

BY: MR. JOSEPH

NO: 30811-08

AN ORDINANCE

Amending Sections 54.01 through 54.10 of the Revised Code of General Ordinances to Provide for the Protection of Surface and Groundwater from Contamination by Storm Water Runoff and to Provide for the Financing of City Activities Related Thereto; Repealing Existing Sections 54.01 through 54.11 of the Revised Code of General Ordinances; and Declaring an Emergency.

WHEREAS, The Commission of the City of Dayton has determined that the proper management of the waters of the City of Dayton is necessary to the preservation and enhancement of the health and welfare of its citizens; and

WHEREAS, The Commission of the City of Dayton has determined that amendment of storm water pollution prevention and control measures are necessary to maintain compliance with pertinent provisions of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1351-1387) the Ohio EPA NPDES Permit No. 1PI00003*CD, and the rules adopted thereunder;

WHEREAS, In order to provide for the immediate preservation of the public peace, property, health, and safety it is necessary that this Ordinance take effect immediately upon its passage; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON,

SECTION 1. That Sections 54.01 through 54.10 of the Revised Code of General Ordinances, "Storm Water Management," is amended to read as follows:

§ 54.01 GENERAL

(A) Purpose

This chapter is adopted to protect public surface and groundwaters from degradation by accelerated soil erosion and other pollutants; and to maintain compliance with the City of Dayton National Pollutant Discharge Elimination System (NPDES) Permit No. 1PI00003*CD. Protection from such degradation shall promote and maintain the health, safety, and general well-being of all inhabitants of the city and surrounding region.

(B) Definitions

As used in this chapter the following words and phrases shall have the meanings ascribed to them respectively, regardless of whether the words and phrases are capitalized:

"Best Management Practice" (BMP) means schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Non-Structural BMPs are those that require modified or additional operational or behavioral practices, such as sweeping a parking lot or having spill response equipment on-site.

Structural BMPs are those that require the construction of a structure or other physical modification on the site.

“Buffer” means a designated transition area around water resources or wetlands that is left in a natural, usually vegetated, state so as to protect the water resources or wetlands from runoff pollution.

“Director” means the Director of the City of Dayton Department of Water or designee.

“Discharge” means any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the MS4 or into waters of the United States.

“Dry Well” means a subterranean chamber, having stones or gravel inside, used to collect storm water and allows it to promote infiltration of water into the ground. Or a shallow injection well designed to drain surface fluids, primarily storm runoff, into a subsurface formation.

“Earth-disturbing activity” means any demolition, grading, excavating, filling, or other alteration of the earth’s surface where natural or man-made ground cover is destroyed and that may result in or contribute to erosion and sediment pollution, except that such term does not apply to agricultural activities.

“Floor Drain” means a structure designed to drain a facility interior to the sanitary sewer system.

“Illicit Connection” means any man-made conveyance connecting an illicit discharge to the MS4.

“Illicit Discharge” means any discharge to an MS4 that is not composed entirely of storm water except discharges authorized by a state or federal National Pollutant Discharge Elimination System permit and those described in section 54.09(B). Illicit discharge includes improper disposal.

“Improper disposal” is defined as the placement of motor vehicle fluids, household hazardous wastes, grass clipping, leaf litter, animal wastes, sewage (as defined in Ohio Revised Code §6111.01 (B)), industrial waste (as defined in ORC §6111.01 (C)) or any other waste (as defined in ORC §6111.01 (D)) into a MS4.

“Impervious Surface Area” means land area covered by buildings, pavement, or other material that prevents storm water from penetrating the soil.

“Industrial Waste” means any liquid, gaseous or solid waste substance, or wastewaters (including, but not limited to those from commercial carpet cleaning, exterior building cleaning, paint related activities, floor washing, and commercial washing of vehicles) resulting from any process of industry, manufacture, trade, or business; or from the development, processing, or recovery of any natural resource.

“Lateral” mean pipe that connects private storm drainage to the municipal MS4.

“Municipal Separate Storm Sewer System” (MS4) means all conveyances and control structures including, but not limited to, municipal streets, catch basins, curbs, gutters, ditches, man-made

channels, dry-wells, infiltration devices, or storm drains owned and operated by the city that are designed or used for collecting, controlling or conveying storm water.

“Other wastes” means garbage, refuse, sediment, decayed wood, sawdust, shaving, bark, grass clippings, yard wastes, and other wood debris, lime, sand, ashes, offal, litter, oil, grease, soaps, antifreeze, tar, coal dust, dredged or fill material, or silt, or other substances that are not sewage or industrial waste, and any other “pollutants” or “toxic pollutants” as defined under the Federal Water Pollution Control Act.

“Owner” means the person or persons who legally own private property, or the designated party operating on behalf of the owner, with facilities that discharge to the MS4.

“Permittee” means any “person,” as defined at 40 CFR 122.2, authorized by a National Pollutant Discharge Elimination System permit to discharge to waters of the United States.

“Person” means an individual, corporation, business trust, estate, trust, partnership, association, the state, or any political subdivision thereof, and the United States and any agency or instrumentality thereof.

“Point Source” means any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, or other floating craft from which pollutants are or may be discharged.

“Pollutants” means, without limitation, oil, fertilizers, pesticides, heavy metals, toxic substances, sediments, any other wastes, bacteria and oxygen-demanding materials that enter receiving water bodies, degrading water quality or inhibiting the attainment of water quality standards.

“Pollution” means the entry of any pollutants, sewage, industrial waste, litter, or other wastes into the MS4 or storm water.

“Private Drainage Facilities” means any storm water conveyance system including, but not limited to, detention/retention basins, laterals, ditches, swales, and private storm sewers that are not owned and operated by the city.

“Sediment” means any solid material, mineral, or organic that is in suspension being transported, or has been moved from its site of origin by mechanical means, air, water, or gravity as a product of erosion.

“Sewage” means any liquid waste containing animal or vegetable matter in suspension or solution, and includes household wastes as commonly discharged from residences and from commercial, institutional, or similar facilities.

“Storm water” means rain water runoff, snowmelt runoff, and surface runoff and drainage.

“Storm Water Management Program (SWMP)” means a comprehensive written program to manage the quantity and quality of storm water discharged to the MS4.

“Storm Water Pollution Prevention Plan (SWP3)” refers to the NPDES permit requirement for the development and implementation of a written plan to minimize or eliminate the potential for contamination of storm water. The plan requires the permittee to (1) investigate sources of

potential contamination, (2) develop on-going practices/procedures for minimizing/eliminating storm water pollution, and (3) implement those practices/procedures.

“Waters of the United States” as defined by 40 Code of Federal Regulations 122.

“Source Water Protection Area” means the surface and subsurface area surrounding a drinking water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

“Swale” means a long, narrow, usually shallow, trough that carries water mainly during rainstorms or snowmelts.

§ 54.02 POWERS OF THE DIRECTOR

The Director shall administer, implement, and enforce the provisions of sections 54.01 through 54.10. Any powers granted or duties imposed upon the Director may be delegated in writing to persons or entities acting in the beneficial interest of or in the employ of the city. The Director shall have power to make rules for the management and protection of the MS4 and to prevent the pollution thereof; to make rules consonant with sections 54.01 to 54.10; to classify storm sewer services; to establish, adjust, and regulate the rates charged for different classes of storm sewer services; to enforce the provisions of sections 54.01 through 54.10; and to exercise all incidental powers necessary to carry out the purposes of Chapter 54.

§ 54.03 STORM WATER UTILITY

For the protection of the public health, safety, welfare, and convenience of the city and its inhabitants a storm water utility is hereby established to manage, maintain, operate, repair, construct, reconstruct, and enlarge the city’s Municipal Separate Storm Sewer System. The storm water utility is administered by the Director.

§ 54.04 STORM WATER CHARGES

- (A) There is hereby charged and imposed upon all real property having an impervious surface area located within the city, whether publicly or privately owned, a fee for benefits accruing from the storm water utility. All owners of such real property are responsible for payment of fees charged to their properties.
- (B) A Municipal Storm Water Fund is established to receive all fees collected pursuant to this chapter. All fees collected for storm water service shall be placed in the Municipal Storm Water Fund. The first priority for the expenditure of this fund shall be to address the specific requirements of the city’s storm water discharge permit for the MS4.
- (C) Public streets and airports owned and operated by the city are not subject to the storm water fees.
- (D) Unpaid storm water service fees shall constitute a lien against the property. Unpaid storm water service fees may be certified to the County Auditor for collection with the property owner’s real property tax payment.
- (E) Storm water fees may be appealed to the Director. Decisions of the Director may be appealed to the Board of Water and Sewer Charge Review and to the Board of Water and Sewer Charge Appeals in accordance with the procedures set forth in R.C.G.O. sections

50.20 through 50.28. The respective boards shall have such powers with respect to storm water charges as they have with respect to water and sanitary sewer service fees.

(F) Assessment Rates.

- (1) The annual fee for one-family, two-family, and three-family residential properties having impervious surface area and from which storm water does not flow directly to the MS4 is \$23.80.
- (2) The annual fee for one-family, two-family, and three-family residential properties having impervious surface area and from which storm water flows directly to the MS4 is \$51.40.
- (3) The annual rate for all properties other than one-family two-family and three-family residential properties, having impervious surface area and from which storm water does not flow directly to the MS4 is \$.0122 per square foot of impervious surface area.
- (4) The annual rate for all properties other than one-family, two-family, and three-family residential properties, having impervious surface area and from which storm water flows directly to the MS4 is \$.0263 per square foot of impervious surface area.
- (5) The city shall annually adjust the rates established by this section, as necessary to recover the cost of operating the storm water utility, by a percentage no greater than the percent change in the Consumer Price Index (CPI-U, U.S. City Average, All Items, Not Seasonally Adjusted) as measured by the percent change in the average price index from the third quarter (hereinafter referred to as the base quarter) of the previous year to the base quarter of one year prior. Such change shall be rounded to the nearest one-tenth of one percent.

§ 54.05 EARTH-DISTURBING ACTIVITY

- (A) No person may engage in earth-disturbing activity without complying with the provisions of this chapter, the "City of Dayton, Ohio, Construction and Materials Specifications," the rules and standards published by the Director, and the Ohio EPA's NPDES Construction Activity General Permit.

No person may engage in earth-disturbing activity of one acre or more without a SWP3 approved by the Director or the Ohio Environmental Protection Agency.

- (B) No person required to have an approved SWP3 shall conduct earth-disturbing activity in a manner inconsistent with the approved plan. No person shall conduct earth-disturbing activity on any portion of a property required to have an approved SWP3 in a manner inconsistent with the approved plan.

§ 54.06 SUBDIVISION PLANNING AND INDIVIDUAL SITE DEVELOPMENT

- (A) An applicant for subdivision plan approval or any individual site development for any site of one acre or more, pursuant to R.C.G.O. Chapter 151 shall submit a Storm Water Management Program to the Director, developed in accordance with the "City of Dayton, Ohio, Construction and Material Specifications" and standards published by the Director.

- (B) No subdivision plan shall be approved by the City of Dayton Plan Board until the Director has approved those provisions of the plan addressing storm water drainage.

- (C) In determining whether to approve a SWMP the Director shall consider the following principles:
- (1) The feasibility of the following storm water management practices:
 - (a) Storm water retention structures;
 - (b) Storm water detention structures; or
 - (c) Post-construction storm water management.
 - (2) Where appropriate and consistent with subdivision ordinances, reducing the need for storm water management facilities by incorporating the use of natural topography.
 - (3) Designs that minimize the need for maintenance, provide access for maintenance purposes, and are structurally sound.
 - (4) Designs that minimize the likelihood of storm water pollution by materials and activities at the subdivision.
- (D) No person required to have an approved SWMP may proceed to develop a subdivision without an approved SWMP or conduct subdivision development activity in a manner inconsistent with the approved plan.
- (E) No bond, financial assurance, or part of any bond or financial assurance given pursuant to R.C.G.O. Section 151.80 shall be released by the City Engineer without the Director's approval.

§ 54.07 PRIVATE DRAINAGE FACILITIES.

The owner of private drainage facilities from a building or an inlet structure to the MS4 is responsible for all maintenance associated with such facilities.

The owner shall maintain the following:

Dry wells. Any existing dry wells are required to have a routine maintenance plan to prevent overflow and cause an illicit discharge to the MS4.

Private Drainage Facilities. The owner shall maintain the private drainage facilities and post-construction controls, on their property in a condition to not cause flooding of storm water to the city MS4, and to keep the flow free from litter and debris, other waste, and other pollutants.

Floor Drains. All floor drains within a commercial or industrial facility that connect to the MS4 are considered a point source and shall be covered by an National Pollutant Discharge Elimination System permit or shall be reconnected to the sanitary sewer system or plugged at the owner's expense.

Storm Sewer Systems including Laterals. All existing or new storm sewer laterals that require a National Pollutant Discharge Elimination System permit may also require a storm water pollution prevention plan to prevent illicit discharges to the MS4.

Storm Ditches and Swales. The owner shall maintain the storm ditches and swales on their property in a condition to not cause flooding of storm water to the MS4, and to keep the flow free from litter and debris, other waste, and other pollutants.

The owner must retain the services of a licensed plumber and obtain a city permit to perform any repairs to private laterals beyond the owner's property line in the right-of-way or easement. The owner or designated representative (such as the plumbing contractor) must contact the City of Dayton, Department of Water prior to cutting into in a dedicated street or alley for the purpose repairs to private laterals. Unless otherwise authorized by the city, all excavations, repairs, and restoration in a dedicated street or alley will be performed by the city in cooperation with the contractor being billed for such work. The owner must obtain the requisite city permits for any work on a private lateral; and inspections will be performed on all such work.

§ 54.08 INSPECTIONS

- (A) Authorized representatives of the Director may enter at reasonable times upon any property to conduct on-site inspections or investigations, obtain samples, and examine records to determine compliance with this chapter, approved construction plans, or an approved SWP3. Upon refusal the Director or authorized representative may apply for a search warrant to enter upon the property.
- (B) No person shall obstruct or interfere with inspection of any premises or the sampling of any discharge by the Director.
- (C) The Director may collect and analyze samples of discharges to the MS4, install and require the installation of storm water sampling and measurement devices, and examine records concerning discharges to the MS4. Where adequate facilities do not exist for the installation of storm water sampling and measurement devices, the Director may order the owner of the property to install such facilities.

§ 54.09 DISCHARGES TO THE MS4

(A) Prohibitions

No person shall:

- (1) Place, cause to be placed, or maintain any material in the MS4 that obstructs or pollutes the flow in any part thereof; excluding leaves during leaf collection periods;
- (2) Place, cause to be placed, or maintain any material in a place that may enter the MS4 that obstructs or pollutes the flow in any part thereof; excluding leaves during leaf collection periods
- (3) Erect any structure over any part of the MS4 so as to interfere with its flow, maintenance, or cleaning;
- (4) Uncover, make any connections with or opening into, use, alter, or disturb any part of the MS4 without obtaining written approval from the Director;
- (5) Install, cause to be installed, or maintain any illicit connection to the MS4;
- (6) Cause or permit any illicit discharge to the MS4;
- (7) Discharge, spill, or dump sewage, industrial wastes, or other wastes into storm water or into any water of the state, or streets, driveways, sidewalks, parking lots or other areas that drain into the MS4;
- (8) Apply pesticide, herbicide, or fertilizer to any surface that drains to the MS4 in a manner inconsistent with the label directions;

- (9) Discharge oil, petroleum products, antifreeze, or other waste materials from the maintenance of motor vehicles, watercraft or aircraft to the MS4;
- (10) Cause or contribute to the occurrence of a spill of pollutants or fail to take all reasonable actions to prevent the spilled materials from entering the MS4;
- (11) Install a Dry well within the Source Water Protection Area (All structures installed must meet the requirements of the design standards and be authorized by the Director);
- (12) Install, or cause to install in a commercial or industrial facility any floor drains which connect to the MS4;
- (13) Damage any portion of the MS4; or
- (14) Cause unauthorized increases in storm flow volumes to any portion of the MS4.

(B) Exceptions

Unless an individual discharge is identified by the Director as a significant source of storm water contamination, the following non-storm water discharges are authorized to be discharged into the MS4:

- (1) Potable water system flushing.
- (2) Landscape irrigation.
- (3) Diverted stream flows.
- (4) Rising ground waters.
- (5) Uncontaminated ground water infiltration.
- (6) Uncontaminated pumped ground water.
- (7) Discharges from potable water sources.
- (8) Foundation drains.
- (9) Air conditioning condensate.
- (10) Irrigation water.
- (11) Springs.
- (12) Water from crawl space pumps.
- (13) Footing drains.
- (14) Lawn watering.
- (15) Non-commercial washing of vehicles or equipment.
- (16) Flows from riparian habitats and wetlands.
- (17) Dechlorinated swimming pool water.
- (18) Street-wash waters.
- (19) Discharges or flows from emergency fire fighting and emergency response activities.
- (20) Unanticipated utility repairs or failures of potable water systems.

§ 54.10 ENFORCEMENT

(A) Whenever the Director finds a violation of a provision or failure to meet a requirement of sections 54.01 through 54.09, and prior to taking any action under paragraphs (B), (C), or (F) of this section, the Director shall order compliance by written Notice of Violation to the person responsible for the violation. Such notice and order shall:

- (1) Be put in writing;

- (2) Include a list of violations, refer to the section or sections of this chapter violated, and order remedial action which, if taken, will effect compliance with the provisions of this chapter;
 - (3) Specify a reasonable time for performance;
 - (4) Advise the owner, occupant, or person responsible for the violation of the procedure for appeal; and
 - (5) Be served on the owner, occupant, or person responsible for the violation agent:
 - (a) in person;
 - (b) sent by certified mail to the last known mailing address of the person served and receiving a receipt showing delivery of the mailing; or
 - (c) in the event the certified mail is returned undelivered, by sending by ordinary mail to the last known mailing address of the person served and by posting the notice on the property subject to the notice.
- (B) **COST OF ABATEMENT OF THE VIOLATION:** Any person who violates any provision of this chapter, or regulation, permit, license, or other directive pursuant to sections 54.01 through 54.09 shall be responsible for all costs incurred by the city to abate the violation, including investigation and administrative costs.
- (C) **ADMINISTRATIVE FINES:** Upon failure to comply with a Notice of Violation, the Director may charge administrative fines not to exceed One Thousand Dollars (\$1,000) per violation against any person who violates any provision of this chapter or any regulation, permit, license, or other directive pursuant to sections 54.01 through 54.09. Each day a violation occurs shall be considered a separate violation. This fine may be charged separate from the abatement costs. Unpaid administrative fines may be certified to the County Auditor for collection with the responsible party's real property tax payment.
- (1) In determining the amount of an administrative fine, the Director shall consider the magnitude and severity of the violation, history of past violations or compliance, economic advantage accrued by the violator due to the violation or noncompliance, and affirmative actions taken by the violator to comply with the provisions of this chapter and regulations, a permit, a license, or other promulgations pursuant to this chapter.
 - (2) Any administrative fines charged by the Director against a person may be added to the person's storm water utility charge.
- (D) Any violation of sections 54.01 through 54.09 is hereby declared to be a public nuisance and may be abated according to the city's public nuisance abatement procedures.
- (E) Any person who violates any provision of sections 54.01 through 54.09, or fails to comply with any of the requirements contained therein, is guilty of a misdemeanor, and upon conviction is subject to a fine not exceeding One Thousand Dollars (\$1,000) and imprisonment not exceeding a term of six (6) months or both. No culpable mental state is required to commit an offense; it being the express intent of this section to impose strict liability for each offense. The provisions of 54.10 (E) shall not apply to any person who complies with a Notice of Violation issued pursuant to 54.10(A) and who pays all

administrative fines and costs levied by the city associated with the violation(s) for which the Notice of Violation was issued.

(F) **FINES LEVIED AGAINST THE CITY.** In addition to other remedies available to the city set forth in this chapter, if the city is fined by the Ohio EPA or U.S. EPA for violation of the city's NPDES permit, or violation of water quality standards as the result of an industrial spill, or slug discharge of a compatible or incompatible pollutant, then the fine, including all city legal, sampling, analytical testing, and any other related costs will be charged to the person responsible for the violation. Such charge shall be in addition to, and not in lieu of, any other remedies the city may have under this chapter or by statute, by regulation, at law, or in equity.

(G) **STOP WORK ORDERS:**

- (1) The Director may issue a stop work order for any earth-disturbing activity if the Director finds that the earth-disturbing activity requiring plan approval pursuant to this chapter is being carried on in violation of this chapter because it is being undertaken:
 - (a) Without the approval of the Director; or,
 - (b) Not substantially in accordance with the approved plan or any written requirements of the Director regarding control of erosion, siltation, or the elimination of pollution, the Director may issue an order requiring the person conducting the work to stop all work, except work necessary to implement the approved plan, until such time as approval of the plan has been obtained from the Director and control measures required by the Director have been implemented.
- (2) A person may request that a stop work order be lifted once the required plan approval has been received and the required control measures have been implemented.
- (3) A stop work order is effective immediately whether or not a request for a hearing is filed, and remains in effect until lifted in accordance with this section.

SECTION 2. That existing Sections 54.01 through 54.11 of the Revised Code of General Ordinances are hereby repealed.

SECTION 3. For the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

Passed by the Commission NOVEMBER 26, 2008

Signed by the Mayor NOVEMBER 26, 2008



Mayor Rhine McLin City of Dayton, Ohio

ATTEST:

Rachelle Ravender
Clerk of Commission
Acting

APPROVED AS TO FORM:

[Signature]
City Attorney