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Town of Palmer

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August 11, 2008

Sponsor: Planning Board

TOWN ORDINANCE 2008-05

AMENDMENT TO THE CODE OF ORDINANCES OF THE TOWN OF PALMER

BE IT ENACTED BY THE PALMER TOWN COUNCIL

That the Code of Ordinances of the Town of Palmer be amended to add Chapter 146, §1-11– Illicit Connections and Discharges to the Municipal Storm Drain System as follows:

§ 146-1 PURPOSE

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of Palmer’s water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment. Increased and contaminated stormwater runoff are major causes of :

1. impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater;
2. contamination of drinking water supplies;
3. alteration or destruction of aquatic and wildlife habitat; and
4. flooding.

The objectives of this Ordinance are:

1. To prevent pollutants from entering Palmer’s municipal separate storm sewer system (MS4);
2. To prohibit illicit connections and unauthorized discharges to the MS4;
3. To require the removal of all such illicit connections;
4. To comply with state and federal statutes and regulations relating to stormwater discharges; and,
5. To establish the legal authority to ensure compliance with the provisions of this Ordinance through inspection, monitoring, and enforcement.

§ 146-2 DEFINITIONS

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

Authorized Enforcement Agency: The Director of the Department of Public Works or Town Manager or designated representative or agent shall enforce this Ordinance.

Best Management Practice (BMP): Structural or biological devices that retain, temporarily store, and/or treat stormwater runoff to reduce the quantity and/or improve the quality of stormwater runoff. BMPs, as recognized by both the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Management, can also be non-structural practices, such as a maintenance procedure, that reduce pollutants at their source. BMPs are further described in a stormwater design manual, *Stormwater Management, Volume Two: Stormwater Technical Handbook* (March, 1997, Mass. Department of Environmental Protection, as updated or amended).

Clean Water Act: The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) as hereafter amended

Discharge of Pollutants: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source by any means.

Groundwater: All water beneath the surface of the ground.

Illegal Discharge: Any direct or indirect non-stormwater discharge to the municipal storm drain system, except as specifically exempted in Section 7 or permitted pursuant to Section 8 of this Ordinance. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or resulting from fire fighting activities exempted pursuant to Section 7, subsection 4, of this Ordinance.

Illicit Connection: Any surface or subsurface drain or conveyance, which allows an illegal discharge into the municipal storm drain system or Waters of the Commonwealth. Illicit connections include conveyances which allow a non-stormwater discharge to the municipal storm drain system including sewage, process wastewater or wash water and any connections from indoor drains sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this Ordinance.

Impervious Surface: Any material or structure on or above the ground that prevents water from infiltrating the underlying soil

Municipal Separate Storm Sewer System (MS4) or Municipal Storm Drain System: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Palmer

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: A permit issued by United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.

Non-Stormwater Discharge: Any discharge to the municipal storm drain system not composed entirely of stormwater or contains substances other than stormwater.

Person: Any individual, partnership, association, firm, company, trust, corporation, and, any agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

Pollutant: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;
- (3) liquid and solid wastes and yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes; sewage, fecal coliform and pathogens;
- (7) dissolved and particulate metals;
- (8) animal wastes;
- (9) rock; sand; salt, soils;
- (10) construction wastes and residues;
- (11) and noxious or offensive matter of any kind.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

Recharge: The process by which groundwater is replenished through the percolation of runoff and surface water received through precipitation.

Stormwater: Runoff from precipitation or snow melt.

Toxic or Hazardous Material or Waste: Any material, which because of its quantity, concentration, chemical corrosiveness, flammability, reactivity, toxicity, infectiousness, or radioactivity, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic or organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L. Ch.21C and Ch.21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

Watercourses: A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

Waters of the Commonwealth: all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, costal waters, groundwaters, and

vernal pools. As defined in 314 CMR 4.00 in Section 4.02, Definitions as the same may from time to time be amended.

Wastewater: any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

§ 146-3 APPLICABILITY

This Ordinance shall apply to flows entering the municipally owned storm drainage system and Waters of the Commonwealth.

§ 146-4 RESPONSIBILITY FOR ADMINISTRATION

The Department of Public Works, Town Manager or designated representative shall administer, implement and enforce this Ordinance. Any powers granted to or duties imposed upon the Department of Public Works/Town Manager may be delegated in writing by the Department of Public Works/Town Manager to employees or agents of the Department of Public Works or Town Manager.

§ 146-5 REGULATIONS

The Department of Public Works and/or Town Manager may promulgate rules and regulations to effectuate the purposes of this Ordinance. Failure by the Department of Public Works and /or Town Manager to promulgate such rules and regulations shall not have the effect of suspending or invalidating this Ordinance.

§ 146-6 PROHIBITED ACTIVITIES

1. Illegal Discharges

No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal storm drain system, watercourse, or into the waters of the Commonwealth. Emergency pumping performed by the Fire Department must utilize appropriate best management practices (BMPs) and follow hazardous materials disposal guidelines to prevent contamination of the municipal storm drainage system with hazardous materials. If hazardous materials are observed within the flooded area, or are suspected to be contained within the flooded area, a qualified hazmat technician must be consulted before pumping. If hazardous materials are observed at any point during pumping, cessation of pumping is required until a qualified hazmat technician can be consulted and BMPs put in place to prevent the contamination of nearby water ways and the municipal storm drainage system.

2. Illicit Connections

No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

3. Obstruction of Municipal Storm Drain System

No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior approval from the Director of the Department of Public Works.

4. Exemptions

This section shall not apply to any of the following non-stormwater discharges or flows provided that the source is not a significant contributor of a pollutant to the municipal storm drain system as defined by Stormwater Phase II Final Rule in the *Federal Register* Volume 64, No. 235 December 8, 1999

- (1) Routine waterline flushing;
- (2) Flows from potable water sources;
- (3) Springs;
- (4) Flows from riparian habitats and wetlands;
- (5) Diverted stream flows;
- (6) Rising groundwaters;
- (7) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- (9) Discharges from landscape irrigation or lawn watering;
- (10) Water from individual residential car washing;
- (11) Discharges from dechlorinated swimming pool/hot tub water (less than one ppm chlorine) provided it is allowed to stand for one week prior to draining and the pool/hot tub is drained in such a way as not to cause a nuisance;
- (12) Discharges from street sweeping (not including stockpile material);
- (13) Discharges or flows resulting from fire fighting activities;
- (14) Dye testing, provided written notification is given to the Director of the Department of Public Works prior to the time of the test;
- (15) Non-stormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- (16) Discharges for which advanced written approval is received from the Town Manager if necessary to protect public health, safety, welfare or the environment.

§ 146-7 EMERGENCY SUSPENSION OF STORM DRAINAGE SYSTEM ACCESS

The Director of the Department of Public Works and/or Town Manager may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened illegal discharge that presents or may present imminent risk of harm to the public health,

safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Director of the Department of Public Works and/or Town Manager may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

§ 146-8 NOTIFICATION OF SPILLS

Notwithstanding any other requirements of local, state or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials at that facility operation which is resulting or may result in illegal discharge of pollutants that person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the municipal fire and police departments and the Director of the Department of Public Works. In the event of a release of non-hazardous material, said person shall notify the Director of the Department of Public Works no later than the next business day. Written confirmation of all telephone, facsimile or in person notifications shall be provided to the Director of the Department of Public Works within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

§ 146-9 ENFORCEMENT

1. Enforcement Agent

The Director of the Department of Public Works and/or Town Manager or an authorized agent shall enforce this Ordinance, and the regulations promulgated thereunder, as well as the terms and conditions of all permits, notices, and orders, and may pursue all civil and criminal remedies for such violations.

2. Orders

The Director of the Department of Public Works and/or Town Manager may issue a written order to enforce the provisions of this Ordinance or the regulations thereunder, which may include:

- (a) Elimination of illicit connections or discharges to the storm drainage system;
- (b) Termination of access to the storm drainage system;
- (c) Performance of monitoring, analyses, and reporting;
- (d) Cessation of unlawful discharges, practices, or operations; and
- (e) Remediation of contamination in connection therewith.

If the Director of the Department of Public Works and/or Town Manager determines that abatement or remediation of contamination is required, the order shall set forth a deadline for completion of the abatement or remediation. Said order shall further advise that, should the violator and/or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and expenses thereof shall be charged to the violator and/or property owner.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and/or the property owner will be notified of the costs incurred by the Town, including administrative costs. The violator and/or property owner may file a written protest objecting to the amount or basis of costs with the Department of Public Works and/or Town Manager within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Department of Public Works and/or Town Manager affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the violator and/or property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. Ch. 59, § 57 after the thirty-first day at which the costs first become due. Non-payment of the amount due shall impose a lien on real property located within the town for any charge or fee, imposed by the town that has not been paid by the due date. Such charges and fees include, but are not limited to, any fee due under the provisions Section 9 of this code, any charge or fee imposed by the non-criminal ticketing process established under the code or imposed by another department, division, board, or commission. This lien shall be known as the "municipal charges lien." The municipal charges lien will take effect upon the recording of a list of unpaid municipal charges and fees by parcel of land, and by the name of the person assessed for the charge or fee, in the Hampden County Registry of Deeds.

If a charge or fee which is secured by a municipal charges lien remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under the General Laws, c. 59, § 53, the board or officer in charge of the collection of the municipal charge or fee, or the collector of taxes shall certify such charge or fee to the assessors, who shall forthwith add this charge or fee to the tax on the property to which it relates and commit it with their warrant to the Collector of Taxes as part of the tax.

If the property to which such charge or fee relates is tax exempt, such charge or fee shall be committed as the tax. A lien under this section may be discharged by filing a certification from the tax collector that all municipal charges or fees constituting the lien, together with any interest and costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.

All invoices for the payment of municipal charges and bills are due within 30 days after they are mailed, unless a different due date is otherwise provided by law or ordinance. Any invoice remaining unpaid after its due date, whether established in this section or otherwise, will accrue interest from the due date at the rate of interest charged on tax bills under the provisions of General Laws, c. 59, § 57, as the same may from time to time be amended.

3. Equitable Remedy

If anyone violates the provisions of this Ordinance, regulations, permit, notice, or order issued thereunder, the Town of Palmer may seek injunctive relief in a court of competent jurisdiction to restrain the person from activities which would create further violations or compelling the person to abate or remediate the violation.

4. Non-Criminal Disposition

As an alternative to criminal prosecution or civil action, the Town of Palmer may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Ch. 40, §21D. Department of Public Works and/or Town Manager, Chief of Police, or designated representative shall be the enforcing person. The penalty for the 1st violation shall be \$50. The penalty for the 2nd violation shall be \$100. The penalty for the 3rd and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

5. Right-of-Entry

To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Town Manager, Director of the Department of Public Works or designated representative may enter upon privately owned property for the purpose of performing their duties under this Ordinance and regulations and may make or cause to be made such examinations, surveys or sampling as the Town Manager, Director of the Department of Public Works or designated representative deems reasonably necessary.

6. Remedies Not Exclusive

The remedies listed in this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law.

§ 146-10 SEVERABILITY

If any provision, paragraph, sentence, or clause, of this Ordinance shall be held invalid for any reason, all other provisions shall continue in full force and effect.

§ 146-11 TRANSITIONAL PROVISIONS

All property owners shall have 60 days from publication of the ordinance in the legal notice section of the newspaper to comply.

Matthew J. Lovell
Council President

Patricia A. Kennedy
Interim Town Manager

Adoption History:

Agenda item and First Reading at Regular Town Council Meeting held on June 9, 2008

Public Hearing was warned in Palmer Journal Register on June 27, 2008

Public Hearing was held at 7:00 PM on July 14, 2008 Palmer Town Bldg.

Agenda Item and Second Reading at Regular Town Council Meeting held on August 11, 2008

Vote on Ordinance at Regular Council Meeting August 11, 2008 and entered into the minutes of this meeting approved on September 8, 2008

Posted in public places on August 12, 2008

Notice of adoption published in the Palmer Journal Register on August 21, 2008

Effective Date: September 10, 2008