

December 19, 2006

ENROLLED ORDINANCE

No. 2006-1114A

INTRODUCED BY COMMISSIONER(S): Boike and Co-sponsored by Commissioner Varga

AN ORDINANCE TO provide for the protection of the environment against pollution from storm water runoff; to provide flood control and adequate drainage within and around Wayne County; to prevent pollution within and around Wayne County; to provide for the implementation of a storm water management program in Wayne County; to provide for the issuance of storm water construction approvals for certain construction activities within Wayne County's jurisdiction; to provide design and construction criteria for storm water management systems; to provide for administration and enforcement of the Ordinance; to require long-term maintenance and financial assurance; to authorize inspections of construction activities governed by this Ordinance; to provide for the continuation of all pre-existing legal requirements to preserve and protect the environment; to provide for the severability of this Ordinance; to provide for the effective date hereof; and to establish penalties for violations hereof.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CHARTER COUNTY OF WAYNE:

1 WAYNE COUNTY STORM WATER MANAGEMENT ORDINANCE

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1 CHAPTER 1 GENERAL PROVISIONS2 SECTION 1.1 AUTHORITY

3 This Ordinance is enacted pursuant to the Federal Water Pollution
4 Control Act of 1972, 33 U.S.C. 1251 et seq., as amended; Part 31 of the
5 Natural Resources and Environmental Protection Act of 1994 ("Part 31"),
6 MCL 324.3101 et seq., as amended; the General Permit "Storm Water
7 Discharges from Municipal Separate Storm Sewer Systems (MS4s) Subject to
8 Watershed Plan Requirements" (General Permit No. MIG619000) issued by
9 the Michigan Department of Environmental Quality pursuant to Part 31;
10 Act 288 of 1967 (Subdivision Control Act), MCL 560.101 et seq., as
11 amended by the Land Division Act, MCL 560.101 et seq.; Act 283 of 1909
12 (County Road Law), MCL 224.1 et seq., as amended; Act 40 of 1956 (Drain
13 Code), MCL 280.1 et seq., as amended; and Act 96 of 1987 (Mobile Home
14 Commission Act), MCL 125.2301 et seq., as amended; the Charter County
15 Law, MCL 45.515 et seq., and the Home Rule Charter of Wayne County,
16 Michigan (1981), as amended.

17 SECTION 1.2 PURPOSE

18 Prevention of pollution from storm water runoff and the protection
19 of the quality of the waters of the state of Michigan is of utmost
20 importance to the People of the Charter County of Wayne. It is the
21 purpose of this Ordinance and any rules promulgated pursuant to this
22 Ordinance:

1 A. To protect the environment against pollution and other
2 effects from storm water runoff, and to protect the public health and
3 safety;

4 B. To provide for the implementation of a storm water
5 management program in Wayne County to manage and prevent flooding,
6 streambank erosion, pollution, and other effects from storm water
7 runoff;

8 C. To establish standards and criteria for the design and
9 construction of storm water management systems subject to the
10 requirements of this Ordinance;

11 D. To establish best management practices for the design,
12 construction, maintenance, and operation of storm water management
13 systems subject to the requirements of this Ordinance;

14 E. To provide for the issuance of storm water construction
15 approvals for construction activities subject to the requirements of
16 this Ordinance;

17 F. To provide for the long-term preservation and maintenance of
18 storm water management systems subject to the requirements of the
19 Ordinance;

20 G. To authorize the inspection of storm water management
21 systems subject to the requirements of this Ordinance; and

22 H. To provide for the administration, implementation, and
23 enforcement of this Ordinance.

1 SECTION 1.3 TITLE

2 This Ordinance shall be known and may be cited as the "Wayne
3 County Storm Water Management Ordinance."

4 SECTION 1.4 ADMINISTRATION

5 This Ordinance shall be administered jointly by the Wayne County
6 Department of Environment and the Wayne County Department of Public
7 Services.

8 SECTION 1.5 EFFECTIVE DATE

9 The Wayne County Storm Water Management Ordinance became effective
10 October 23, 2000. Any project that was assigned an active review number
11 by the Permit Office as of the Effective Date shall be exempt from the
12 requirements of this Ordinance.

13 SECTION 1.6 STATE RULES

14 Unless otherwise specifically provided in this Ordinance, the
15 provisions of this Ordinance shall control over less stringent rules of
16 the Michigan Department of Environmental Quality, unless contrary to
17 law.

18 SECTION 1.7 NO WAIVER OF OTHER OBLIGATIONS

19 Nothing in this Ordinance or any rule promulgated pursuant to this
20 Ordinance shall be construed to reduce, abate, alter, modify, amend, or
21 affect any duty or obligation to preserve and protect the environment,
22 including the Rouge River Watershed or other waters of the state; to
23 control soil erosion and sedimentation; to protect wetlands; or to

1 prevent air, water, or other pollution.

2 SECTION 1.8 INCORPORATION BY REFERENCE

3 Rules, regulations, other regulatory standards or statutory
4 provisions incorporated or adopted by reference in this Ordinance or any
5 rules promulgated pursuant to this Ordinance shall have the same force
6 and effect given to any provision of this Ordinance.

7 SECTION 1.9 SEVERABILITY

8 The provisions of this Ordinance shall be severable. If any
9 provision of this Ordinance is declared by a Court of competent
10 jurisdiction to be unconstitutional or otherwise invalid, the remaining
11 provisions of this Ordinance shall remain valid and enforceable.

12 CHAPTER 2: DEFINITIONS

13 SECTION 2.1 As used in this Ordinance, the following terms have
14 the following meanings:

15 (A) *Applicant* means a person responsible for regulated
16 construction activity on a development site who is seeking to obtain
17 storm water construction approval.

18 (B) *Construction activity* means a human-made activity, including
19 without limitation, clearing, grading, excavating, construction and
20 paving, that results in an earth change or disturbance in the existing
21 cover or topography of land, including any modification or alteration of
22 a site or the "footprint" of a building that results in an earth change
23 or disturbance in the existing cover or topography of land.

1 (C) *Conveyance* means any structure or other means of safely
2 conveying storm water and storm water runoff within a storm water
3 management system, including without limitation a watercourse, closed
4 conduit, culvert, or bridge.

5 (D) *County* means the Charter County of Wayne.

6 (E) *County Drains* are drains established pursuant to the
7 Michigan Drain Code of 1956, MCL 280.1 et seq., as amended.

8 (F) *Development site* means the property on which regulated
9 construction activity will occur or is occurring or has occurred.

10 (G) *Director* means the Director of the Wayne County Department
11 of Public Services or its designee.

12 (H) *Permit Office* means the Permit Office of the Wayne County
13 Department of Public Services, Engineering Division.

14 (I) *Person* means a natural person, trustee, court-appointed
15 representative, syndicate, association, partnership, firm, club,
16 company, corporation, business trust, institution, agency, government
17 corporation, municipal corporation, city, county, municipality,
18 district, or other political subdivision, department, bureau, agency or
19 instrumentality of federal, state, or local government, or other entity
20 recognized by law as the subject of rights and duties.

21 (J) *Regulated construction activity* means construction activity
22 that is subject to the provisions of this Ordinance or a rule
23 promulgated pursuant to this Ordinance.

1 (K) *Storm water* means water resulting from precipitation,
2 including without limitation rain, snow, and snowmelt.

3 (L) *Storm water construction approval* means an approval issued
4 pursuant to this Ordinance and rules promulgated pursuant to this
5 Ordinance.

6 (M) *Storm water management program* consists of ordinances,
7 orders, rules, regulations, and other mechanisms that provide for the
8 management of storm water and storm water runoff to prevent flooding and
9 to ensure the restoration and/or protection of surface waters in Wayne
10 County. With respect to the County, storm water management program
11 consists of the requirements of this Ordinance and any rules or
12 regulations promulgated under this Ordinance, and activities mandated by
13 the Certificate of Coverage issued by the Michigan Department of
14 Environmental Quality to the County pursuant to the General Permit
15 "Storm Water Discharges from Municipal Separate Storm Sewer Systems
16 (MS4s) Subject to Watershed Plan Requirements" (General Permit No.
17 MIG619000).

18 (N) *Storm water management system* means any structure, feature
19 or appurtenance subject to this Ordinance or a rule promulgated pursuant
20 to this Ordinance that is designed to collect, detain, retain, treat, or
21 convey storm water or storm water runoff, including without limitation
22 buffer strips, swales, gutters, catch basins, closed conduits, detention
23 systems, pretreatment systems, wetlands, pavement, unpaved surfaces,

1 structures, watercourses, or surface waters.

2 (O) *Storm water runoff* means the excess portion of precipitation
3 that does not infiltrate the ground, but "runs off" and reaches a
4 conveyance, surface water, or watercourse.

5 (P) *Surface water* means a body of water, including without
6 limitation seasonal and intermittent waters, in which the surface of the
7 water is exposed to the atmosphere, including without limitation lakes,
8 open detention basins, forebays, watercourses, bioretention areas,
9 retention basins, wetlands, and impoundments.

10 (Q) *Watercourse* means an open conduit, either naturally or
11 artificially created, that periodically or continuously conveys water,
12 including without limitation rivers, streams, vegetated swales, open
13 channels, and open County Drains.

14 CHAPTER 3: APPLICABILITY

15 SECTION 3.1 GENERAL

16 This Ordinance and rules promulgated pursuant to this Ordinance
17 shall apply to all of the following:

18 (A) construction activity that impacts storm water runoff into
19 or around new or existing road rights-of-way within the jurisdiction of
20 the County;

21 (B) construction activity that impacts storm water runoff into
22 or around County drains;

23

1 (C) construction activity that impacts storm water runoff in
2 projects that are subject to the requirements of Act 288 of 1967
3 (Subdivision Control Act), MCL 560.101 et seq., as amended;

4 (D) construction activity that impacts storm water runoff from
5 projects that are subject to Act 96 of 1987 (Mobile Home Commission
6 Act), MCL 125.2301 et seq., as amended;

7 (E) construction activity that impacts storm water runoff into,
8 on, or through property owned by the County;

9 (F) construction activity that impacts new or existing storm
10 sewer systems owned, operated, or controlled by the County; and

11 (G) construction activity that occurs within and impacts or may
12 impact water quality or water resources in watersheds or sub-watersheds
13 included in the Certificate of Coverage issued by the Michigan
14 Department of Environmental Quality to the County pursuant to the
15 General Permit "Storm Water Discharges from Municipal Separate Storm
16 Sewer Systems (MS4s) Subject to Watershed Plan Requirements" (General
17 Permit No. MIG619000).

18 SECTION 3.2 LOCAL REQUIREMENTS

19 (A) Nothing in this Ordinance, or in any rule promulgated
20 pursuant to this Ordinance, invalidates any rule, regulation, or
21 ordinance enacted by a local unit of government within Wayne County
22 prior to the Effective Date of this Ordinance, or prevents any local
23 unit of government from adopting or enacting a storm water management

1 program applicable to activities within its jurisdiction.

2 (B) Nothing in this Ordinance or in any rule promulgated
3 pursuant to this Ordinance shall apply to construction activity that is
4 subject to a storm water management program enacted by a local unit of
5 government within Wayne County that imposes requirements equal to or
6 more stringent than the minimum applicable requirements of this
7 Ordinance.

8 (C) The County, in its sole discretion, and to the extent
9 permitted by law, may enter into an agreement with any local unit of
10 government within Wayne County for the purpose of implementing, in whole
11 or in part, this Ordinance and/or any rule promulgated pursuant to this
12 Ordinance, with respect to construction activity within the jurisdiction
13 of the local unit of government.

14 CHAPTER 4: STORM WATER CONSTRUCTION APPROVALS

15 SECTION 4.1 GENERAL REQUIREMENTS

16 It shall be a violation of this Ordinance to engage in regulated
17 construction activity except in accordance with this Ordinance and rules
18 promulgated pursuant to this Ordinance, and pursuant to a valid storm
19 water construction approval issued by the County. A storm water
20 construction approval shall be issued in a form and manner approved by
21 the County, and may be incorporated into a construction permit or other
22 approval issued under or required by another ordinance, statute or
23 regulation.

1 SECTION 4.2 APPLICATION FOR STORM WATER CONSTRUCTION APPROVAL

2 (A) Applicants shall submit a written application for a storm
3 water construction approval to the County. The application shall be
4 made in a form and manner approved by the County, and shall include all
5 information and documentation required by the County pursuant to this
6 Ordinance or rules promulgated pursuant to this Ordinance.

7 (B) All proposed modifications to a storm water management
8 system that has received a storm water construction approval issued by
9 the County shall be submitted to the County in writing, together with
10 all information and all supporting documentation required by the County
11 pursuant to this Ordinance or rules promulgated pursuant to this
12 Ordinance to support the proposed modification. A person shall not
13 commence regulated construction activity associated with a proposed
14 modification without the approval of the County.

15 SECTION 4.3 FINANCIAL ASSURANCE FOR REGULATED CONSTRUCTION ACTIVITY

16 (A) The County may require an Applicant to provide financial
17 assurance for regulated construction activity.

18 (B) Financial assurance provided pursuant to this section shall
19 be in the form of a performance bond, cash deposit, or unconditional
20 irrevocable letter of credit. The County may accept, with prior
21 approval, an equivalent instrument as financial assurance for regulated
22 construction activity.

1 (C) The County may establish the form and amount of financial
2 assurance to be provided; the events, circumstances, or occurrences that
3 will cause the County to release the financial assurance mechanism; and
4 other requirements for financial assurance to satisfy the purposes of
5 this Ordinance.

6 CHAPTER 5: DESIGN AND CONSTRUCTION REQUIREMENTS

7 FOR STORM WATER MANAGEMENT SYSTEMS

8 SECTION 5.1 GENERAL

9 (A) Except as provided below, storm water management systems
10 shall be designed in accordance with the minimum requirements for
11 performance and design that are set forth in this Ordinance and in rules
12 promulgated pursuant to this Ordinance.

13 (B) The County encourages the development and use of innovative
14 storm water management system designs and construction techniques,
15 including without limitation the use of non-structural practices to
16 reduce storm water runoff and/or its water quality impacts, to achieve
17 the flood control and water quality objectives of this Ordinance and the
18 rules promulgated hereunder.

19 (C) Notwithstanding any provision in this Ordinance or a rule
20 promulgated pursuant to this Ordinance, the County may require storm
21 water management systems to satisfy performance and/or design standards
22 more stringent than the minimum requirements for performance and design
23 set forth in this Ordinance and in rules promulgated pursuant to this

1 Ordinance when necessary to address unique flood control or water
2 resources protection issues at a development site, on adjacent
3 properties, or downstream of a development site.

4 SECTION 5.2 REQUIREMENTS FOR DESIGN OF STORM WATER MANAGEMENT SYSTEMS

5 (A) Selecting and designing storm water management systems to
6 meet the requirements of this Ordinance and the rules promulgated
7 pursuant to this Ordinance shall be the responsibility of the applicant
8 or its designee, subject to the approval of the County pursuant to this
9 Ordinance and rules promulgated pursuant to this Ordinance. The County
10 may deny a storm water construction approval for a system design that is
11 not in compliance with these requirements.

12 (B) In designing a storm water management system, the applicant
13 shall consider all relevant and appropriate factors, including without
14 limitation the following:

15 (1) the public health, safety, welfare, and the environment;

16 (2) the inconvenience caused by storm water runoff on the
17 subject property;

18 (3) the long-term impact of regulated construction activity on
19 storm water runoff on, from, and beyond the property;

20 (4) the natural drainage pattern of the land;

21 (5) the impact of the regulated construction activity on the
22 affected watershed(s); and

23

1 (6) the effect of complete upstream development on the subject
2 property as determined by applicable master plans and/or storm water
3 plans; and

4 (7) the extent of downstream improvements necessary for proper
5 storm water drainage.

6 CHAPTER 6: FEES FOR STORM WATER CONSTRUCTION APPROVALS

7 A County agency may recommend to the County Commission a written
8 schedule to be adopted by the County to establish a fee system for
9 administering and implementing the storm water management program. The
10 fee system may include fees for application submittal and review,
11 project overview, compliance inspections, and any other task or service
12 performed by the County to administer or implement the requirements of
13 this Ordinance or rules promulgated hereunder. Fees may be refundable
14 or nonrefundable, as determined appropriate by the County, and may
15 include charges for time and materials utilized by the County in
16 implementing and administering the requirements of this Ordinance or
17 rules promulgated pursuant to this Ordinance. The schedule of fees
18 shall be incorporated into chapter 129 (Fees) of the Code of Ordinances
19 of the Charter County of Wayne, as amended.

20 CHAPTER 7: LONG-TERM MAINTENANCE

21 SECTION 7.1 DEMONSTRATION OF LONG-TERM MAINTENANCE

22 The applicant for a storm water construction approval shall
23 demonstrate to the County in the application or during the application

1 review process, as determined appropriate by the County, that the storm
2 water management system shall be maintained in perpetuity. This
3 demonstration shall be made in the manner specified in rules promulgated
4 pursuant to this Ordinance.

5 SECTION 7.2 SCOPE OF LONG-TERM MAINTENANCE

6 For purposes of this Ordinance and rules promulgated pursuant to
7 this Ordinance, long-term maintenance shall include site monitoring and
8 preventative maintenance activities necessary to ensure that a storm
9 water management system functions properly as designed; remedial actions
10 necessary to repair, modify, or reconstruct the system in the event the
11 system does not function properly as designed at any time; notification
12 to subsequent owners of limitations or restrictions on the property;
13 actions necessary to enforce the terms of restrictive covenants or other
14 instruments applicable to the property pursuant to this Ordinance and
15 rules promulgated pursuant to this Ordinance; and such other actions as
16 may be set forth in rules promulgated hereto.

17 CHAPTER 8: AUTHORITY AND DUTIES OF INSPECTORS

18 SECTION 8.1 AUTHORITY

19 Upon presentation of proper credentials and identification, and
20 after stating the authority and purpose of the inspection, County
21 inspectors shall be promptly permitted to enter and inspect a
22 development site. The inspection shall be for the purpose of
23 investigating the development site, storm water management systems, or

1 components of storm water management systems, to determine compliance or
2 non-compliance with this Ordinance, rules or regulations promulgated
3 pursuant to this Ordinance, and/or storm water construction approvals
4 issued pursuant to this Ordinance.

5 SECTION 8.2 DUTIES OF INSPECTORS

6 While entering and performing an inspection on private property
7 pursuant to Section 8.1 above, a County inspector shall observe and
8 comply with all safety rules applicable to the premises.

9 CHAPTER 9: COMPLIANCE AND ENFORCEMENT

10 SECTION 9.1 GENERAL

11 All persons are encouraged to cooperate with the County to ensure
12 that the requirements of this Ordinance, rules promulgated pursuant to
13 this Ordinance, and storm water construction approvals issued hereunder
14 are satisfied. Whenever possible, the County shall attempt to enter
15 into voluntary agreements to resolve violations of this Ordinance, rules
16 promulgated pursuant to this Ordinance, and storm water construction
17 approvals issued hereunder.

18 SECTION 9.2 INVESTIGATIONS, INFORMAL CONFERENCES, AND VOLUNTARY
19 AGREEMENTS

20 (A) If the County believes that a violation of this Ordinance, a
21 rule promulgated pursuant to this Ordinance, or a storm water
22 construction approval issued hereunder may have occurred or exists, the
23 County shall make a prompt investigation. If, after this investigation,

1 the County determines that a violation has occurred or exists, the
2 County shall attempt to enter into a voluntary agreement to resolve or
3 correct the violation. An informal conference may be requested by the
4 County or by any other person to facilitate a voluntary agreement.

5 (B) If a voluntary agreement cannot be reached, the County shall
6 take appropriate enforcement action pursuant to this Ordinance and other
7 applicable provisions of law.

8 SECTION 9.3 NOTIFICATION OF VIOLATION

9 (A) If a voluntary agreement pursuant to Section 9.2 cannot be
10 reached, the County shall issue written notice of a violation to the
11 person or persons alleged to have caused or contributed to a violation
12 of this Ordinance, a rule promulgated pursuant to this Ordinance, and/or
13 an approval issued hereunder. A written notice of violation shall
14 include a statement of facts upon which the violation is based.

15 (B) Within fourteen (14) days of the receipt of a written notice
16 of violation, the alleged violator shall submit to the County an
17 explanation of the violation and a plan for correcting the violation to
18 comply with this Ordinance, rules promulgated pursuant to this
19 Ordinance, and/or storm water construction approvals issued hereunder.
20 Submission of this plan in no way relieves the alleged violator of
21 liability for any previous violation not addressed by the plan or future
22 violation.

1 (C) Within fourteen (14) days of the receipt of a written
2 response to a notice of violation, the County shall determine whether
3 the response resolves and/or corrects the alleged violation. If the
4 County determines that the response resolves and/or corrects the
5 violation, then the plan for correcting the violation shall be
6 incorporated into a consent agreement pursuant to Section 9.4.

7 SECTION 9.4 CONSENT AGREEMENT

8 (A) A consent agreement may be entered into at any time by and
9 between the County and the person or persons alleged to have caused or
10 contributed to the violation. The consent agreement shall be mutually
11 acceptable to both the County and the recipient(s) and shall reflect the
12 recipient's agreement to assume responsibility for and correct
13 violations of this Ordinance, rules promulgated pursuant to this
14 Ordinance, and approvals issued hereunder.

15 (B) The consent agreement shall contain a short statement of
16 facts, describe the actions necessary to correct the non-compliance,
17 contain a compliance schedule, and be signed by all parties. The
18 agreement may contain a monetary or other relief as agreed to by the
19 parties for the non-compliance, including without limitation, amounts
20 necessary to compensate the County for costs incurred investigating,
21 administering and/or enforcing this Ordinance or rules promulgated
22 hereto.

23

1 SECTION 9.5 ADMINISTRATIVE COMPLIANCE ORDERS

2 (A) If the County determines that a violation of this Ordinance,
3 a rule promulgated pursuant to this Ordinance, or a storm water
4 construction approval issued hereunder has occurred or exists, the
5 County may issue an administrative compliance order pursuant to this
6 Section 9.5.

7 (B) Except as provided in Section 9.6, the County may issue an
8 administrative compliance order in the following circumstances:

9 (1) the County determines that a person has violated a consent
10 agreement entered into with the County; or

11 (2) (a) the County determines that a person has violated or
12 continues to violate this Ordinance, a rule promulgated pursuant to this
13 Ordinance, or a storm water construction approval issued hereunder, and
14 (b) the County has attempted to resolve the violation pursuant to
15 Sections 9.2 and 9.3 but no voluntary agreement or consent agreement has
16 been entered into.

17 (C) The administrative compliance order shall contain a
18 statement of facts upon which the order is based, a description of the
19 actions that must be taken to correct the non-compliance, a compliance
20 schedule, and other requirements as might be reasonably necessary to
21 address the non-compliance. Administrative compliance orders also may
22 contain administrative fines and penalties, and such other monetary
23 relief for the non-compliance, including without limitation amounts

1 necessary to compensate the County for costs incurred investigating,
2 administering, and enforcing this Ordinance or rules promulgated hereto.

3 (D) Within twenty-eight (28) days of being issued an
4 administrative compliance order, the person or persons receiving the
5 order may appeal the issuance of the Order pursuant to Chapter 10 of
6 this Ordinance.

7 SECTION 9.6 IMMINENT AND SUBSTANTIAL INJURY ORDERS

8 (A) The County may issue an administrative order without
9 attempting to resolve a violation by using the enforcement procedures
10 described in Section 9.2 and 9.3 if the County finds that a violation of
11 this Ordinance, a rule promulgated pursuant to this Ordinance, or a
12 storm water construction approval issued hereunder constitutes or
13 causes, or will constitute or cause, a substantial injury to the public
14 health, safety, welfare, or the environment, and it is prejudicial to
15 the interests of the people of the County to delay action.

16 (B) Administrative orders issued pursuant to this Section 9.6
17 shall contain a statement of facts upon which the order is based, and
18 notification to the person that it must immediately take action to
19 discontinue, abate, correct, or otherwise address the imminent and
20 substantial injury caused or likely to be caused by the non-compliance.

21 (C) Within seven (7) days, the County shall provide the person
22 an opportunity to be heard and to present any proof that the non-
23 compliance does not or will not constitute imminent and substantial

1 injury to the public health, safety, welfare or the environment.

2 (D) An order issued pursuant to this Section 9.6 is effective on
3 issuance and shall remain in effect for a period of not more than seven
4 (7) days, unless the County brings an action to restrain the alleged
5 non-compliance pursuant to Section 9.8 or 9.9 before the expiration of
6 that period. If the County brings such an action within the seven day
7 period, the order issued by the County shall remain in effect for an
8 additional seven (7) days or such other period as is authorized by the
9 court in which the action is brought.

10 SECTION 9.7 MUNICIPAL CIVIL INFRACTIONS

11 (A) Violation; Municipal Civil Infraction

12 Except as provided by Section 9.8, a person who violates any
13 provision of this Ordinance or rules promulgated hereunder, including
14 without limitation any notice, order, storm water construction approval,
15 agreement, decision, or determination promulgated, issued, made, or
16 entered by the County under this Ordinance or rules promulgated
17 hereunder, is responsible for a municipal civil infraction, subject to
18 payment of a civil fine of not less than \$1,000 per day and not more
19 than \$27,500 per day for each infraction, plus costs and other
20 sanctions.

21 (B) Repeat Offenses; Increased Fines.

22 (1) Increased fines may be imposed for repeat offenses. As used
23 in this section, "repeat offense" means a second (or any subsequent)

1 municipal civil infraction violation of the same requirement or
2 provision of this Ordinance or rule promulgated hereunder (a) that is
3 committed by a person within any 12-month period and (b) for which the
4 person admits responsibility or is determined to be responsible.

5 (2) The increased fine for a repeat offense under this section
6 shall be as follows:

7 (a) The fine for any offense that is a first repeat offense
8 shall be not less than \$2,500, plus costs.

9 (b) The fine for any offense that is a second repeat offense or
10 any subsequent repeat offense shall be not less than \$5,000, plus costs.

11 (C) Amount of Fines.

12 (1) Municipal Civil Infraction Citations. Subject to the
13 minimum fine amounts specified in Section 9.7(A) and (B), the following
14 factors shall be considered in determining the amount of a municipal
15 civil infraction fine following the issuance of a municipal civil
16 infraction citation for a violation of this Ordinance or rules
17 promulgated pursuant to this Ordinance:

18 (a) the type, nature, gravity, magnitude, severity, frequency,
19 duration, preventability, potential and actual effect, cause (including
20 whether negligent or intentional) and economic benefit to the violator
21 (such as delayed or avoided costs or competitive advantage) of the
22 violation;

23

1 (b) the violator's recalcitrance, cooperation or efforts to
2 comply;

3 (c) the violator's compliance history (regardless whether prior
4 enforcement proceedings were commenced);

5 (d) the economic impacts of the fine on the violator; and

6 (e) such other factors as justice may require.

7 A violator shall bear the burden of demonstrating the presence and
8 degree of any mitigating factors to be considered in determining the
9 amount of a fine. However, mitigating factors shall not be considered
10 unless it is determined that the violator has made all good faith
11 efforts to correct and terminate all violations.

12 (2) Municipal Civil Infraction Notices; Schedule of Fines.
13 Notwithstanding any provision of this Ordinance to the contrary, the
14 amount of a municipal civil infraction fine due in response to the
15 issuance of a municipal civil infraction notice for a violation as
16 provided by Section 9.7(A) shall be according to the following schedule:

17 First offense: \$1,000

18 Second offense: \$2,500

19 Third offense (or any subsequent offense): \$5,000

20 For any fine not paid in full within 30 days of the time specified for
21 appearance in the municipal civil infraction violation notice, the fine
22 amount due shall automatically be double the amounts listed immediately
23 above. A copy of this schedule shall be posted at the Wayne County

1 Municipal Ordinance Violations Bureau.

2 (D) Authorized County Officials.

3 The following persons are authorized County Officials for purposes
4 of issuing municipal civil infraction citations (directing alleged
5 violators to appear in district court) or municipal civil infraction
6 violation notices (directing alleged violators to appear at the Wayne
7 County Municipal Ordinance Violations Bureau) for violations under this
8 Ordinance: the Director of the Department of the Environment; the
9 Director of the Department of Public Services, and their respective
10 designees and authorized representatives.

11 (E) Procedures.

12 Except as otherwise provided by this section, the procedures for
13 municipal civil infraction actions shall be as set forth in Chapter 2
14 (Municipal Civil Infractions) of the Code of Ordinances of the Charter
15 County of Wayne, Enrolled Ordinance 2000-404.

16 SECTION 9.8 CIVIL ACTIONS

17 The County, by and through corporation counsel, may bring a civil
18 action in the name of the County to enforce the provisions of this
19 Ordinance and rules promulgated pursuant to this Ordinance. Nothing in
20 this Ordinance shall preclude the County from instituting an action for
21 appropriate legal and/or equitable relief in Wayne County Circuit Court
22 to restrain, correct, or abate a violation of this Ordinance, a rule or
23 regulation promulgated pursuant to this Ordinance, or a storm water

1 construction approval issued hereunder; or to stop an illegal act; or to
2 abate a nuisance; or to prevent pollution or flooding.

3 SECTION 9.9 CRIMINAL PENALTIES; IMPRISONMENT

4 Any person who

5 (A) At the time of a violation knew or should have known that a
6 violation of this Ordinance, or any notice, order, storm water
7 construction approval, or decision or determination promulgated, issued
8 or made by the County under this Ordinance; or

9 (B) Intentionally makes a false statement, representation, or
10 certification in any application for, or form pertaining to, a storm
11 water construction approval, or in any other correspondence or
12 communication, written or oral, with the County regarding matters
13 regulated by this Ordinance; or

14 (C) Commits any other act that is punishable under state law by
15 imprisonment for more than 90 days;
16 shall, upon conviction, be guilty of a misdemeanor punishable by a fine
17 of \$500 per violation, per day, or imprisonment for up to 90 days, or
18 both in the discretion of the court.

1 SECTION 9.10 SEPARATE OFFENSES

2 Each act of violation, and each day or portion of a day that a
3 violation of this Ordinance, rules or regulations promulgated pursuant
4 to this Ordinance, storm water construction approval, order, notice, or
5 determination issued, made or entered into under this Ordinance is
6 permitted to exist or occur, constitutes a separate offense and shall be
7 punishable as provided by this Ordinance.

8 CHAPTER 10: APPEAL9 SECTION 10.1 APPEAL

10 (A) Any person whose legal rights, duties, or privileges are
11 determined by the County pursuant to this Ordinance or a rule
12 promulgated pursuant to this Ordinance, and who is aggrieved by the
13 County's determination, may appeal to the Storm Water Appeals Board for
14 relief of that grievance. An appeal shall be made according to the
15 procedure set forth in this Chapter.

16 (B) The Storm Water Appeals Board shall consist of the Director
17 of the Department of Public Services; the Director of the Department of
18 Environment; and the Director of the Department of Engineering; or their
19 designees. Meetings of the Storm Water Appeals Board shall be in person
20 and shall be open to all interested parties.

21 SECTION 10.2 APPEAL PROCEDURE

22 (A) An appeal shall be in writing, shall be addressed to the
23 Storm Water Appeals Board c/o the Permit Office, and shall be received

1 within twenty (20) days of the determination that is the subject of the
2 appeal. The appeal shall be made in triplicate, shall set forth the
3 specific act or matter complained of and in dispute, and shall include
4 all documentation that supports the appellant's position. The appellant
5 may be required to post a deposit at the time of filing to cover the
6 costs of processing the appeal.

7 (B) Within thirty (30) days of receipt of a written appeal, the
8 Permit Office shall acknowledge such receipt in writing, and shall set a
9 day and time for an appellate hearing to be conducted in accordance with
10 subsection (D). If appropriate, the Permit Office may schedule a
11 conciliation meeting with the appellant in accordance with subsection
12 (C).

13 (C) Conciliation meeting

14 (1) The purpose of a conciliation meeting is to attempt to
15 resolve the matter before an appeal is forwarded to the Storm Water
16 Appeals Board. If a conciliation meeting is held, it shall occur as
17 soon as practicable, at the mutual convenience of the parties.
18 Conciliation meetings shall be open to all interested parties and their
19 representatives.

20 (2) After a conciliation meeting, if the appellant or the Permit
21 Office determines that an appeal cannot be resolved through a
22 conciliation meeting, the parties shall so inform the Storm Water
23 Appeals Board in writing, and the appellate hearing scheduled pursuant

1 to subsection (B) shall be conducted in accordance with subsection (D).
2 Additional conciliation meetings shall not be necessary.

3 (3) If the Permit Office and the appellant agree that the
4 subject of the appeal has been satisfactorily resolved through the
5 conciliation meeting process or otherwise, the agreement shall be
6 incorporated into a consent agreement pursuant to Section 9.4.

7 (D) Hearing procedure

8 (1) A notice shall be sent to the appellant at least ten (10)
9 days prior to the hearing. The notice shall include (a) a statement of
10 the date, time, place, and nature of the hearing; (b) a statement of the
11 legal authority and jurisdiction under which the hearing will be held;
12 (c) a reference to the particular sections of this Ordinance involved in
13 the appeal; (d) brief summary of the specific act or matter complained
14 of and in dispute.

15 (2) At the hearing, the Storm Water Appeals Board shall receive
16 testimony and evidence provided by the appellant, the County, and/or
17 others as the Storm Water Appeals Board deems necessary. During the
18 hearing, the Storm Water Appeals Board shall not be bound strictly by
19 the rules of evidence that would apply in a court, but shall have the
20 authority to receive such evidence as deemed relevant and material. The
21 Storm Water Appeals Board may give the evidence as is received such
22 weight and probative value as, in the Board's discretion, is deemed
23 proper.

1 (3) Within thirty (30) days after the hearing, the Storm Water
2 Appeals Board shall render a decision in writing. This thirty (30) day
3 period may be extended for good cause. The decision shall include a
4 brief summary of the specific act or matter complained of, the nature of
5 the testimony and evidence received, and a decision as to whether the
6 Board affirmed, rescinded, or modified the decision or action at issue.

7 (4) The decision of the Storm Water Appeals Board shall be final
8 and enforceable at law. A person aggrieved by a final decision of the
9 Storm Water Appeals Board may seek judicial review of the decision by
10 the Wayne County Circuit Court. A petition for judicial review shall be
11 filed not later than sixty (60) days following the receipt of the final
12 decision of the Storm Water Appeals Board. An aggrieved person shall
13 exhaust all administrative remedies provided in this Chapter before
14 seeking judicial review.

15 **ADOPTED BY THE WAYNE COUNTY COMMISSION DECEMBER 19, 2006**
(2007-70-009A)