

AN ORDINANCE AMENDING CHAPTER 22 OF THE
ARLINGTON HEIGHTS MUNICIPAL CODE

BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS:

SECTION ONE: That Chapter 22, Sewers, of the Arlington Heights Municipal Code, is hereby amended as follows:

a. That Article V, Industrial Wastes, and Article VI, Penalty, are hereby renumbered as Articles VI and VII respectively.

b. That the following Article V, is hereby added:

Article V
Illicit Discharge Ordinance

Section 22-501 Purpose. The purpose of this Article is to provide for the health, safety, and general welfare of the citizens of the Village of Arlington Heights through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Article establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. This Article is intended to:

- (1) Regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- (2) Prohibit illicit connections and discharges to the municipal separate storm sewer system; and
- (3) Establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Article.

Section 22-502 Definitions. For the purposes of this Article, the following definitions are adopted:

- a. Authorized Enforcement Agent. The Director of Public Works and/or the Director of Engineering or designee.
- b. Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating

- procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- c. Clean Water Act. The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and any subsequent amendments thereto.
 - d. Construction Activity. Activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.
 - e. Hazardous Materials. Any material, including any substance, waste, or combination thereof, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
 - f. Illegal Discharge. Any direct or indirect non-stormwater discharge to the storm drainage system, except as exempted in Section 507 of this Article.
 - g. Illicit Connections. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drainage system including, without limitation, any conveyances that allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drainage system; any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an Authorized Enforcement Agent; or any drain or conveyance connected from a commercial or industrial land use to the storm drainage system that has not been documented in plans, maps, or equivalent records and approved by an Authorized Enforcement Agent.
 - h. Industrial Activity. Activities subject to NPDES industrial permits as defined in 40 CFR, Section 122.26 (b)(14).
 - i. National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. A permit issued by EPA [or by a state under authority delegated pursuant to 33 USC 1342(b)] that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
 - j. Non-stormwater Discharge. Any discharge to the storm drainage system that is not composed entirely of stormwater.
 - k. Pollutant. Anything that causes or contributes to pollution. Pollutants may include, without limitation: paints, varnishes, and solvents; oil and other automotive fluids; nonhazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers;

hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

- l. Storm Drainage System. Publicly-owned facilities by which stormwater is collected and/or conveyed, including without limitation, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- m. Stormwater. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- n. Stormwater Pollution Prevention Plan. A document that describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.
- o. Wastewater. Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

Section 22-503 Applicability. This Article shall apply to all water entering the storm drainage system generated on any developed or undeveloped lands unless explicitly exempted by an Authorized Enforcement Agent.

Section 22-504 Administration. Any powers granted or duties imposed upon the Authorized Enforcement Agent may be delegated in writing by the director of the Authorized Enforcement Agent to persons or entities acting on behalf of or in the employment of the Village of Arlington Heights.

Section 22-505 Severability. If any provision of this Article, or the application of any provision of this Article, is held unconstitutional or otherwise invalid, such occurrence shall not affect, impair, or invalidate other provisions of this Article, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Article.

Section 22-506 Minimum standards. The standards set forth in this Article are minimum standards. This Article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

Section 22-507 Prohibitions on discharges. No person shall discharge or cause to be discharged into the municipal storm drainage system or watercourses any materials, including, but not limited to, pollutants or waters containing any pollutants, that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement,

conduct, or continuance of any illegal discharge to the storm drainage system is prohibited except as follows:

- a. Water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising groundwater, groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, noncommercial washing of vehicles, natural riparian habitat or wetland flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), firefighting activities, and any other water source not containing pollutants.
- b. Discharges specified in writing by the Authorized Enforcement Agent as being necessary to protect public health and safety.
- c. Dye testing, but only with prior oral notification to the Authorized Enforcement Agent prior to the time of the test.
- d. Non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agent, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drainage system.

Section 22-508 Prohibition of illicit connections. The construction, use, maintenance, or continued existence of illicit connections to the storm drainage system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is considered to be in violation of this Article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

Section 22-509 Suspension of MS4 access. The Authorized Enforcement Agent may suspend, without prior notice, MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Authorized Enforcement Agent may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to the public.

Any person discharging to the MS4 in violation of this Article may have MS4 access terminated if such termination would abate or reduce an illicit discharge. The Authorized Enforcement Agent will notify a violator of the proposed termination of its MS4 access. The violator may petition the Authorized Enforcement Agent for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section without the prior approval of the Authorized Enforcement Agent.

Section 22-510 Industrial or construction discharges. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Authorized Enforcement Agent prior to the allowing of discharges to the MS4.

Section 22-511 Monitoring of discharges. This Section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

- a. The Authorized Enforcement Agent shall be permitted to enter and inspect facilities subject to regulation under this Article as often as may be necessary to determine compliance with this Article. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, then the discharger shall make the necessary arrangements to allow access to representatives of the Authorized Enforcement Agent.
- b. Facility operators shall allow the Authorized Enforcement Agent ready access to all parts of the premises for the purposes of inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- c. The Authorized Enforcement Agent shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Authorized Enforcement Agent to conduct monitoring and/or sampling of the facility's stormwater discharge.
- d. The Authorized Enforcement Agent has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- e. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Authorized Enforcement Agent and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- f. Unreasonable delays in allowing the Authorized Enforcement Agent access to a permitted facility is a violation of a stormwater discharge permit and of this Article. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Authorized Enforcement Agent reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Article.
- g. If the Authorized Enforcement Agent has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect

and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Authorized Enforcement Agent may seek issuance of a search warrant from any court of competent jurisdiction.

Section 22-512 Best management practices required. The Authorized Enforcement Agent will adopt requirements identifying best management practices for any activity, operation, or facility that may cause or contribute to pollution or contamination of stormwater, the storm drainage system, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at its own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drainage system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

Section 22-513 Watercourse protection. Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately-owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Section 22-514 Notification of spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials that are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drainage system, or water of the United States said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Authorized Enforcement Agent in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Authorized Enforcement Agent within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

Section 22-515 Enforcement. Whenever the Authorized Enforcement Agent finds that a person has violated a prohibition or failed to meet a requirement of this Article, the Authorized

Enforcement Agent may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit connections or discharges;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- e. Payment of a fine to cover administrative and remediation costs; and/or
- f. The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. The notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agent or a contractor and the expense thereof shall be charged to the violator.

Section 22-516 Appeal of notice of violation. Any person receiving a notice of violation may appeal the determination of the Authorized Enforcement Agent by filing a written notice of appeal with the Village Manager. The notice of appeal must be received within 15 days from the date of the notice of violation. The hearing on the appeal before the Village Manager or designee shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the Village Manager or their designee shall be final.

Section 22-517 Enforcement measures after appeal. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within days of the decision of the Village Manager or designee upholding the decision of the Authorized Enforcement Agent, then representatives of the Authorized Enforcement Agent shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the designated governmental agent or designated contractor to enter upon the premises for the purposes set forth above.

Section 22-518 Cost of abatement. Within 15 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment. If the amount due is not paid within a timely manner as determined by the decision of the Village Manager or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this Article shall become liable to the Village by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of one percent per annum shall be assessed on the balance beginning on the first day following the discovery of the violation.

Section 22-519 Injunctive relief. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. If a person has violated or continues to violate the provisions of this Article, the Authorized Enforcement Agent may petition a court of competent jurisdiction for a preliminary or permanent injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

Section 22-520 Violations deemed public nuisance. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

Section 22-521 Remedies not exclusive. The remedies listed in this Article are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Authorized Enforcement Agent to seek cumulative remedies.

SECTION TWO: The provisions of this Ordinance are severable, and the invalidity of any phrase, clause or part of this Ordinance shall not affect the validity or effectiveness of the remainder of this Ordinance.

SECTION THREE: All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION FOUR: This Ordinance shall be in full force and effect from and after its passage and approval and publication in pamphlet form, in the manner provided by law.

AYES:

NAYS:

PASSED AND APPROVED this 5th day of October, 2015.

Village President

ATTEST:

Village Clerk