

**STATE OF MICHIGAN
COUNTY OF WAYNE
CITY OF ALLEN PARK**

PROPOSED ORDINANCE #01-2022

AN ORDINANCE OF THE CITY OF ALLEN PARK CODE OF ORDINANCES; AMENDING CHAPTER 48, “UTILITIES”, ARTICLE IV, “STORMWATER AND WASTEWATER COLLECTION AND TREATMENT”, BY THE REPEAL AND READOPTION OF DIVISION 4 “DESIGN AND CONSTRUCTION REQUIREMENTS FOR STORMWATER FACILITIES” TO UPDATE THE DIVISION.

The City of Allen Park Ordains:

SECTION 1. Amendment to Code.

That Division 4 Design And Construction Requirements For Stormwater Facilities, under Chapter 48 “Utilities”, Article IV “Stormwater And Wastewater Collection And Treatment” is hereby repealed and readopted to hereafter read as follows:

Chapter 48 “Utilities”
Article IV “Stormwater And Wastewater Collection And Treatment”
Division 4 “Design And Construction Requirements For Stormwater Facilities”

Table of Contents

DIVISION 4.1. GENERAL PROVISIONS.....	1
.....SECTION 48-362 AUTHORITY.....	1
SECTION 48-363 PURPOSE.....	1
SECTION 48-364 TITLE.....	1
SECTION 48-365 ADMINISTRATION.....	2
SECTION 48-366 EFFECTIVE DATE.....	2
SECTION 48-367 STATE RULES.....	2
SECTION 48-368 NO WAIVER OF OTHER OBLIGATIONS.	2
SECTION 48-369 INCORPORATION BY REFERENCE.....	2

SECTION 48-370 SEVERABILITY.....	2
DIVISION 4.2: DEFINITIONS.....	2
SECTION 48-371 DEFINITIONS.....	2
DIVISION 4.3: APPLICABILITY.....	4
SECTION 48-372 GENERAL.....	4
SECTION 48-373 LOCAL REQUIREMENTS.....	4
DIVISION 4.4: STORM WATER CONSTRUCTION APPROVALS.....	5
SECTION 48-374 GENERAL REQUIREMENT.....	5
SECTION 48-375 APPLICATION FOR STORM WATER CONSTRUCTION APPROVAL.....	5
SECTION 48-376 FINANCIAL ASSURANCE.....	5
DIVISION 4.5: DESIGN AND CONSTRUCTION REQUIREMENTS FOR STORM WATER MANAGEMENT SYSTEMS.....	6
SECTION 48-377 GENERAL.....	6
SECTION 48-378 REQUIREMENTS FOR DESIGN OF STORM WATER MANAGEMENT SYSTEMS.....	6
DIVISION 4.6: FEES FOR STORM WATER CONSTRUCTION APPROVALS.....	6
SECTION 48-379 FEES.....	6
DIVISION 4.7: LONG-TERM MAINTENANCE.....	7
SECTION 48-380 DEMONSTRATION OF LONG-TERM MAINTENANCE.....	7
SECTION 48-381 SCOPE OF LONG-TERM MAINTENANCE.....	7
DIVISION 4.8: AUTHORITY AND DUTIES OF INSPECTORS.....	7
SECTION 48-382 AUTHORITY.....	7

SECTION 48-383 DUTIES OF INSPECTORS.....	8
DIVISION 4.9: COMPLIANCE AND ENFORCEMENT.....	8
SECTION 48-384 GENERAL.....	8
SECTION 48-385 INVESTIGATIONS, INFORMAL CONFERENCES, AND VOLUNTARY AGREEMENTS.....	8
SECTION 48-386 NOTIFICATION OF VIOLATION.....	8
SECTION 48-387 CONSENT AGREEMENT.....	9
SECTION 48-388 ADMINISTRATIVE COMPLIANCE ORDERS.....	9
SECTION 48-389 IMMINENT AND SUBSTANTIAL INJURY ORDERS.....	9
SECTION 48-390 MUNICIPAL CIVIL INFRACTIONS.....	10
SECTION 48-391 CIVIL ACTIONS.....	11
SECTION 48-392 CRIMINAL PENALTIES; IMPRISONMENT.....	12
SECTION 48-393 SEPARATE OFFENSES.....	12
DIVISION 4.10: APPEAL.....	12
SECTION 48-394.1 APPEAL.....	12
SECTION 48-394.2 APPEAL PROCEDURE	12

Sec. 48-362 Authority

This Ordinance is enacted pursuant to the Federal Water Pollution Control Act of 1972, 33 U.S.C. 1251 et seq., as amended; Part 31 of the Natural Resources and Environmental Protection Act of 1994 (“Part 31”), MCL 324.3101 et seq., as amended; the Individual Permit “Storm Water Discharges from Municipal Separate Storm Sewer Systems (MS4s) Individual Permit No. MI0060035” issued by the Michigan Department of Environment, Great Lakes and Energy (EGLE) Pursuant to Part 31; Act 288 of 1967 (Subdivision Control Act), MCL 560.101 et seq., as amended by the Land Division Act, MCL 560.101 et seq.; Act 283 of 1909 (County Road Law), MCL 224.1 et seq., as amended; Act 40 of 1056 (Drain Code, MCL 280.1 et seq., as amended; and Act 96 of 1987 (Mobile Home Commission Act), MCL 125.2301 et seq., as amended; the Charter County Law, MCL 45.515 et seq., the Home Rule Charter of Wayne County, Michigan (1981), as amended, and the Home Rule City Act (MCL 117.1 et seq.)

Sec. 48-363 Purpose

Prevention of pollution from storm water runoff and the protection of the quality of the waters of the state of Michigan is of utmost importance to the people of the City of Allen Park. It is the purpose of this Ordinance and any rules promulgated pursuant to this Ordinance:

To protect the environment against pollution and other effects from storm water runoff, and to protect the public health and safety;

To provide for the implementation of a storm water management program in the City of Allen Park and administrative rules to manage and prevent flooding, streambank erosion, pollution, and other effects from the storm water runoff;

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

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

To provide for the issuance of storm water construction approvals for construction activities subject to the requirements of this Ordinance.

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

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

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

Sec. 48-364 Title

This Ordinance shall be known and may be cited as the “City of Allen Park Storm Water Management Ordinance”

Sec. 48-365 Administration

This Ordinance shall be administered jointly by the City of Allen Park Department of Public Services and the Department of Engineering.

Sec. 48-366 Effective Date

The Storm Water Management Ordinance shall become effective upon approval of the City Council.

Sec. 48-367 State and Administrative Rules

Unless otherwise specifically provided in this Ordinance, the provisions of this Ordinance shall control over less stringent rules of the Michigan Department of Environment, Great Lakes and Energy (EGLE), unless contrary to law.

The City Council may adopt by resolution Administrative Rules promulgated (by any City department) pursuant to this ordinance for the implementation and management of this ordinance.

Sec. 48-368 No Waiver of Other Obligations

Nothing in this Ordinance or any rule promulgated pursuant to this Ordinance shall be construed to reduce, abate, alter, modify, amend, or affect any duty or obligation to preserve and protect environment, including the Combined Downriver Watershed or other waters of the state; to control soil erosion and sedimentation; to protect wetlands; or to prevent air, water, or other pollution.

Sec. 48-369 Incorporation by Reference

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

Sec. 48-370 Severability

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

DIVISION 2: DEFINITIONS

Sec. 48-371 As used in this Ordinance, the following terms have the following meanings:

Applicant means a person responsible for regulated construction activity on a development site who is seeking to obtain storm water construction approval.

Best management practice, or BMP means a Practice or combination of practices that have been determined by the City or County to be the preferred method of preventing, minimizing, or reducing pollution and other effects of stormwater runoff.

Bioretention area means a component of a stormwater control system that is comprised of depressed land area that contains specific soil, plant materials, and other features and is used for channel protection and/or water quality control.

Buffer strip means a zone that is used for filtering stormwater and to direct stormwater runoff into a stormwater control system and/or for providing maintenance access to a stormwater control system.

Catch basin means a structure to collect water from the surface and convey it into a closed conduit.

Closed conduit means an enclosed conveyance designed to carry stormwater runoff such that the surface of the water is not exposed to the atmosphere, including without limitation storm sewers, culverts, closed County drains, and pipes.

Construction activity means a human-made activity, including without limitation, clearing, grading, excavating, construction and paving, that results in an earth change or disturbance in the existing cover or topography of land, including any modification or alteration of a site or the “footprint” of a building that results in an earth change or disturbance in the existing cover or topography of land.

Conveyance means any structure or other means of safely conveying storm water and storm water runoff within a storm water management system, including without limitation a watercourse, closed conduit, culvert, or a bridge.

City means the City of Allen Park.

County Drains are open or closed drains within the jurisdiction of Wayne County established pursuant to the Michigan Drain Code of 1956, MCL 280.1 et seq., as amended.

Culvert means a structure, including supports, built to carry a feature (i.e. roadway) over a surface water or watercourse, with a clear span of less than 20 feet measured along the center of the feature being carried.

Design storm means a rainfall event of specific size and return interval that is used to calculate the water volume and peak flow rate that must be handled by a stormwater control system.

Detention or Detain means the temporary storage of stormwater runoff to control peak flow rates and/or provide pollutant removal before discharging the water to a surface water or closed conduit

Detention system means a component of a stormwater control system, either aboveground or belowground, that detains stormwater and stormwater runoff. Detention systems may include, without limitation, open detention basins and underground detention systems.

Development site means the property on which regulated construction activity will occur or is occurring or has occurred.

Director means the Director of the City of Allen Park Department of Public Services.

Drainage area means the entire upstream land area from which stormwater runoff drains to a particular location, including any off-site drainage area.

Extended detention means the storage and gradual release of stormwater from a detention system over a period of not less than 48 hours.

Flood control means methods used to reduce or prevent negative impacts of stormwater runoff.

Forebay means a settling basin constructed at the inlet used as a pretreatment system.

Long-Term Maintenance Agreement means an agreement executed by the City or County and the Property Owner in which identifies all of the stormwater control system components, maintenance responsibilities and schedule which obligates the Property Owner to maintain and perform maintenance on the system in perpetuity.

Manufactured treatment system means a component of a stormwater control system that is comprised of a manmade device or structure that is used as a pretreatment system

MS4 means a Municipal Separate Storm Sewer System which is a system of drainage (including, but not limited to, roads, storm drains, pipes, and ditches) that is publicly owned, not a combined sewer or part of a sewage treatment plant.

MS4 Permit means a permit under Section 402 of the Federal Water Pollution Control Act of 1972, as amended, and under Part 31 of the Michigan Natural Resources and Environmental Protection Act of 1994, as amended, that is required by regulated communities with MS4s that discharge to waters of the state.

Open detention basin means a component of a stormwater control system that is used as a settling basin constructed at the inlet used as a pretreatment system for a detention system.

Peak flow rate means the maximum instantaneous rate of flow at a particular location within a stormwater control system, usually in reference to a specific design storm event.

Permit Section means the City of Allen Park Department of Public Services, and the City Engineer.

Person means a natural person, trustee, court-appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency,

government corporation, municipal corporation, city, county, municipality, district, or other political subdivision, department, bureau, agency or instrumentality of federal, state, or local government, or other entity recognized by law as the subject of rights and duties.

Pollutant means any substance introduced into the environment that may adversely affect the public health, safety, welfare, or the environment, or the usefulness of a resource.

Pretreatment system means a structure, feature, or appurtenance, or combination thereof, either aboveground or belowground, that is used as a component of a stormwater control system to remove incoming pollutants from stormwater and stormwater runoff. Pretreatment systems may include, without limitation, forebays, manufactured treatment systems, and bioretention areas.

Property Owner means a person with legal title to real property on which a stormwater control system is constructed pursuant to this Ordinance

Regulated Construction Activity means construction activity that is subject to the provisions of this Ordinance or a rule promulgated pursuant to this Ordinance.

Storm Water means water resulting from precipitation, including without limitation rain, snow, and snowmelt.

Storm Water Construction Approval means an approval issued pursuant to this Ordinance and rules promulgated pursuant to this Ordinance.

Storm Water Management Program consists of ordinances, orders, rules, regulations, and other mechanisms that provide for the management of storm water and storm water runoff to prevent flooding and to ensure the restoration and /or protection of surface waters in the City of Allen Park. The Storm water management program consists of the requirements of this Ordinance and any rules or regulations promulgated under this Ordinance, and activities mandated by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to the City.

Storm Water Management System means any structure, feature or appurtenance subject to this Ordinance or a rule promulgated pursuant to this Ordinance that is designed to collect, detain, retain, treat, or convey storm water or storm water runoff, including without limitation buffer strips, swales, gutters, catch basins, closed conduits, detention systems, pretreatment systems, pavement, unpaved surfaces, or structures.

Stormwater Standards Manual means the manual published separately by the Wayne County Department of Public Services and updated periodically that outlines key elements of this Ordinance and the Rules and assists with their implementation. Specifically, the manual describes performance standards for stormwater control systems, design criteria for the various components of stormwater control systems, and design and maintenance information for various BMPs.

Storm Water Runoff means the excess portion of precipitation that does not infiltrate the ground, but “runs off” and reaches a conveyance, surface water, or watercourse.

Surface Water means a body of water, including without limitation seasonal and intermittent waters, in which the surface of the water is exposed to the atmosphere, including without limitation lakes, watercourses, and impoundments.

Underground detention system means one or more underground pipes and/or other structures that are utilized as a detention system.

Watercourse means an open conduit, either naturally or artificially created, that periodically or continuously conveys water, including without limitation, rivers, streams, vegetated swales, open channels, and open Drains.

Watershed means the complete area or region draining into a watercourse, surface water, or closed conduit.

DIVISION 4.3: APPLICABILITY

Sec. 48-372 GENERAL

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

construction activity that impacts storm water runoff into or around new or existing road rights-of-way within the jurisdiction of the City;

construction activity that impacts storm water runoff into or around City drains;

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

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

construction activity that impacts storm water runoff into, on or through property owned by the City; construction activity that impacts new or existing storm sewer systems owned, operated, or controlled by the City; and construction activity for new development or redevelopment that disturb one (1) or more acres, including projects less than one (1) acre that are part of a larger common plan of development or sale, and discharge to the City’s MS4, including projects where the City is the developer.

Sec. 48-373 Local Requirements

Nothing in this Ordinance, or in any rule promulgated pursuant to this Ordinance, invalidates any rule, regulation, or ordinance enacted by the City prior to the Effective Date of this Ordinance, or prevents the City from adopting or enacting a storm water management program applicable to activities within its jurisdiction.

Nothing in this Ordinance or in any rule promulgated pursuant to this Ordinance shall apply to construction activity that is subject to a storm water management program enacted by the City that imposes requirements equal to or more stringent than the minimum applicable requirements of this Ordinance.

The City, in its sole discretion, and to the extent permitted by law, may enter into an agreement with any local unit of government for the purpose of implementing, in whole or in part, this Ordinance and/or any rule promulgated pursuant to this Ordinance, with respect to construction activity within the jurisdiction of the local unit of government.

DIVISION 4.4: STORM WATER CONSTRUCTION APPROVALS

Sec. 48-374 General Requirements

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

Sec. 48-375 Application for Storm Water Construction Approval

Applicants shall submit a written application for a storm water construction approval to the City. The application shall be made in a form and manner approved by the City, and shall include all information and documentation required by the City similar to the requirements outlined in the 2021 Wayne County Standards Manual.

All proposed modifications to a storm water management system that has received a storm water construction approval issued by the City shall be submitted to the City in writing, together with all information and all supporting documentation required by the City pursuant to this Ordinance or rules promulgated pursuant to this Ordinance to support the proposed modification. A person shall not commence regulated construction activity associated with a proposed modification without the approval of the City.

Sec 48-376 Financial Assurance for Regulated Construction Activity

The City may require an Applicant to provide financial assurance for regulated construction activity.

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

The City may establish the form and amount of financial assurance to be provided; the events, circumstances, or occurrences that will cause the City to release the financial assurance mechanism; and other requirements for financial assurance to satisfy the purposes of this Ordinance.

DIVISION 4.5: DESIGN AND CONSTRUCTION REQUIREMENTS

Sec. 48-377 General

Except as provided below, storm water management systems shall be designed in accordance with the minimum requirements for performance and design that are set forth in the Wayne County Storm Water Standards (Adopted September 2021) and in rules promulgated pursuant to this Ordinance.

The City encourages the development and use of innovative storm water management system designs and construction techniques, including without limitation the use of non-structural practices to reduce storm water runoff and/or its water quality impacts, to achieve the flood control and water quality objectives of the Ordinance and the rules promulgated hereunder.

Notwithstanding any provision in this Ordinance or a rule promulgated pursuant to this Ordinance, the City may require storm water management systems to satisfy performance and/or design standards more stringent than the minimum requirements for performance and design set forth in this Ordinance and in rules promulgated pursuant to this Ordinance when necessary to address unique flood control or water resources protection issues at a development site, on adjacent properties, or downstream of a development site.

Sec. 48-378 Requirements for Design of Storm Water Management Systems

Selecting and designing storm water management systems to meet the requirements of this Ordinance and the rules promulgated pursuant to this Ordinance, including the design standards set forth in the 2021 Wayne County Storm Water Standards, shall be the responsibility of the applicant or its designee, subject to the approval of the City pursuant to this Ordinance and rules promulgated pursuant to this Ordinance. The City may deny a storm water construction approval for a system design that is not in compliance with these requirements.

In designing a storm water management system, the applicant shall consider all relevant and appropriate factors, including without limitation the following:

- the public health, safety, welfare, and the environment;
- the inconvenience caused by storm water runoff on the subject property;
- the long-term impact of regulated construction activity on storm water runoff on, from and beyond the property;
- the natural drainage pattern of the land;
- the impact of the regulated construction activity on the affected watershed(s); and
- the effect of complete upstream development on the subject property as determined by applicable master plans and/or storm water plans; and
- the extent of downstream improvements necessary for proper storm water drainage.

DIVISION 4.6: FEES FOR STORM WATER CONSTRUCTION APPROVALS

Sec. 48-379 Fees

A City agency may recommend to the City Council a written schedule to be adopted by the City to establish a fee system for administering and implementing the storm water management program. The fee system may include fees for application submittal and review, project overview,

compliance inspections, and any other task or service performed by the City to administer or implement the requirements of this Ordinance or rules promulgated hereunder. Fees may be refundable or nonrefundable, as determined appropriate by the City, and may include charges for time and materials utilized by the City in implementing and administering the requirements of this Ordinance or rules promulgated pursuant to this Ordinance. The schedule of fees may be adopted by Resolution of the City Council and adjusted from time to time.

DIVISION 4.7: LONG-TERM MAINTENANCE

Sec. 48-380 Demonstration of Long-Term Maintenance

The applicant for a storm water construction approval shall demonstrate to the City in the application or during the application review process, as determined appropriate by the City, that the storm water management system shall be maintained in perpetuity. This demonstration shall be made in the manner specified in rules promulgated pursuant to this Ordinance.

Sec. 48-381 Scope of Long-Term Maintenance

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

DIVISION 4.8: AUTHORITY AND DUTIES OF INSPECTORS

Sec. 48-382 Authority

Upon presentation of proper credentials and identification, and after stating the authority and purpose of the inspection, City inspectors shall be promptly permitted to enter and inspect a development site. The inspection shall be for the purpose of investigating the development site, storm water management systems, or components of storm water management systems, to determine compliance or non-compliance with this Ordinance, rules or regulations promulgated pursuant to this Ordinance, and/or storm water construction approvals issued pursuant to this Ordinance.

Sec. 48-383 Duties of Inspectors

While entering and performing an inspection on private property pursuant to Section 48-382 above, a City inspector shall observe and comply with all safety rules applicable to the premises.

DIVISION 4.9: COMPLIANCE AND ENFORCEMENT

Sec. 48-384 General

All persons are required to cooperate with the City to ensure that the requirements of this Ordinance, rules promulgated pursuant to this Ordinance, and storm water construction approvals issued hereunder are satisfied. Whenever possible, the City shall attempt to enter into voluntary agreements to resolve violations of this Ordinance, rules promulgated pursuant to this Ordinance, and storm water construction approvals issued hereunder.

Sec. 48-385 Investigations, Informal Conferences, and Voluntary Agreements

If the City believes that a violation of this Ordinance, a rule promulgated pursuant to this Ordinance, or a storm water construction approval issued hereunder may have occurred or exists, the City shall make a prompt investigation. If, after this investigation, the City determines that a violation has occurred or exists, the City shall attempt to enter into a voluntary agreement to resolve or correct the violation. An informal conference may be requested by the City or by any other person to facilitate a voluntary agreement.

If a voluntary agreement cannot be reached, the City shall take appropriate enforcement action pursuant to this Ordinance and other applicable provisions of law.

Sec. 48-386 Notification of Violation

If a voluntary agreement pursuant to Section 48-385 cannot be reached, the City shall issue written notice of a violation to the person or persons alleged to have caused or contributed to a violation of this Ordinance, a rule promulgated pursuant to this Ordinance, and/or an approval issued hereunder. A written notice of violation shall include a statement of facts upon which the violation is based.

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

Within fourteen (14) days of the receipt of a written response to a notice of violation, the City shall determine whether the response resolves and/or corrects the alleged violation. If the City determines that the response resolves and/or corrects the violation, then the plan for correcting the violation shall be incorporated into a consent agreement pursuant to Section 48-387.

Sec. 48-387 Consent Agreement

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

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

Sec. 48-388 Administrative Compliance Orders

If the City determines that violation of this Ordinance, a rule promulgated pursuant to this Ordinance, or a storm water construction approval issued hereunder has occurred or exists, the City may issue an administrative compliance order pursuant to this Section 48-388.

Except as provided in Section 48-389, the City may issue an administrative compliance order in the following circumstances:

the City determines that a person has violated a consent agreement entered into with the City; or
the City determines that a person has violated or continues to violate this Ordinance, a rule promulgated pursuant to this Ordinance, or a storm water construction approval issued hereunder,
and

the City has attempted to resolve the violation pursuant to Section 48-385 and 48-386 but no voluntary agreement or consent agreement has been entered into.

The administrative compliance order shall contain a statement of facts upon which the order is based, a description of the actions that must be taken to correct the non-compliance, a compliance schedule, and other requirements as might be reasonably necessary to address the non-compliance. Administrative compliance orders also may contain administrative fines and penalties, and such other monetary relief for the non-compliance, including without limitation amounts necessary to compensate the City for costs incurred investigating, administering, and enforcing this Ordinance or rules promulgated hereto.

Within twenty-eight (28) days of being issued an administrative compliance order, the person or persons receiving the order may appeal the issuance of the Order pursuant to Division 4.10 of this Ordinance.

Sec. 48-389 Imminent and Substantial Injury Orders

The City may issue an administrative order without attempting to resolve a violation by using the enforcement procedures described in Section 48-385 and 48-386 if the City finds that a violation of this Ordinance, a rule promulgated pursuant to this Ordinance, or a storm water construction approval issued hereunder constitutes or causes, or will constitute or cause, a substantial injury to the public health, safety, welfare, or the environment, and it is prejudicial to the interests of the people of the City to delay action.

Administrative orders issued pursuant to this Section 48-389 shall contain a statement of facts upon which the order is based, and notification to the person that it must immediately take action to discontinue, abate, correct, or otherwise address the imminent and substantial injury caused or likely to be caused by the non-compliance.

Within seven (7) days, the City shall provide the person an opportunity to be heard and to present any proof that the non-compliance does not or will not constitute imminent and substantial injury to the public health, safety, welfare or the environment.

An order issued pursuant to this Section 48-389 is effective on issuance and shall remain in effect for a period of not more than seven (7) days, unless the City brings an action to restrain the alleged non-compliance pursuant to Section 48-391 or 48-392 before the expiration of that period. If the City brings such an action within the seven day period, the order issued by the City shall remain in effect for an additional seven (7) days or such other period as is authorized by the court in which the action is brought.

Sec. 48-390 Municipal Civil Infractions

Violation; Municipal Civil Infraction

Except as provided by Section 48-391, a person who violates any provision of this Ordinance or rules promulgated hereunder, including without limitation any notice, order, storm water construction approval, agreement, decision, or determination promulgated, issued, made, or entered by the City under this Ordinance or rules promulgated hereunder, is responsible for a municipal civil infraction, subject to payment of a civil fine of no less than \$1,000 per day and not more than \$27,500 per day for each infraction, plus costs and other sanctions.

Repeat Offenses; Increased Fines.

Increased fines may be imposed for repeat offenses. As used in this section, “repeat offenses” means a second (or any subsequent) municipal or civil infraction violation of the same requirement or provision of this Ordinance or rule promulgated hereunder (a) that is committed by a person within any 12-month period and (b) for which the person admits responsibility or is determined to be responsible.

The increased fine for a repeat offense under this section shall be as follows:

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

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

Amount of Fines.

(1) Municipal Civil Infraction Citations. Subject to the minimum fine amounts specified in Section 48-390(a) and (b), the following factors shall be considered in determining the amount of a municipal civil infraction fine following the issuance of a municipal civil infraction citation for a violation of this Ordinance or rules promulgated pursuant to this Ordinance:

- (i) the type, nature, gravity, magnitude, severity, frequency, duration, preventability, potential and actual effect, cause (including whether negligent or intentional) and economic benefit to the violator (such as delayed or avoided costs or competitive advantage) of the violation;
- (ii) the violator’s recalcitrance, cooperation or efforts to comply;
- (iii) the violator’s compliance history (regardless whether prior enforcement proceedings were commenced);
- (iv) the economic impacts of the fine on the violator; and
- (v) such other factors 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.

(2) Municipal Civil Infraction Notices; Schedule of Fines.

Notwithstanding any provision of this Ordinance to the contrary, the amount of a municipal civil infraction fine due in response to the issuance of a municipal civil infraction notice for a violation as provided by Section 48-390(a) shall be according to the following schedule:

First Offense:	\$1,000
Second Offense:	\$2,500
Third Offense:	\$5,000

For any fine not paid in full within 30 days of the time specified for appearance in the municipal civil infraction violation notice, the fine amount due shall automatically be double the amounts listed immediately above. A copy of this schedule shall be posted at the City of Allen Park Department of Public Services.

Authorized City Officials.

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

Procedures.

Except as otherwise provided by this section, the procedures for municipal civil infraction actions shall be as set forth in Chapter 2 (Municipal Civil Infractions) of the Code of Ordinances of the City of Allen Park.

Sec. 48-391 Civil Actions

The City, by and through the City Attorney, may bring a civil action in the name of the City to enforce the provisions of this Ordinance and rules promulgated pursuant to this Ordinance. Nothing in this Ordinance shall preclude the City from instituting an action for appropriate legal and/or equitable relief in Wayne County Circuit Court to restrain, correct, or abate a violation of this Ordinance, a rule or regulation promulgated pursuant to this Ordinance, or a storm water construction approval issued hereunder; or to stop an illegal act; or to abate a nuisance; or to prevent pollution or flooding.

Sec. 48-392 Criminal Penalties; Imprisonment

Any person who

At the time of violation knew or should have known that a violation of this Ordinance, or any notice, order, storm water construction approval, or decision or determination promulgated, issued or made by the City under this Ordinance; or

Intentionally makes a false statement, representation, or certification in any application for, or form pertaining to, a storm water construction approval, or any other correspondence or communication, written or oral, with the City regarding matters regulated by this Ordinance; or

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 per violation, per day, or imprisonment for up to 90 days, or both in the discretion of the court.

Sec. 48-393 Separate Offenses

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

DIVISION 4.10: APPEAL

Sec. 48-394.1 Appeal

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

The Storm Water Appeals Board shall consist of the Director of the Department of Public Services; the City Administrator; and the City Engineer; or their designees. Meetings of the Storm Water Appeals Board shall be in person and shall be open to all interested parties.

Sec. 48-394.2 Appeal Procedure

An appeal shall be in writing, shall be addressed to the Storm Water Appeals Board c/o the Department of Public Services, and shall be received within twenty (20) days of the determination that is the subject of the appeal. The appeal shall be made in triplicate, shall set forth the specific act or matter complained of and in dispute, and shall include all documentation that supports the appellant's position. The appellant may be required to post a deposit at the time of filing to cover the costs of processing the appeal.

Within thirty (30) days of receipt of written appeal, the Department of Public Services shall acknowledge such recipient in writing, and shall set a day and time for an appellant hearing to be conducted in accordance with subsection (d). If appropriate, the Department of Public Services may schedule a conciliation meeting with the appellant in accordance with subsection (c).

Conciliation Meeting

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

After a conciliation meeting, if the appellant or the Department of Public Services determines that an appeal cannot be resolved through a conciliation meeting, the parties shall so inform the Storm Water Appeals Board in writing, and the appellate hearing scheduled pursuant to subsection (b) shall be conducted in accordance with subsection (d). Additional conciliation meetings shall not be necessary.

(3) If the Department of Public Services and the appellant agree that the subject of the appeal has been satisfactorily resolved through the conciliation meeting process or otherwise, the agreement shall be incorporated into a consent agreement pursuant to Section 48-387.

Hearing procedure

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

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

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

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

SECTION 2. Repeal.

All ordinances or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Saving Clause.

Nothing in this Ordinance or in the code hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquiring or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 4. Severability.

Should any word, sentence, phrase or any portion of this Ordinance be held in a manner invalid by any court of competent jurisdiction or by any state agency having authority to do so for any reason whatsoever, such holdings shall be construed and limited to such work, sentence, phrase, or any portion of the Ordinance held to be so invalid shall not be construed as affecting the validity of any of the remaining words, sentences, phrases or portions of this Ordinance.

SECTION 5. Codification; Scrivener's Errors:

- (a). Section 1 of this Ordinance shall be codified, and all other sections shall not be codified.
- (b). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.
- (c). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Administrator, or designee, without the need for a public hearing.

SECTION 6. Publication.

The Clerk for the City of Allen Park shall cause this ordinance to be published in the manner required by law.

SECTION 7. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Allen Park, County of Wayne, State of Michigan, at a regular meeting, called and held on the ___ day of ____, 2022.

GAIL McLEOD, Mayor
City of Allen Park

MICHAEL I. MIZZI, City Clerk
City of Allen Park

