

ARTICLE 3. - STORMWATER MANAGEMENT

FOOTNOTE(S):

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Cross reference— Utilities, ch. 70. ([Back](#))

DIVISION 1. - GENERALLY

Sec. 78-101. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings provided in this section, except where the context clearly indicates a different meaning:

Act means part 301 of Public Act No. 451 of 1994 (MCL 324.30101).

Building opening means any opening of a solid wall, such as a window or door, through which floodwaters could penetrate to cause property damage.

Chapter 20 drain means a drain established under chapter 20 of the Michigan Drain Code of 1956 (MCL 280.461 et seq.).

Construction means the improvement of a drain by rechannelization, reconstruction, erosion protection or enclosure.

Drain means any open or enclosed conduit, ditch, swale or creek, used for purposes of transferring water from land and structures to a downstream location.

Drainage means the method of transfer of stormwater from impacting land or structure.

Floodplain means the area flooded by a 100-year storm as determined by the current Flood Insurance Study published by the Federal Emergency Management Agency.

Floodway means a cross section of the floodplain, or naturally occurring drain outside the FEMA designated floodplain, necessary to carry the floodwaters.

Floodway fringe means a cross section between the floodway and the edge of the floodplain necessary to temporarily store floodwaters.

Maintenance means the process of restoration of stormwater flow in a drain by:

- (1) Returning to a previously established design grade;
- (2) Cleanout of conduits;
- (3) Bank stabilization;
- (4) Drainage structure repair; and
- (5) Similar measures as determined by the City.

Stormwater means water that has its origin in precipitation.

(Comp. Ords. 1987, § 25.174)

Cross reference— Definitions generally, § 1-2.

Sec. 78-102. - Finding of necessity.

The City hereby finds that it is necessary for the protection of the health, safety and welfare of the citizens of the City that provision be made by ordinance for the control, maintenance and regulation of stormwater so as to prevent flooding, loss of life, property damage, erosion and nuisance conditions, and to promote groundwater recharge, lower storm sewer costs and water quality improvement in the City, and this article is hereby adopted to that end. This article is further necessary to define responsibility for handling stormwater related problems among the City, private developers and private citizens.

(Comp. Ords. 1987, § 25.171)

Sec. 78-103. - Approval process.

(a) *Design and approval requirements.*

- (1) Any construction on a drain in the City shall be designed and the construction supervised by a registered professional engineer.
- (2) Approval for construction work shall be by the City Engineer.
- (3) Any waiver from the provisions of this article must be supported by a study conducted by a registered professional engineer.

(b) *Standard specifications.*

- (1) Any construction shall conform to following standard specifications and such specifications are hereby adopted by the City in connection and conjunction with this article:
 - a. Site drainage.
 - b. Design and construction of a storm sewer.
 - c. Design and construction of open channels.
 - d. Design and construction of stormwater detention storage.

(c) *Appeal procedure.*

- (1) Should the application of this article produce drainage facilities which serve to prevent compliance or serve to create offsetting difficulties, the net result of which is detrimental, the City Engineer is hereby authorized to hear and consider such difficulties.
- (2) The City Engineer, upon consideration of the facts, shall file a report with the Committee of the Whole of the City Commission.
- (3) The applicant's input, along with the report as set forth in subsection (c)(2) of this section, shall be considered by the City Commission Committee of the Whole and the City Commission Committee of the Whole is hereby designated as the appropriate body to grant a waiver from the provisions of this article.

(Comp. Ords. 1987, § 25.181; Memo of 8-2-2012)

Sec. 78-104. - Violations; penalties.

- (a) Any person convicted of a violation of any provision of this article is responsible for a municipal civil infraction for which the fine shall be at least \$2,500.00.
- (b) Each day a violation exists or continues shall be deemed as a separate offense.
- (c) Any person, firm or corporation, who, having been determined to be responsible for a violation of this article, commits and is found responsible for a subsequent violation, within a two-year period, shall be fined in an amount double the amount of the fine assessed for the immediately preceding violation.
- (d) In addition to fines assessed pursuant to subsections (a), (b), and (c) above, a person, firm or corporation found to be responsible for a violation shall pay the City's actual costs, direct or indirect, for correcting and abating the violation, and the actual costs, direct and indirect, to which the City has

put in correcting the violation, to the extent permitted by law, in the event the fines and costs are not fully paid within 30 days, the fines and costs may be added to and made part of the next City tax bill against the subject premises and may be collected in the same manner as provided by Michigan law for the collection of City taxes on real estate.

(Comp. Ords. 1987, § 25.182; Ord. No. 03-01, § 2, 2-6-2001; Ord. No. 02-02, 1-7-2002)

Secs. 78-105—78-120. - Reserved.

DIVISION 2. - STANDARDS

Sec. 78-121. - Drain construction.

(a) *City.*

- (1) A drain construction project may be undertaken by the City following receipt of a petition or by initiative of the City Commission.
- (2) Appropriate special assessment hearings must be conducted prior to any further action beyond receipt of a petition or project initiative by the City Commission, unless the City Commission determines that it is in the best interest of the City to finance the construction project in another manner.
- (3) The special assessment amount for any chapter 20 drain project shall be divided into 50 percent from the City's drain-at-large fund and 50 percent from the special assessment district.
- (4) For any enclosure of a drain, except as otherwise provided for in this section, the 50 percent special assessment district amount divides into 25 percent per front foot along the enclosure because of a special benefit and 25 percent from the district because of a legal benefit.

(b) *Developers.*

- (1) Any drain improvement work required because of land improvement shall be 100 percent funded by the developer. Inherent in this concept is a fundamental principle that an existing drain reduces raw land costs as compared to land without such encumbrance.
- (2) For any residential development, drains must be enclosed along all front and side yards.
- (3) All developments must carry a floodway through the development so as to preclude property damage.
- (4) Storm sewer laterals must be provided to any building when soil borings or actual excavation indicates a siting in the water table. A hydraulic break must occur between the building and storm sewer so that a storm sewer backup will not affect the building.
- (5) A grading plan showing surface and subsurface drainage on the parcel and any division of that parcel must be filed and approved by the City for purposes of ensuring that the drainage system and building development are compatible.
- (6) A site grading and stormwater management bond in the amount of \$20,000.00, payable to the City, is required for any nonplat development requiring stormwater detention, floodway construction, or surface or subsurface drainage construction. Such bond is posted to ensure that the approved plan is constructed in the field. Developments of less than one acre or remaining undeveloped parcel size of less than one acre are exempt. Upon certification by a registered professional engineer that such construction has taken place according to the approved plans and specifications, and subsequent approval by the engineering staff, such bond will be released. Certification shall be according to as-built certification requirements of the City, which are adopted in connection and conjunction with this article. Filing of a false certification is subject to the penalties of this article as provided in section 78-104(a).

(c) *Private property owners.*

- (1) Drain improvement by a private property owner can be undertaken only after approval by the City and any other appropriate jurisdiction.
- (2) Costs for improvement are the responsibility of the property owner.

(d) *Stream protection.*

- (1) Any natural stream, as defined under the act, shall be protected from drain improvement work by means of a 50-foot, no disturbance zone centered on the stream.
- (2) Exceptions to the no disturbance zone are road culverts and drain enclosures required in front and side yards of residential developments.

(Comp. Ords. 1987, § 25.175; Ord. No. 03-01, § 1, 2-6-2001; Ord. No. 11-03, § 25.175, 9-2-2003)

Sec. 78-122. - Drain maintenance.

(a) *City.*

- (1) Any chapter 20 drain improved under a construction project shall be maintained by the City to the following degree:
 - a. Enclosed drains, structures, ditch checks, spillways and constructed erosion protection shall be 100 percent.
 - b. Restoration of hydraulic capacity to prevent property damage shall be 100 percent.
 - c. Stagnant water or erosion remediation will not be performed if correction of the problem would cause greater problems than the existing condition by reason of quantity of earth to be disturbed.
- (2) Any drain improvement constructed as part of plat improvements and for which a drain easement exists shall be maintained by the City to the same degree as in subsection (a)(1) of this section.

(b) *Private property owners.*

- (1) For any drain, whether improved or unimproved, the adjacent property owner shall have responsibility of natural growth management of weeds, trees and turf.
- (2) Any unimproved drain shall be maintained 100 percent by the adjacent property owner. Riparian rights also includes riparian responsibility. The existence of a drain or even a recorded drain easement does not confer on the City the maintenance responsibility.
- (3) No filling, blocking, fencing or above the surface vegetation planting is to be undertaken within a floodway, except by written approval.
- (4) For an overland flow drainage easement:
 - a. Site screen fences are not allowed below the top of the bank or the edge of the easement, whichever is higher.
 - b. Chainlink fences will be allowed if it is determined by the engineering department that the chainlink fence will not obstruct or divert the flow of water.
 - c. If the fences are removed by the City for drain access or maintenance, they are to be replaced by the owner of the fence, at the owner's expense.
 - d. No shrubs or trees are to be placed below the top of the bank or the edge of the easement, whichever is higher, unless written approval is received.
- (5) For a storm sewer easement, shrubs, trees or above the ground vegetation are not permitted to be planted. If the easement is only for storm sewer purposes, a fence can be allowed under the same removal conditions as an overland flow easement.

(Comp. Ords. 1987, § 25.176)

Sec. 78-123. - Stormwater detention.

- (a) *Lands subject to requirements; exceptions.* Any and all parcels of land are subject to stormwater detention storage requirements in the City, unless the parcel meets one of the following requirements:
- (1) Is less than one acre in total size or the undeveloped remainder of the parcel is less than one acre.
 - (2) Is within the Crippen or Esbaugh Drains and has an adequate downstream channel.
 - (3) Over 25 percent is a floodplain.
 - (4) Dry wells could be used.
 - (5) Development density is one dwelling unit per acre or less.
 - (6) Already has a master pond to serve the parcel and downstream facilities between the parcel and the master pond are adequate to transport the water. In this case, the master pond must be used.
- (b) *Phase and sequence limitations.*
- (1) To avoid large numbers of detention sites, each original parcel, as of the original adoption date of the ordinance from which this division is derived, is allowed only one detention pond for that parcel. If the original parcel is split off, phased or in any way only partially developed at such time, the detention facility for the whole original parcel must be constructed with the initial construction, regardless of where on the original parcel the pond is best suited. The City expects property owners to work together on property splits to prevent the occurrence of many ponds.
 - (2) Stormwater detention storage is to be the first item of earth moving on any site and must work along with soil erosion prevention requirements to reduce peak downstream flows from the first day of earth change.
- (c) *Maintenance responsibility.*
- (1) For all recorded plats, following final approval by the City, control and maintenance of the stormwater detention storage facility shall be by and under the City. The City shall be responsible for any and all work related to the hydraulic functioning of such facility. The property owner on whose parcel the easement for the facility rests is responsible for turf maintenance.
 - (2) For any development under which the land or parcel remains in one ownership, control and maintenance of the detention storage facility is the responsibility of the property owner. Should the property owner neglect to maintain the storage in such a manner that failure of the detention concept could occur, the City, following proper notification, shall have the right to make the necessary repairs or maintenance and add the cost thereof to the next tax bill covering the subject premises.

(Comp. Ords. 1987, § 25.177)

Sec. 78-124. - Stormwater connections.

- (a) *Parking lots.* Any parking lot paved after the effective date of the ordinance from which this division is derived and which, in its final configuration, constitutes over 2,500 square feet of pavement, shall not be allowed to drain directly to any adjacent surface, but shall drain to an internal storm sewer system.
- (b) *Roof drainage.* Residential buildings of two units or less shall dump roof drainage onto the lawn adjacent to the building. A time lapse is needed to reduce peak flows in the storm sewer system.
- (c) *Sump pump discharge.*

- (1) Whenever a building needs footing drains because of a high water table which is within two feet of the footing drains or impervious soils, a direct connection between the footing drains through a sump pump check valve system to a storm sewer is required. A gravity system is not allowed. Should a storm sewer lateral or other suitable storm sewer connection point not be available, then consideration will be given to a waiver of this requirement.
 - (2) Storm sewer laterals are to be provided at the time of storm sewer construction so that permanent pavement will not have to be removed for the installation. For plats, one storm lateral for every two parcels is required.
- (d) *Swimming pools.* Swimming pool discharge water is allowed into the drainage system under the same conditions as set forth in subsection (b) of this section.
- (e) *Private storm sewers connected to external sources.* Private storm sewers connected to external sources, such as parking lot drains or yard drains, shall not be built under a building.

(Comp. Ords. 1987, § 25.178)

Sec. 78-125. - Private property drainage.

(a) *Building openings.*

- (1) Any building in a flooding influence area of a swale, drainageway, floodway, ditch, culvert, detention pond or any device which controls flooding shall strictly control the lowest building opening elevation so as to preclude building damage.
- (2) No building opening shall be constructed below the following elevations:
 - a. One foot above the 100-year floodplain established under the National Flood Insurance Program.
 - b. The building opening established at the time of the plat or development approval and on file in the inspection department.
 - c. Three feet above the top of any downstream culvert.
 - d. Four feet above the bottom of any permanent and defined drainageway.
 - e. Five feet above the bottom of any drainageway that could be enclosed in pipe in the probable future.
- (3) A waiver from meeting elevations outlined in subsection (a)(2) of this section can be granted by the City Engineer following receipt of a certified letter from a registered professional engineer which supports the proposed elevation as being nonhazardous.
- (4) The construction of any minimum building opening specified by this article or an approved grading plan must be certified, upon its completion, by a registered land surveyor. The certification, attesting that the building opening meets the specified standards, must be submitted by the permittee to the community development inspections department prior to the issuance of an occupancy permit for the building. If the surveyor should find that the minimum building opening is below the specified elevation, that opening must be raised or protected by using a method which meets the approval of the City Building Inspector. The reconstruction must then be certified by the registered land surveyor before an occupancy permit is issued.

(b) *Lot drainage.*

- (1) Any drainage situation not involving any public property water is the responsibility of the property owner.
- (2) In plat and site plan review, the City will only review private property drainage for the purpose of ensuring that private property can be drained.
- (3) Lot grading and private property drainage is a civil matter among the property owners affected.

- (4) The City will provide technical advice to a property owner on drainage matters, but help will be limited to advice only.
- (5) To aid contractors and builders in grading private property, a lot grading plan will be required on all developments and such information shall be disbursed along with the building permit. The lot grading plan must show the following:
 - a. Any established minimum building opening.
 - b. Floodway elevations.
 - c. All storm sewers and the size, grade, invert elevation and top of casting elevations.
 - d. All storm sewer laterals.
 - e. All utility and drainage easements and their full description.
 - f. Minimum basement elevation for the sanitary sewer.
 - g. Direction of drainage on each lot.
 - h. Elevation of any constructed surface drainage facility.
 - i. Surface grading of the entire parcel.
- (6) A minimum rear yard of 25 feet prior to any drainage encumbrance is required. This will allow an opportunity for rear yard use for sheds, play equipment, etc., without concern about water damage or inconvenience.
- (7) Prior to construction of any structure on a parcel or lot upon which a floodway easement exists, the permittee must obtain from the community development inspections office, a copy of the approved plans, showing the location and design elevations of the floodway. Upon completion of the structure and prior to the issuance of an occupancy permit, the permittee must provide a certification from a registered land surveyor that the floodway grades and dimensions are as designed. If the floodway does not conform to the approved plans, the floodway must be reconstructed and certified prior to the issuance of an occupancy permit for that lot or parcel. Concurrent floodway reconstruction and issuance of an occupancy permit are permitted only if that action does not present a danger to the safety and welfare of any affected property. To permit concurrent action, the permittee shall provide the City with a performance bond, letter of credit or cash deposit to cover the cost of such reconstruction at a dollar amount established by the City.

(Comp. Ords. 1987, § 25.179)

Sec. 78-126. - Floodplain protection.

- (a) No alteration of the natural floodway shall be allowed.
- (b) No alteration of the natural floodway fringe shall be allowed unless natural vegetation, consisting of trees, scrub trees and shrubs, are at a density of one per 100 square feet or less.
- (c) The provisions of subsections (a) and (b) of this section are intended to keep a major drain system in dynamic equilibrium so that the drain can handle major storms without major soil erosion occurring because of impact of natural root systems on soil stabilization.
- (d) Only in areas of the floodway fringe can permitted development take place and then only in areas of low concentrations of natural soil holding root systems as described in subsection (c) of this section.
- (e) No filling of any floodway or naturally vegetated floodway fringe shall take place.
- (f) For purposes of retaining the current natural flood storage in the floodway fringe, no filling of any sparsely vegetated portion of the floodway fringe shall take place unless the storage taken away by the filling action is created in another portion of the site outside the floodway fringe. Such process shall be known as "offset detention."

- (g) In order to protect the Federal Emergency Management Agency designated floodplain fringe from erosion damage, a "Do Not Disturb/Natural Erosion Control Zone" is to be established and called out on a recorded plat, an approved block grading plan, a site plan or an improvement plan. Such zone consists of existing natural tree and vegetation slope protection on the bank immediately adjacent to the established floodplain and shall be maintained as is (e.g., no earth change or vegetation change of any sort is to take place.), including planting of additional vegetation, shrubs or trees. Should bank erosion, tree blockage or any excessive erosion of any type threaten the property immediately adjacent to the zone, the City will take any corrective action necessary. If the cause is action taken by the property owner, then such owner will be billed for the corrective action. The limits for the zone extend from the edge of the established floodplain to the established top of the bank. The top of the bank is established in the following sequence:
- (1) Existing top of bank where the stream channel is within ten feet of the base of the bank or aims at the base of the bank.
 - (2) Existing top of bank where downslope to the floodplain is one on three or steeper.
 - (3) A developed top of bank where:
 - a. The existing downslope is flatter than one on three.
 - b. A six-foot band of natural vegetation is left between the floodplain high water mark and the beginning of yard development.
 - c. The developed slope of the yard is one on four or flatter.

Should the existing bank have no tree or shrub stabilization, the existing bank can be graded, provided that the existing toe of the bank is not moved, the bank slope does not exceed one on three and the bank grading is blanketed with erosion protection immediately following the grading. Any home construction shall allow for a 35-foot rear yard prior to the top of the bank. This allows for several uses in the rear yard which will not disturb the top of the bank. The 35-foot dimension can be reduced, but only after an approved development plan which does not disturb the top of the bank.

(Comp. Ords. 1987, § 25.180)

State law reference— Construction in floodplains, MCL 324.3108.

Sec. 78-127. - Standard City specifications for leaching basins.

- (a) *Scope.* This section constitutes the standard City specifications for leaching basins.
- (b) *Basic soil requirements.*
 - (1) Leaching basins may only be used in sandy pervious soils.
 - (2) The county soil survey map is the basis for determining acceptability of soil type.
 - (3) Only those soils in a permeable range of six inches to 20 inches per hour qualify.
 - (4) Marginal areas will require soil borings.
- (c) *Short method for determination of number.*
 - (1) The short method for determination of the number of leaching basins applies to a situation where:
 - a. Soil type is suitable.
 - b. Water table is nine feet deep or more.
 - (2) Without further calculation, one standard leaching basin accommodates 5,000 square feet of impervious area (parking lot, building roof).
- (d) *Standard detail of construction.*

- (1) Standard leaching basin detail is set forth in subsections (g) and (h) of this section.
 - (2) Special attention must be given to having a two-foot minimum of 6A stone prior to the filter fabric/sand interface.
- (e) *Location.*
- (1) Leaching basins must be a minimum of 15 feet from the exterior edge of the basin to the nearest property line.
 - (2) The minimum distance between leaching basins shall be 15 feet, measured from the exterior edge to exterior edge.
- (f) *Interconnection.*
- (1) All leaching basins must interconnect by means of a storm sewer which is tapped into the basin entirely above the side wall leaching area.
 - (2) A tie can be made to a public storm sewer system in the same manner (above the leaching side wall).
- (g) *Long method for determination of number.*
- (1) Where the water table is shallower than nine feet or a leaching basin with a deeper side wall than six feet can be used, the long method for determination of the number of leaching basins either increases or decreases the number to be used.
 - (2) Basic to this method is the rate of application of water to the leaching basin side wall through to the stone/sand interface. A standard rate of two gallons per square foot minimum is used on the stone/sand interface, based on this being the standard for a rapid sand filter.
 - (3) If the leaching system can handle the maximum flow rate from the site for a 25-year frequency rain, minus the natural undeveloped state release rate, then water is kept from the storm system peak load much like detention ponds.
 - (4) A small storage allowance is given, based on the capacity in the leaching basin and among the stones around the basin.
 - (5) Design parameters then are as follows:
 - a. Natural $Q_{\text{release}} = 0.15 I_3, A, t_c = \text{natural}$.
 - b. Developed $Q_{\text{dev}} = C_{\text{dev}} I_{25} A, t_c = \text{developed}$.
 - c. $Q_{\text{design}} = Q_{\text{dev}} - Q_{\text{release}}$.
 - d. Dosing rate of leaching basin at the stone/sand interface is 2 gpm/ft².
 - e. Amount of leaching side wall needed in lineal feet of depth would be as follows:

| | | |
|----|---|---|
| 1. | Each basin has a diameter of 4' (I.D.) + one foot (wall) + 4' (stone) = 9'. | |
| 2. | TT D = (3.14)(9) = 28 ft ² /ft of depth. | |
| 3. | Ln. ft. = | Q_{des} (cfs) 449(gpm/cfs) |
| | | 28(ft ² /ft) 2(gpm/ft ²) |

f. Storage allowance:

| | | | | | | |
|----|---|-----------|---|---|---|---------------------------|
| 1. | Basin itself - | πd^2 | = | $(3.14) 4^2$ | = | 12.5 ft ³ /ft. |
| | | 4 | | 4 | | |
| 2. | Stone area = | π | | $(9^2 - 5^2)(.2) = 9 \text{ ft}^3/\text{ft.}$ | | |
| | | 4 | | | | |
| 3. | Total storage = 21.5 ft ³ /ft. | | | | | |

g. Required storage is 0.1 acre ft/acre or 4,356 ft³/acre.

h. Adjusted side wall depth would be:

| | | |
|---------------|------|--|
| Depth from 5c | (1 - | Depth from 5c 21.5 ft ³ /ft;) |
| | | (4,356 ft ³ /acres) (Total site in Acres) |

i. Precast sections with holes 12 inches on center can let the flow rate through.

j. Filter fabric can also let the flow rate through.

(6) Example: Site is 1.7 acres, $C_{dev} = 0.8$, Water table depth = 9' Therefore, can use 6' of side wall.

a. Calculate $Q_{release} = 0.15(2.5_3) (1.7) = 0.6 \text{ cfs}$ for $t_c = 20 \text{ min.}$

b. Calculate $Q_{dev} = 0.8(5.5_{25}) (1.7) = 7.5 \text{ cfs}$ for $t_c = 10 \text{ min.}$

c. $Q_{design} = 7.5 - 0.6 = 6.9 \text{ cfs.}$

d. $L_n \text{ ft.} = (6.9) (449) / (28) (2) = 55.$

e. $\text{Adj. side wall depth} = 55 (1 - (55) (21.5) / (4,356) (1.7) =) 55(0.8) = 44.$

f. Number of basins = 44 In. ft. required / 6 In. ft./basin = 7 basins.

(h) *Partial system with storage.* The equation for a partial system with storage is as follows:

| | | |
|---------------|-----|---|
| Depth from 5c | 1 - | Storage in ft ³ ;) |
| | | (4,356 ft ³ /acre) (Total site in Acres) |

(Comp. Ords. 1987, § 25.185)

DIVISION 3. - ILLICIT DISCHARGE ELIMINATION

Subdivision 1. - General Provisions

Sec. 78-131. - Statutory authority and title.

This division is adopted in accordance with the Home Rule City Act, as amended, being MCL 117.1, et seq.; the Drain Code of 1956, as amended, being MCL 280.1, et seq.; the Land Division Act, as amended, being MCL 560.1, et seq.; the Revenue Bond Act, as amended, being MCL 141.101, et seq.; the Natural Resources and Environmental Protection Act, as amended, being MCL 324.101, et seq.; Section 401(p) of the Federal Water Pollution Control Act (also known as the Clean Water Act), as amended, being 33 USC 1342(p) and 40 CFR Parts 9, 122, 123, and 124; and other applicable state and federal laws.

The City of Kentwood (City) shall administer, implement, and enforce the provisions of the division. Any powers granted, or duties imposed, upon the City may be delegated in writing by the Mayor of Kentwood to persons or entities acting in the beneficial interest of, or in the employ of the City.

(Ord. No. 11-04, § 1.01, 10-24-2004)

Sec. 78-132. - Findings.

The City of Kentwood finds that:

- (1) Illicit discharges contain pollutants that will significantly degrade the waterbodies and water resources of the City, thus threatening the health, safety, and welfare of the citizenry.
- (2) Illicit discharges enter the stormwater drainage system through either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the storm drain system or spills connected by drain inlets).
- (3) Establishing the measures for controlling illicit discharges and connections contained in this division and implementing the same will address many of the deleterious effects of illicit discharges.
- (4) Any condition caused or permitted to exist in violation of any of the provisions of this division is a threat to public health, safety, and welfare, and is declared and deemed a nuisance.

(Ord. No. 11-04, § 1.02, 10-24-2004)

Sec. 78-133. - Purpose.

It is the purpose of this division to establish minimum stormwater management requirements and controls to accomplish, among others, the following objectives:

- (1) To regulate the contribution of pollutants to the stormwater drainage system and waterbodies by stormwater discharges by any user.
- (2) To prohibit illicit discharges and connections to the stormwater drainage system and waterbodies.
- (3) To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this division.
- (4) To provide appropriate remedies for failure to comply with this division.

(Ord. No. 11-04, § 1.03, 10-24-2004)

Sec. 78-134. - Applicability and general provisions.

This division shall apply to all discharges entering the stormwater drainage system and waterbodies generated on any developed and undeveloped lands.

(Ord. No. 11-04, § 1.04, 10-24-2004)

Sec. 78-135. - Definitions.

For the purpose of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context in which they are used specifically indicates otherwise:

Authorized enforcement agency: The City of Kentwood, and/or any persons or agencies designated to act as the authorized enforcement agency by the City.

Best management practices (BMPs): Structural devices or nonstructural practices that are designed to prevent pollutants from entering stormwater flows, to direct the flow of stormwater, or to treat polluted stormwater flows. BMPs may include, but shall not be limited to, those described in the Michigan Department of Environmental Quality Guidebook of BMPs for Michigan watersheds. Equivalent practices and design criteria that accomplish the purposes of this division (including, but not limited to, minimizing stormwater runoff and preventing the discharge of pollutants into stormwater) shall be as determined by the City Engineer.

Clean Water Act: The Federal Water Pollution Control Act, 33 USC Section 1251 et seq., as amended, and the applicable regulations promulgated thereunder.

Discharge: means the introduction (intentionally or unintentionally, and directly or indirectly) of any liquid, substance, pollutant, or other material into a stormwater drainage system or water body.

Discharger: Any person who directly or indirectly discharges stormwater from any premises. Discharger also includes any employee, officer, director, partner, contractor, or other person who participates in, or is legally or factually responsible for, any act or omission that is, or results in, a violation of this division.

Drain: Any and all conduits, facilities, measures, areas, and structures that serve to convey, catch, hold, filter, store, and/or receive stormwater or groundwater, either on a temporary or permanent basis.

Drainage: The collection, conveyance, or discharge of groundwater and/or surface water.

Drainageway: A drain, water body, or floodplain.

EPA: The U.S. Environmental Protection Agency (EPA).

Floodplain: The area, usually low lands, adjoining the channel of a river, stream, or watercourse or lake, or other body of standing water, that has been or may be covered by floodwater.

Hazardous materials: Any solid, liquid, semisolid, or gaseous substance or material that because of its quantity, quality, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.

Illicit connection: Any method, means, or conduit for conveying an illicit discharge into a water body or a stormwater drainage system.

Illicit discharge: Any discharge to a water body or a stormwater drainage system that does not consist entirely of stormwater, that is not authorized by the terms of an NPDES permit, or that is not an authorized discharge as defined by this division.

MDEQ: Michigan Department of Environmental Quality.

National Pollutant Discharge Elimination System (NPDES) permit: A permit issued by the EPA or a state under authority delegated pursuant to the Clean Water Act that authorizes the discharge of pollutants to waters of the United States.

Nonstormwater discharge: Any discharge to the stormwater drainage system or a water body that is not composed entirely of stormwater.

Person: An individual, firm, partnership, association, public or private corporation, public agency, instrumentality, or any other legal entity.

Pollutant: The term pollutant includes, but is not limited to, the following: any dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, hazardous materials, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, commercial, and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act. Pollutant also includes properties or characteristics of water, including, but not limited to, pH, heat, TSS, turbidity, color, BOD, COD, toxicity, and odor.

Premises: Any building, structure, lot, parcel of land, or portion of land, or property, whether improved or unimproved, including adjacent sidewalks and parking strips.

Property owner: Any person having legal or equitable title to premises or any person having or exercising care, custody, or control over any premises.

State of Michigan Water Quality Standards: All applicable state rules, regulations, and laws pertaining to water quality, including the provisions of Section 3106 of Part 31 of 1994 PA 451, as amended.

Stormwater drainage system: Storm sewers, conduits, curbs, gutters, catch basins, drains, ditches, pumping devices, parking lots, roads, or other man-made channels that are designed or used, singly or together in combination with one another, for collecting or conveying stormwater.

Stormwater pollution prevention plan: A document, that describes the BMPs 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, a stormwater drainage system, and/or a water body to the maximum extent practicable.

Stormwater runoff (or stormwater): The runoff and drainage of precipitation resulting from rainfall, snowmelt, or other natural event or process.

Toxic material: Any pollutant or combination of pollutants that is or can potentially be harmful to the public health or the environment, including, without limitation, those listed in 40 CFR 401.15 as toxic under the provisions of the Clean Water Act, or listed in the Critical Materials Register promulgated by the Michigan Department of Environmental Quality, or as otherwise provided by local, state, or federal laws, rules, or regulations.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a premises. The term includes any water that has in any way been used and degraded or physically or chemically altered.

Water body: A river, lake, stream, creek, or other watercourse or wetlands.

(Ord. No. 11-04, § 1.05, 10-24-2004)

Subdivision 2. - Prohibitions and Authorizations

Sec. 78-136. - Prohibited discharges.

- (1) It is unlawful for any person to discharge, or cause to be discharged, to a stormwater drainage system or water body any substance or material, 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 or an authorized discharge. This prohibition includes the commencement, conducting, or continuance of any illicit discharge by any person to a stormwater drainage system or water body.

- (2) Any person discharging stormwater shall effectively prevent pollutants from being discharged with the stormwater, except in accordance with BMPs.
- (3) The authorized enforcement agency is authorized to require dischargers to implement pollution prevention measures, using stormwater pollution prevention plans and BMPs, as determined necessary by the authorized enforcement agency to prevent or reduce the discharge of pollutants to a stormwater drainage system or water body.
- (4) The discharge prohibitions of this section shall not apply to any nonstormwater discharge authorized under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the EPA, provided 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 stormwater drainage system.

(Ord. No. 11-04, § 2.01, 10-24-2004)

Sec. 78-137. - Prohibited illicit connections.

- (1) It is unlawful for any person to construct, use, maintain (or to allow the construction, use, maintenance or continued existence of) an illicit connection.
- (2) This prohibition expressly includes, without limitation, illicit connections made prior to the effective date of this Ordinance, and regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(Ord. No. 11-04, § 2.02, 10-24-2004)

Sec. 78-138. - Authorized discharges.

The following nonstormwater discharges are permissible, but only if they do not result in a violation of State of Michigan water quality standards and provided that they are undertaken in compliance with any applicable or required BMPs:

- (1) Water supply line flushing.
- (2) Landscape irrigation runoff.
- (3) Diverted stream flows.
- (4) Rising groundwater.
- (5) Uncontaminated groundwater infiltration to storm drains.
- (6) Uncontaminated pumped groundwater.
- (7) Discharges from potable water sources.
- (8) Foundation (footing) drains.
- (9) Air conditioning condensate.
- (10) Irrigation water.
- (11) Springs.
- (12) Water from crawl space pumps.
- (13) Footing drains and basement sump pumps.
- (14) Lawn watering runoff.

- (15) Waters from noncommercial car washing.
- (16) Flows from riparian habitats and wetlands.
- (17) Residential swimming pool water and other dechlorinated swimming pool water, provided that any filter backwash water that is present is treated.
- (18) Residual street wash water.
- (19) Discharges or flows from emergency fire fighting activities.
- (20) Discharges specifically authorized in writing by the authorized enforcement agency as being necessary to protect public health, welfare, and safety or the environment.

(Ord. No. 11-04, § 2.03, 10-24-2004)

Sec. 78-139. - Storage of hazardous or toxic materials in drainageway.

Except as permitted by law, it shall be unlawful for any person to store or stockpile, within a drainageway, any hazardous or toxic materials, unless adequate protection and/or containment has been provided so as to prevent any such materials from entering a stormwater drainage system or water body.

(Ord. No. 11-04, § 2.04, 10-24-2004)

Subdivision 3. - Inspection, Monitoring, Reporting, and Recordkeeping

Sec. 78-140. - Inspection and sampling.

The authorized enforcement agency may inspect and/or obtain samples from any discharger's premises as necessary to determine compliance with the requirements of this division. Upon request, the discharger shall allow properly identified representatives of the authorized enforcement agency to enter the premises of the discharger at all hours necessary for the purposes of such inspection or investigation, including, but not limited to, smoke/dye testing, televising pipes, sampling, and excavation. The authorized enforcement agency shall provide the discharger reasonable advance notice of the need for such access, if possible and consistent with protection of public health and safety and the environment. The properly identified representatives may place on the discharger's premises the equipment or devices used for such sampling or inspection. Unreasonable delays in allowing access to a premises is a violation of this division.

(Ord. No. 11-04, § 3.01, 10-24-2004)

Sec. 78-141. - Stormwater monitoring facilities.

If directed in writing to do so by the authorized enforcement agency, a discharger of stormwater runoff from any premises used for commercial or industrial purposes shall provide and operate equipment or devices for the monitoring of stormwater runoff to provide for inspection, sampling, and flow measurement of each discharge to a water body or a stormwater drainage system, as specified by the authorized enforcement agency. The authorized enforcement agency may require a discharger to provide and operate such equipment and devices if it is necessary or appropriate for the inspection, sampling, and flow measurement of discharges in order to determine whether adverse effects from, or as a result of, such discharges may occur. All such equipment and devices for the inspection, sampling, and flow measurement of discharges shall be installed and maintained at the discharger's expense in accordance with applicable laws, ordinances, and regulations.

(Ord. No. 11-04, § 3.02, 10-24-2004)

Sec. 78-142. - Accidental discharges.

Any discharger who accidentally discharges into a stormwater drainage system or a water body any substance other than stormwater or an authorized discharge shall immediately notify the authorized enforcement agency of the discharge. If the notification is given orally, a written report concerning the discharge shall be filed with the authorized enforcement agency within five days. The written report shall specify all of the following:

- (1) The composition of the discharge and the cause thereof.
- (2) The exact date, time, and estimated volume of the discharge.
- (3) All measures taken to clean up the discharge, all measures taken or proposed to be taken to mitigate any known or potential adverse impacts of the discharge, and all measures proposed to be taken to reduce and prevent any recurrences.
- (4) The names and telephone numbers of the individual making the report, and (if different) the individual who may be contacted for additional information regarding the discharge.

(Ord. No. 11-04, § 3.03, 10-24-2004)

Sec. 78-143. - Recordkeeping requirement.

Any person that violates any requirement of this division or that is subject to monitoring under this division shall retain and preserve for no less than three years any and 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 premises connected with the violation or subject to monitoring.

(Ord. No. 11-04, § 3.04, 10-24-2004)

Subdivision 4. - Enforcement

Sec. 78-144. - Sanctions for violation.

- (1) *Violation; municipal civil infraction.* Except as provided by subsection 144(6), and notwithstanding any other provision of the City's laws, ordinances, and regulations to the contrary, a person who violates any provision of this division (including, without limitation, any notice, order, permit, decision or determination promulgated, issued or made by the authorized enforcement agency under this division) is responsible for a municipal civil infraction, subject to payment of a civil fine of not less than \$1,000.00 per day for each infraction and not more than \$10,000.00 per day for each infraction, plus costs and other sanctions.
- (2) *Repeat offenses; increased fines.* Increased fines may be imposed for repeat offenses. As used in this section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this division (i) committed by a person within any 12-month period and (ii) for which the person admits responsibility or is determined to be responsible. The increased fine for a repeat offense under this division shall be as follows:
 - (a) The fine for any offense that is a first repeat offense shall be not less than \$2,500.00, plus costs.
 - (b) The fine for any offense that is a second repeat offense or any subsequent repeat offense shall be not less than \$5,000.00, plus costs.
- (3) *Amount of fines.* Subject to the minimum fine amounts specified in subsections 78-144(2)(a) and 78-144(2)(b), the following factors shall be considered by a court in determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this division: the type, nature, severity, frequency, duration, preventability, potential and actual effect, and economic benefit to the violator (such as delayed or avoided costs or competitive

advantage) of a violation; the violator's recalcitrance or efforts to comply; the economic impacts of the fine on the violator; and such other matters as justice may require. A violator shall bear the burden of demonstrating the presence and degree of any mitigating factors to be considered in determining the amount of a fine. However, mitigating factors shall not be considered unless it is determined that the violator has made all good faith efforts to correct and terminate all violations.

- (4) *Authorized local official.* Notwithstanding any other provision of the City's laws, ordinances, and regulations to the contrary, the following persons are designated as the authorized local officials to issue municipal civil infraction citations (directing alleged violators to appear in district court) and/or notices (directing alleged violators to appear at the City's Municipal Violations Bureau, as applicable) for violations of this division (in addition to any other persons so designated by the authorized enforcement agency): the City Engineer and his/her assigns, and any police officer.
- (5) *Other requirements and procedures.* Except as otherwise provided by this section, the requirements and procedures for commencing municipal civil infraction actions; issuance and service of municipal civil infraction citations; determination and collection of court-ordered fines, costs and expenses; appearances and payment of fines and costs; failure to answer, appear or, pay fines; disposition of fines, costs and expenses paid; and other matters regarding municipal civil infractions shall be as set forth in Act No. 236 of the Public Acts of 1961, as amended.
- (6) *[Violations.]* Any person who (1) at the time of a violation knew or should have known that a pollutant or substance was discharged contrary to any provision of this division, or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the authorized enforcement agency under this division, or (2) intentionally makes a false statement, representation, or certification in an application for, or form pertaining to a permit, or in a notice, report, or record required by this division, or in any other correspondence or communication, written or oral, with the authorized enforcement agency regarding matters regulated by this division; or (3) intentionally falsifies, tampers with, or renders inaccurate any sampling or monitoring device or record required to be maintained by this division; or (4) commits any other act that is punishable under state law by imprisonment for more than 90 days; shall, upon conviction, be guilty of a misdemeanor punishable by a fine of \$500.00 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.
- (7) *[Aiding and abetting.]* Any person who aids or abets another person in a violation of this division shall be subject to the sanctions provided in this section.

(Ord. No. 11-04, § 4.01, 10-24-2004)

Sec. 78-145. - Failure to comply; completion.

The authorized enforcement agency is authorized, after giving reasonable notice and opportunity for compliance, to correct any violation of this division or damage or impairment to the stormwater drainage system caused by a discharge and to bill the person causing the violation or discharge for the costs of the work to be reimbursed. The costs reimbursable under this section shall be in addition to fees, amounts or other costs and expenses required to be paid to the authorized enforcement agency under other sections of this division.

(Ord. No. 11-04, § 4.02, 10-24-2004)

Sec. 78-146. - Emergency measures.

If emergency measures are necessary to respond to a nuisance; to protect public safety, health, and welfare; and/or to prevent loss of life, injury, or damage to property, the authorized enforcement agency is authorized to carry out or arrange for all such emergency measures. Property owners shall be responsible for the cost of such measures made necessary as a result of a violation of this division, and shall promptly reimburse the City for all of such costs.

(Ord. No. 11-04, § 4.03, 10-24-2004)

Sec. 78-147. - Cost recovery for damage to stormwater drainage system.

Any person who discharges to a stormwater drainage system or a water body, including, but not limited to, any person who causes or creates a discharge that violates any provision of this division, produces a deposit or obstruction or otherwise damages or impairs a stormwater drainage system, or causes or contributes to a violation of any federal, state, or local law governing the City, shall be liable to and shall fully reimburse the City for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the City as a result of any such discharge, deposit, obstruction, damage, impairment, violation, exceedence or noncompliance. The costs that must be reimbursed to the City shall include, but shall not be limited to, all of the following:

- (1) All costs incurred by the City in responding to the violation or discharge, including, expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring, and treatment, as a result of the discharge, violation, exceedence or noncompliance.
- (2) All costs to the City of monitoring, surveillance, and enforcement in connection with investigating, verifying, and prosecuting any discharge, violation, exceedence, or noncompliance.
- (3) The full amount of any fines, assessments, penalties, and claims, including natural resource damages, levied against the City, or any City representative, by any governmental agency or third party as a result of a violation of applicable laws or regulations that is caused by or contributed to by any discharge, violation, exceedence, or noncompliance.
- (4) The full value of any City staff time (including any required overtime), consultant and engineering fees, and actual attorney fees and defense costs (including the City legal counsel and any special legal counsel), associated with responding to, investigating, verifying, and prosecuting any discharge, violation, exceedence or noncompliance, or otherwise enforcing the requirements of this division.

(Ord. No. 11-04, § 4.04, 10-24-2004)

Sec. 78-148. - Collection of costs; lien.

- (1) Costs incurred by the City pursuant to sections 78-145, 78-146, 78-147, and 78-149(1) shall constitute a lien on the premises, which shall be enforceable in accordance with Act No. 94 of the Public Acts of 1933, as amended from time to time, or as otherwise authorized by law. Any such charges that are delinquent for six months or more may be certified annually to the City Treasurer, who shall enter the lien on the next tax roll against the premises, the costs shall be collected, and the lien shall be enforced in the same manner as provided for in the collection of taxes assessed upon the roll and the enforcement of a lien for taxes. In addition to any other lawful enforcement methods, the City shall have all remedies authorized by Act No. 94 of the Public Acts of 1933, as amended, and by other applicable laws.
- (2) The failure by any person to pay any amounts required to be reimbursed to the City as provided by this division shall constitute an additional violation of this division.

(Ord. No. 11-04, § 4.05, 10-24-2004)

Sec. 78-149. - Suspension of access to the stormwater drainage system.

- (1) *Suspension due to illicit discharges in emergency situations.* The authorized enforcement agency may, without prior notice, suspend access to the stormwater drainage system to any person or premises when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the stormwater drainage system or a water body. If the person 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 stormwater drainage system or the environment, or to minimize danger to persons, and bill the person for the costs to the City in taking such steps.

- (2) *Suspension due to the detection of illicit discharge.* Any person discharging to the stormwater drainage system in violation of this division may have their access to the system terminated, if the authorized enforcement agency determines that such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its access. It shall be unlawful for any person to reinstate access of the stormwater drainage system to a premises terminated pursuant to this section without the prior written approval of the authorized enforcement agency.

(Ord. No. 11-04, § 4.06, 10-24-2004)

Sec. 78-150. - Appeals.

Any person to whom any provision of this division has been applied may appeal in writing to the Kentwood City Commission Committee of the Whole, not later than 30 days after the action or decision being appealed. Such appeal shall identify the matter being appealed, and the basis for the appeal. The City Commission Committee of the Whole shall consider the appeal and make a decision whereby it affirms, rejects, or modifies the action being appealed. In considering any such appeal, the City Commission Committee of the Whole may consider the recommendations of the authorized enforcement agency and the comments of other persons having knowledge or expertise regarding the matter. In considering any such appeal, the City Commission Committee of the Whole may grant a temporary variance from the terms of this division 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 division provisions being appealed will present or cause unnecessary hardship for the person appealing; provided, however, that unnecessary hardship shall not include the need for a property owner to incur additional reasonable expenses in order to comply with the division; and
- (2) The granting of the relief requested will not prevent accomplishment of the goals and purposes of this division, nor result in less effective management of stormwater runoff.

(Ord. No. 11-04, § 4.07, 10-24-2004; Memo of 8-2-2012)

Sec. 78-151. - Judicial relief.

With the approval of the City, the authorized enforcement agency may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this division or of any permit, order, notice or agreement issued or entered into under this division. The action may seek temporary or permanent injunctive relief, damages, penalties, costs, and any other relief, at law or equity, that a court may order. The authorized enforcement agency may also seek collection of fines, penalties and any other amounts due to the City that a person has not paid.

(Ord. No. 11-04, § 4.08, 10-24-2004)

Sec. 78-152. - Cumulative remedies.

The imposition of a single penalty, fine, order, damage, or surcharge upon any person for a violation of this division, or of any permit, order, notice or agreement issued, or entered into under this Ordinance, shall not preclude the imposition by the City, the authorized enforcement agency, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions and remedies with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial, or administrative proceeding, conference, or hearing regarding the person.

(Ord. No. 11-04, § 4.09, 10-24-2004)

Subdivision 5. - Performance and Design Standards

Sec. 78-153. - Responsibility to implement BMPs.

The owner or operator of a premises used for commercial or industrial purposes shall provide, at the owner or operator's own expense, reasonable protection from an accidental discharge of prohibited materials or other wastes into the stormwater drainage system or water body through the use of structural and nonstructural BMPs. Further, any person responsible for a premises that is, or may be, the source of an illicit discharge may be required to implement, at the person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the stormwater drainage system or water body. 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.

(Ord. No. 11-04, § 5.01, 10-24-2004)