

TEMPORARY ORDINANCE NO. 5-14

PERMANENT ORDINANCE NO. 5-14

AN ORDINANCE TO AMEND LANCASTER CODIFIED ORDINANCE CHAPTER 913 DRAINAGE GENERALLY, AND TO REPEAL EXISTING CHAPTER 913, AND TO DECLARE AN EMERGENCY

WHEREAS, the Law Committee has recommended updates;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. That Chapter 913 be amended pursuant to Exhibit A, attached hereto.

SECTION 2. That existing Chapter 913 be repealed in its entirety.

SECTION 3. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to properly regulate the streets and sidewalks as spring construction season begins, wherefore this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 4/14/14 after 3rd reading. Vote: Yeas 9 Nays 0

Approved: 4/14/14

Clerk: Teresa Lee Sandy

Offered by: Joe E. H. ...

Second by: Theresa M. Bender

Requested by Law Committee

Cheryl J. Pettus
President of Council

[Signature]
Mayor

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2014 and _____, 2014 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council

CHAPTER 913
Drainage Generally

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913.01 PURPOSE

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of Lancaster, Ohio through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance 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. The objectives of this ordinance are:

- (a) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user
- (b) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system
- (c) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

913.02 DEFINITIONS.

For the purposes of this ordinance, the following shall mean:

- (a) Service Safety Director or his authorized designee: employees or designees of the Service-Safety Directory designated to enforce this ordinance.
- (b) Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping 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 1 acres 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, which 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-storm water discharge to the storm drain system, except as exempted in Section 913.13.d.(l) of this ordinance.
- (g) Illicit Connections. An illicit connection is defined as either of the following:
 - (l) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks,

- regardless of whether said drain or connection had been previously allowed, permitted, or approved by an Service Safety Director or his authorized designee or,
- (ll) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an Service Safety Director or his authorized designee.
 - (h) Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
 - (i) MS4-Municipal Separate Storm Sewer System-Storm Drainage System
 - (j) National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. means 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.
 - (k) Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of storm water.
 - (l) Person : means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.
 - (m)Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous 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.
 - (n) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
 - (o) Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to 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.
 - (p) Storm Water. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
 - (q) Stormwater Pollution Prevention Plan: A document which 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.
 - (r) Wastewater means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

913.03 **APPLICABILITY.**

This ordinance shall apply to all water entering the storm drainage system generated on any developed and undeveloped lands unless explicitly exempted by an Service Safety Director or his authorized designee.

913.05 **RESPONSIBILITY FOR ADMINISTRATION.**

The Service Safety Director shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the Service Safety Director may be delegated in writing by the Service Safety Director to persons or entities acting in the beneficial interest of or in the employ of the agency.

913.06 **SEWER MAP; RESTRICTION ON TAP PERMIT ISSUANCE.**

A map of all sanitary and storm sewers and openings numbered shall be provided and kept in the office of the City Engineer. Permits may be issued to tap the sewers at a location approved by the City Engineer.

913.07 **SEWER TAP PERMIT AND FEE.**

The sewers shall be in the charge of the Safety-Service Safety Director. No person shall tap any sewer without the consent and by the direction of the Director, and without written permit from the City Engineer, who shall keep a record of the same. The applicant shall, before receiving a permit, pay into the City Treasury the applicable tap fee, to be credited to the appropriate fund.

913.08 **SEWER CONSTRUCTION OR CONNECTION SPECIFICATIONS**

The written permit to construct a house sewer or to make a connection to a public sewer shall specify the permissible use of such house sewer and connection, and such specifications shall be governed by the requirements of this chapter.

913.09 **OBSTRUCTING SEWERS AND UNLAWFUL TAPS PROHIBITED.**

No person shall throw any debris in any catch basin, inlet or manhole or tap any of the City sewers by breaking holes in the sewer pipes.

913.10 **TAPPING STORMWATER SEWERS.**

An inspection shall be performed upon 72 hour notification by the contractor and a record of the location and material used for each location shall be kept on file by the City Engineer's office

913.11 **SEVERABILITY.**

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

913.12 **ULTIMATE RESPONSIBILITY.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any

person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

913.13 DISCHARGE PROHIBITIONS.

- (a) Prohibition of Illegal Discharges to Sanitary Sewer-Surface water, rainwater from roofs, subsoil drainage, building foundations drainage, cistern overflow, clean water from condensers, waste water from water motors and elevators, and any other clean and unobjectionable waste water shall be discharged into street gutters or into a stormwater sewer or combined sewer, but in no case into a sanitary sewer.
- (b) Prohibition of Downspouts or Drains Emptying on Sidewalks-No person owning property which abuts or bounds upon a sidewalk shall cause, allow, or permit downspouts, drains or sewers to empty or discharge water or drainage upon any of the sidewalks of the City.
- (c) Prohibition of New Sump Pump Connections to Gutter-For all building permits issued after the effective date of this ordinance shall provide for the connection of all sump discharge lines directly to the nearest approved outlet
- (d) Prohibition of Illegal Discharges to Stormwater System-No person shall discharge or cause to be discharged into the municipal storm drain 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 storm water. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
 - (I) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - typically less than one PPM chlorine), fire fighting activities, and any other water source not containing Pollutants.
 - (II) Discharges specified in writing by the Service Safety Director or his authorized designee as being necessary to protect public health and safety.
 - (III) Dye testing by government agencies having jurisdiction within the municipality is an allowable discharge, but requires a verbal notification to the Service Safety Director prior to the time of the test.
 - (IV) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority

of the Federal Environmental Protection Agency, 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 drain system.

- (e) Prohibition of Illicit Connections-The construction, use, maintenance or continued existence of illicit connections to the storm drain 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 ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

913.14 Prohibition of Discharges to the Public Right-of-Way

No owner of real property in the City shall be permitted to discharge storm water or rain water or other types of clear water discharges upon or adjacent to the public right-of-way in such a manner that the discharge creates or tends to create a safety hazard for pedestrians and vehicular traffic on the public right-of-way whether such hazard is created in the area immediately bound by the owner property or at a distance from the owner's property.

- (a) The Service Safety Director is herewith charged with the responsibility of periodically surveying the city to determine those areas in which rain and other water discharges upon the public right-of-way have in the past and are likely to in the future create ice hazards during the winter season upon the public right-of-way in the City.
- (b) The Service Safety Director is also herewith charged with the responsibility of investigating complaints of discharge upon the public right-of-way causing a safety hazard to pedestrian or vehicular traffic on the public right-of-way and where, in their judgment, such discharge creates a safety hazard, to order the owner of the property causing such discharge, whether that property owner be the one immediately adjacent to the hazard or at a distance therefrom, to eliminate the water causing such hazard in conformity with the following provisions.
- (c) The Service Safety Director in conjunction with the City Engineer shall determine the source of such water creating such ice hazard and determine the most efficient and economical means of elimination of such hazard and issue such orders as are necessary to achievement of such elimination.
- (d) Such orders shall be served upon the property owner and shall provide for the remedial action to be taken within a definite period of time and shall identify with reasonable specificity the means by which such remedial action shall be taken.

913.15 SUSPENSION OF MS4 ACCESS.

- (a) Suspension due to Illicit Discharges in Emergency Situations-The Service Safety Director or his authorized designee may, without prior notice, suspend MS4

discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or 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 Service Safety Director or his authorized designee 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 persons.

- (b) Suspension due to the Detection of Illicit Discharge-Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Service Safety Director or his authorized designee will notify a violator of the proposed termination of its MS4 access.
- (c) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Service Safety Director or his authorized designee.

913.16 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water 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 City Engineer prior to the allowing of discharges to the MS4.

913.17 MONITORING OF DISCHARGES

(a) Applicability-This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

(b) Access to Facilities-The Service Safety Director or his authorized designee shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Service Safety Director or his authorized designee.

- (I) Facility operators shall allow the Service Safety Director or his authorized designee 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 storm water, and the performance of any additional duties as defined by state and federal law.
- (II) The Service Safety Director or his authorized designee shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Service Safety Director or his authorized designee to conduct monitoring and/or sampling of the facility's storm water discharge.

- (III) The Service Safety Director or his authorized or his designee 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.
- (IV) 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 Service Safety Director or his authorized designee and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (V) Unreasonable delays in allowing the Service Safety Director or his authorized designee access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Service Safety Director or his authorized designee reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.
- (VI) If the Service Safety Director or his authorized designee 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 ordinance, 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 ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the Service Safety Director or his authorized designee may seek issuance of a search warrant from any court of competent jurisdiction.

913.18 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The City Engineer will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain 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 storm water 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.

913.19 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.

913.20 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 water of the U.S. 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 Service Safety Director or his authorized designee 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 Service Safety Director 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.

913.21 ENFORCEMENT.

Notice of Violation.

Whenever the Service Safety Director or his authorized designee finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Service Safety Director or his authorized designee 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 storm water pollution or contamination hazards and the restoration of any affected property; and
- (e) Payment of a fine to cover administrative and remediation costs; and
- (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. Said 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 agency or a contractor and the expense thereof shall be assessed to the property taxes.

913.22 APPEAL OF NOTICE OF VIOLATION

(a) Right to Appeal. Any person affected by a decision of the Service Safety Director or his authorized designee or a notice or order issued under this Chapter shall have the right to appeal to the Hearing Board established under Section 918.08, provided that a written application for appeal is filed within twenty days after the day the decision, notice or order was served.

(b) Limitation of Authority. An application for appeal shall be based on a claim that the true intent of the rules legally adopted hereunder have been incorrectly interpreted, the provisions of this code do not apply, or the requirements of this code are adequately satisfied by other means.

913.23 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 Board upholding the decision of the Service Safety Director or his authorized designee, then the Service Safety Director or his authorized designee 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 government agency or designated contractor to enter upon the premises for the purposes set forth above.

913.24 COST OF ABATEMENT OF THE VIOLATION

Within 45 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 appeal of the amount of the assessment within 20 days. If the amount due is not paid within a timely manner as determined by the decision Service Safety Director or his authorized 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 article shall become liable to the city by reason of such violation.

913.25 INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the Service Safety Director or his authorized designee 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.

913.26 NOT USED

913.27 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 Ordinance 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.

913.28 RIGHT TO REIMBURSEMENT

The Service Safety Director or his authorized designee may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

913.29 REMEDIES NOT EXCLUSIVE

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Service Safety Director or his authorized designee to seek cumulative remedies.

913.30 ADOPTION OF ORDINANCE

This ordinance shall be in full force and effect immediately after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

913.99 CRIMINAL PENALTY

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be deemed guilty of an unclassified misdemeanor subject to thirty days jail and a maximum fine of one thousand dollars (\$1,000.00).