

## **ORDINANCE NO. 2189**

### **CITY OF MADISON HEIGHTS OAKLAND COUNTY, MICHIGAN**

#### **AMENDMENT TO THE CODE OF ORDINANCES**

An Ordinance to amend Ordinance 571, being an Ordinance codifying and adopting a new Code of Ordinances for the City of Madison Heights, Michigan by amending Chapter 29, Article V, Section 117 of the Code of Ordinances to provide a program for post construction stormwater management and modifying the current Chapter 29, Article V, Section 117, Ordinances in Conflict to Chapter 29, Article V, Section 118, Ordinances in Conflict.

#### **THE CITY OF MADISON HEIGHTS ORDAINS**

##### Section 1.

That Chapter 29, Article V, Section 117 of the City of Madison Heights, Michigan, Code of Ordinances is hereby amended in its entirety to read as follows:

##### **Sec. 29-117. POST CONSTRUCTION STORMWATER MANAGEMENT PROGRAM**

- A. Purposes: The City of Madison Heights is required to implement a post construction stormwater management program that meets the Municipal Separate Storm Sewer System (MS4) permit requirements as provided by the Michigan Department of Environment, Great Lakes and Energy (EGLE). EGLE requires that the City of Madison Heights adopts an ordinance or other suitable regulatory mechanisms, or develop design standards to control stormwater following construction activities, and ensure long term maintenance of stormwater controls.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Madison Heights through the regulation of stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

- (1) To regulate the quality and quantity of stormwater discharge from a private property into a municipal storm sewer, enclosed or open conveyance systems.
- (2) To establish legal authority to implement permitting and delegation of monitoring and maintenance responsibilities necessary to ensure compliance with this article.

- (3) To adopt the Stormwater Engineering Design Standards set forth by the Oakland County Water Resources Commissioner's Office and that application of said standards shall be subject to the review and approval of City Engineers who make or allow exceptions to said standards as they determine appropriate in any specific case.

B. Definitions: The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates another meaning:

- (1) **Authorized Enforcement Agency** means the city engineer and his/her authorized representatives, which shall specifically include all inspectors and code enforcement, and any other individual designated by the City Manager to enforce this ordinance. Where applicable the term may also mean the director of the Michigan Department of Environment, Great Lakes and Energy (EGLE) and/or his/her designated official, and/or the United States EPA Administrator or his/her designated official
- (2) **Best Management Practices (BMPs)** means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (3) **City** means the City of Madison Heights, Michigan.
- (4) **Clean Water Act** means the Federal Water Pollution Control Act (33 U.S.C. section 1251, et seq.), and any subsequent amendments thereto.
- (5) **County** means the County of Oakland.
- (6) **Construction Activity** means activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of five acres or more requiring an issued permit and small construction activities impacting one to five acres of land deemed to operate under a national permit. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.
- (7) **MS4** means a municipal separate storm sewer system
- (8) **National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit** means a permit issued by United States Environmental Protection Agency (EPA), or by the State of Michigan under authority delegated pursuant to 33 USC section 1342(b) and codified in the Michigan Natural

Resources and Environmental Protection Act Protection at MCL 324.101 et seq., that authorizes the discharge of wastewater to waters of the United States or State of Michigan, whether the permit is applicable on an individual, group, or general area-wide basis.

- (9) **Person** means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner's agent.
  - (10) **Pollutant** means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that same may cause or contribute to pollution; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
  - (11) **Premises** means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
  - (12) **Storm sewer system or storm drainage system** means a publicly owned facility by which stormwater is collected and/or conveyed, including, but not limited to, road drainage systems, inlets, catch basins, or other drainage structures, piped/enclosed storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, excluding surface waters.
  - (13) **Stormwater** means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.
  - (14) **Wastewater** means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.
- C. Applicability: This ordinance shall apply to all development and redevelopment sites discharging to the City's MS4 as outlines in Oakland County's new stormwater engineering design standards, here forth referred to as the Oakland County Stormwater Standards.
- D. Enforcement, Responsibility for Administration: This ordinance shall be enforceable by the City Engineer, building official, or other authorized enforcement agency.
- E. Minimum Standards: The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore, this ordinance does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

- F. Right Of Entry: The City Engineer, building official, or other authorized enforcement agency shall be permitted to enter upon all properties for the purposes of inspection of stormwater BMPs in accordance with the provisions of this article. Refusal of reasonable access to the City Engineer, building official, and/or representatives of the authorized enforcement agency to any part of the premises is a violation of this article.
- G. Requirements To Manage Stormwater by Following Oakland County Stormwater Standards: The city adopts the requirements set out in the Oakland County Stormwater Standards. The Standards lay out a consistent county wide best managements practices (BMPs) to regulate stormwater quantity and quality discharge as approved by EGLE. The owner of a new development or redevelopment meeting the thresholds set out in the Oakland County Stormwater Standards shall, at their own expense, apply for and obtain a permit ahead of starting construction, engineered stormwater controls contained within the applicant's property meeting the design criteria of the Oakland County Stormwater standards. The property owner, upon completion of construction, must enter into a binding long-term maintenance agreement with the city, at their own expense, to document, routinely monitor and maintain the stormwater quantity and quality BMPs so they continue to operate as designed. The agreement shall be set up that if the property owner should be determined to be nonresponsive to a notice of required maintenance actions, that the city may enter the property to perform the maintenance required.
- H. Enforcement:
- (1) Notice of Violation: Whenever the City engineer, Director of Public Services or its designee, building inspector, or code enforcement finds that a person has violated a prohibition or failed to meet a requirement of this ordinance, the city may order compliance by written notice of violation. Such notice may require without limitation: The performance condition monitoring and measuring; The performance maintenance work in order to get BMPs functioning as designed; Payment of fines and cost to cover reimbursement of direct and administrative costs; In some cases, a bond to be posted.
  - (2) Abatement of Violation: If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator failed to remediate or restore within the established deadline, the work will be done by the City or its designee at the violator's expense.
- I. Appeal Of Notice of Violation: Any person receiving a Notice of Violation may appeal the determination of the City. The notice of appeal must be received within 21 days from the date of the Notice of violation. Hearing on the appeal before the appropriate authority or designee shall take place within 14 days from the date of the receipt of the notice of appeal. The decision of the City or designee shall be final.
- J. Enforcement Measures After Appeal: If 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

14 days of the decision of the City upholding its decision, then representatives of the City or designees may enter upon the subject private property and are authorized to take any and measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the City or its designees to enter upon the premises for the purposes set forth above.

- K. Cost Of Abatement of Violation: The cost of actual abatement and administration costs shall be the responsibility of the owner of the property. Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs, in writing. The property owner may file a written objection to the amount assessed with 10 days of the date of the notice of costs. If the amount due is not paid in a timely manner, as determined by the City, or by the expiration of the time in which to file a timely appeal, the costs will become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of five (5%) per annum shall be assessed on the balance beginning on the first day following discovery of the violation.
- L. Injunctive Relief: It shall be unlawful for any person to violate any provision or fail to comply with any of the requirement of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the City may petition for a permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation in violation.
- M. Other Proceedings: In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, the city may impose upon a violator alternative compensatory action, including but not limited to storm drain stenciling, attendance at compliance workshops, and other cleanup.
- N. Violations Deemed A Public Nuisance: In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provision of this ordinances is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense. The City may also simultaneously or alternatively initiate a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance.
- O. Criminal Prosecution: Any person who has violated this ordinance shall be guilty of a misdemeanor and subject to 90 days in jail and/or a \$500 fine, plus attorney's fees, court costs, abatement costs, costs associated with enforcement of this ordinance including monitoring and maintenance expenses, and any other costs determined by the Court. A separate violation occurs for each day that the violation exists without complete abatement.
- P. 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 and it is within

the discretion of the city and/or authorized enforcement agency to seek cumulative remedies.

## Section 2.

That Chapter 29, Article V, Section 117 of the City of Madison Heights, Michigan, Code of Ordinances is hereby amended to Chapter 29, Article V, Section 118 and shall read as follows:

### **Sec. 29-118. Ordinance in conflict.**

All ordinances or parts of ordinances of the City of Madison Heights in conflict with this article are superseded by this article only to the extent necessary to give this article full force and effect.

## Section 3.

In the event any section, subdivision, clause or phrase of this Ordinance be declared by the Courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part so invalidated.

## Section 4.

All other provisions of the code of ordinances of the City of Madison Heights, Michigan except as herein modified are hereby expressly ratified and affirmed. This ordinance shall become effective upon passage and publication.