

CITY OF NEWPORT

ORDINANCE

OF THE

COUNCIL

NO.

AN ORDINANCE IN THE AMENDMENT OF TITLE 13 OF THE CODIFIED ORDINANCES OF THE CITY OF NEWPORT, RHODE ISLAND, REVISION OF 1994, AS AMENDED, ENTITLED, "PUBLIC SERVICES."

BE IT ORDAINED by the City of Newport:

SECTION 1. Chapter 13.09 of the Codified Ordinances of the City of Newport, Revision of 1994, as amended, entitled, "Illicit Discharge and Connection-Stormwater," is hereby further amended as follows:

Section 13.09.020. Authority.

DELETE IN ITS ENTIRETY:

~~This chapter is promulgated pursuant to the Rhode Island Department of Environmental Management's ("DEM") general permit, Rhode Island Pollutant Discharge Elimination System Stormwater Discharge from small municipal separate storm sewer systems and from industrial activity at eligible facilities operated by regulated small MS4s and in accordance with the Administrative Procedures Act, R.I.G.L. 42-35-1, et seq.~~

ADD IN LIEU THEREOF THE FOLLOWING:

This chapter is enacted pursuant to the City's home rule and police powers; the Rhode Island Department of Environmental Management general permit governing stormwater discharges from regulated small MS4s; and R.I. Gen. Laws Chapters 45-61 and 45-61.2, as applicable. The Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, does not apply to proceedings under this chapter.

SECTION 2. Chapter 13.09 of the Codified Ordinances of the City of Newport, Revision of 1994, as amended, entitled, "Illicit Discharge and Connection-Stormwater," is hereby further amended as follows:

Section 13.09.140. Appeal of notice of violation.

DELETE IN ITS ENTIRETY:

~~Any person receiving a notice of violation may appeal the determination of the authorized enforcement agency. The notice of~~

~~appeal must be received within ten days from the date of the receipt of the notice of violation. The notice of appeal shall be in writing and contain a detailed basis upon which the appeal was taken. The procedure for said appeal shall be in conformity with the Administrative Procedures Act, R.I.G.L. 42-35-1, et seq.~~

ADD IN LIEU THEREOF THE FOLLOWING:

- A. A person receiving a notice of violation may file a written appeal within ten (10) days after service. The appeal shall state the grounds and include available supporting evidence.
- B. The appeal shall be heard by an independent Administrative Hearing Officer appointed by the City Manager. The Hearing Officer shall be an attorney licensed in good standing in Rhode Island, shall not be a City employee, shall have had no prior participation in the matter, and shall have no financial, professional, or personal conflict of interest.
- C. The Hearing Officer shall provide at least seven (7) days' written notice of hearing, allow the parties to present evidence and question witnesses, maintain an administrative record, and issue a written decision with findings and conclusions within thirty (30) days after the record closes.
- D. The Hearing Officer shall affirm the Director's action unless it is arbitrary, unsupported by substantial evidence in the record, or contrary to law, and shall not substitute judgment on a matter committed to the Director's technical discretion.
- E. Filing an appeal does not automatically stay enforcement unless the Director, Hearing Officer, or a court grants a written stay. Emergency action necessary to address an imminent threat is not stayed.
- F. The Hearing Officer's written decision is final administrative action subject to judicial review as provided by Rhode Island law. The City Council is not the administrative appeal body.
- G. The Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, does not apply. Hearings are governed exclusively by this section and procedures adopted by the City Manager consistent with due process.
- H. A notice or decision under this section or a chapter incorporating it may be served personally; by first-class mail to the recipient's last known address; by delivery-confirmed courier; or electronically with prior written

consent. The issuing department shall document the date and method. Mail service is complete three (3) days after mailing unless returned; other service is complete on delivery.

SECTION 3. Chapter 13.09 of the Codified Ordinances of the City of Newport, Revision of 1994, as amended, entitled, "Illicit Discharge and Connection-Stormwater," is hereby further amended as follows:

Section 13.09.160. Enforcement measures after appeal.

DELETE IN ITS ENTIRETY:

~~If no timely appeal of a notice of violation has been taken and the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within ten days of the decision, then the department of public works shall undertake all necessary actions, including requesting injunctive relief through the superior court, to enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property.~~

ADD IN LIEU THEREOF THE FOLLOWING:

If no timely appeal of a notice of violation has been taken and the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within ten (10) days after the Hearing Officer's final decision under Section 13.09.140, then the Department of Utilities shall undertake all necessary actions, including requesting injunctive relief through a court of competent jurisdiction, to enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property.

SECTION 4. Chapter 13.09 of the Codified Ordinances of the City of Newport, Revision of 1994, as amended, entitled, "Illicit Discharge and Connection-Stormwater," is hereby further amended as follows:

Section 13.09.210. Criminal prosecution.

DELETE IN ITS ENTIRETY:

~~Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of five hundred dollars (\$500.00) per violation per day. The department of public works may recover all attorney's fees, court costs, and other~~

~~expenses associated with enforcement of this chapter, including sampling and monitoring expenses.~~

ADD IN LIEU THEREOF THE FOLLOWING:

A violation of this chapter is punishable by a fine not exceeding five hundred dollars (\$500.00) or imprisonment not exceeding thirty (30) days under R.I. Gen. Laws Section 45-6-2. Each day a violation continues after the compliance deadline in a final notice or order constitutes a separate violation to the extent permitted by law. The Department of Utilities may recover attorney's fees, court costs, and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses, to the extent permitted by law.

SECTION 5. This ordinance shall take effect upon its passage and all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

IN COUNCIL
READ AND PASSED

LAURA C. SWISTAK, CMC
CITY CLERK