

RECORD OF ORDINANCES

ORDINANCE NO. 2019-02

PASSED: February 5, 2019

Sponsored by: Administration

Referred to: General Gov't Services
Date: February 5, 2019

AN ORDINANCE AMENDING PART NINE OF THE CODIFIED ORDINANCES OF THE CITY OF MUNROE FALLS, ENTITLED "STREETS, UTILITIES AND PUBLIC SERVICES CODE", PARTICULARLY TITLE THREE THEREOF ENTITLED "UTILITIES", TO ESTABLISH AND ENACT CHAPTER 933 THEREOF ENTITLED "ILLICIT DISCHARGE AND ILLEGAL CONNECTION CONTROL" TO EFFECTUATE THE REGULATIONS FOR ILLICIT DISCHARGE AND CONNECTION CONTROL TO MUNICIPAL SEPARATE STORM SEWERS AND TO WATERS OF THE STATE ENVIRONMENTAL HEALTH CODE OF THE SUMMIT COUNTY COMBINED GENERAL HEALTH DISTRICT, AND DECLARING AN EMERGENCY.

WHEREAS, illicit discharges to the municipal separate storm sewer system, MS4, and to other receiving waters create water quality risks to public health; and

WHEREAS, illicit discharges may necessitate repair of storm sewer and ditches; damage to public and private property; and may damage water resources, by reducing water quality; and

WHEREAS, there are watershed-wide efforts to reduce illicit discharges to the Cuyahoga River and their tributaries in order to protect and enhance the unique water resources of the Cuyahoga River watershed.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MUNROE FALLS, COUNTY OF SUMMIT, AND STATE OF OHIO, THAT:

Section 1. City Council hereby establishes and enacts Chapter 933 of the City of Munroe Falls Codified Ordinances entitled "Illicit Discharge and Illegal Connection Control" to read henceforth as follows:

933.01 PURPOSE AND SCOPE.

The purpose of this chapter is to provide for the public health, safety, and general welfare of the citizens of the City of Munroe Falls the regulation of illicit discharges to the municipal separate storm sewer system (MS4) and waters of the State. This chapter establishes methods for controlling the introduction of pollutants into the MS4 and the waters of the state in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process as required by the Ohio Environmental Protection Agency (Ohio EPA). The objectives of this regulation are:

- (a) To prohibit illicit discharges and illegal connections to the MS4, onto the ground surface, into common drainage tiles, ditch, creek, stream or other bodies of water.
- (b) To establish legal authority to carry out inspections, monitoring procedures, and enforcement actions necessary to ensure compliance with this chapter.

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933.02 APPLICABILITY AND ADMINISTRATION.

This chapter shall apply to all residential, commercial, industrial, or institutional facilities responsible for discharges as described in Section 933.01(a) and on any lands in the City of Munroe Falls and:

(a) Where the City of Munroe Falls has entered into a memorandum of agreement with the Health District to provide such service, and

(b) Except for those discharges generated by the activities detailed in Section 933.06 (a)(1) to (b)(3) of this regulation.

933.03 DEFINITIONS.

The words and terms used in this chapter, unless otherwise expressly stated, shall have the following meaning:

(a) Authorized Enforcement Agency: The City, its employees and/or designees.

(b) Best Management Practices (BMPs): means 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 to storm water. 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) Community: means the City of Munroe Falls, its designated representatives, boards, or commissions.

(e) Environmental Protection Agency or United States Environmental Protection Agency (USEPA): means the United States Environmental Protection Agency, including but not limited to the Ohio Environmental Protection Agency (Ohio EPA), or any duly authorized official of said agency.

(f) Floatable Material: in general this term means any foreign matter that may float or remain suspended in the water column, and includes but is not limited to, plastic, aluminum cans, wood products, bottles, and paper products.

(g) Hazardous Material: means any material including any substance, waste, or combination thereof, which because of its quantity, concentration, 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.

(h) Illicit Discharge: as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit or noted in Section 7 of this regulation.

(i) Illegal Connection: means any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4.

(j) Industrial Activity: activities subject to NPDES Industrial permits as defined in 40 CFR, Section 122.26 (b)(14).

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(k) Municipal Separate Storm Sewer System (MS4): as defined at 40 C.F.R. 122.26 (b)(8), municipal separate storm sewer system means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(1) Owned or operated by a State, city, town, borough, county, parish, district, municipality, township, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over sewage, industrial wastes, including special districts under State law such as a sewer district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act that discharges to waters of the United States;

(2) Designed or used for collecting or conveying storm water;

(3) Which is not a combined sewer; and

(4) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2.

(l) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by the 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.

(m) Off-Lot Discharging Home Sewage Treatment System: means a system designed to treat home sewage on-site and discharges treated wastewater effluent off the property into a storm water or surface water conveyance or system.

(n) Owner/Operator/Person: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or on the owner's behalf.

(o) Pollutant: means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, hazardous materials, wastes, sewage, dissolved and particulate metals, animal wastes, residues that result from constructing a structure, and noxious or offensive matter of any kind.

(p) Premises: any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(q) Storm Water: any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(r) Wastewater: The spent water of a community. From the standpoint of a source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions.

(s) Waters of the state: means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground water.

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933.04 DISCLAIMER OF LIABILITY.

Compliance with the provisions of this chapter shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this chapter are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

933.05 CONFLICTS, SEVERABILITY, NUISANCES AND RESPONSIBILITY.

(a) Where this chapter is in conflict with other provisions of law or ordinance, the most restrictive provisions, as determined by the Authorized Enforcement Agency, shall prevail.

(b) If any clause, section, or provision of this chapter is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.

(c) This chapter shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this chapter shall not be a defense in any action to abate such a nuisance.

(d) Failure of the Authorized Enforcement Agency to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting there from, and shall not result in the Authorized Enforcement Agency, its officers, employees, or agents being responsible for any condition or damage resulting there from.

933.06 DISCHARGE AND CONNECTION PROHIBITIONS.

(a) Prohibition of Illicit Discharges. No person shall discharge, or cause to be discharged, an illicit discharge into the MS4. The commencement, conduct, or continuance of any illicit discharge to the MS4 is prohibited except as described below:

(1) Water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration; uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensate; irrigation water; springs; water from crawl space pumps; footer drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; and discharges or flows from fire fighting activities. These discharges are exempt until such time as they are determined by the Authorized Enforcement Agency to be significant contributors of pollutants to the MS4.

(2) Discharges specified in writing by the Authorized Enforcement Agency as being necessary to protect public health and safety.

(3) Discharges from off-lot household sewage treatment systems permitted by the Summit County Health District for the purpose of discharging treated sewage effluent in accordance with Ohio Administrative Code 3701-29-02(6) until such time as the Ohio Environmental Protection Agency issues a NPDES permitting mechanism for residential 1, 2, or 3 family dwellings. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance by the Summit County Board of Health. In compliance with the community Storm Water Management Program, discharges from all off-lot household sewage treatment systems must either be eliminated if found not to be eligible for an NPDES permit for existing discharges or

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receive coverage under an appropriate NPDES permit issued and approved by the Ohio Environmental Protection Agency. When such permit coverage is available, discharges from off-lot discharging household sewage treatment systems will no longer be exempt from the requirements of this regulation.

(b) Prohibition of Illegal Connections. The construction, use, maintenance, or continued existence of illegal connections to the MS4 is prohibited.

(1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(2) A person is considered to be in violation of this regulation if the person connects a line conveying illicit discharges to the MS4, or allows such a connection to continue.

933.07 MONITORING OF ILLICIT DISCHARGES AND ILLEGAL CONNECTIONS.

(a) Establishment of an Illicit Discharge and Illegal Connection Monitoring Program: The Health District has established this program to detect and eliminate illicit discharges and illegal connections to the MS4 including the systematic investigation of potential residential, commercial, industrial, and institutional facilities for the sources of any dry weather flows found as the result of these inspections.

(b) Inspection of Residential, Commercial, Industrial, or Institutional Facilities.

(1) The City of Munroe Falls, the Health District, and/or the City designee shall be permitted to enter and inspect facilities subject to this regulation as often as may be necessary to determine compliance with this regulation. At least 72 hours prior to any entrance into any private residential, commercial, industrial and institutional facility for inspection, notice of the entrance and inspection shall be provided to the person(s) having actual control over the premises to be inspected. No entrance and inspection inside a private residential, commercial, industrial and institutional facility shall occur without an adult having actual control over the premises present during the inspection unless so waived in writing.

(2) The City of Munroe Falls, the Health District, and/or the City designee shall have the right to set up at facilities subject to this regulation such devices as are necessary to conduct monitoring and/or sampling of the facility's storm water discharge, as determined by the City of Munroe Falls, the Health District, and/or the City designee.

(3) The City of Munroe Falls, the Health District, and/or the City designee shall have the right to require the facility owner/operator to install monitoring equipment as necessary. This sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the facility owner/operator at the owner/operator's expense.

(4) Any temporary or permanent obstruction to safe and reasonable access to the facility to be inspected and/or sampled shall be promptly removed by the facility's owner/operator at the written or oral request of the City of Munroe Falls, the Health District, and/or the City designee and shall not be replaced. The costs of clearing such access shall be borne by the facility owner/operator.

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(5) Unreasonable delays in allowing the City of Munroe Falls, the Health District, and/or the City designee access to a facility subject to this regulation for the purposes of illicit discharge inspection is a violation of this chapter.

(6) If the City of Munroe Falls, the Health District, and/or the City designee is refused access to any part of the facility from which storm water is discharged, and the City of Munroe Falls, the Health District, and/or the City designee demonstrates probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this chapter or any order issued hereunder, or to protect the public health, safety, and welfare, the City of Munroe Falls, the Health District, and/or the City designee may seek issuance of a search warrant, civil remedies including but not limited to injunctive relief, and/or criminal remedies from any court of appropriate jurisdiction.

(7) Any costs associated with these inspections, pollution source tracking, enforcement and abatement shall be assessed to the facility owner/operator.

933.08 RIPARIAN ZONE 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, 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.

933.09 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 which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the state 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 agency 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 agency 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.

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933.10 ENFORCEMENT.

(a) Notice of Violation. When the City of Munroe Falls, the Health District, and/or the City designee finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the City of Munroe Falls, the Health District, and/or the City designee may order compliance by written Notice of Violation. Such notice must specify the violation and shall be hand delivered, and/or sent by registered mail, to the owner/operator of the facility. Such notice may require the following actions:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges or illegal connections;
- (3) That violating discharges, practices, or operations cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or
- (5) The implementation of source control or treatment BMPs.

(b) If abatement of a violation and/or restoration of affected property is required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to remediate or restore within the established deadline, a legal action for enforcement may be initiated.

(c) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.

(d) Administrative Hearing. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the City of Munroe Falls, the Health District, and/or the City designee shall schedule an administrative hearing to determine reasons for non-compliance and to determine the next enforcement activity. Notice of the administrative hearing shall be hand delivered and/or sent registered mail.

(e) Injunctive Relief. It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this chapter pursuant to Ohio R.C. 3709.211. If a owner/operator has violated or continues to violate the provisions of this chapter, the City of Munroe Falls, the Health District, and/or the City designee may petition for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.

933.11 APPEAL OF NOTICE OF VIOLATION.

Any person receiving a Notice of Violation may appeal the determination of the City of Munroe Falls, the Health District, and/or the City designee. The notice of appeal must be received within 15 days from the date of the Notice of Violation. Hearing on the appeal before the City of Munroe Falls or Board of Health or their designee shall take place within 45 days from the date of receipt of the notice of appeal. The decision of the City of Munroe Falls or Board of Health or their designee shall be final.

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933.12 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 30 days of the decision of the City of Munroe Falls or Board of Health upholding the decision of the City of Munroe Falls, the Health District, and/or the City designee, then representatives of the authorized enforcement agency forward the nuisance to the City of Munroe Falls Law Director or Summit County Prosecutor for an appeal for injunctive relief or if authorized by the City of Munroe Falls or Board of Health, or their designee shall enter upon the subject private property to take any and all measures necessary to abate the violation and/or restore the property, Ohio R.C. 3707.02. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

933.13 COST OF ABATEMENT OF THE VIOLATION.

Within 60 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 within 45 days. If the amount due is not paid within a timely manner as determined by the decision of the City of Munroe Falls, the Health District, and/or the City designee 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 chapter shall become liable to the City of Munroe Falls, the Health District, and/or the City designee by reason of such violation.

933.14 INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. If a person has violated or continues to violate the provisions of this chapter, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

933.15 VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this regulation 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.

933.16 REMEDIES NOT EXCLUSIVE

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the Authorized Enforcement Agency to seek cumulative remedies.

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933.99 PENALTY.

Whoever violates or fails to comply with any of the provisions of this chapter shall be in violation of Ohio R.C. 3707.48, 3709.20, 3709.21 or 3709.22, and subject to penalties provided in Ohio R.C. 3707.99 and 3709.99.

Section 2. All other Chapters of Part Nine (Streets, Utilities and Public Services Code) remain unchanged.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

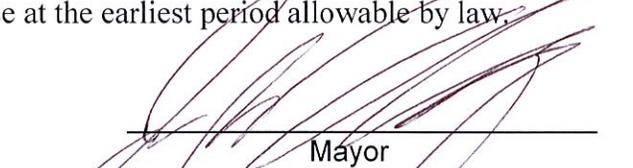
Section 4. This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, safety, and welfare of the residents of the City of Munroe Falls, and for the further reason that this Ordinance is required to be immediately effective in order adequately address illicit discharge and to protect the water resources serving this City and the State of Ohio, and provided that it receives the affirmative vote of two-thirds of the members elected to Council, it shall take effect immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force at the earliest period allowable by law.

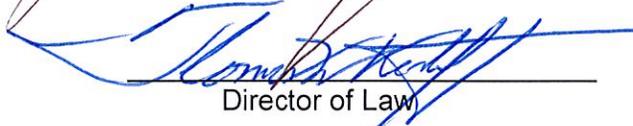


President of Council



Director of Finance



Mayor
Reviewed as to form:


Director of Law

I, the duly appointed and qualified Clerk of Council of the City of Munroe Falls, County of Summit and State of Ohio do hereby certify that this is a true copy of the original Ordinance adopted at a meeting of City Council duly held on the _____ day of _____, _____. Dated this _____ day of _____, _____.

Clerk of Council

First Reading: February 5, 2019
Second Reading: _____
Third Reading: _____

