or component of the County storm sewer system, thereby causing an illicit discharge.

Section 6: Notice of Violation.

6.1 To the extent possible, considering the nature and extent of the illicit discharge, the County Engineer or designated El Paso County staff shall provide verbal or written notice to persons or owners violating this Ordinance and shall work with such persons to correct violations prior to the commencement of enforcement proceedings.

6.2 Nothing in this Section shall be construed to bar the commencement of criminal or civil enforcement proceedings for violations of this Ordinance as provided herein without prior notice.

Section 7: Criminal Prosecution.

7.1 After receiving Board approval at a public hearing, the County Engineer may initiate the criminal prosecution of violations of subsections 5.1 and 5.2 of this Ordinance in the county court.

7.2 County Public Works inspectors shall have the authority to issue citations or summonses and complaints for the purpose of enforcing subsections 5.1 and 5.2 of this Ordinance.

7.3 Any person who violates subsection 5.1 or 5.2 of this Ordinance commits a class 2 petty offense, and, upon conviction thereof, shall be punished by a fine of up to one thousand dollars (\$1,000).

7.4 The penalty assessment procedure provided in C.R.S. § 16-2-201 shall be followed in enforcing this Ordinance.

7.5 All fines and forfeitures collected by the court for the violation of subsections 5.1 and 5.2 of this Ordinance shall be paid to the El Paso County Treasurer within thirty (30) days of receipt and shall be deposited into the General Fund of the County.

7.6 In addition to the penalties prescribed in subsection 7.3 of this Ordinance, persons convicted of a violation of subsection 5.1 or 5.2 of this Ordinance are subject to a surcharge of ten dollars that shall be paid to the clerk of the court by the defendant, as provided by C.R.S. § 30-15-402 (2)(a).

Section 8: Civil Enforcement.

The County Engineer may refer violations of this Ordinance to the County Attorney's Office for the institution of an injunction, mandamus, abatement, or other appropriate action to prevent, enjoin, abate, or remove a violation.

Section 9: County Cleanup of Illicit Discharges.

9.1 After verbal or written notice to an owner of a violation of subsection 5.3 of this Ordinance and failure of said owner to cleanup or abate such violation, and if the County Engineer deems it appropriate for county resources to be utilized for the cleanup necessary to abate an illicit discharge, he or she may contact the owner to request written permission to enter the property for cleanup purposes.

9.2 If the County Engineer does not receive written permission from an owner to enter the property for cleanup purposes after such permission has been requested, the County Engineer may refer the matter to the County Attorney's Office for application to the courts for an administrative entry and seizure warrant for such cleanup pursuant to Section 10 below.

9.3 Upon obtaining either written permission from an owner or an administrative entry and seizure warrant, the County Engineer shall have the authority to perform the cleanup by and through County forces, contract,

or otherwise at the expense of the owner. If the owner fails to pay the cost of cleanup within ten (10) days after the County Engineer mails an invoice for such cost, the whole cost thereof, including five percent (5%) for inspection and incidental costs in connection therewith, may be assessed upon the lots, parcel and tracts upon which such cleanup occurred. Any assessment pursuant to this subsection 9.3 shall be a lien against such lot, parcel or tract of land until paid and, once recorded, shall have priority based upon its recording date.

9.4 In case the assessment prescribed in subsection 9.3 above is not paid within ninety (90) days from the date of cleanup by El Paso County, such assessment may be certified to the El Paso County Treasurer, who shall collect the assessment, together with a ten percent (10%) penalty for the cost of collection, in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this subsection 9.4.

Section 10: Administrative Entry and Seizure Warrant.

10.1 No entry upon private property for the purpose of cleanup or abatement shall be made until an administrative entry and seizure warrant has been obtained from a court of competent jurisdiction.

10.2 A sworn or affirmed affidavit shall be prepared and submitted to the court which shall establish the factual basis for the warrant, including a reasonably specific description of the location of the property, a general list or site plan describing the material to be cleaned up, evidence that the owner has received notice of the violation and has failed to cleanup or abate the same, and evidence that the owner has received a request for permission to enter the property and has failed to provide the same. Said affidavit shall be accompanied by a copy of this Ordinance.

10.3 Within ten (10) days following the date of issuance of an administrative entry and seizure warrant, such warrant shall be executed in accordance with directions by the issuing court, a copy of such issued warrant shall be provided or mailed first class to the owner, and proof of the execution of such warrant shall be submitted to the issuing court.

Section 11: Safety Clause.

The Board hereby finds, determines, and declares that this Ordinance is necessary for the health, safety, and welfare of the citizens of El Paso County, Colorado.

Section 12: Severability Clause.

If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 13: Effective Date.

This Ordinance shall take effect on January 18, 2008.
This Ordinance was amended on December 20, 2012.
This Ordinance was amended on February 26, 2013.
This Ordinance was amended on June 25, 2019.