

1 STATE OF GEORGIA

2 CITY OF LITHONIA

3 **ORDINANCE NO. 2021-02-04**

4 AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CITY OF LITHONIA,  
5 GEORGIA, BY ADDING SECTION 5 (ILLICIT DISCHARGE); TO PROVIDE FOR  
6 SEVERABILITY; TO PROVIDE FOR CODIFICATION; TO PROVIDE AN ADOPTION  
7 AND EFFECTIVE DATE; AND FOR OTHER LAWFUL PURPOSES.

8 **WHEREAS**, the duly elected governing authority of the City of Lithonia, Georgia  
9 (the “City”) is the Mayor and Council thereof; and

10 **WHEREAS**, the City of Lithonia is authorized by O.C.G.A. §36-35-3 to adopt  
11 ordinances relating to its property, affairs, and local government; and

12 **WHEREAS**, the City’s Code of Ordinances should be amended and updated in order  
13 to provide for the proper regulation of land and water management, in order to comply with  
14 current Georgia law, and

15 **WHEREAS**, the Mayor and City Council have determined that it is appropriate to  
16 amend said sections of the Code of Ordinances of the City of Lithonia to be consistent with  
17 state law and to further protect the public health, safety, and welfare of the citizens of the  
18 City.

19 **NOW THEREFORE, BE IT AND IT IS HEREBY ORDAINED BY THE**  
20 **MAYOR AND COUNCIL OF THE CITY OF LITHONIA, GEORGIA** and by the  
21 authority thereof:

22 **Section 1.** The City of Lithonia, Georgia’s Code of Ordinances is amended by adding  
23 Sec. 5 (Illicit Discharge), to read as follows:

24

25     **SECTION 5. GENERAL PROVISIONS**

26     **A. Purpose and Intent**

27     The purpose of this ordinance is to protect the public health, safety, environment and  
28     general welfare through the regulation of non-stormwater discharges to the  
29     (municipal/county) separate storm sewer system to the maximum extent practicable as  
30     required by Federal law. This ordinance establishes methods for controlling the  
31     introduction of pollutants into the (municipal/county) separate storm sewer system in  
32     order to comply with requirements of the National Pollutant Discharge Elimination  
33     System (NPDES) permit process. The objectives of this ordinance are to:

- 34
- 35     (1)     Regulate the contribution of pollutants to the (municipal/county) separate  
36             storm sewer system by any person;
  - 37     (2)     Prohibit illicit discharges and illegal connections to the (municipal/county)  
38             separate storm sewer system;
  - 39     (3)     Prevent non-stormwater discharges, generated as a result of spills,  
40             inappropriate dumping or disposal, to the (municipal/county) separate storm  
41             sewer system; and,
  - 42     (4)     To establish legal authority to carry out all inspection, surveillance, monitoring  
43             and enforcement procedures necessary to ensure compliance with this ordinance

44     **B. Applicability**

45     The provisions of this ordinance shall apply throughout the city limits of City of  
46     Lithonia.

47

48     **C. Compatibility with Other Regulations**

49     This ordinance is not intended to modify or repeal any other ordinance, rule, regulation,  
50     other provision of law. The requirements of this ordinance are in addition to the  
51     requirements of any other ordinance, rule, regulation, or other provision of law, and  
52     where any provision of

53 this ordinance imposes restrictions different from those imposed by any other ordinance,  
54 rule, regulation, or other provision of law, whichever provision is more restrictive or  
55 imposes higher protective standards for human health or the environment shall control.  
56

#### 57 **D. Responsibility for Administration**

59 The City of Lithonia shall administer, implement, and enforce the provisions of this  
60 ordinance.

### 61 **SECTION 5.1 DEFINITIONS**

62 “**Accidental Discharge**” means a discharge prohibited by this ordinance which occurs by  
63 chance and without planning or thought prior to occurrence.

64 “**Clean Water Act**” means the Federal Water Pollution Control Act (33 U.S.C. §  
65 1251 et seq.), and any subsequent amendments thereto.

66 “**Construction Activity**” means activities subject to the Georgia Erosion and  
67 Sedimentation Control Act or NPDES General Construction Permits. These include  
68 construction projects resulting in land disturbance. Such activities include but are not  
69 limited to clearing and grubbing, grading, excavating, and demolition.

70 “**Illicit Discharge**” means any direct or indirect non-stormwater discharge to the  
71 (municipal/county) separate storm sewer system, except as exempted in Section 3 of  
72 this ordinance.

73 “**Illegal Connection**” means either of the following:

- 74 i. Any pipe, open channel, drain or conveyance, whether on the surface  
75 or subsurface, which allows an illicit discharge to enter the storm  
76 drain system including but not limited to any conveyances which  
77 allow any non-stormwater discharge including sewage, process  
78 wastewater, and wash water to enter the storm drain system,  
79 regardless of whether such pipe, open channel, drain or conveyance  
80 has been previously allowed, permitted, or approved by an authorized  
81 enforcement agency; or
- 82 ii. Any pipe, open channel, drain or conveyance connected to the  
83 (municipal/county) separate storm sewer system which has not  
84 been documented in plans, maps, or equivalent records and  
85 approved by an unauthorized enforcement agency.

86 “**Industrial Activity**” means activities subject to NPDES Industrial Permits as defined in  
87 40CFR, Section 122.26 (b)(14).

88 “**National Pollutant Discharge Elimination System (NPDES) Storm Water**  
89 **Discharge Permit**” means a permit issued by the Georgia EPD under authority  
90 delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to  
91 waters of the United States, whether the permit is applicable on an individual, group, or  
92 general area-wide basis. “**(Municipal/County) Separate Storm Sewer System**” means  
93 any facility designed or used for collecting and/or conveying stormwater, including but  
94 not limited to any roads with

95 drainage systems, highways, (municipal/county) streets, curbs, gutters, inlets, catch basins,  
96 piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural  
97 and man-made or altered drainage channels, reservoirs, and other drainage structures, and which  
98 is:

- 99 (a) Owned or maintained by the City;
- 100 (b) Not a combined sewer; and
- 101 (c) Not part of a publicly-owned treatment works.

102 **“Non-Stormwater Discharge”** means any discharge to the storm drain system that is not  
103 composed entirely of stormwater.

104 **“Person”** means, except to the extent exempted from this ordinance, any individual,  
105 partnership, firm, association, joint venture, public or private corporation, trust, estate,  
106 commission, board, public or private institution, utility, cooperative, city, county or other  
107 political subdivision of the State, any interstate body or any other legal entity. **“Pollutant”**  
108 means anything which causes or contributes to pollution. Pollutants may include, but are  
109 not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids;  
110 cooking grease; detergents (biodegradable or otherwise); degreasers;  
111 cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish,  
112 garbage, litter, or other discarded or abandoned objects and accumulations, so that same may  
113 cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and  
114 solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal  
115 wastes; wastes and residues that result from constructing a building or structure; concrete and  
116 cement; and noxious or offensive matter of any kind.

117 **“Pollution”** means the contamination or other alteration of any water’s physical, chemical or  
118 biological properties by the addition of any constituent and includes but is not limited to, a  
119 change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any  
120 liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to  
121 create a nuisance or render such waters harmful, detrimental or injurious to the public health,  
122 safety, welfare, or environment, or to domestic, commercial, industrial, agricultural,  
123 recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or  
124 other aquatic life.

125 **“Premises”** mean any building, lot, parcel of land, or portion of land whether improved or  
126 unimproved including adjacent sidewalks and parking strips.

127 **“State Waters”** means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds,  
128 drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or  
129 artificial, lying within or forming a part of the boundaries of the State of Georgia which are  
130 not entirely confined and retained completely upon the property of a single person.

131 **“Stormwater Runoff”** or **“Stormwater”** means any surface flow, runoff, and drainage  
132 consisting entirely of water from any form of natural precipitation, and resulting from such  
133 precipitation.

134 **“Structural Stormwater Control”** means a structural stormwater management facility or  
135 device that controls stormwater runoff and changes the characteristics of that runoff including,  
136 but not limited to, the quantity and quality, the period of release or the velocity of flow.

137 **SECTION 5.2. PROHIBITIONS**

138 **A. Prohibition of Illicit Discharges**

139 No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to  
140 throw, drain, or otherwise discharge into the (municipal/county) separate storm sewer system  
141 any pollutants or waters containing any pollutants, other than stormwater.

142 The following discharges are exempt from the prohibition provision above:

- 143
- 144 (1) Water line flushing performed by a government agency, other potable water sources,  
145 landscape irrigation or lawn watering, diverted stream flows, rising ground water,  
146 ground water infiltration to storm drains, uncontaminated pumped ground water,  
147 foundation or footing drains (not including active groundwater dewatering systems),  
148 crawl space pumps, air conditioning condensation, springs, natural riparian habitat or  
149 wetland flows, and any other water source not containing pollutants;
  - 150 (2) Discharges or flows from fire fighting, and other discharges specified in writing by  
151 the **City of Lithonia** as being necessary to protect public health and safety;
  - 152 (3) The prohibition provision above shall not apply to any non-stormwater discharge  
153 permitted under an NPDES permit or order issued to the discharger and administered  
154 under the authority of the State and the Federal Environmental Protection Agency,  
155 provided that the discharger is in full compliance with all requirements of the permit,  
156 waiver, or order and other applicable laws and regulations, and provided that written  
157 approval has been granted for any discharge to the (municipal/county) separate storm  
158 sewer system.

159 **B. Prohibition of Illegal Connections**

160 The construction, connection, use, maintenance or continued existence of any illegal  
161 connection to the (municipal/county) separate storm sewer system is prohibited.

- 162
- 163 (1) This prohibition expressly includes, without limitation, illegal connections made in the  
164 past, regardless of whether the connection was permissible under law or practices  
165 applicable or prevailing at the time of connection.
  - 166 (2) A person violates this ordinance if the person connects a line conveying sewage to the  
167 (municipal/county) separate storm sewer system, or allows such a connection to  
168 continue.
  - 169 (3) Improper connections in violation of this ordinance must be disconnected and  
170 redirected, if necessary, to an approved onsite wastewater management system or the  
171 sanitary sewer system upon approval of the DeKalb County Department of  
172 Watershed Management.
  - 173 (4) Any drain or conveyance that has not been documented in plans, maps or equivalent,  
174 and which may be connected to the storm sewer system, shall be located by the owner  
175 or occupant of that property upon receipt of written notice of violation from the City  
176 requiring that such locating be completed. Such notice will specify a reasonable time  
177 period within which the location of the drain or conveyance is to be completed, that the  
178 drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the  
179 outfall location or point of connection to the storm sewer system, sanitary sewer system  
180 or other discharge point be identified. Results of these investigations are to be

181 documented and provided to the **(local enforcement authority)**.

182

183 **SECTION 5.3 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES**

184 Any person subject to an industrial or construction activity NPDES stormwater discharge  
185 permit shall comply with all provisions of such permit. Proof of compliance with said permit  
186 may be required in a form acceptable to the City of Lithonia prior to allowing discharges to the  
187 municipal separate storm sewer system.

188 **SECTION 5.4 ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES**

189 The City of Lithonia shall be permitted to enter and inspect properties and facilities at  
190 reasonable times as often as may be necessary to determine compliance with this ordinance.

191

192 (1) If a property or facility has security measures in force which require proper  
193 identification and clearance before entry into its premises, the owner or operator shall  
194 make the necessary arrangements to allow access to representatives of the City of  
195 Lithonia.

196 (2) The owner or operator shall allow the City ready access to all parts of the premises for  
197 the purposes of inspection, sampling, photography, videotaping, examination and  
198 copying of any records that are required under the conditions of an NPDES permit to  
199 discharge stormwater.

200 (3) The City shall have the right to set up on any property or facility such devices as are  
201 necessary in the opinion of the City to conduct monitoring and/or sampling of flow  
202 discharges.

203 (4) The City may require the owner or operator to install monitoring equipment and  
204 perform monitoring as necessary, and make the monitoring data available to the City.  
205 This sampling and monitoring equipment shall be maintained at all times in a safe and  
206 proper operating condition by the owner or operator at his/her own expense. All  
207 devices used to measure flow and quality shall be calibrated to ensure their accuracy.

208 (5) Any temporary or permanent obstruction to safe and easy access to the property or  
209 facility to be inspected and/or sampled shall be promptly removed by the owner or  
210 operator at the written or oral request of the City and shall not be replaced. The costs of  
211 clearing such access shall be borne by the owner or operator.

212 (6) Unreasonable delays in allowing the City access to a facility is a violation of this  
213 ordinance.

214 (7) If the City has been refused access to any part of the premises from which stormwater  
215 is discharged, and the City is able to demonstrate probable cause to believe that there  
216 may be a violation of this ordinance, or that there is a need to inspect and/or sample as  
217 part of a routine inspection and sampling program designed to verify compliance with  
218 this ordinance or any order issued hereunder, or to protect the overall public health,  
219 safety, environment and welfare of the community, then the City may seek issuance of  
220 a search warrant from any court of competent jurisdiction.

221



222        **SECTION 5.5 NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS**

223        Notwithstanding other requirements of law, as soon as any person responsible for a facility,  
224        activity or operation, or responsible for emergency response for a facility, activity or operation  
225        has information of any known or suspected release of pollutants or non-stormwater discharges  
226        from that facility or operation which are resulting or may result in illicit discharges or  
227        pollutants discharging into stormwater, the (municipal/county) separate storm sewer system,  
228        State Waters, or Waters of the U.S., said person shall take all necessary steps to ensure the  
229        discovery, containment, and cleanup of such release so as to minimize the effects of the  
230        discharge.

231        Said person shall notify the authorized enforcement agency in person or by phone, facsimile  
232        or in person no later than 24 hours of the nature, quantity and time of occurrence of the  
233        discharge. Notifications in person or by phone shall be confirmed by written notice addressed  
234        and mailed to the City within three business days of the phone or in person notice. If the  
235        discharge of prohibited materials emanates from a commercial or industrial establishment, the  
236        owner or operator of such establishment shall also retain an on-site written record of the  
237        discharge and the actions taken to prevent its recurrence. Such records shall be retained for at  
238        least three years. Said person shall also take immediate steps to ensure no recurrence of the  
239        discharge or spill.

241        In the event of such a release of hazardous materials, emergency response agencies and/or  
242        other appropriate agencies shall be immediately notified.

244        Failure to provide notification of a release as provided above is a violation of this ordinance.

246        **SECTION 5.6. VIOLATIONS, ENFORCEMENT AND PENALTIES**

247        **A. Violations**

248        It shall be unlawful for any person to violate any provision or fail to comply with any of the  
249        requirements of this Ordinance. Any person who has violated or continues to violate the  
250        provisions of this ordinance, may be subject to the enforcement actions outlined in this section  
251        or may be restrained by injunction or otherwise abated in a manner provided by law.

253        In the event the violation constitutes an immediate danger to public health or public safety, the  
254        City is authorized to enter upon the subject private property, without giving prior notice, to  
255        take any and all measures necessary to abate the violation and/or restore the property. The City  
256        is authorized to seek costs of the abatement as outlined in Section 7.5.

258        **B. Notice of Violation**

259        Whenever the City finds that a violation of this ordinance has occurred, the City may order  
260        compliance by written notice of violation.

261  
262        (1)        The notice of violation shall contain:

- 263 (a) The name and address of the alleged violator;  
264 (b) The address when available or a description of the building, structure or land  
265 upon which the violation is occurring, or has occurred;  
266 (c) A statement specifying the nature of the violation;  
267 (d) A description of the remedial measures necessary to restore compliance with  
268 this ordinance and a time schedule for the completion of such remedial action;  
269 (e) A statement of the penalty or penalties that shall or may be assessed against  
270 the person to whom the notice of violation is directed; and,  
271 (f) A statement that the determination of violation may be appealed to the City by  
272 filing a written notice of appeal within thirty (30) days of service of notice of  
273 violation.
- 274 (2) Such notice may require without limitation:  
275 (a) The performance of monitoring, analyses, and reporting;  
276 (b) The elimination of illicit discharges and illegal connections;  
277 (c) That violating discharges, practices, or operations shall cease and desist;  
278 (d) The abatement or remediation of stormwater pollution or contamination  
279 hazards and the restoration of any affected property;  
280 (e) Payment of costs to cover administrative and abatement costs; and,  
281 (f) The implementation of pollution prevention practices.

282  
283

### **C. APPEAL OF NOTICE OF VIOLATION**

284 Any person receiving a Notice of Violation may appeal the determination of the City of  
285 Lithonia. The notice of appeal must be received within thirty (30) days from the date of the  
286 Notice of Violation. Hearing on the appeal before the City Administrator or his/her designee  
287 shall take place within 15 days from the date of receipt of the notice of appeal. The decision of  
288 the appropriate authority or their designee shall be final.

289  
290

#### **1. ENFORCEMENT MEASURES AFTER APPEAL**

291 If the violation has not been corrected pursuant to the requirements set forth in the Notice of  
292 Violation, or, in the event of an appeal, within 30 days of the decision of the appropriate  
293 authority upholding the decision of the City, then representatives of the City may enter upon  
294 the subject private property and are authorized to take any and all measures necessary to abate  
295 the violation and/or restore the property. It shall be unlawful for any person, owner, agent or  
296 person in possession of any premises to refuse to allow the government agency or designated  
297 contractor to enter upon the premises for the purposes set forth above.

298  
299

#### **2. COSTS OF ABATEMENT OF THE VIOLATION**

300 Within 30 days after abatement of the violation, the owner of the property will be notified of  
301 the cost of abatement, including administrative costs. The property owner may file a written  
302 protest objecting to the assessment or to the amount of the assessment within 30 days of such  
303 notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an  
304 appeal is taken, within thirty (30) days after a decision on said appeal, the charges shall  
305 become a special assessment against the property and shall constitute a lien on the property for  
306 the amount of the assessment.



307  
308 Any person violating any of the provisions of this article shall become liable to the  
309 City by reason of such violation.

310 **3. CIVIL PENALTIES**

311 In the event the alleged violator fails to take the remedial measures set forth in the notice of  
312 violation or otherwise fails to cure the violations described therein within ten days, or such  
313 greater period as the City shall deem appropriate, after the City has taken one or more of the  
314 actions described above, the City may impose a penalty not to exceed \$1,000 (depending on  
315 the severity of the violation) for each day the violation remains unremedied after receipt of  
316 the notice of violation.

317  
318 **a. CRIMINAL PENALTIES**

319 For intentional and flagrant violations of this ordinance, the City may issue a citation to the  
320 alleged violator requiring such person to appear in Municipal Court to answer charges for such  
321 violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 or  
322 imprisonment for 60 days or both. Each act of violation and each day upon which any violation  
323 shall occur shall constitute a separate offense.

324  
325 **b. VIOLATIONS DEEMED A PUBLIC NUISANCE**

326 In addition to the enforcement processes and penalties provided, any condition caused or  
327 permitted to exist in violation of any of the provisions of this ordinance is a threat to public  
328 health, safety, welfare, and environment and is declared and deemed a nuisance, and may be  
329 abated by injunctive or other equitable relief as provided by law.

330  
331 **c. REMEDIES NOT EXCLUSIVE**

332 The remedies listed in this ordinance are not exclusive of any other remedies available under  
333 any applicable Federal, State or local law and the City may seek cumulative remedies. The  
334 City may recover attorney's fees, court costs, and other expenses associated with  
335 enforcement of this ordinance, including sampling and monitoring expenses.

336 **Section 2.** The preamble of this Ordinance shall be considered to be and is hereby  
337 incorporated by reference as if fully set out herein.

338 **Section 3.** (a) It is hereby declared to be the intent of the Mayor and Council that all  
339 sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their  
340 enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

341 (b) It is hereby declared to be the intent of the Mayor and Council that, to the greatest extent  
342 allowed by law, each and every section, paragraph, sentence, clause, or phrase of this Ordinance

343 is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It  
344 is hereby further declared to be the intent of the Mayor and Council that, to the greatest extent  
345 allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually  
346 dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

347 (c) In the event that any phrase, clause, sentence, paragraph, or section of this Ordinance  
348 shall, for any reason whatsoever, be declared invalid, unconstitutional, or otherwise unenforceable  
349 by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of  
350 the Mayor and Council that such invalidity, unconstitutionality, or unenforceability shall, to the  
351 greatest extent allowed by law, not render invalid, unconstitutional, or otherwise unenforceable  
352 any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinance and that,  
353 to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and  
354 sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and  
355 effect.

356 **Section 4.** All ordinances and parts of ordinances in conflict herewith are hereby expressly  
357 repealed.

358

359

360

361

362

363

364

365

366

367

368

369

370

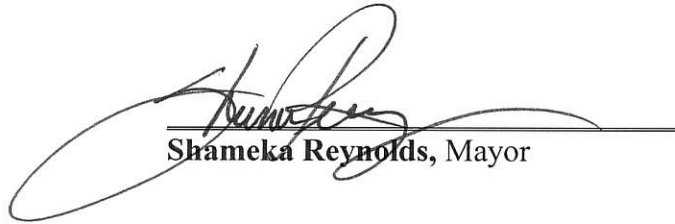
371

372            **Section 5.** The effective date of this Ordinance shall be the date of adoption unless  
373 otherwise specified herein.

374  
375 SO ORDAINED this 15<sup>th</sup> day of February, 2021.  
376



CITY OF LITHONIA, GEORGIA

377  
378  
379  
380  
381  
382  
383  
384  
385  
  
Shameka Reynolds, Mayor

386 ATTEST:

387  
388  
389  
390  
391  
392  
393  
  
Robinette Blount, City Clerk

394 APPROVED AS TO FORM BY:

395  
396  
397  
398  
399  
  
City Attorney