

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. 1776

AN ORDINANCE TO CREATE CHAPTER 29 REGARDING
THE CITY'S STORMWATER SYSTEM,
TO REPEAL CERTAIN SECTIONS OF CHAPTER 28, AND
TO AMEND SECTION 7 OF CHAPTER 34

THE CITY OF KALAMAZOO ORDAINS:

Section 1

Chapter 29 of the Kalamazoo City Code is hereby created to read as follows:

Section 29-1 Purpose / Intent.

The objectives of the ordinance are:

- A. To provide environmental protection to the waters of the state consistent with the State and Federal Clean Water Acts;
- B. To regulate discharges into the City of Kalamazoo's Stormwater System;
- C. To remove existing and prevent the introduction of pollutants into the City's Stormwater System, and the degradation that said constituents may cause to the environment;
- D. To require permits for connections to the system and to prohibit non-permitted connections; and
- E. To establish legal authority to inspect and monitor use of the City's stormwater system to ensure compliance with this ordinance, and to establish sanctions for those who violate this ordinance.

Sec. 29-2 Definitions

For the purposes of this ordinance, the following shall mean:

Best Management Practices (BMPs): devices or practices consistent with the guidelines set forth in the most current MDEQ Guidebook of BMPs for Michigan Watersheds, or equivalent practices and design criteria that accomplish the purposes of this ordinance, as approved by the Department, that prevent pollutants from entering into stormwater flows, that direct the flow of stormwater, or that treat polluted water before it enters the stormwater system.

Discharge Permit: A permit issued by the Department of Public Services (“Department”), Engineering Division or other Division as designated by the Director to a user for a discharge into the City’s stormwater drainage system.

Illicit Connection: Any method or means for conveying an illicit discharge into the stormwater drainage system of the City.

Illicit Discharge: Any direct or indirect non-stormwater discharge (or seepage) to the stormwater system that is not composed entirely of stormwater or uncontaminated groundwater, except as exempted in this ordinance. These are considered illicit because Municipal Separate Storm Sewer Systems (MS4s) are not designed to accept, process or discharge such discharges.

MDEQ: Michigan Department of Environmental Quality.

MS4: Municipal Separate Storm Sewer System, as defined by federal and state laws.

NPDES: National Pollutant Discharge Elimination System, as addressed in 33 USC § 1342 (b) and the Federal Clean Water Act, as amended.

NPDES Stormwater Discharge Permit: A permit issued by the U.S. Environmental Protection Agency (EPA) (or a state under authority delegated pursuant to 33 USC section 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis. For the purposes of this ordinance, the subject NPDES Permit is issued to the City by the MDEQ.

Person: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law.

Pollutant: Any substance which, alone or in combination with other substances, if discharged to waters of the State in sufficient quantities, causes or contributes to, or has the potential to cause or contribute to, a violation of a Federal, State, or local water quality standard, a nuisance, or to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, industrial, agricultural, recreational, or other legitimate beneficial uses or to any organism, aquatic life, plant or animal. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; sediment; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Stormwater: Run off from natural precipitation, including snowmelt, as well as other surface runoff and drainage that flow via natural or manmade drainage ways.

Stormwater Drainage System (Stormwater System): Any mode of conveyance that allows or permits the flow of stormwater to waters of the State, excluding combined sewer systems and sanitary sewer systems (separate stormwater systems are not intended to carry sanitary wastewater). The conveyance may be opened or enclosed, public or private, and may contain non-stormwater discharges. Specifically, the stormwater system includes all of the City's storm sewer infrastructures and natural drainage designs that are intended to collect, control, and provide a method of conveyance, discharge, and perhaps treatment of stormwater. This may include roads with drainage systems, municipal streets, catch basins, inlets, curbs, gutters, ditches, and manmade swales, channels, wetlands, storm drains, outfalls, and treatment structures.

Stormwater Pollution Prevention Plan (SWPPP): A document, which describes the best management practices (BMPs) and activities to be implemented by a person or business to identify known or potential sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater drainage ways, and/or receiving waters to the maximum extent practicable.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Waters of the State: Great Lakes and their connecting waters, all inland lakes, rivers, streams, impoundments, open drains, and other surface bodies of water within the confines of the state. It does not include drainage ways and ponds used solely for wastewater conveyance, treatment, or control.

Sec. 29-3 Responsibility for Administration

The City's Department of Public Services ("Department") shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Department may be delegated in writing by the Department Director to third parties as said Director deems appropriate.

Sec. 29-4 Discharge Prohibitions

A. Prohibition of Illicit Discharges

1. A person shall not discharge, directly or indirectly, any pollutant into the City's stormwater system, except in quantities expressly authorized by an approved NPDES permit or by a plan for compliance, or that are consistent with the utilization of best management practices.

2. A person shall not improperly store, handle, or apply any pollutant in a manner that will cause its exposure to rainfall or runoff or otherwise cause it to discharge into the stormwater system, except in quantities explicitly authorized by an approved NPDES permit or by a plan for compliance, or that are consistent with the utilization of best management practices.
3. The following shall **not** be deemed to be an illegal discharge (unless identified by the Department as a source of pollutants or deemed to be an interference to the proper operation and maintenance of the stormwater drainage system):
 - a. Water supply line flushing, landscape irrigation runoff, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined by 40 CFR 35.2005 (20)), pumped groundwater (except for groundwater cleanups not specifically authorized by NPDES permits), discharges from potable water sources, foundation drains, air conditioning condensate, irrigation water, springs, water from crawl space pumps, footing drains and basement sump pumps, lawn watering runoff, waters from non-commercial car washing, flows from riparian habitats and wetlands, and residual street wash waters, discharges or flows from emergency fire fighting activities;
 - b. Residential swimming pool discharges so long as the pool waters have been effectively de-chlorinated (less than 0.5 parts per million chlorine) and so long as the discharge does not occur during times of heavy rains (non-residential/commercial swimming pools are regulated under Chapter 34 "Swimming Pools" of the Kalamazoo Code and Chapter 28 "Wastewater Discharge Regulations and Enforcement Procedures");
 - c. Discharges specified by the Department as being necessary to protect public health and safety;
 - d. Dye testing using MDEQ or Department approved dyes, so long as preceded by a written notification to and approval from the Department; and
 - e. 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 or MDEQ, provided that the discharger is in full compliance with all requirements of the permit or order, and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the stormwater system.

4. No person shall place any material in or around any stormwater system component, including catch basins, inlets, manholes, culverts, pipes, or natural watercourse, if such material acts to significantly obstruct or clog the stormwater system or stormwater flow. This prohibition shall not apply to the temporary placement of material as acceptable and consistent with official City material collection programs and policies (such as leaf or brush pick-ups).
5. A person may not discharge fluids into or towards the stormwater system if such discharge accumulates and freezes on a street or sidewalk, or is reasonably likely to do so.

B. Prohibition of Illicit Connections

1. No person shall construct, use, maintain, or allow to continue to exist a connection to the stormwater system unless first permitted to do so by the City's Department of Public Services, Engineering Division or other Department designated Division.
2. This requirement includes, without limitation, 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 conduit conveying wastewater to the MS4, or allows such a connection to continue.

Sec. 29-5 Compliance with Other Permits

Any person subject to a NPDES stormwater discharge permit, City of Kalamazoo Soil Erosion and Sedimentation Control Permit, or City of Kalamazoo Site Plan Review, shall comply with all provisions of such permit or approvals. Proof of compliance with said permits or approvals may be required in a form acceptable to the Department prior to the allowing of discharges to the MS4.

Sec. 29-6 Monitoring of Discharges

A. Access to Facilities

1. As a condition to having a connection to the City's stormwater system, an industrial or commercial facility shall permit the Department to enter and inspect at reasonable times and in a reasonable manner to determine compliance with this ordinance. Such entry and inspection may include but not be limited to sampling, analysis, dye testing, smoke testing, remote video inspection (Tving), and examination and/or copying of records that are required by this ordinance to be maintained.

2. The Department may require a commercial or industrial facility that discharges into the City's stormwater system to install devices as are reasonably necessary to monitor and/or sample the facility's stormwater discharge. In the alternative, and at the City's option, the City may install such devices. All such devices shall be calibrated to ensure accuracy.
3. The City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining entry to a facility if the Department has been refused access to any part of the premises from which stormwater originates and/or is discharged, and if the Department 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. In addition, or in the alternative, the Department, if denied entry, may terminate the facility's connection to the stormwater system. Such termination must be preceded by written notice to the facility of such intent.

Sec. 29-7 Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the use of Best Management Practices

- A. If the owner or operator of a facility does not provide reasonable protection from illicit discharge, the Department may require Best Management Practices (BMPs) and/or Stormwater Pollution Prevention Plans (SWPPPs) for a facility that discharges, or is reasonably suspected of discharging, pollution into the stormwater system, at the facility's expense. A BMP shall be consistent with the guidelines set forth in the most current MDEQ Guidebook of BMPs for Michigan Watersheds, or equivalent practices and design criteria that accomplish the purposes of this ordinance, as approved by the Department. A BMP and/or a SWPPP, which may be imposed even if the facility is subject to a NPDES permit, shall be communicated in writing by the Department to the facility.
- B. If the facility believes all or a portion of the BMP or SWPPP is unreasonable, it may appeal it to the Department Director. Such an appeal must be in writing and must be received by the Department Director within 14 days of when the BMP and/or SWPP notification is received by the facility. In the absence of such an appeal, the facility shall implement the BMP and/or SWPPP before the deadline stipulated by the Department in the original written notification regarding the BMP requirement. If an appeal is denied, the facility shall implement the BMP and/or SWPPP within a deadline stipulated by the Department in the appeal denial notification letter. The required BMP implementation time period will be based on the severity of the specific situation and may range from one (1) day to forty-five (45) days.

Sec. 29-8 Notification of Spills

- A. Notwithstanding other requirements of law, as soon as any person responsible for a facility, or responsible for emergency response for a facility, has information of a release, or suspected release, of pollutants into the stormwater system, said person shall take all reasonable and necessary steps to discover, contain, and clean up such release, including, if necessary, contacting emergency response agencies. Said person shall also notify the Department of the discharge either in person, by telephone, or by facsimile as soon as possible, but in no event more than six hours after learning of the release.
- B. All spill notifications provided to the Department in person or by telephone shall be documented by said person in writing and mailed to the Department within five business days of said incident. Such written notice shall specify the following: the composition of the discharge and the cause thereof; the exact date, time, and estimated volume of the discharge; all measures taken to clean up the discharge, and all measures proposed to be taken to reduce and prevent any recurrence; the name and telephone number of the person making the report, and the name of the person who may be contacted for additional information on the matter. The person shall also provide the Department with copies of all documents the person submits to state or federal agencies relating to the same release.

Sec. 29-9 Records, Reports, Sampling and Analysis

A facility shall prepare and maintain records and/or conduct such testing and analysis as deemed necessary by the Department to insure compliance with a BMP or a SWPPP. The facility shall make such records and test results available to the Department upon request. The owner or operator shall retain a copy of the written notice, all books, drawings, plans, prints, documents, memoranda, reports, correspondence, and records, including records on magnetic or electronic media, and any and all summaries of such records relating to monitoring, sampling, and chemical analysis of any discharge or stormwater runoff from any property for at least five (5) years.

Sec. 29-10 Enforcement

- A. Whenever the Department finds that a person has violated a provision of this Ordinance, the Department may order compliance by issuing a written Notice of Violation to the responsible person. Such notice may require one or more of the following:
 - 1. The performance of monitoring, analyses, and reporting;
 - 2. The elimination of an illicit connection or discharge;
 - 3. That violating discharges, practices, or operations cease and desist;

4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
 5. The abatement and correction of any degradation of riparian habitat and aquatic life caused by the failure to design, install, operate, or maintain sediment control, stormwater management, or agricultural BMPs in accordance with an approved sediment control plan, stormwater plan, sediment control permit, Soil Conservation and Quality Plan, or plan for compliance;
 6. The reimbursement to the City in an amount sufficient to reimburse the City for all reasonable administrative and remediation costs; and
 7. The implementation of source control or treatment BMPs.
- B. 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 may be done by the Department, with the expense thereof charged to the violator.

Sec. 29-11 Appeal of Notice of Violation

- A. Any person receiving a Notice of Violation may appeal the determination to the Department Director. The notice of appeal must be received by the Director within 30 days from the date of the Notice of Violation and identify the matter being appealed and the basis for the appeal. The Director shall address the appeal within 30 days from the date of receipt of the notice of appeal. The Director will consider the appeal and make a decision whereby it affirms, rejects, or modifies the action being appealed. In considering any such appeal, the Director may consider the recommendations of its staff and the comments of other persons having knowledge of the matter.
- B. In considering all such appeals, the Director may grant a variance from the terms of this ordinance so as to provide relief, in whole or in part from the action being appealed, but only upon finding that the following requirements are satisfied:
1. The application of the ordinance provisions being appealed will present or cause unreasonable difficulties for a facility; and
 2. The granting of the relief requested will not substantially prevent the goals and purposes sought to be accomplished by this ordinance from being accomplished, nor result in less effective management of stormwater runoff.

Sec. 29-12 Suspension of Access to City Stormwater System

- A. The Department may, after providing written notice, suspend MS4 discharge access to a person in violation of this ordinance. Written notice shall describe the nature of the violation and the action necessary to correct the violation. If the violation continues for 10 calendar days after the notice was sent, the Department may suspend MS4 discharge access.
- B. The Department may suspend MS4 discharge access to a person in violation of this ordinance, without prior notice, when such suspension is necessary to stop an actual or threatened discharge that presents an imminent and substantial danger to the City's stormwater system or to the environment.

Sec. 29-13 Abatement Activities by the Department

- A. The Department may perform reasonable and necessary abatement activities whenever the Department determines a violation of this Ordinance has occurred and it appears that the responsible party cannot or will not timely perform said activities, or when no known responsible party exists. The responsible party shall reimburse the City for all reasonable expenses thus incurred.
- B. If the City desires the responsible party to reimburse it for reasonable abatement activity expenses, the City shall, within 90 days of the completion of said activities, mail to that person a Notice of Claim outlining the expenses incurred, including reasonable administrative costs, and the amounts thereof. The person billed shall pay said sum in full within 30 days of receipt of the claim. If the person billed desires to object to all or some of the amount sought by the Department, said person may file, within the same 30-day period, a written objection so stating. The Department shall, within 30 days of its receipt of the objection, provide an opportunity for the objecting party to present facts or arguments supporting said objection. If the Department determines that some or all of the amount originally billed is appropriate, the person shall pay said sum within 30 days of receipt of that determination. If the amount due is not timely paid, the City may cause the charges to become a special assessment against the property and shall constitute a lien on the property.

Sec. 29-14 Injunctive Relief

If a person has violated or continues to violate the provisions of this Ordinance, the Department may petition the appropriate court for injunctive relief restraining the person from activities which would create further violations, or compelling the person to perform necessary abatement or remediation.

Sec. 29-15 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, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City.

Sec. 29-16 Criminal Prosecution

Any person who violates this Ordinance shall be guilty of a misdemeanor, punishable by a fine of not more than \$500.00 or imprisonment of not more than 90 days. Each day a violation exists shall be deemed a separate violation.

Sec. 29-17 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 Department to seek cumulative remedies.”

Section 2

Within Chapter 28 of the Kalamazoo City Code, the following sections are hereby repealed: 3 (61), 10(1)(c), 18 (1), and 18(2).

Section 3

Section 7 of Chapter 34 of the Kalamazoo City Code is amended to read as follows:

“The drain line for a swimming pool may be connected to the city stormwater system or the sewer system so long as the following provisions are complied with:

1. The drain line shall not be connected to a storm sewer except in full compliance with Chapter 29; and
2. The drain line may be connected to a sanitary sewer subject to the approval of the director of public utilities and the provisions of Chapter 28 of the Kalamazoo City Code.”

REPEALER

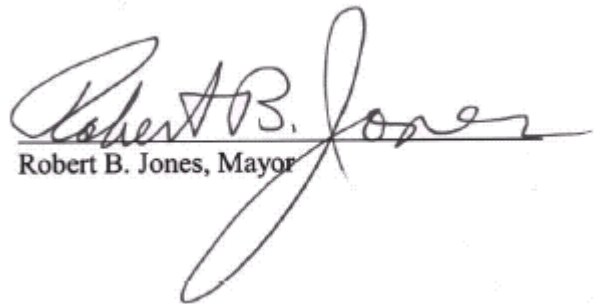
All former ordinances or parts of ordinances conflicting or inconsistent with the provisions of this ordinance are hereby repealed.


SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on September 20, 2004. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267, 1976). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.


Robert B. Jones, Mayor


Scott A. Borling, Acting City Clerk