

VILLAGE OF VERMONTVILLE

ORDINANCE NO. 2015-09

AN ORDINANCE TO AMEND CHAPTER 2 OF ARTICLE 1 OF THE CODE OF ORDINANCES OF THE VILLAGE OF VERMONTVILLE RELATING TO DISCHARGES TO AND THE USE OF THE PUBLIC SEWER SYSTEM AND MATTERS RELATED THERETO

THE VILLAGE OF VERMONTVILLE HEREBY ORDAINS:

Section 1. Amendment of Section 2.2. Section 2.2 of Chapter 2 of Article 1 of the Code of Ordinances (the “Code”) of the Village of Vermontville (the “Village”), entitled “Definitions,” is hereby amended to add the following terms and definitions to read as follows:

W. “Dry Well” shall mean a seepage pit.

X. “Footing Drain” shall mean a pipe or conduit which is placed around the perimeter of a building foundation and which intentionally admits groundwater.

Section 2. Amendment of Section 2.6.A. Section 2.6.A. of Chapter 2 of Article 1 of the Village Code, entitled “Storm water Prohibited,” is hereby amended to read in its entirety as follows:

Section 2.6.A. Storm water.

1) No person shall discharge, or cause to be discharged, any storm water, surface water, ground water, roof runoff, sub surface drainage, cooling water, unpolluted air conditioning water or unpolluted industrial process waters to any Public Sewer. No footing drains or sump pumps shall be connected to any Public Sewer. All footing drain or sump pump water shall be discharged to Storm Sewers or dry wells.

2) Storm water and all other unpolluted drainage shall be discharged to sewers specifically designated as Storm Sewers, or to a Natural Outlet approved by the Village, the Eaton County Road Commission, Eaton County Drain Commissioner, Michigan Department of Environmental Quality, and/or other governmental agencies having jurisdiction. Industrial cooling water, unpolluted air conditioning water, or unpolluted process waters may be discharged to a Storm Sewer or Natural Outlet upon approval of the Village, the Eaton County Road Commission, and, where appropriate, upon approval of the Eaton County Drain Commissioner, Michigan Department of Environmental Quality, and/or other governmental agencies having jurisdiction.

3) No person shall connect or maintain a connection to the Public Sewer for the discharge of Storm Water, surface water, ground water, roof runoff, sub surface drainage, cooling water, unpolluted air conditioning water or unpolluted industrial process waters. In accordance with this Chapter, the Village may inspect premises connected to the Public Sewer for the presence of such improvements to connections and discharges and, if such connections are identified, order the Person to terminate such discharge to the Public Sewer and disconnect such footing drains or other improvements and connections in the Public Sewer.

Section 3. Amendment of Section 2.8. Section 2.8 of Chapter 2 of Article 1 of the Village Code, entitled “Powers and Authority of Inspectors,” is hereby amended to read in its entirety as follows:

2.8 Powers and Authority of Inspectors. The duly authorized representatives, employees or agents of the Village, including, but not limited to, the Superintendent and/or his or her agent, inspector, the Village’s engineer, representatives of the Barry Eaton District Health Department, and representatives of MDEQ bearing proper identification shall be permitted to enter at any time during reasonable or usual business hours in and upon all properties within the Village for the purposes of inspection, observation, measurement, sampling, testing and emergency repairs and/or disconnections in accordance with the provisions and enforcement of this Chapter. Any person who applies for and receives sewer services from the Village or owns real property within the Village shall be deemed to have given consent for all such activities including entrance upon that Person’s property.

Section 4. Amendment of Section 2.9.B. Section 2.9.B. of Chapter 2 of Article 1 of the Village Code is amended to read in its entirety as follows:

2.9.B. Cancellation of Permits; Disconnection of Service. Applications for connection permits may be canceled and/or sewer service disconnected by the Village for any violation of any part of this Chapter, including, without limitation, any of the following reasons:

- 1) Misrepresentation in the permit application as to the nature or extent of the property to be serviced by the Public Sewer.
- 2) Non-payment of Sewer Rates and Charges.
- 3) Failure to keep Building Sewers and control manholes in a suitable state of repair.
- 4) Discharges in violation of this Chapter including, but not limited to, discharges prohibited pursuant to Section 2.6.A.

5) Impermissible connections to the Public Sewer including, but not limited to, connection of footing drains or sump pumps to the Public Sewer.

6) Damage to any part of the Public Sewer.

Section 5. Amendment of Section 2.10. Section 2.10 of Chapter 2 of Article 1 of the

Village Code, entitled “Penalties,” is hereby amended to read in its entirety as follows:

2.10 Notice and Claim Procedures. This Section 2.10 has been adopted in accordance with Act 222 of the Public Acts of Michigan of 2001, as amended (“Act 222”) to set forth the notice and claim procedures applicable to an overflow or backup of the Public Sewer System, which, as defined in Act 222, shall be referred to for purposes of this Article as a “Sewage Disposal System Event.” To afford property owners, individuals and the Village greater efficiency, certainty and consistency in the provision of relief for damages or physical injuries caused by a Sewage Disposal System Event, the Village and any Person making a claim for economic damages, which, as defined in Act 222 and this Ordinance, shall be referred to for purposes of this Article IX as a “Claimant,” shall follow the following procedures:

A. A Claimant is not entitled to compensation unless the Claimant notifies the Village of a claim of damage or physical injury, in writing, within 45 days after the date the damage or physical injury was discovered by the Claimant, or in the exercise of reasonable diligence should have been discovered by the Claimant.

B. The written notice under subsection A shall contain the Claimant’s name, address, and telephone number, the address of the affected property, the date of discovery of any property damages or physical injuries, and a brief description of the claim. As part of the description of the claim, the Claimant shall submit an explanation of the Sewage Disposal System Event and reasonable proof of ownership and the value of any damaged personal property. Reasonable proof of ownership and the purchase price or value of the property may include testimony or records. Reasonable proof of the value of the property may also include photographic or similar evidence.

C. The written notice under subsection A shall be sent to the Superintendent, who is hereby designated as the individual at the Village to receive such notices pursuant to Section 19 of Act 222.

D. If a Claimant who owns or occupies affected property notifies the Village orally or in writing of a Sewage Disposal System Event before providing a notice of a claim that complies with subsections A, B and C, the Superintendent shall provide the Claimant with a written explanation of the notice requirements of subsections A, B and C sufficiently detailed to allow the Claimant to comply with said requirements.

E. If the Village is notified of a claim under subsection A and the Village believes that a different or additional governmental agency may be responsible for the claimed property damages or physical injuries, the Village shall notify the contacting agency of each additional or different governmental agency of that fact, in writing, within 15 business days after the date the Village receives the Claimant's notice under subsection A.

F. If the Village receives a notice from a Claimant or a different or additional governmental agency that complies with this Section 2.10, the Village may inspect the damaged property or investigate the physical injury. A Claimant or the owner or occupant of affected property shall not unreasonably refuse to allow the Village or its duly authorized representatives to inspect damaged property or investigate a physical injury.

G. Prior to a determination of payment of compensation by the Village, the Claimant shall provide to the Village additional documentation and proof that:

- 1) At the time of the Sewage Disposal System Event, the Village owned or operated, or directly or indirectly discharged into, that portion of the Public Sewer that allegedly caused damage or physical injury;
- 2) The Public Sewer had a defect;
- 3) The Village knew, or in the exercise of reasonable diligence, should have known, about the defect in the Public Sewer;
- 4) The Village, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct or remedy the defect in the Public Sewer; and
- 5) The defect in the Public Sewer System was a proximate cause that was 50% or more of the cause of the Sewage Disposal System Event and the property damage or physical injury.

H. Prior to a determination of payment of compensation by the Village, the Claimant shall also provide to the Village additional documentation and proof that neither of the following were a proximate cause that was 50% or more of the cause of the Sewage Disposal System Event:

- 1) An obstruction in a Service Connection or a Building Sewer or in the connection of the Building Sewer to the Public Sewer (also known as the "Service Connection") that was not caused by the Village; or,
- 2) A connection on the affected premises, including, but not limited to, a footing drain, sump system, surface drain, gutter, down spout or connection of any other sort that discharged any storm water, surface water, ground water, roof runoff, sub surface drainage, cooling water, unpolluted air conditioning water or unpolluted industrial process waters to the Public Sewer.

I. If the Village and a Claimant do not reach an agreement on the amount of compensation for the property damages or physical injury within 45 days after the receipt of notice under subsection A, the Claimant may institute a civil action in accordance with Act 222.

J. To facilitate compliance with this Section 2.10, the Village shall make available to the public information about the notice and claim procedures under this Section.

K. The notice and claim procedures set forth in this Chapter shall be applicable to a Sewage Disposal System Event involving the Public Sewer.

L. In the event of a conflict between the notice and claim procedures set forth in this Section 2.10 and the specific requirements of Act 222, the specific requirements of Act 222 shall control.

M. As provided in Section 19(7) of Act 222, the notice and claim procedures of this Article do not apply to claims for non-economic damages (as defined in Act 222) arising out of a Sewage Disposal System Event.

Any word, term or phrase used in this Article, if defined in Act 222, shall have the same meaning provided under Act 222.

Section 6. Amendment of Section 2.11. Section 2.11 of Chapter 2 of Article 1 of the

Village Code, entitled “Sewer Charges,” is hereby amended to read in its entirety as follows:

2.11 Sewer Charges.

A. The following charges (collectively referred to in this Chapter as “Sewer Rates and Charges”) shall be established by resolution adopted by the Village Council from time to time

- 1) Readiness to serve charge.
- 2) Usage charge shall be based on water meter reading.
- 3) Inspection fee for inspections of connections to the Public Sewer.
- 4) Late Penalty. There shall be a 10% penalty added to all bills not paid within thirty days.
- 5) Miscellaneous User Charge. The Village shall, from time to time, charge a Miscellaneous User Fee, as necessary, for miscellaneous services, repairs and related administrative costs associated with the Public Sewer, including without limitation, excessive inspection services not covered by the Inspection fee, unauthorized connection to and use of the Public Sewer, services to turn water service on and off, damages to the Public Sewer or any component

of the Public Sewer, disconnection from the Public Sewer, costs and expenses incurred by the Village as a result of damage to other premises, or the Public Sewer, costs and expenses incurred by the Village as a result of damage to other premises, attorney fees and costs for enforcement of violation(s) of this Chapter, and similar fees which are the result of a violation of this Chapter or a negligent or wrongful act of a Person whose premises is connection to the Public Sewer. The amount of the Miscellaneous User Fee shall be equal to the Village's actual costs for the miscellaneous services and/or repairs, plus the Village's related administrative costs, attorney's fees and costs for enforcement of violations of this article. The User shall be charged a fee established by resolution of the Village Council from time to time whenever the Village is requested by the User to turn on or off sewer service. Whenever the Village is requested to provide turn-on or off services at times other than regular business hours of the Village, there will be imposed an additional charge of labor and materials.

B. Lien. The Sewer Rates and Charges shall be a lien on the respective premises served by the Public Sewer. Whenever Sewer Rates and Charges shall be unpaid for three (3) months or more, they shall be considered delinquent. The Village shall certify all Sewer Rates and Charges delinquent as of April 1 and penalties thereon, annually, on or before May 1, of each year, to the tax assessing officer of the Village, who shall enter the delinquent Sewer Rates and Charges, interest and penalties, together with an additional penalty equal to 15% of the total, upon the next tax roll as a charge against the premises affected and such charge shall be collected and the lien thereof enforced in the same manner as ad valorem property taxes levied against such premises.

C. Enforcement of Lien.

1) If Sewer Rates and Charges are not paid on or before the due date, the Village, pursuant to Act 178 of the Public Acts of Michigan of 1939, as amended, may:

(a) discontinue the services provided by the Public Sewer by disconnecting the Building Sewer from the Public Sewer, and the service so discontinued shall not be reinstated until all sums then due and owing, including penalties, interest and all expenses incurred by the Village for shutting off and turning on the service, shall be paid to the Village;

(b) institute an action in any court of competent jurisdiction for the collection of the amounts unpaid, including penalties, interest and reasonable attorney fees; or

(c) enforce the lien created in Section 2.11.B., above.

These remedies shall be cumulative and shall be in addition to any other remedy provided in this Chapter or now or hereafter existing at law or equity.

2) Under no circumstances shall action taken by the Village to collect unpaid Sewer Rates and Charges, penalties and interest, invalidate or waive the lien created by Section 2.11.B., above. Before disconnecting service, the Village shall give thirty (30) days written notice to the User at the last known address according to the Village records and the Village Tax Assessment Roll. The notice shall inform the User that the User may request an informal hearing to present reasons why service should not be disconnected.

D. No Free Service. No free service shall be furnished by the Public Sewer to any Person, public or private, or to any public agency or instrumentality.

E. Turn on Following Disconnection; Payment of Sewer Rates and Charges. If the sewer service supplied to a premises has been discontinued for non-payment of Sewer Rates and Charges, service shall not be re-established until all delinquent Sewer Rates and Charges, or for violations of the provisions of this Chapter, including interest and penalties, and the turn-on charge has been paid. The turn-on charge shall be established by resolution of the Village Council from time to time.

Section 7. Addition of Section 2.12. A new section, Section 2.12 entitled “Enforcement,” is hereby added to Chapter 2 of Article 1 of the Village Code to read in its entirety as follows:

2.12. Enforcement.

A. Damage to System. No unauthorized Person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with, climb upon, or enter into any structure, appurtenance, or equipment of the Public Sewer or Sewage Works.

B. Notice to Cease and Desist. Except for violations of Section 2.12.A., hereof, any Person found to be violating any provision of this Ordinance shall be served by the Village with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

C. Civil Infraction. Any violation of Section 2.12.A., or any violation beyond the time limit provided for in Section 2.12.B., shall be a municipal civil infraction, for which the fine shall not be less than \$100 nor more than \$500 for the first offense and not less than \$250 nor more than \$1,000 for subsequent offenses, in the discretion of the Court, and in addition to all other costs, damages, and expenses, and actual attorney fees incurred by the Village enforcing this Chapter as ordered by the court. For purposes of this Section 2.12.C., “subsequent offense” means a violation of this Chapter committed by the same person within 12 months of a previous violation of the Chapter for which said

person admitted responsibility or was adjudicated to be responsible, provided, however, that offenses committed on subsequent days within a period of one week following issuance of a citation for a first offense shall all be considered separate first offenses. Each day that such violation occurs shall constitute a separate offense. Any person violating any of the provisions of this Chapter shall, in addition, become liable for any expense, including reasonable attorney fees, loss, or damage occasioned by reason of such violation. The Village President, or Superintendent or his/her authorized agent, including, but not limited to, the Village's contract operator of the System, is hereby authorized to issue, in the manner provided by law, citations for municipal civil infractions for violations of this Chapter.

D. Nuisance; Abatement. Any Nuisance or any violation of this Chapter is deemed to be a nuisance per se. The Village in the furtherance of the public health may enforce the requirements of this Chapter by injunction or other remedy and is hereby empowered to make all necessary repairs or take other corrective action necessitated by such nuisance or violation. The Person who violated the Chapter or permitted such nuisance or violation to occur shall be responsible to the Village for the costs and expenses, including reasonable attorney fees, incurred by the Village in making such repairs or taking such action as a Miscellaneous User Fee pursuant to Section 2.11.

E. Liability for Expenses. Any Person violating any of the provisions of this Chapter shall become liable to the Village and their authorized representatives for any expense, including reasonable attorney's fees, loss, or damage incurred by the Village by reason of such violation.

F. Remedies are Cumulative. The remedies provided by this Chapter shall be deemed to be cumulative and not mutually exclusive with any other remedies available to the Village.

Section 8. Severability. In the event that any section or provision of this ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect any other articles, sections or provisions of this ordinance, except so far as the article, section or portion so declared invalid shall be inseparable from the remainder of any portion thereof.

Section 9. Repeal. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 10. Publication; Effective Date. This Ordinance shall become effective upon its publication or upon the publication of a summary of its provisions in a local newspaper of general circulation in the Village.