

CITY OF KEEGO HARBOR

ORDINANCE NO. 438

AN ORDINANCE TO AMEND THE CITY OF KEEGO HARBOR CODE, CHAPTER 10, ENVIRONMENT, ARTICLE II, NUISANCES TO ADD DIVISION 3 ILLICIT DISCHARGE ELIMINATION PLAN, TO READ AS FOLLOWS:

THE CITY OF KEEGO HARBOR ORDAINS:

**Section 1.01**

**Sec. 10.59 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 engineer and his/her authorized representatives, which shall specifically include all inspectors and code enforcement, and any other individual designated by the City Manager of Keego Harbor to enforce this Ordinance. Where applicable the terms may also mean the director of the Michigan Department of Environmental Quality 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 Keego Harbor.

*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* means 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 section 10.64(b) 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 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.

***Nonstormwater 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*** mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

***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.

**Sec. 10.60 Purpose.**

The purpose of this Ordinance is to provide for the health, safety, and general welfare of the citizens of the city 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.

**Sec. 10.61 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.

**Sec. 10.62 Enforcement, responsibility for administration.**

This Ordinance shall be enforceable by the city engineer or other authorized enforcement agency.

**Sec. 10.63 Minimum standards.**

The standards set forth herein and promulgated pursuant to this Ordinance are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

**Sec. 10.64 Discharge prohibitions.**

(a) 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 except as described as follows:

- (1) Discharges from footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), firefighting activities.
- (2) Discharges specified in writing by the city engineer as being necessary to protect public health and safety.
- (3) Dye testing is an allowable discharge, but requires a verbal notification to the city engineer prior to the time of the test.
- (4) The prohibition shall not apply to any non-stormwater discharge 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.

(b) Exempt discharges. The following discharges are exempt from the discharge prohibitions established by this Ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or and any other water source not containing pollutants.

(c) Prohibition of illicit connections.

- (1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (2) 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.
- (3) A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to a storm drain system or MS4, or allows such a connection to continue.

**Sec. 10-65 Suspension of storm sewer system access.**

(a) Suspension due to illicit discharges in emergency situations. The city engineer 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 State of Michigan. 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 State of Michigan, or to minimize danger to persons.

(b) Suspension due to the detection of illicit discharge. Any person discharging to the storm sewer system in violation of this Ordinance may have their storm sewer system access terminated if such termination would abate or reduce an illicit discharge. The city engineer will notify a violator of the proposed termination of its storm sewer system access. The violator may petition the city engineer for reconsideration and hearing.

(c) Violation. A person violates this Ordinance if the person reinstates storm sewer system access to premises terminated pursuant to this section, without the prior approval of the city engineer or other authorized enforcement agency.

**Sec. 10.66 Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity NPDES stormwater 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 or other authorized enforcement agency prior to the allowing of discharges to the storm sewer system.

**Sec. 10.67 Monitoring of discharges.**

(a) Applicability. This Ordinance applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

(b) Access to facilities.

(1) The city engineer and/or representatives of the authorized enforcement agency shall be permitted to enter and inspect facilities subject to regulation under this Ordinance as often as may be necessary to determine compliance with this Ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the city engineer or representatives of the authorized enforcement agency.

(2) Facility operators shall allow the city engineer and/or representatives of the authorized enforcement agency ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(3) The city engineer and/or representatives of the authorized enforcement agency shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the city engineer or authorized enforcement agency to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4) The city engineer has the right to require the discharger to install monitoring equipment as necessary. 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.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the city engineer and/or designee and shall not be replaced. The costs of clearing such access shall be borne by the person operating the facility.

(6) Unreasonable delays in allowing the city engineer and/or a representative of the authorized enforcement agency access to a permitted facility is a violation of a stormwater discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity violated this Ordinance if the person denies the city engineer or authorized enforcement agency reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Ordinance.

(7) If the city engineer and/or representatives of the authorized enforcement agency has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city engineer and/or authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

**Sec. 10.68 Requirement to prevent, controls, and reduce stormwater pollutants by the use of best management practices.**

The city engineer shall adopt requirements identifying best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States or State of Michigan. 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 premises, 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 storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater 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 stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

**Sec. 10.69 Watercourse protection.**

Every person owning property through which a watercourse passes, or such person's lessee(s), 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. This responsibility does not apply to publicly or privately owned drains that are not owned by the property owner and are otherwise the responsibility of the drain owner. 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.

**Sec. 10.70 Notification of release or discharge.**

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 stormwater, the storm drain system, or water of the United States or State of Michigan 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 engineer 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 three years.

**Sec. 10.71 Notice of violation.**

(a) Whenever the city engineer or authorized enforcement agency finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the city engineer or his/her designee or other authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

(b) If abatement of a violation and/or restoration of affected property are 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 done by the city or the authorized enforcement agency or a contractor and the expense thereof shall be charged to the violator.

**Sec. 10.72 Appeal of notice of Violation.**

Any person receiving a notice of violation may appeal the determination of the city engineer to the City Council. The notice of appeal must be received by the city engineer's office within seven days from the date of the notice of violation. A hearing on the appeal before the City Council shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the City Council shall be final.

**Sec. 10.73 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 15 days of the denial of an the appeal, then representatives of the city engineer or authorized enforcement agency 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 government agency or designated contractor to enter upon the premises for the purposes set forth above.

**Sec. 10.74 Cost of 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 15 days. If the amount due is not paid within 60 days 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 Ordinance shall become liable to the city for the cost of the abatement by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the legal rate then applicable shall be assessed on a per annum basis on the balance beginning on the first day following discovery of the violation.

**Sec. 10.75 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 engineer or authorized enforcement agency 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.

**Sec. 10.76 Compensatory action.**

In lieu of bringing enforcement proceedings to seek the penalties and remedies authorized by this



Ordinance, the city engineer or authorized enforcement agency may impose alternative compensatory actions upon a violator, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc. The decision to seek alternative compensatory actions does not waive the city or authorized enforcement agency's right to seek legal enforcement from a court of law.

**Sec. 10.77      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 public nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**Sec. 10.78      Criminal prosecution.**

All violations of this Ordinance shall be misdemeanor and upon a plea or finding of guilt therefor shall be punishable by up to 90 days in jail and/or a fine of not more than \$500.00.

The authorized enforcement agency may recover all attorney fees court costs and other expenses associated with enforcement of this Ordinance, including sampling and monitoring expenses.

**Sec. 10.79      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 2.01      Savings Clause.**

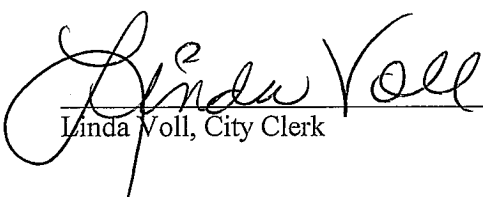
All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

**Section 3.01      Effective Date.**

This ordinance is hereby ordered to take effect ten (10) days after publication by the City Clerk.

Made and passed by the City Council of the City of Keego Harbor this 23rd day of August, 2012.

  
\_\_\_\_\_  
Robert Kalman, Mayor

  
\_\_\_\_\_  
Linda Voll, City Clerk

MOTION TO ADOPT ORDINANCE

Motion by Council Member Fletcher and seconded by Council Member Gubka that the foregoing Ordinance be adopted.

YEAS: (5) Kalman, Rubin, Yoder, Fletcher and Gubka \_\_\_\_\_

NAYS: None \_\_\_\_\_

ABSENT: None \_\_\_\_\_

ORDINANCE DECLARED ADOPTED.

CERTIFICATE OF CLERK

I, LINDA VOLL, being the duly appointed Clerk of the City of Keego Harbor, do hereby certify that the above Ordinance No. 438 is a true copy of the Ordinance adopted by the City Council of the City of Keego Harbor, Oakland County, Michigan, at a regular meeting thereof held on August 23, 2012.