

ORDINANCE 2010-17

AN ORDINANCE ENACTING ARTICLE 937 OF THE MARTINSBURG CITY CODE, AS THE SAME APPLIES TO STORMWATER MANAGEMENT AND SURFACE WATER DISCHARGE CONTROL .

WHEREAS, the 2001 West Virginia Legislature amended sections 8-16-1 et seq., and 16-13-1 et seq., of the West Virginia Code so as to authorize municipalities to regulate stormwater management and surface water discharge, as part of its public works program and sanitary sewerage system; and,

WHEREAS, there is a public need to protect life, property and the water environment from loss, injury and damage caused by storm and surface water, and a responsibility of the City as a trustee of the water environment for future generations; and,

WHEREAS, the City of Martinsburg, and its contiguous urban watershed, has been designated by Federal Law as a regulated municipal separate storm sewer system, and must comply with the regulatory requirements established under the Clean Water Act; and,

WHEREAS, accordingly, it is necessary for the City of Martinsburg to enact rules and regulations pertaining to stormwater management and surface water discharge control in its urban watershed.

NOW, THEREFORE, the City of Martinsburg hereby ordains that Article 937, addressing stormwater management and surface water drainage control, is added to its City Code and reads as follows:

ARTICLE 937

Stormwater Management and Surface Water Discharge Control

937.1 Definitions:

Unless the context specifically indicates otherwise, the meaning of the terms used herein shall be as follows:

(a) **“Best Management Practices (BMPs)”** are physical, structural and/or managerial practices that, when used singly or in combination, control site run-off, spillage and leaks, waste disposal and drainage from raw material storage and prevent or reduce the discharge of pollutants directly or indirectly to waters of the state. BMPs may include schedules of activities, prohibition of practices, design standards, educational activities and treatment requirements.

(b) **“City watershed”** are those areas within the corporate limits of the City of Martinsburg, and designated areas outside of those limits, over which surface water naturally drains into and impacts the City stormwater system. Designation of areas outside of the corporate limits of the City of Martinsburg shall be made by the Director.

(c) **“Director”** is the Public Works Director of the City of Martinsburg and/or his/her designated representative.

(d) **“Facility”** for purposes of this Article is a building, structure, installation or construction site in which pollutants are produced and/or generated as a result of a process or processes, conducted within the building, structure or installation.

(e) **“Footing drain”** is a pipe or conduit which is placed around the perimeter of a building foundation or other structures for the purpose of admitting ground water.

(f) **“Illicit connection”** means any physical connection to a publicly maintained storm drain system which has not been permitted allowed by the City of Martinsburg from the date of enactment of this ordinance.

(g) **“Illicit discharge”** means any discharge to a storm drain or into the stormwater collection system that is not composed entirely of stormwater, except discharges pursuant to a NPDES permit, discharges resulting from firefighting activities, and other discharges exempted in this Article.

(h) **“Impervious area”** is land area covered by buildings, pavement, gravel or other material that significantly inhibits stormwater from penetrating the soil.

(i) **“Industrial sites”** are those sites that contain industrial activities which require NPDES stormwater permits as set forth in 40 CFR 122.26(a)(6).

(j) **“Land Disturbance Activity”** is any land change that may result in soil erosion from wind, water and/or ice and the movement of sediments into or upon waters, lands, or rights-of-way within the City of Martinsburg urban watershed, including but not limited to building demolition, clearing and grubbing, grading, excavating, transporting and filling of land. Land disturbance activity does not include the following:

(a) Minor land disturbance activities, but not limited to, underground utility repairs, home gardens, minor repairs, and maintenance work which do not disturb more than five hundred (500) square feet of land.

(b) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.

(c) Emergency work to protect life, limb, or property and emergency repairs. If the land disturbing activity would have required an approval Erosion and Sediment Control Plan except for the emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of this regulation.

(k) **“Multi-unit property”** is a residential, non-residential or commercial property of any size that has located upon the property two or more tenants, at least one of which having no ownership interest in the property.

(l) **“Non-stormwater”** is all flows to the stormwater system not defined as stormwater in this Article or as determined by the Director. This includes, but is not limited to, cooling water, process water, ground water from a purge well and swimming pool discharge.

(m) **“Pervious area”** is all land area that is not impervious.

(n) **“Pollutant”** means objects including, but not limited to, dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, grease, petroleum products, munitions, chemical waste, detergents, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, dirt, industrial, municipal and agricultural waste, gasses entrained in water, paints, oil and other automotive fluids, soil, rubbish, debris, materials containing fecal coliform, fecal streptococcus, and enterococcus, heavy metals, hazardous wastes, yard waste from commercial landscaping operations, animal waste, materials that result from the process of building, and offensive matter of any kind, which, when discharged to water, cause or contribute to water pollution.

(o) **“Pollution”** is the degradation of the physical, thermal, chemical, biological or radioactive properties of the waters of the state and/or the discharge of any pollutant to the waters of the state which will or is likely to create a nuisance or to render such waters harmful, detrimental or injurious to public health, safety or welfare or to the beneficial use of the water and/or the water environment.

(p) **“Public facility”** is a stormwater facility that serves two or more properties, including, but not limited to, main pipelines that collect and transmit stormwater from and/or across two or more properties, and all taps or other connections onto a public facility. Stormwater facilities that are privately owned upon enactment of this Article may become publicly owned facilities, and thus the responsibility of the stormwater utility, only upon conveyance by the private owner and acceptance by the Director. Acceptance of tendered facilities shall be at the sole discretion of the Director.

(q) **“Private facility”** is a stormwater facility not otherwise classified as a public facility as defined in paragraph (p), above.

(r) **“Service area”** is all areas within the political boundaries of the City of Martinsburg and those areas outside of said boundaries as designated by the Director.

(s) **“Stormwater”** is atmospheric precipitation, surface runoff water, ground water discharge water used in fire fighting, runoff from street sweeping, flows from footing drains and all other discharge sources identified in the City of Martinsburg stormwater NPDES permit, except as may be defined as non-stormwater by this Article.

(t) **“Stormwater management”** is the process of collection, conveyance, storage, treatment and disposal of stormwater to ensure control of the magnitude and frequency of runoff to minimize the impact of the runoff upon the water quality of the receiving stream and the other hazards associated with flooding.

(u) **“Stormwater system”** is public stormwater sewers, drains, ditches, streets, retention/detention structures, dams, river impoundments and flood control facilities used for collecting and transporting stormwater and non-stormwater.

(v) **“User”** is a firm, person or property which is the legal owner or occupant of a property that directly or indirectly contributes stormwater or non-stormwater flows to the stormwater system, whether within or outside the corporate limits of the City of Martinsburg.

937.2 General:

(a) This article has been enacted to protect and enhance the water quality of our watercourses, water bodies, groundwater and wetlands in a manner pursuant to and consistent with the Clean Water Act and associated federal and state stormwater regulations.

(b) The intent of this article is:

- (1) To control non-stormwater discharges to storm drain systems.
- (2) To reduce pollutants in stormwater discharges.
- (3) To control stormwater runoff by providing design, construction and maintenance criteria for permanent and temporary stormwater facilities.
- (4) To maintain and improve the stormwater collection system in order to protect and improve water quality in the receiving streams and to reduce or eliminate local flooding resulting from stormwater accumulation.
- (5) To fully comply with federal and state statutory and regulatory requirements and schedules regarding stormwater management and the water quality of the receiving streams.

937.3 General Requirements and Prohibitions:

(a) The use of the stormwater collection system shall be the collection and transportation of stormwater.

(b) No person shall place or cause to be placed any pollutant into the stormwater system other than stormwater, unless written approval has been granted by the Director. The Director may refuse to grant approval to discharge non-stormwater into the stormwater system for any reason or combination of reasons.

(c) The City of Martinsburg shall administer use of the stormwater system to all users within the City watershed, whether located within or outside City limits.

(d) No person shall cause or permit the introduction of any pollutant into the stormwater system, whether solid, liquid or gaseous, that will cause:

- (1) Chemical reaction, either directly or indirectly with the materials of construction used in the stormwater system or that will impair the strength or durability of sewers or structures;
- (2) Mechanical action that will destroy or damage sewers or structures;
- (3) Restriction of the normal maintenance and inspection of sewers;
- (4) Danger to public health and safety or to the environment;
- (5) Conditions that create a public nuisance;
- (6) An oil sheen or unusual color;
- (7) Abnormal demand on the stormwater system capacity; or,
- (8) The stormwater system to violate its NPDES permit or applicable receiving water standards and all other Federal, State, and local regulations.

(e) Any person or entity engaged in activities which will or may result in pollutants entering the storm drain system shall undertake best management practices to reduce such pollutants. Examples of such activities include, but are not limited to, compliant operation of facilities that may be a source of pollutants, such as paved parking lots, gasoline stations, industrial facilities, and private roads/streets.

(f) No person shall throw, deposit, leave, maintain or cause to be thrown, deposited, left or maintained any refuse, rubbish, garbage, grease, petroleum products, or other discarded or abandoned objects, articles and accumulations in or upon any street, alley, sidewalk, storm drain inlet, catch basin, conduit or other drainage structures, parking area, or upon any private or public plot of land so that the same might become a pollutant, except where the pollutant is being temporarily stored in properly contained waste receptacles or is part of a well defined compost system.

(g) No person shall cause or permit any dumpster, solid waste bin, or similar container to leak such that any pollutant is discharged into any street, alley, sidewalk, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private plot of land in the urban watershed.

(h) No person shall use the stormwater system for discharge from any environmental cleanup that is regulated under federal or state law unless approved by the Director. Approval by the Director must be conditioned upon the discharge meeting all criteria for discharge under this chapter. Approval conditions may provide for measures appropriate to prevent harm due to possible

exfiltration into the ground adjacent to the system or failure of any pretreatment system for the discharge.

937.4 Illicit Connections:

It is prohibited to establish, use, maintain or continue illicit connections to the municipal stormwater system, or to commence or continue any illicit discharges to the municipal stormwater system.

937.5 Outdoor Storage Areas:

In outdoor areas, no person shall store grease, oil or other hazardous substances in a manner that will or may result in such substances entering the stormwater system. In outdoor areas, no person shall store motor vehicles, machine parts, or other objects in a manner that may leak grease, oil, or other hazardous substances to the stormwater system. To prevent the discharge of hazardous substances to the stormwater system, the Director may require the installation of a spill containment system. Spill containment systems may consist of a system of dikes, walls, barriers, berms, or other devices as required. No person shall operate a spill containment system such that it allows incompatible liquids to mix and thereby create a hazardous condition.

937.6 Construction Sites:

(a) Any person performing construction work in the city watershed of the City of Martinsburg shall comply with the provisions of this Article and shall provide erosion and sediment controls that effectively prevent discharges of pollutants to the storm drain system and/or receiving stream.

(1) Property owners or a designated responsible party conducting land disturbance or landfilling activities that disturb up to 5,000 square feet of total area shall complete a site registration application for their project with the Director. Such site registration will require identification of the project owner and contractor or other entity in charge of operations at the site. Upon filing the site registration, the applicant will receive written guidelines on small construction site Best Management Practices (BMPs) to prevent erosion, control sediment and prevent the contamination of stormwater runoff on construction sites.

(2) Property owners or a designated responsible party conducting land disturbance or landfilling activities that disturb greater than 5,000 square feet up to 25,000 square feet shall submit to the Director a site registration application for the

project. Such site registration will require identification of the project owner and contractor or other entity in charge of operations at the site. In addition, an erosion and sediment control plan must be submitted for the project.

(3) Property owners or a designated responsible party conducting land disturbance or landfilling activities that disturb greater than 25,000 square feet shall submit to the Director a site registration application for their project with the Director. Such site registration will require identification of the project owner and contractor or other entity in charge of operations at the site. In addition, a storm water pollution prevention plan (SWPPP) must be submitted for the project.

(b) The Director shall issue regulations and guidelines for the preparation of acceptable project submissions, including erosion and sediment control plans and storm water pollution prevention plans, and shall establish by regulation standards and guidelines for the implementation and maintenance of best management practices designed to provide erosion and sediment control from construction sites.

At a minimum, these regulations shall address:

- (1) Erosion controls through the protection and preservation of the soil at an active construction site to prevent off-site sedimentation.
- (2) Sediment controls to remove sediment from runoff before the runoff is discharged from an active construction site.
- (3) Stabilization and structural practices to prevent sedimentation and erosion.
- (4) Stormwater management measures to be installed before, coincident with and upon completion of construction activities. These measures shall be designed to reduce or eliminate pollutants discharged from the site and to promote flood control objectives designated by the Director.
- (5) Construction site housekeeping best management practices, including, but not limited to, equipment maintenance, repair and cleaning, waste management and collection, storage of materials and chemicals, and sanitary facilities.
- (6) Compliance with any and all other requirements imposed under the provisions of the Clean Water Act.

No landowner or land operator shall receive any building, grading or other land development permit or administrative authorization/license required for building or land disturbance activities without meeting the requirement of this section.

937.7 Discharge of Pollutants:

Discharges from the following activities will not be considered a regulated source of pollutants to the municipal separate storm sewer and waters of the state when properly managed: water line flushing and uncontaminated discharges from potable water sources, landscape irrigation and lawn watering, irrigation water, diverted stream flows, rising ground waters, groundwater infiltration to separate storm drains, uncontaminated pumped ground water, foundation and footing drains, roof drains, water from crawl space pumps, residential air conditioning condensation, springs, individual residential car washes, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges or flows from fire fighting activities and training.

937.8 Discharge in Violation of Permit:

Any discharge that would cause a violation of a Municipal NPDES Permit and any amendments, revisions or reissuance thereof, either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge, including, but not limited to, the cost of remedial activity, shall be the responsibility of the person(s) causing or responsible for the discharge, and the City shall seek to have such persons defend, indemnify and hold harmless the City in any administrative or judicial enforcement action against the City of Martinsburg relating to such discharge as provided by applicable rules of law.

937.9 Notification of Spills:

All persons in charge of a facility or responsible for emergency response for a facility are responsible to train facility personnel, maintain records of such training and maintain notification procedures to assure that immediate notification is provided to the Director upon becoming aware of any suspected, confirmed or unconfirmed release of material, pollutants or waste creating a risk of discharge into the municipal stormwater system or into a receiving stream.

937.10 Construction:

(a) Only designated City of Martinsburg employees or parties authorized by the Director may perform construction upon the public facilities of the stormwater system. Public facilities of the system shall include:

- (1) Those facilities that serve two or more properties, including, but not limited to, main pipelines that collect and transmit stormwater from and/or across two or more properties; and,

(2) All taps or other connections from a private lateral to a public facility of the system.

(b) All public costs and expenses of and incidental to the installation of private stormwater facilities, connections to public facilities, and installation of public facilities to facilitate and convey flows from a specific private facility shall be borne by the owner(s) of the private facility. Payment terms for these costs and expenses shall be designated by the Director.

(c) Parties authorized by the Director to perform construction of or upon the public facilities of the stormwater system shall comply with the design and construction standards promulgated by the Director. These parties shall allow for inspection of the construction by the Director at all times, and construction shall only occur during normal working hours of the City of Martinsburg. No facility constructed by an authorized party may be covered or connected to a public facility without specific authorization of the Director. This authority shall be granted by the Director upon satisfaction of the announced design and construction standards.

(d) All public facilities shall, upon authorized completion and/or acceptance by the Director, be property of the City of Martinsburg.

(e) A party authorized by the Director to perform construction upon the public facilities of the stormwater system shall meet the following requirements prior to and throughout construction:

- (1) Compliance with all relevant Federal and State labor, employment and environmental laws; and,
- (2) Compliance with all relevant and applicable state laws regarding government construction contracts, including, but not limited to, WV Code §§ 5-22-1, et seq. And 21-5A-1, et seq.; and,
- (3) Full and active policy coverage as certified by the West Virginia Bureau of Employment Programs, Workers' Compensation Division; and,
- (4) Contractor's liability insurance, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, which may include commercial general, automobile, umbrella and builders risk policies, naming the City of Martinsburg as an additional insured party. Policies and coverage limits and terms required shall be appropriate to the subject construction and shall be designated by the Director; and,
- (5) A construction bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, equal to

110% of the estimated cost of the construction and for a term equal to the duration of the construction project. At the discretion of the Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,

- (6) A repair bond, issued by an insurance company with a Best's rating of no less than "A" and certified to the satisfaction of the Director, in an amount no more than 110% of the reasonable estimate of repair costs, as determined by the Director, and for a term of no longer than five years, beginning on the date of substantial project completion. At the discretion of the Director, a bonded party may provide a cumulative general construction bond in satisfaction of this requirement; and,
- (7) Certification of full compliance with all relevant state and local permitting and tax rules and regulations, certification of appropriate property rights to perform the construction, and conveyance to the City of Martinsburg of appropriate property rights for the completed public facilities.
- (8) Nothing in sub-paragraphs 2, 3, 4, 5 and 6 shall apply to any situation where the Director shall come to an agreement with volunteer or a volunteer group doing work for a qualified not-for-profit entity, whereby the Director will provide engineering, technical or other services and the volunteers will provide the necessary labor without charge to, or liability upon, the City of Martinsburg. The not-for-profit entity shall be responsible for all costs to the utility associated with such a project.

937.11 Stormwater Taps:

(a) Only the Director or a party authorized by the Director may furnish and install stormwater system taps of the size and at the location requested in writing by an applicant upon a form to be provided by the Director. The applicant shall pay the full cost of the tap installation.

(b) The Director may deny a tap application when, as determined solely by the Director, the requested tap is proposed to an inadequate downstream public facility. In such a case, the applicant is responsible for the cost of extending the stormwater facilities to the nearest main of adequate capacity, upgrading existing downstream facilities, or otherwise reducing flows to the stormwater system.

937.12 Enforcement:

(a) No person shall construct or maintain any property, residence or business not in compliance with the standards of this Article.

(b) The Director and other authorized employees of the City bearing proper credentials and identification shall be permitted, after reasonable notice, to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Article.

(c) No person or firm shall fail to provide any report or other information or perform any duty required by this Article.

(d) The Director is authorized to take appropriate legal action to require compliance with this Article.

(e) The Director is authorized to enforce and collect upon the terms of a construction and/or repair bond in the event of default of the conditions described therein.

(f) If, after reasonable notice, a person fails to comply with this Article, the Director may cause the work to be done to obtain compliance and shall charge the cost of that work to the person responsible. The responsible person shall pay in full the charged amount within thirty (30) days of the invoice date, or otherwise make arrangements, acceptable to the Director, for full payment of the invoiced amount.

(g) The Director is authorized to take all steps necessary to immediately halt any discharge of pollutants which reasonably appear to present an imminent danger to the health or welfare of persons or to the environment.

(h) Persons aggrieved by any determination of the Director in enforcing this Article may appeal that determination to the City Council of the City of Martinsburg or a designated committee of City Council or a court of proper jurisdiction. Prosecution shall be stayed pending such an appeal.

937.13 Stormwater Management and Comprehensive Drainage Plans:

(a) Upon or following the effective date of this Article, the Director shall enact regulations providing for specific requirements and standards for stormwater management and drainage upon all new developments and redevelopment projects. These regulations shall be written to minimize the discharge and transport of pollutants to storm drain systems and prevent the deterioration of water quality. At a minimum, these regulations shall address:

- (1) Prevention of any direct discharge of untreated stormwater, either on or off-site and employ management measures that keep and manage on site the first one inch of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation.
- (2) Prevention of increased post-development discharge rates.

- (3) Removal of a designated amount, determined by the percentage of impervious parcel area, of annual total load of pollutants generated from development or redevelopment runoff prior to any off-site discharge.
- (4) Description and implementation of best management practices, and the continuation of those BMPs for appropriate periods of time.
- (5) Protection of ground water from instances of polluted runoff infiltration.
- (6) Protection and preservation of the stormwater collection system, including, but not limited to, open natural drainage ways and riparian areas, which together function to attenuate runoff volumes, peak discharges and pollutant loading to the water environment.

937.14 Drainage System Standards:

Drainage systems shall comply with the standards established by the Director.

937.15 Plan Submission and Review Process:

(a) Upon the effective date of this Article, and following the enactment of regulations providing for specific requirements and standards for stormwater management and drainage upon all new developments and redevelopment projects, stormwater management plans and comprehensive drainage plans for any new construction or reconstruction within the city watershed shall be submitted to the Director. The plans shall be reviewed by the Director or his/her designated representative for compliance with the applicable rules and standards. Plans developed to meet federal or state requirements may be submitted, and will be approved if they conform to the requirements of this Article. If the Director employs outside services for plan review, the cost of that review shall be paid by the Applicant.

(b) The plan submission and review process shall be coordinated with and integrated into the City planning and permitting process. Following the effective date of this section, no building permit shall be issued without an approved stormwater management plan if required under this Article.

937.16 Maintenance of Stormwater Facilities:

(a) Private stormwater facilities located in private property and within the City watershed shall be maintained by the owner or other responsible party and shall be repaired and/or replaced by such person when such facilities are no longer functioning as designed.

(b) Disposal of waste from maintenance of private facilities shall be conducted in accordance with applicable federal, state and local laws and regulations.

(c) Records of installation and maintenance and repair shall be retained by the owner or other responsible party for a period of five (5) years and shall be made available to the Director upon request.

(d) The Director may perform or direct the performance of corrective or maintenance work, which shall be at the owner's expense, upon any failure to maintain facilities or correct problems with facilities after receiving due reasonable notice from the Director.

(e) Routine maintenance of detention/retention facilities shall be conducted by the owner of the facility in accordance with this Article and guidance of the Director.

937.17 Inspection:

(a) Stormwater systems within the City watershed shall be inspected by the Director during and after construction to assure consistency with the approved stormwater management plan.

(b) All stormwater systems within the City watershed shall be subject to the authority of the Director to ensure compliance with this Article and may be inspected when deemed necessary.

(c) The owner of a private stormwater system, or other responsible party designated by the owner, shall make annual inspections of the facilities, including any detention/retention facility, and maintain records of such inspections for a period of five (5) years.

(d) Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the Director has reasonable cause to believe that there exists in any building or upon any premises any condition which may constitute a violation of the provisions of this Article, the Director may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed by this Article; provided that (1) if such building or premises is occupied, he or she first shall present proper credentials and request entry; and (2) if such building or premises is unoccupied, he or she first shall make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

(e) The property owner or occupant has the right to refuse entry but, in the event such entry is refused, the Director is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry and performing such inspection.

(f) Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Article, including but not limited to, random sampling and/or sampling in areas with evidence of stormwater pollution, illicit discharges, or similar factors.

937.18 Sampling:

With the consent of the owner or occupant or with Court order, the Director may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Director may take any samples deemed necessary to aid in the pursuit of the inquiry or to record the on-site activities, provided that owners or occupants shall be entitled to split samples.

937.19 Testing and Monitoring:

(a) Whenever the Director determines that any person engaged in any activity and/or owning or operating any facility may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Director may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the Director may require. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required. The burden to be borne by the owner or operator, including costs of these activities, analyses and reports, shall bear a reasonable relationship to the need for the monitoring, analyses and reports and the benefits to be obtained. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the Order.

(b) Within twenty (20) days of the date of receipt of the order notice, the recipient shall respond personally or in writing advising the Director of the recipient's position with respect to the Order's requirements. Thereafter, the recipient shall be given the opportunity to meet with the Director to review the Order's requirements and revise the Order as the Director may deem necessary. Within ten (10) days of such meeting, the Director shall issue a final written order. Final Orders issued pursuant to this Section may be appealed to the City Council of the City of Martinsburg by the filing of a written appeal with the City Council within ten (10) days of receipt of the final Order. The appeal notice shall set forth the particular Order requirements or issues being appealed. The City Council or a designated committee of City Council shall hear the appeal at its earliest practical date and may either affirm, revoke or modify the Order. The decision of the City Council shall be final, but may be subject to review by a Court of competent jurisdiction.

(c) In the event the owner or operator of a facility or property fails to conduct the monitoring and/or analyses and furnish the reports required by the Order in the time frames set forth therein, the Director may cause such monitoring and/or analyses to occur. If a violation is found, the Director may assess all costs incurred, including reasonable administrative costs and attorney's fees, to the owner or operator. The Director may pursue judicial action to enforce the Order and recover all costs incurred.

937.20 Concealment:

Causing, permitting, aiding, abetting or concealing a violation of any provision of this Article shall constitute a violation of such provision.

937.21 Acts Resulting in Violation of Federal Clean Water Act:

Any person who violates any provision of this Article, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, also may be in violation of the federal Clean Water Act and may be subject to the sanctions of that Act including civil and criminal penalties.

937.22 Violations Deemed a Public Nuisance:

(a) In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this Article shall be considered a threat to the public health, safety, welfare and the environment, may be declared and deemed a nuisance by the Director and may be summarily abated and/or restored by the Director and/or civil action taken to abate, enjoin or otherwise compel the cessation of such nuisance

(b) The cost of such abatement and/or restoration shall be borne by the owner of the property and the cost thereof shall be a lien upon and against the property and such lien shall continue in existence until the same shall be paid.

(c) If any violation of this Article constitutes a seasonal and recurrent nuisance, the Director shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further declaration.

(d) In any administrative or civil proceeding under this Article in which the City or its agent prevails, the City or its agent may be awarded all costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, costs of suit and reasonable attorneys' fees.

937.23 Administrative Enforcement Powers:

(a) In addition to the other enforcement powers and remedies established by this Article, the Director has the authority to utilize the following administrative remedies.

- (1) Cease and Desist Orders. When the Director finds that a discharge has taken place or is likely to take place in violation of this Article, the Director may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (a) comply with the requirement; (b) comply with a time schedule for compliance, and/or (c) take appropriate remedial or preventive action to prevent the violation from recurring. The Director may refer the violation to

the West Virginia Department of Environmental Protection for further civil and/or criminal prosecution in accordance with the Clean Water Act. The Director may, in any case, assess a charge to the violator to recover the cost of response/remediation incurred by the utility. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. The Director may also bring a civil action in a court of competent jurisdiction to recover unpaid costs and fees.

- (2) Notice to Clean. Whenever the Director finds any oil, earth dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds or in close proximity to any open drain or ditch channel, which may result in an increase in pollutants entering the storm drain system or a non-stormwater discharge to the storm drain system, he or she may give notice to the property owner remove and lawfully dispose of such material in any manner that he or she reasonably may provide. The recipient of such notice shall undertake the activities as described in the notice within the time frames set forth therein.
- (3) In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the Director may cause such required activities as described in the notice to be performed, and the cost thereof shall be assessed and invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, a lien shall be placed upon and against the property. The Director may also bring a civil action in a court of competent jurisdiction to recover unpaid costs and fees.

937.24 Violations:

(a) When the Director finds that a discharge has taken place or is likely to take place in violation of this Article, the Director may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall comply with the requirement and comply with a time schedule for compliance. The Director shall provide notice to one in violation of this Article by personal notice or certified U.S. Mail, return receipt requested, or, if no return receipt is received by the Director after a reasonable time, by first class U.S. Mail. Said notice shall state the nature of the violation, the potential penalty, the action required to correct the violation, and the time period within which the corrective action must be taken.

(b) If, after receipt of proper notice, a violator fails to timely make the required corrections, the Director may enter upon the subject property and make said corrections. The costs of correction may be recovered in a civil action brought against the violator on behalf of the City.

(c) In the alternative, and at the discretion of the Director, and pursuant to WV Code §16-13-23A(1), a violator may be assessed a monetary fine, payable to the City, in accordance with the following schedule:

- (1) First violation: \$100 per violation per day and notice to correct.
- (2) Second violation and/or failure to correct: \$500 per violation per day.
- (3) Third violation and/or continued failure to correct: \$1,000 per violation per day.

Any fine assessed to the City for an illicit discharge or other action in violation of this ordinance shall be assessed against and collected from the violator. In any event, the Director shall ensure that there is a reasonable time between a notice to correct and a subsequent sanction for failure to correct.

(d) In addition or in the alternative, a violator that, after due notice, is found to be in non-compliance with this Article or any obligation or plan submitted pursuant to this Article, may, at the discretion of the Director, be denied continued coverage by a cease a desist order regarding a previously issued building permit and/or refusal to issue or withdrawal of a previously issued occupancy permit until the non-compliant condition is resolved and damages remediated to the satisfaction of the Director.

These sanctions may be assessed against any user of the municipal stormwater system within the City watershed. The Martinsburg Municipal Court and/or the Berkeley County Circuit Court shall be the venue for violations occurring within the City political boundaries. The Berkeley County Circuit Court shall be the venue for violations occurring within the City watershed and outside the political boundaries of the City.

937.25 Nonexclusivity of Remedies:

Remedies under this Article are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

937.26 Appeal:

Any person, firm, corporation or organization notified of non-compliance with this Article or required to perform monitoring, analyses, reporting and/or corrective activities who is aggrieved by the decision of the Director may appeal such decision in writing to the City Council of the City of Martinsburg within ten (10) days following the effective date of the decision. Upon receipt of such request, the City Council shall request a report and recommendation from the Director and shall set the matter for administrative hearing at the earliest practical date. At said hearing, the City Council may hear additional evidence, and may revoke, affirm or modify the earlier decision. Such decision shall be final, subject to appeal to a Court of competent jurisdiction.

937.27 Disclaimer of Liability:

The degree of protection required by this Article is considered reasonable for regulatory purposes. The standards set forth herein are minimum standards and this Article does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the State. This Article shall not create liability on the part of the City, any agent or employee thereof for any damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

This Ordinance shall be effective upon date of adoption.

INTRODUCED: *December 9, 2010*

ADOPTED: *January 13, 2011*



George Karos, Mayor



Sharon A. Flick, City Recorder