

ORDINANCE NO. 2192

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, by amending, in part, Chapter 29, Article V, Section 29-116 to provide for the health, safety, and general welfare of the citizens of the City of Madison Heights through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law.

THE CITY OF MADISON HEIGHTS ORDAINS

Section 1.

That Chapter 29, Article V, Section 29-116 of the Code of Ordinances of the City of Madison Heights is hereby amended in its entirety to read as follows:

Sec. 29-116 Exclusion of Stormwater from Sanitary Sewers & Illicit Discharge Elimination

A. Purposes: To provide for the health, safety, and general welfare of the citizens of the City of Madison Heights through the regulation of non-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 contribution of pollutants to the municipal storm sewer system by stormwater discharges by any user.
- (2) To prohibit illicit connections and discharges to the municipal storm sewer system.
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article.

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 a different meaning:

Authorized enforcement agency means the City of Madison Heights Department of Public Services and its authorized representatives, which shall specifically include all inspectors and code enforcement, and any other individual designated by the City Manager or Mayor of the City of Madison Heights to enforce this Ordinance. Where applicable, the terms may also mean the director of the Michigan Department of Environment, Great Lakes, and Energy (EGLE) or his/her designated official, and/or the United States EPA Administrator or his/her designated official.

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.

City means the City of Madison Heights.

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

County means the County of Oakland.

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.

Hazardous materials mean any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal discharge means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in sub-section G of this Ordinance.

Illicit connections mean either of the following:

- (1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited, to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency, or
- (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial activity means activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26(b)(14).

MS4 means a municipal separate storm sewer system.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit means a permit issued by the United States Environmental Protection Agency (EPA), or by the State of Michigan under authority delegated pursuant to 33 USC § 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 pollutants to waters of the United States or State of Michigan, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-stormwater discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

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.

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; floatables; pesticides, herbicides, and fertilizers; 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.

Premises means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Sanitary sewer system means the publicly owned facilities consisting of, but not limited to, transporting pipes, pumping equipment, storage containment, treatment operations and other structures for purpose of wastewater remediation for the management of water-carried wastes from residences, business buildings, institutions, commercial and industrial establishments.

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, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

Stormwater pollution prevention plan means a document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Wastewater means any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

C. Exclusion of stormwater from sanitary sewers:

- (1) Direct connection of any stormwater source to sanitary sewers is not allowed.
- (2) Subsurface water collected by edge drains, sump pumps or other means of conveyance must be discharged into a storm sewer or on surface with positive drainage to an approved point of collection.
- (3) Sanitary sewer systems shall be periodically checked for infiltration and repaired as needed.

D. Applicability: This Ordinance shall apply to all water entering the storm drain system generated on any developed or undeveloped lands unless expressly exempted by an authorized enforcement agency.

E. Enforcement, Responsibility for Administration: This Ordinance shall be enforceable by the City of Madison Heights Department of Public Services or other authorized enforcement agency, as appropriate.

F. 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.

G. Discharge Prohibitions:

(1) Prohibition of illegal discharges.

No person shall discharge or cause to be discharged into the storm drain system or watercourses, any materials, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct, or continuance of any illegal discharge to the storm drain system is prohibited; however, the following discharges are exempt from prohibition as described:

- (a) The discharges and flows from firefighting activities if they are identified as not being a significant source of pollutants to the waters of the state.
- (b) Discharges specified in writing by the City of Madison Heights Department of Public Services as being necessary to protect public health and safety.
- (c) Dye testing, when there has been verbal notification to the Department of Public Services and state department of environmental quality procedures have been followed.
- (d) Discharges permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (e) The following discharges or flows if they are identified as not being a significant contributor to violations of water quality standards: water line flushing and discharges from potable water sources; landscape irrigation runoff, lawn watering runoff, and

irrigation waters; diverted stream flows and flows from riparian habitats and wetlands; rising groundwaters and springs; uncontaminated pumped groundwater, except for groundwater cleanups specifically authorized by NPDES permits; foundation drains, water from crawl space pumps, footing drains and basement sump pumps; air conditioning condensation; waters from noncommercial car washing; street wash water; dechlorinated swimming pool water from single-, two- or three-family residences. Other swimming pools shall not be discharged to stormwater or to surface waters of the state without NPDES permit authorization from EGLE.

(2) Prohibition of illicit connections.

(a) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.

(b) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(c) A person is considered to be in violation of this article if the person connects a line conveying sewage to a storm drain system or MS4 or allows such a connection to continue.

(3) Prohibition of Direct Dumping or Disposal of Materials into the MS4.

The direct dumping of materials or discharges into the MS4 is prohibited except for those illicit discharges identified as not being a significant contributor to violations of water quality standards.

H. Right of Entry: The City of Madison Heights Department of Public Services or other authorized enforcement agency shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing of suspected non-stormwater discharges in accordance with the provisions of this article. Refusal of reasonable access to the City and/or representatives of the authorized enforcement agency to any part of the premises is a violation of this article.

I. Suspension of Storm Sewer System Access:

(1) Suspension due to illicit discharges in emergency situations: The Department of Public Services or other authorized enforcement agency may, without prior notice, suspend storm sewer system discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm sewer system or the Waters of the United States or this state. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the storm sewer system or waters of the United States or this state, or to minimize danger to persons.

(2) Suspension due to the detection of illicit discharge: Any person discharging to the storm sewer system in violation of this article may have their storm sewer system access

terminated if such termination would abate or reduce an illicit discharge. The Department of Public Services will notify a violator of the proposed termination of its storm sewer system access. The violator may petition the City for reconsideration and hearing.

- (3) Violations: A person violates this article if the person reinstates storm sewer system access to premises terminated pursuant to this section, without the prior approval of the Department of Public Services or other authorized enforcement agency.

J. Industrial or Construction Activity Discharges: Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the city engineer prior to the allowing of discharges to the MS4.

K. Monitoring of Discharges: The City of Madison Heights Department of Public Services has the right to require non-residential dischargers to install monitoring equipment as necessary if a non-stormwater discharge is suspected. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

L. Requirements to prevent, control, and reduce storm water pollutants by the use of best management practices: The City of Madison Heights Department of Public Services or his designee will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a Storm Water Pollution Prevention Plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

M. Watercourse Protection: Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

N. Notification of Spills: Notwithstanding other requirements of 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 which are resulting or

may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City of Madison Heights Department of Public Services within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least 3 years.

O. Enforcement:

(1) Notice of Violation: Whenever the city engineer or his designee finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the City of Madison Heights may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination of hazards and the restoration of any affected property; and
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of source control or treatment BMPs.

(2) Abatement of a 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 fail to remediate or restore within the established deadline, the work will be performed by the City of Madison Heights or its designee at the violator's expense.

P. Appeal of Notice of Violation: Any person receiving a Notice of Violation may appeal the determination of the City of Madison Heights. The notice of appeal must be received by the City Clerk within 30 days from the date of the Notice of Violation. Hearing on the appeal by the City Council's appointed hearing officer shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the hearing officer shall be final.

Q. Enforcement of 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 30 days of the decision of the City of Madison Heights upholding its decision, then representatives of the City or its designees shall enter upon the subject private property and are authorized to take any and all 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 designee to enter upon the premises for the purposes set forth above.

R. Cost of the Abatement of the Violation: Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 days. If the amount due is not paid within a timely manner as determined by the decision of the City of Madison Heights or by the expiration of the time in which to file an appeal, the charges shall 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 percent (5%) per annum shall be assessed on the balance beginning on the first day following discovery of the violation.

S. Injunctive Relief: It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the City of Madison Heights may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

T. Appeal of Notice of Violation: In lieu of enforcement proceedings, penalties, and remedies authorized by this Ordinance, the City of Madison Heights may impose upon a violator's alternative compensatory actions; including, but not limited to: storm drain stenciling, attendance at compliance workshops, and creek cleanup.

U. 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 provisions of this Ordinance 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 of Madison Heights may also simultaneously or alternatively initiate a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance.

V. Criminal Prosecution:

(1) Any person who violates this ordinance shall be guilty of a misdemeanor and subject to the penalties set forth in Sec 1-7 of the City of Madison Heights Code.

(2) The City of Madison Heights may recover all attorney's fees; court costs; and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

W. 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 authorized enforcement agency to seek cumulative remedies.

Section 2.

All Ordinances or parts of Ordinances in conflict with this Ordinance are repealed only to the extent necessary to give this Ordinance full force and effect

Section 3.

Should any section, subdivision, clause, or phrase of this Ordinance be declared by a Court of competent jurisdiction to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Section 4.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law in force when they commenced.

Section 5.

This ordinance as ordered shall take effect ten (10) days after its adoption and upon publication.

Section 6.

A copy of this ordinance may be inspected or purchased at the City Clerk's office at 300 West Thirteen Mile Road, Madison Heights, Michigan, between the hours of 8:00 a.m. and 11:30 a.m. and between the hours of 12:30 p.m. and 4:30 p.m. on regular business days.