

**TOWN OF WEST HARTFORD PUBLIC HEARING  
JUNE 12, 2018**

Vice President Kerrigan: I'd like to call the June 12<sup>th</sup> 7:15 public hearing to order. This is an Ordinance Concerning the Regulating of Non-Stormwater Discharges to the Town Storm Drainage System. Roll call, Ms. Labrot.

Ms. Labrot: Mr. Barnes?

Councilor Barnes: Present.

Ms. Labrot: Ms. Cantor's absent. Mr. Davidoff?

Councilor Davidoff: Here.

Ms. Labrot: Mr. Dodge?

Councilor Dodge: Here.

Ms. Labrot: Ms. Fay?

Councilor Fay: Here.

Ms. Labrot: Ms. Kerrigan?

Vice President Kerrigan: Here.

Ms. Labrot: Mr. Sweeney?

Councilor Sweeney: Here.

Ms. Labrot: Mr. Wenograd?

Councilor Wenograd: Here.

Ms. Labrot: And Mr. Williams?

Councilor Williams: Here.

Vice President Kerrigan: Thank you, Ms. Labrot. Presentation, Mr. Hart?

Mr. Hart: Thank you, Deputy Mayor. I would invite Mr. McGovern, our Director of Community Development, to come and make a presentation to the Council regarding the proposed Ordinance.

Mr. McGovern:

Good evening. Mark McGovern, Community Development Director. So for some time now we've been talking about the MS4 Program. And this Ordinance tonight that I'm going to describe is one of the important features of our enforcement of stormwater regulations. Sort of in a big picture, the federal government in their interest in promoting clean water requires states to regulate stormwater. The states can then either do that on their own or pass that authority down to county or local government. And in Connecticut, the Department of Energy and Environmental Protection passes that on to local communities through its MS4 Program. The MS4 is an acronym for the Municipal Separate Storm Sewer System and that's a system that the Town owns and operates. It's the 6,000+ catch basins, the underground piping, the culverts ultimately that lead to open streams in Town, which are part of the system. Those streams run to the river, the river runs to Long Island Sound, and that's how it's all connected from South Main Street to our interest in making Long Island Sound cleaner.

This proposed Ordinance is a requirement of our MS4 Permit. That Permit went into effect in January of 2017. You may recall our Stormwater Management Plan went into effect in July of 2017. There are a number of different steps and requirements in the Permit and this is one of them. This is the Ordinance that provides the authority for us to do investigations and follow what are listed discharges in the stormwater system so that we can abate them. The Ordinance also identifies a number of prohibitions, what individuals can and can't do in terms of discharging into the stormwater system. Individuals are residents, they are businesses, they are organizations. So in the Ordinance, they're referred to as "persons." Persons is the defined term. The Ordinance also prohibits illicit connections to our stormwater system. An illicit connection might be a sanitary line from a home or a business that was inadvertently tied to our stormwater system, and as a result, sewage flows into the stormwater system. That happens, unfortunately, routinely in Town, much of it based on an infrastructure that's very old and oftentimes difficult to locate.

So from a practical point of view, the MS4 Permit, we already started a number of the different activities associated with it. Street sweeping has begun more in earnest, catch basin cleaning, and also water testing. We're required to take samples at different outfalls throughout Town to determine whether or not there are pollutants in the stormwater. We're now – it's our obligation to when we find those pollutants, we have to find the source and then eliminate the source and this Ordinance gives us that authority. The Community Development Department's identified as the responsible department for administration but it involves several departments, including the

Department of Public Works as well as the Health District. Engineering and Planning and Zoning will play a major role. Engineering will manage our contractors, our consultants for water testing and so forth. Planning and Zoning will be more involved in the reports side of it and the record keeping and submission requirements to the State DEEP. So the Ordinance identifies this authority. It also spells out the authority to levy fines as needed. And other than the case of commercial properties, enter a property and go in and make specific recommendations for abatement, monitoring, continued testing, and things of that nature.

The Ordinance is a model ordinance. It's one that's being used State-wide. Deputy Corporation Counsel Kimberly Boneham received it, I think, from CCM. Several communities are using this model and adapting it to their organizational structure. As I mentioned, it is a requirement under our Permit and will become an important component of our larger Illicit Discharge Detection and Elimination Plan that gets into the more specifics of how we'll have to go about tracking down these pollutants and trying to cease them. So with that, I'm happy to answer any questions. Duane Martin and Todd Dumais are here as well and can backstop me.

Vice President Kerrigan: Thank you. Mr. Sweeney?

Councilor Sweeney: Thanks [inaudible 9:32]. Do all the eight member towns of the MDC have this similar Ordinance?

Mr. McGovern: I don't know where they are – where each of the eight are in the process but any community with an MS4 Permit is required to do this. Depending on the size of the community depends – will determine what class of permit you have and how long – how much time you'll have to adopt something like this. But my expectation is, yes, all eight will have to do this if not now probably within a year.

Councilor Sweeney: Thank you.

Vice President Kerrigan: Mr. Barnes?

Councilor Barnes: Thank you, Deputy Mayor. Mr. McGovern, this – I believe that this Ordinance was discussed at the Community Planning – I think the last Community Planning meeting. And unfortunately it was a long meeting and I believe I had to jump off before we actually – we had a chance to talk about this. But just a couple questions and a couple comments. One, I think you just mentioned that this is – my question was going to be who drafted it, you know, where'd the language come from? And it sounds like it's a model that was created by CCM and

we'll, along with some other towns, have decided to adopt this model ordinance, correct?

Mr. McGovern: Correct.

Councilor Barnes: Okay. Did we do any – did we add to this Ordinance at all or did we take the CCM model, if you know?

Mr. McGovern: I don't believe we added any additional requirements over and above what's required in the MS4 Permit. The revisions were really on the basis of working within our organizational structure and using the Town-specific Department names and things of that nature.

Councilor Barnes: Okay. And from what you've said, this is a requirement?

Mr. McGovern: Yes.

Councilor Barnes: It sounds like we don't have a choice.

Mr. McGovern: Correct.

Councilor Barnes: To enter into – or to pass this Ordinance. Did we have – in Town, do we have anything in place before this that prohibited Town residents from, you know, pouring pollutants into our, you know, disposal – into the catch basins, I guess?

Mr. McGovern: Todd'll answer that question.

Mr. Dumais: For the record, Todd Dumais, Town Planner. Yes, we do have an Ordinance on the books. I forgot the reference and the code but it's a broad-based Ordinance, I think, that fits under our litter provisions and in there it says you cannot dump or spill [the glitter 11:57] into our waterways and – among other areas but it wasn't as specific as was required under this Permit.

Councilor Barnes: And did that – does that Ordinance provide for any type of fine to residents?

Mr. Dumais: There was a fine provision, I believe. I – Pat has it there. You can probably find it quicker than I could but we can look at that.

Councilor Barnes: It was – you know, when I looked through the – when I read this today, there were a couple things that concerned me. One, it doesn't appear to have any, you know, intent requirement. It's not like somebody in Town has to intentionally do something or recklessly do something. It's if it happens, either, you know, directly or indirectly,

there's, you know, potential liability or responsibility for it. So, you know, it could just, you know, whether it's fertilizer on somebody's lawn or something that gets into the storm drain and we're able to investigate and determine that it came from somebody's property, you know, they would be responsible for, you know, the cleanup, the testing, the remediation to make sure all of that is taken care of. And according to, you know, the Ordinance, it's, I think, \$250 per day while you're doing the, you know, the testing and everything and, you know, their appeal rights, injunctive relief. And I think if you don't clean it up within a certain amount of time, the Town has the authority to come on your property and do the remediation and then send you the bill for it essentially.

And so it just seemed like it was very strong in terms of, you know, what the Town can do and what the potential exposure would be to our residents, including the water course protection provision that if you have any type of, you know, water body that, you know, runs through your property, you're now – I assume you're now responsible for, you know, basically making sure that it's clean of all vegetation, you know, obstacles, etc., etc., trash, debris. And I'm not sure if that was a requirement before as well. So, you know, those're my concerns. I mean, have those types of concerns been raised? Has the State or the federal government addressed them? You know, can you add anything to, you know, what this potentially could do to the residents and, you know, have we done any, you know, public outreach to let people know that, you know, that this is now going to, you know, as – whatever the effective date is, it's going to be the long count?

Mr. McGovern:

The public outreach is another component of our MS4 Permit requirements and that will begin. You're right, I mean, it is stiff, you know, so to speak. The entire Permit is and the requirements on the Town are as well, so I would say that, you know, we're struggling a little bit in terms of our ability to manage all of these different elements of the Permit requirement and we will struggle as well in the enforcement side of it. So we'll have an obligation to follow up on things that we find in mandatory testing but it – I expect it will be enforced much like zoning is, in which we'll work with residents. We'll issue a Notice of Violation. We'll work with them to try and get into compliance and look at fines as, you know, a last resort.

Councilor Barnes:

Right.

Mr. McGovern:

I think that's the only reasonable approach that we can take on – given sort of the enormity of the requirements of this Permit and then, you know, the follow through with it.

Mr. Alair: If I could follow-up for a moment on that. Some of you – if you remember back when the State was in the process of implementing the MS4 regulations, there was a lot of public hue and cry from municipalities, CCM, us, others, with concerns over the regulation. We call it a permit but it's really regulations under a different name but with the permit as it was being drafted and this Ordinance is the result of DEEP saying, we hear you and this is what you're getting anyway. So that's where we are.

Councilor Barnes: Right. I remember there were some concessions that were made and I don't recall whether they were major or minor. But at the end of the day, the, you know, this program on a, you know, four hour, you know, equipment or operating costs and then also in man hours is substantial. I think it's north of –

Mr. Alair: Yes.

Councilor Barnes: – a million dollars –

Mr. McGovern: Yup.

Councilor Barnes: – you know, on an annual basis to comply with what's essentially an unfunded State mandate or federal mandate, you know, to do this. And, Mark, I appreciate, you know, your comments. I know that we'll work with our residents and do it in the right way. My concern is if we're testing 6,000 catch basins or whatever our water samples are, I assume we have to report that up to the State level. And my concern would be pressure from the State, assuming they ever got around to looking at the samples, which I'm sure they won't, but if they did, that they would apply pressure to – on us to investigate and take a stronger position and we would really be bound by this Ordinance.

Mr. McGovern: I think that's accurate.

Councilor Barnes: Yeah.

Mr. McGovern: You know, and just to further Pat's comments in terms of the back and forth that CCM and all the different communities had with DEEP. You know, the accommodations, I think, were minor and I think most of them were really in relation to timeframe to implement. So where at sort of the initial permits that you had to X, Y, and Z by such-and-such a date, some of those things were pushed out. Instead of year to implement, you get two years to implement. So, you know, if we could've had this ready and to you earlier, we would have.

Councilor Barnes: Right.

Mr. McGovern: But as it is, you know, it's required as of the 30<sup>th</sup> of June.

Councilor Barnes: Right. I was just going to – I noted – I saw that in the Meeting Minutes, that we're on the deadline and we have to do it. Okay. Thank you.

Mr. McGovern: Yup.

Vice President Kerrigan: Mr. Dodge?

Councilor Dodge: Thank you, Madam Deputy Mayor. This is a question, I think, probably for either Mr. Alair or Mr. McGovern. But I just want to make sure I understand how the fine process works. So if somebody's found to be in violation of the Ordinance, they would be – would they immediately be fined \$250? And then it says, "Each day in which a violation occurs or continues after the time for correction of violation has been given." So I assume that we would identify a violation and then some reasonable time period would be given, where they would have the opportunity to correct that? And if they didn't do it by the end of that –

Mr. McGovern: Right.

Councilor Dodge: – then the \$250 a day would kick in?

Mr. McGovern: That's my understanding, yes.

Councilor Dodge: Okay. So it's not immediate? As soon as there's a violation, there's now a \$250 a day problem?

Mr. McGovern: Correct.

Councilor Dodge: For – okay.

Mr. McGovern: Yup. Which is consistent with how we levy other citations. A Notice of Violation puts an owner on record with an identified period to remedy.

Councilor Dodge: Okay.

Vice President Kerrigan: Mr. Williams.

Councilor Williams: Thank you, Madam Deputy Mayor. Mr. McGovern, thanks for taking the time to explain this and I appreciated also the clarity as to whether or not this is a regulation versus the permit because, you know, one of

the other things the public may not know is we bought an extremely advanced truck as a result of this program. It's like a spaceship, that thing. And how much – do you know how much that thing was off the top of your head? I know John's not here –

Mr. McGovern: Uh...yeah.

Councilor Williams: – but, regardless, it's been very expensive. But my question was I think the MS4 Program is a – the genesis of it was the Bush administration. Isn't that right? It was some time ago.

Mr. McGovern: It goes back some time. I'm not sure.

Councilor Williams: So we now have a federal administration that really prides itself on cutting regulations. In case you haven't heard, it's often spoken. But any word on whether the regulations surrounding MS4 have been lobbied to be changed or is there any sort of federal eye on this program specifically that you're aware of?

Mr. McGovern: No, I'm not, and I'd be surprised if there was because, actually, the State of Connecticut is delinquent in this implementation. Other states are far ahead, so we're sort of trailing the play, so to speak. In other northeast states, they've had this in place for years.

Councilor Williams: Okay. And it's a federal mandate all states, all municipalities? All right, thank you.

Vice President Kerrigan: Mr. Davidoff.

Councilor Davidoff: Thank you. I have a question. So in Article 2, it says, "Discharge – Prohibitions of Illegal Discharge and it says that "no person shall discharge any pollutants into the stormwater," thing and then it defines in the definition portion what a pollutant is. And I just want to concentrate on pesticides, herbicides, and fertilizers. And then it talks in the definitions of what "illegal discharge" is, which says, "any direct or indirect non-stormwater discharge." So my question is to the resident who has a company who uses lawn chemicals to fertilize their lawn and then we get a rainstorm and then I wouldn't say that that was a discharge. I would say that would be a runoff. So the question is what's the distinction between a runoff and a discharge? Because in the end, they're both ending up in the storm basin and when you do a testing, it's going to be a little difficult to discern whether or not somebody sprayed into the catch basin or if it ran off the resident's lawn.

Mr. McGovern: Those may be –



Councilor Davidoff: And that was a long question.

Mr. McGovern: Those may be two technical engineering terms that I may defer to the Town Engineer. Is there a difference between runoff and discharge?

Mr. Martin: Duane Martin, Town Engineer. Essentially, if it reaches a water body, a water course, then it can be considered an illicit discharge. But there needs to be a certain concentration of whatever the pollutant is in order for it to trigger being considered an illicit discharge.

Councilor Davidoff: All right. So – to follow up. So I guess if somebody took an entire container of fertilizer and poured it down the storm drain, it would be a little bit different than the person who has their lawn treated for a service for weed killer. Is that?

Mr. Martin: Exactly. But fertilizer, pesticides, etc. are included as potential pollutants –

Councilor Davidoff: That’s what it said in the definition.

Mr. Martin: – and the [volume 22:56] and the concentration is high enough and it’s recorded and found that that’s the source, then the process would follow. But in most cases, if it’s adequately applied, it may not be considered an illicit discharge.

Councilor Davidoff: So let’s just do the scenario where they do the testing and they find a high enough concentration of the fertilizer or the chemical as a result of this person having their lawn treated. So does the liability fall on the homeowner because they’re the property owner or does it fall on the fertilizer company or does it fall on all the abutting neighbors who may also be contributing to the same problem? Because it may not just be the person’s house who’s in – who’s the – who has the storm drain in front of their property. So – I think that’s a practical question that I don’t think the – this Ordinance really addresses as to how do we determine who the “polluter” was. We determined what the standard was with respect to the concentration of what is the pollution but it – I think it’s a little difficult to determine the source.

Mr. Martin: That’s part of the challenge that the Town or Towns face, as a matter of fact. It’s, one, finding out where the source comes from and then determining who are the most – appropriate party is to address the issue. So – but we have an Illicit Discharge Detection and Elimination Plan that goes through step by step how to handle illicit discharges, both in tracking and then reporting and trying to eliminate them. So it

– but depending on the pollutant, depending on the system that we have in place to track it, it can be very complicated.

Councilor Davidoff: Very true. All right, well, thank you for your answers. I appreciate it.

Vice President Kerrigan: Mr. Williams.

Councilor Williams: Thanks. Just one follow-up question to that. Pat, do you know in circumstances like this, what kind of standard there – would be applied? You know, would it be preponderance? Would it be more likely than not? Is it, you know, what would be the burden of the Town in establishing who was responsible?

Mr. Alair: Well, if we ended up bringing a lawsuit, it would be preponderance the traditional, simple standard. It's not a criminal standard. And just because I was still noodling over Councilor Davidoff's question. I think if you think through the mechanics of the scenario that you laid out. You have the applicant or the property owner who hires a contractor who comes out, does an application of pesticide or herbicide on the lawn. Perhaps gets it wrong, overfertilizes, and magically that evening, there's a rain, and at the same time, we're out there with our little test kit. You know, the perfect storm hits. Well, the first step is to notify that property owner, assuming that we figured out that, yes indeed, it was that property probably because they still have the little stakes with the yellow signs on them. And we go to them and say, you overfertilized. The first step is the Notice of Violation that essentially says, don't do that anymore. Well, at that point, they're not doing anything anymore. They've stopped. The – it's done. And so there's not going to be a next step unless the guy comes back out and doesn't change the settings on the fertilizer spreader the next time. So I think it's sort of self-regulating in that sense. It – if it's a one-off kind of thing, (a) it's unlikely we catch it; and (b) if we did catch it, I don't think it would result in too onerous a penalty if it was well-intentioned.

Mr. McGovern: I think in cases like that or perhaps there's a neighborhood, where there are several lawns that're really green, right, but you can't determine where it's from. I think the issue is really addressed through public education. It might mean that we send a mailing out to everyone in the neighborhood that says, we have test levels that show higher than usual concentration but we can't determine who. We're deducing that it could be from your lawn services, please be advised, etc., etc., and we deal with it through public education.

Councilor Davidoff: And how about the scenario where there's PCBs in the water?

Mr. McGovern: Well, that – it's – we'll be obligated to find out where it came from and have to trace it back. And there are methods of doing that that will be laid out in our Plan about how we go about doing that. In some cases, we'll be able to do it with our own testing consultants. In other cases, we may have to bring in contractors on a major issue to sandbag areas and figure out where the water's coming from to determine, you know, what the source of the pollution is.

Councilor Davidoff: So who would bear – who – sorry – who would bear the cost of the remediation steps while we're doing the testing?

Mr. McGovern: Who should –

Councilor Davidoff: Because they were just saying, oh, potentially we'd have to bring a testing company in or we'd have to sandbag it or something. Would the burden be – the financial burden be placed upon the municipality?

Mr. McGovern: On the upfront, I believe it would, and then we'd have the opportunity to seek the reimbursement if we're able to identify who the pollutant was.

Councilor Davidoff: Thanks, Mark.

Mr. Alair: Assuming, of course, that the polluter is subject to our Ordinances.

Councilor Davidoff: Thank you, Mr. Alair.

Vice President Kerrigan: Any other questions? Do you want to see if there's anyone on the signup sheet?

Mr. McGovern: Sure. There's not.

Vice President Kerrigan: Anyone in the audience who'd like to speak to this public hearing?

Ms. Allen: Judy Allen, 25 Fowler Drive. Mostly I have questions. We've been talking about residents but what if it's the Town that's responsible, the road salts or the fertilizers that the Town uses? I don't know how the Town gets fined or addresses that. Having just almost taken a second mortgage out on my house to repair a septic line break, some of these things can be really expensive to fix. And is the – so you find the source of pollution, is the Town responsible for treating what you find before you can find the source of it? Does the Town have to treat any of it? [Inaudible 30:03].

Vice President Kerrigan: Thank you.

Mr. McGovern: So, yes, the Town is responsible for abiding by the same regulations and part of our Plan also have best management practices that mainly Department of Public Works will follow as it relates to the application of the roads, the cleaning of trucks, everything in the DPW facility, how they wash things down. So the Permit requirements, the regulatory requirements also overlay on top of the Town and its operations as well. And the other question was?

Ms. Allen: Do you have to treat –

Mr. McGovern: Oh, before – I don't believe we have to treat what we find before we find the source. I think we could choose to depending on the severity of it but I don't think we're under any obligation to treat it as we look for it upstream.

Vice President Kerrigan: Any other comments? Mr. Hart? Seeing as there's no other questions, I will close the public hearing.

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