

City of Flint, Michigan

*Third Floor, City Hall
1101 S. Saginaw Street
Flint, Michigan 48502
www.cityofflint.com*



Meeting Agenda - Final

Wednesday, October 9, 2019

5:00 PM

Committee Room

LEGISLATIVE COMMITTEE

Eva L. Worthing, Chairperson, Ward 9

*Eric Mays, Ward 1
Santino J. Guerra, Ward 3
Jerri Winfrey-Carter, Ward 5
Monica Galloway, Ward 7*

*Maurice D. Davis, Ward 2
Kate Fields, Ward 4
Herbert J. Winfrey, Ward 6
Allan Griggs, Ward 8*

Inez M. Brown, City Clerk

ROLL CALL

CHANGES AND/OR ADDITIONS TO AGENDA

City Council shall vote on any agenda changes.

PUBLIC SPEAKING

Members of the public shall have no more than two (2) minutes to address the City Council on any subject.

SPECIAL ORDERS

190358.1 Special Order/City of Flint Policies Discussions

A Special Order request by Councilperson Fields allow Council to include the City's Computer Use Policy when discussing the three other policies currently on its agendas (Anti-Bullying; Harassment and Discrimination in the Work Place; Alcohol & Drug Free Work Place and Testing).

190032 Special Order/COF Purchasing Ordinance/Emergency Purchases

A Special Order as requested by 1st Ward Councilperson Eric Mays to allow for a council discussion regarding the emergency purchases (Ord. No. 3865, Sec. 18-21.9).

ORDINANCES

190239 Amendment/Ordinance/Chapter 46 (Utilities)/Article V (Wastewater Disposal Regulations)/Division I (Use of Storm Sewers)

An ordinance to amend the Flint City Code of Ordinances by amending Chapter 46 (Utilities), Article V (Wastewater Disposal Regulations), Division I (Use of Storm Sewers), by adding new sections 46-125 through 46-150.

190323 Amendment/Ordinance/Chapter ____/Article ____/_____/Add Section ____ (Ethics and Accountability Board By-Laws)

An ordinance to amend the Flint City Code of Ordinances by amending Chapter _____, Article _____, _____, by adding Section _____ (Ethics and Accountability Board By-Laws).

RESOLUTIONS

180590 Approval/City of Flint Statement of Policy/Anti-Bullying

Resolution resolving that the Flint City Council agrees to adopt the Anti-Bullying Policy, as requested by Human Resources.

180591 Approval/City of Flint Statement of Policy/Harassment and Discrimination in the Work Place/Complaint Procedure

Resolution resolving that the Flint City Council agrees to adopt the Harassment and Discrimination in the Work Place Policy, and Complaint Procedure, as requested by Human Resources. [NOTE: Policy last adopted on April 22, 2015.]

190011 Approval/City of Flint Statement of Policy/Alcohol & Drug Free Workplace & Testing Policy

Resolution resolving that the Flint City Council agrees to adopt the Alcohol & Drug Free Workplace & Testing Policy, as requested by Human Resources.

OLD, OUTSTANDING DISCUSSION ITEMS

170028 Referral/Tax Breaks/Home-Based Businesses

Referral by Councilperson Mays to ADMIN, re: He would like to know if the current Administration has considered or is working toward offering tax breaks to city residents with home-based businesses, as well as asks that the City Council consider creating specific legislation in this regard. [Referral Action Date: 1/09/2017 @ City Council Meeting.]

170386 Ordinance Drafts/Water Bills

Referral by Councilperson Mays to MAYOR/ADM/LAW/: He would like two ordinances drafted for the council to review: 1. water lien relief, and 2. a limit on how far the city can go back in trying to collect past due water bills that have been estimated. [Referral Action Date: 7/6/2017 @ Finance Committee Meeting.]

180017 Discussion Item/Home Business Ordinance

Discussion item proposed by Councilperson Mays, re: He would like a discussion of the Home Business Ordinance on the next Legislative Agenda. [Referral Action Date: 1/3/2018 @ Governmental Operations Committee Meeting.]

180304 Referral/CWAC/Ordinance/Discussion

Referral by Councilperson FIELDS to LEGAL/PLANNING & DEVELOPMENT, re: She would like a copy of the CWAC Ordinance and to have a discussion item about the CWAC on the Legislative Agenda. [Referral Action Date: 6/20/2018 @ Grants Committee Meeting.]

180443 Discussion Item/Ordinance Amendment/Blight Infractions

Discussion Item as requested by Councilperson Mays, re: He would like to

discuss the possibility of amending the City Code with regard to blight infractions in order to include a \$500 fine and possible jail time. [Referral Action Date: 8/27/2018 @ City Council Meeting.]

180533 Referral/Lobbyists/Fee

A referral as requested by Councilperson Fields to LEGAL: She would like to legislation to require lobbyists to pay fees, as referenced in the new City of Flint Charter. [Referral Action Date: 10/3/2018 @ Finance Committee Meeting.]

180534 Discussion Item/Parking on Lots/Property

A discussion item as requested by Councilperson Mays: He would like to discuss parking on lots and on a homeowner's own property. [Referral Action Date: 5/8/2018 @ Finance Committee Meeting.]

180576 Discussion Item/Recreational Marihuana

A discussion item as requested by Councilperson Mays, re: He would like to discuss recreational marihuana. [Referral Action Date: 11/7/2018 @ Legislative Committee Meeting.]

190033 Discussion Item/CWAC Ordinance

Discussion Item as requested by Councilperson Mays, re: He would like to discuss the proposed changes to the City Wide Advisory [Council] Committee ordinance (Ord. No. 180523.2). [Referral Action Date: 2/04/2019 @ City Council Meeting.]

190359 Referral/Discussion/Flint City Code of Ordinances/Parking on Private Property

Referral by Councilperson Mays, re: He asks that Council take a look at the "parking ordinance", that is, City Code Section No. 28-103, Parking on Private Property. [Referral Action Date: 8/26/2019 @ Special Affairs Committee Meeting.]

190362 Referral/Copies/Nepotism Policy/Ethics Ordinance

Referral by Councilperson Fields to LEGAL, re: As part of the discussion of the three policies on the Legislative agenda, she would like copies of the Nepotism Policy and the Ethics Ordinance. [Referral Action Date: 8/21/2019 @ Special Legislative Committee Meeting.]

190363 Referral/Legal Opinion/Political Podcast & Facebook

Referral by Councilperson Fields to LEGAL, re: She would like to know if it's legal for a city employee to tape the Mayor on a podcast and then air it on her own (city employee) Facebook page. [Referral Action Date: 8/21/2019 @ Special Legislative Committee Meeting.]

190386 Referral/Ordinance/Sewer Liens

Referral by Councilperson Mays to LEGAL: re, He would like the ordinance that deals with sewer liens. [Referral Action Date: 9/4/2019 @ Finance Committee Meeting.]

NEW BUSINESS

ADJOURNMENT

180590

RESOLUTION NO.: _____

PRESENTED: 11-20-18

ADOPTED: _____

RESOLUTION TO ADOPT THE ANTI-BULLYING POLICY

BY THE MAYOR:

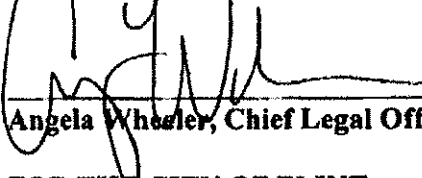
WHEREAS, The City of Flint intends to protect the rights of public servants and employees by adopting policies and procedures regarding bullying.

WHEREAS, The City has prepared an Anti-Bullying Policy. The policy is attached.

WHEREAS, Mayor, Karen W. Weaver recommends adopting the Anti-Bullying Policy.

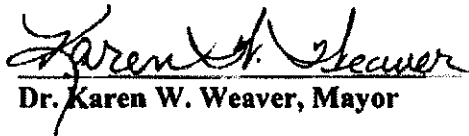
THEREFORE, BE IT RESOLVED that the Flint City Council agrees to adopt the Anti-Bullying Policy.

APPROVED AS TO FORM:



Angela Wheeler, Chief Legal Officer

FOR THE CITY OF FLINT:



Dr. Karen W. Weaver, Mayor

APPROVED AS TO FINANCE:



Hughey Newsome, Chief Financial Officer

APPROVED BY CITY COUNCIL:

Herbert Winfrey, City Council President

Resolution Routing

TO: Resolution Signatories
FROM: **Law Department**
SUBJECT: RESOLUTION FOR APPROVAL

This RESOLUTION has been forwarded to you for your respective review and approval.

Date recorded: 11/15/2018 18-6470

All documents should be reviewed within three working days after receipt by your office.

Anti-Bullying Policy

The attached resolution is submitted to the Legal Dept. for approval as to form only:

Review and Approval:	IN	OUT	<u>Approval</u>
1. City Attorney (Form Only):		11/15/2018	
2. Finance		11/15/2018	
3. City Administrator			

Please call Jennifer at ex. 2082



City of Flint

Policy: Anti-Bullying Policy	Original Date:
Issued by the City of Flint Legal Department and the Human Resources & Labor Relations Department	Revision Date:

Disclaimer: No statements in this policy are intended or set forth as contractual commitments or obligations of the City to any individual employee or group of employees or to establish an exception to the employment-at-will doctrine beyond that specified in contracts or pertinent collective bargaining agreements. If there are differences between the various collective bargaining agreements and this policy, the pertinent collective bargaining agreement takes precedence.

INTRODUCTION

The following is the City of Flint's policy prohibiting bullying of City public servants¹, employees or job applicants. The Complaint/Report Procedure described in this policy should be utilized to report bullying. The City will take appropriate action to prevent bullying and will protect the rights of public servants and employees who file complaints.

PURPOSE

The City of Flint ("City") considers workplace bullying unacceptable and will not tolerate it under any circumstances. This policy shall apply to all public servants, employees, contractors, interns, externs, and volunteers. Any employee found in violation of this policy will be disciplined, up to and including discharge.

A. Work Place Bullying Defined

The City defines bullying as persistent, malicious, unwelcome, severe and pervasive mistreatment that harms, intimidates, offends, degrades or humiliates an employee, whether verbal, physical or otherwise, at the place of work and/or in the course of employment.

The City promotes a healthy workplace culture where all employees are able to work in an environment free of bullying behavior.

The City encourages all public servants and employees to report any instance of bullying behavior. Any reports of this type will be treated seriously, investigated promptly and impartially. The complaint and procedure policy will be followed as found in this policy.

B. Work Place Bullying Behavior

The City considers the following types of behavior as workplace bullying. Please note, this list is not meant to be exhaustive and is only offered by way of example:

1. Exclusion or social isolation;
2. Excessive monitoring or micro-managing;
3. Personal attacks (angry outbursts, excessive profanity, or name-calling);
4. Encouragement of others to turn against the targeted employee;
5. Sabotage of a co-worker's work product or undermining of an employee's work performance;
6. Stalking;

¹ Public Servants: All persons employed or otherwise engaged by the Corporation of the City of Flint to conduct business on its behalf including but not limited to elected officials, appointed employees, members of boards and commissions, classified employees, contractual employees, and volunteers. Flint City Charter §1-405

7. Unwelcome touching or uncontested-to touching;
8. Invasion of another's person's personal space;
9. Unreasonable interference with an employee's ability to do his or her work (i.e., overloading of emails);
10. Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults and epithets; and
11. Conduct a reasonable person would find hostile, offensive, and unrelated to the employer's legitimate business interests

C. Complaint/Report Procedure

The following procedure shall be utilized by the City public servants and employees for the processing of complaints relating to bullying in the work place. This procedure shall apply only to those complaints directed against a person who at the time of the filing of the complaint is a City of Flint employee or public servant. The procedure may be utilized with regard to complaints covering administrators, supervisory personnel and co-employees. While the procedure itself is not directly applicable to complaints involving non-employees of the City of Flint, any bullying from such individuals in the City of Flint work place should be brought to the attention of the employee's supervisor and/or the Human Resources Director.

1. City of Flint Fact Finding Procedure

- i. An employee, regardless of position, who feels he or she is being or has been subjected to bullying is expected to notify the Human Resources Director or his/her supervisor (or a higher level supervisor if the immediate supervisor is the offending party) immediately by issuing their complaint in writing or verbally. All complaints will be forwarded to the Human Resources Director if the offending party. If the Human Resources Director is believed to have violated the City's Anti-Bullying Policy, the employee should immediately file a written or verbal complaint with the City Attorney.
- ii. The written complaint must provide the following:
 - a. The dates and times the instances of bullying have occurred;
 - b. The identity of the perpetrators;
 - c. Any known witnesses;
 - d. The nature of the conduct amounting to bullying; and
 - e. A request for an investigation.
- iii. If a verbal complaint is made then the person who took the complaint must reduce the complaint to writing and provide the requirements listed under Section E(1)(ii)

The Human Resources/Labor Relations Director then assigns an Investigator to the complaint. Information received during the complaint process will be treated as confidentially as may be permitted under the circumstances, giving due regard to an employee's right to be apprised of and respond to allegations made against him or her.

2. Investigation Process

- i. During the investigation a statement of public servants and/or employees or others with any possible knowledge of the situation are obtained through interviews. The statement may be reduced to writing for signature by the maker of the statement recorded or transcribed at the discretion of the investigator.
- ii. The complainant and the accused employee may be accompanied at the time of the statement by his or her union steward. Other persons may not be allowed at the time the statement is made.
- iii. Any physical and/or documentary evidence is collected or secured.
- iv. Upon completion of the investigation, a summary report of the findings and the Investigator's recommendation is prepared and submitted to the Human Resources Director.
- v. The Human Resources Director in consultation with the City Administrator will issue the final determination as to whether the City's Anti-Bullying Policy has been violated.
- vi. If it is found the Policy has been violated, the Human Resources and Labor Relations Director in consultation with the City Administrator will determine what amount of disciplinary action is appropriate, and initiate implementation of discipline.

Although confidentiality will be maintained to the extent practicable throughout the investigation process, notification to the accused may occur at any step of this investigation process.

At any stage in the process an investigation may be discontinued or held in abeyance due to conflicting or insufficient evidence, improper motivation or lack of jurisdiction as determined by the investigator. The Human Resources Director, in consultation with the City Administrator, shall have final authority to determine whether an investigation proceeds or is discontinued. If the Human Resources Director is the subject of such investigation, final authority shall rest with the City Attorney.

3. Unsubstantiated Complaints

- i. If, as a result of the investigation, it is determined no violation of the policy has occurred, or there is insufficient information from which to make a determination whether a violation has occurred: The complainant and alleged bully shall be notified of the finding and the reason(s) therefore.

D. False Allegations

- i. If after an investigation the City of Flint finds clear and convincing evidence a complainant knowingly made false complaints, the complainant may be subject to disciplinary action up to and including termination.

DRAFT

180591

RESOLUTION NO.: _____

PRESENTED: 11-20-18

ADOPTED: _____

RESOLUTION TO ADOPT HARASSMENT AND DISCRIMINATION IN THE WORK PLACE POLICY AND COMPLAINT PROCEDURE

BY THE MAYOR:

WHEREAS, The City of Flint intends to protect the rights of public servants and employees by adopting policies and procedures regarding discrimination and harassment.

WHEREAS, The City has prepared a Harassment and Discrimination in the Work Place Policy and Complaint Procedure. The policy is attached.

WHEREAS, Mayor, Karen W. Weaver recommends adopting the Harassment and Discrimination in the Work Place Policy and Complaint Procedure.

THEREFORE, BE IT RESOLVED that the Flint City Council agrees to adopt the Harassment and Discrimination in the Work Place Policy and Complaint Procedure.

APPROVED AS TO FORM:



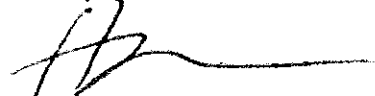
Angela Wheeler, Chief Legal Officer

FOR THE CITY OF FLINT:



Dr. Karen W. Weaver, Mayor

APPROVED AS TO FINANCE:



Hughey Newsome, Chief Financial Officer

APPROVED BY CITY COUNCIL:

Herbert Winfrey, City Council President

Resolution Routing

TO: Resolution Signatories
FROM: **Law Department**
SUBJECT: RESOLUTION FOR APPROVAL

This RESOLUTION has been forwarded to you for your respective review and approval.

Date recorded:

11/15/2018

18-6469

All documents should be reviewed within three working days after receipt by your office.

Harassment and Discrimination Policy

The attached resolution is submitted to the Legal Dept. for approval as to form only:

Review and Approval:	IN	OUT	<u>Approval</u>
1. City Attorney (Form Only):		11/15/2018	
2. Finance		11/15/2018	
3. City Administrator			

Please call Jennifer at ex. 2082



City of Flint

Policy: Harassment and Discrimination in the Work Place Policy and Complaint Procedure	Original Date:
Issued by the City of Flint Legal Department and the Human Resources & Labor Relations Department	Revision Date:

Disclaimer: No statements in this policy are intended or set forth as contractual commitments or obligations of the City to any individual employee or group of employees or to establish an exception to the employment-at-will doctrine beyond that specified in contracts or pertinent collective bargaining agreements. If there are differences between the various collective bargaining agreements and this policy, the pertinent collective bargaining agreement takes precedence.

DRAFT

INTRODUCTION

The following is the City of Flint's policy prohibiting discrimination and harassment of City public servants¹, employees or job applicants on any basis protected by federal, state or local law. The Complaint/Report Procedure described in this policy should be utilized to report discrimination and harassment. The City will take appropriate action to prevent discrimination and harassment and will protect the rights of public servants and employees who file complaints.

PURPOSE

Because the City of Flint ("the City") is an equal opportunity employer, it is the policy of the City that public servants, officials, employees and applicants shall receive consideration and treatment consistent with all equal employment opportunity laws in all terms and conditions of work. This includes a workplace free of discriminatory and harassing conduct as those terms are defined. The City does not discriminate against anyone on the basis of race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity, gender expression, familial status, age, or non-disqualifying physical or mental disability, or any basis protected by federal, state, or local law.

The City strives to provide a work environment which promotes respect and in which each employee has the opportunity to develop to his or her full potential. Discrimination and harassment are strictly prohibited, not only because they violate the law, but also because they are contrary to the City's interest in attracting, retaining and promoting the most talented, effective and dedicated employees.

The City has an internal Complaint/Report Procedure to address and resolve complaints of discrimination and harassment. The City will take appropriate action to prevent discrimination and harassment, and to protect the rights of public servants who file complaints.

A. Discrimination is Prohibited

¹ Public Servants: All persons employed or otherwise engaged by the Corporation of the City of Flint to conduct business on its behalf including but not limited to elected officials, appointed employees, members of boards and commissions, classified employees, contractual employees, and volunteers. Flint City Charter §1-405

The City requires all applicants, public servants, and employees be treated as individuals, on the basis of their own qualifications, skills, abilities, conduct and performance.

Discrimination on account of any status protected by law, including but not limited to those identified in the first paragraph above, is prohibited. This Policy applies to all employment practices, including recruitment, hiring, evaluation, promotion, transfer, discipline and termination, as well as to all forms of compensation and benefits.

All personnel working for the City, including public servants, contractors, students, interns, externs and volunteers are required to comply with this Policy, including the Complaint/Report procedure. All personnel must behave in a non-discriminatory and business-like manner in all dealings with co-workers and all non-employees of the City contracted in the course of employment. The Policy also prohibits discrimination and harassment by persons doing business with the City, including vendors.

B. Harassment is Prohibited

Additionally, this Policy prohibits harassment, both in the workplace and in other work-related activities, such as business trips and business-related meetings and social events. No employee should have to tolerate harassment of the type described in this Policy and the City takes allegations of harassment seriously. The City will promptly investigate all reports and complaints of prohibited harassment. If it is determined inappropriate conduct has occurred, the City will take corrective and remedial action appropriate to the situation. If any public servant or employee engages in harassment prohibited by this Policy, they will be subject to disciplinary action, up to and including discharge.

C. Sexual Harassment is Prohibited

Sexual harassment in the workplace or in other work-related settings is illegal and is prohibited by this Policy. Sexual harassment is typically defined as unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature, when:

- Submission to that conduct is made explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of that conduct is used as a basis for employment decisions; or
- The conduct has the effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

For the purpose of this Policy "unwelcome" means "unwanted." An employee should never assume any such conduct is welcomed by others.

Under the definition given above, sexual harassment includes a direct or implied request by a supervisor for sexual favors in exchange for favorable job action (such as a favorable review, a salary increase or promotion) or in exchange for avoiding unfavorable job action (such as demotion, discipline or discharge). Any such requests are strictly prohibited and will result in disciplinary action or discharge. If any supervisor or manager makes any such direct or implied request, it must be reported as described in the policy. The City will take actions appropriate to fully investigate allegations of harassment.

The legal definition of sexual harassment also includes other types of conduct. While it is not possible to describe all circumstances which may constitute sexual harassment, the following are examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances, including the severity and pervasiveness of the conduct:

- Sexual advances and propositions, with or without physical contact;
- Making or threatening reprisal for a negative response to sexual advances;
- Sexual epithets and jokes and written or oral remarks about a person's sex life, body or sexual activities, sexual deficiencies or prowess;
- Displaying or circulating obscene or sexually suggestive objects, pictures, cartoons, internet materials or screen-savers;
- Gossip or questions about someone's sexual experiences, gender identification, or orientation or talking about sexual experiences;
- Assaults, pinching, hugging, kissing or touching of an offensive or sexual nature or rubbing up against the body or impeding or blocking movement;
- Leering, wolf whistles, catcalls, sexual slurs or gestures, or sexually suggestive, insulting or degrading comments;
- Sexually suggestive or obscene letters, notes, e-mails or invitations; and
- Repeated solicitation, requests for dates and the like by anyone to someone who has indicated such attentions are not welcome.

Whether such conduct is deemed to be illegal or not, unwelcome and offensive conduct of these types by any individual toward anyone is prohibited by this Policy. Anyone found to be in violation of this policy is subject to disciplinary action up to and including termination and any other penalties recognized by Federal, State and Local law.

D. Other Types of Harassment are Prohibited

Not all harassment is sexual. This Policy also prohibits verbal or physical harassment of any person because of his or her race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity, gender expression, familial status, age, disability, height, weight, marital status, or protected status or exercise of legal rights, including the right to report violations of this Policy, where such conduct is unwelcome and has the effect

of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. Whether any such conduct is deemed to be illegal or not, conduct such as that described below is prohibited:

- Epithets, slurs, ridicule, insults, or threatening, intimidating or hostile acts, including those that purport to be "jokes" or "pranks," made to or about someone because of his or her membership in a protected class or exercise of legal rights;
- Stereotyping or offensive comments, cartoons, pictures or objects that denigrate or insult members of a protected class or those who exercise legal rights; and
- Demeaning, hostile or derogatory remarks directed at someone because of his or her protected class status or exercise of legal rights.

These are just some examples of conduct which may constitute harassment, depending upon the totality of circumstances, including the severity and pervasiveness of the conduct.

E. Complaint/Report Procedure

The following procedure shall be utilized by the City public servants and employees for the processing of complaints relating to discrimination and harassment. This procedure shall apply only to those complaints directed against a person who at the time of the filing of the complaint is a City of Flint employee or public servant. The procedure may be utilized with regard to complaints covering administrators, supervisory personnel and co-employees. While the procedure itself is not directly applicable to complaints involving non-employees of the City of Flint, any discrimination or harassment from such individuals in the City of Flint work place should be brought to the attention of the employee's supervisor and/or the Human Resources Director.

1. City of Flint Fact Finding Procedure

- i. An employee, regardless of position, who feels he or she is being or has been subjected to illegal discrimination or harassment by another person on the basis of their race, color, sex, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity, gender expression, familial status, age, disability height, weight, marital status, is expected to notify the Human Resources Director or his/her supervisor (or a higher level supervisor if the immediate supervisor is the offending party) immediately by issuing their complaint in writing or verbally. All complaints will be forwarded to the Human Resources Director unless the Human Resources Director is the offending party. If the Human Resources Director is believed to have violated the City's No Harassment and Discrimination in the Work Place Policy, the employee should immediately file a written or verbal complaint with the City Attorney.

- ii. The written complaint must provide the following:
 - a. The dates and times the instances of discrimination or harassment have occurred;
 - b. The identity of the perpetrators;
 - c. Any known witnesses;
 - d. The nature of the conduct amounting to the discrimination or harassment; and
 - e. A request for an investigation
- iii. If a verbal complaint is made then the person who took the complaint must reduce the complaint to writing and provide the requirements listed under Section E(1)(ii).

The Human Resources/Labor Relations Director then assigns an investigator to the complaint. Information received during the complaint process will be treated as confidentially as may be permitted under the circumstances, giving due regard to an employee's right to be apprised of and respond to allegations made against him or her.

2. Investigation Process

- i. During the investigation a statement of public servants and/or employees or others with any possible knowledge of the situation are obtained through interviews. The statement may be reduced to writing for signature by the maker of the statement recorded or transcribed at the discretion of the investigator.
- ii. The complainant and the accused employee may be accompanied at the time of the statement by his or her union steward. Other persons may not be allowed at the time the statement is made.
- iii. Any physical and/or documentary evidence is collected or secured.
- iv. Upon completion of the investigation, a summary report of the findings and the Investigator's recommendation is prepared and submitted to the Human Resources Director.
- v. The Human Resources Director in consultation with the City Administrator will issue the final determination as to whether the City's No Harassment and Discrimination in the Work Place Policy has been violated.

- vi. If it is found the Policy has been violated, the Human Resources and Labor Relations Director in consultation with the City Administrator will determine what amount of disciplinary action is appropriate, and initiate implementation of discipline.

Although confidentiality will be maintained to the extent practicable throughout the investigation process, notification to the accused may occur at any step of this investigation process.

At any stage in the process an investigation may be discontinued or held in abeyance due to conflicting or insufficient evidence, improper motivation or lack of jurisdiction as determined by the investigator. The Human Resources Director, in consultation with the City Administrator, shall have final authority to determine whether an investigation proceeds or is discontinued. If the Human Resources Director is the subject of such investigation, final authority shall rest with the City Attorney.

3. Unsubstantiated Complaints

- i. If, as a result of the investigation, it is determined no violation of the policy has occurred, or there is insufficient information from which to make a determination whether a violation has occurred: The complainant and alleged harasser shall be notified of the finding and the reason(s) therefore.

F. Federal, State and Local Laws

Federal, state and local laws prohibit illegal discrimination, harassment and retaliation. It is the policy of the City to comply with all state and federal laws which prohibit illegal harassment and discrimination in the workplace, including the Elliott-Larson Civil Rights Act and Title VII of the 1964 Civil Rights Act.

G. False allegations

If after an investigation the City of Flint finds clear and convincing evidence a complainant knowingly made false complaints, the complainant may be subject to disciplinary action up to and including termination.

RESOLUTION NO. 190011

(Resolution to Adopt the Alcohol & Drug Free Workplace and Testing Policy) is being prepared by the Administration for the 2/20/2019 Legislative Committee agenda. Policy attached.

CITY OF FLINT
ALCOHOL & DRUG FREE WORKPLACE AND TESTING POLICY

1. PURPOSE

The City of Flint recognizes the importance of a drug and alcohol free workplace. The abuse of drugs, alcohol or other chemical substances by an employee endangers the safety of the public, the employee, and other City employees. The City recognizes it is in its best interest, as well as the best interest of its employees and the public, to prevent and eliminate drug, alcohol and/or substance abuse in the work place. Any employee found using, possessing, selling, distributing or being under the influence of an illegal chemical substance and/or alcohol during working hours, while on City property, or while using City equipment will be subject to discipline up to and including termination of employment.

2. APPLICATION

This policy applies to all employees as well as all applicants for employment once they have received a conditional offer of employment.

Nothing in this policy shall conflict with the Collective Bargaining Agreements of any employees. If a provision of this policy conflicts, the Collective Bargaining Agreement prevails.

Because of Federal law requirements, any employee who is convicted of manufacturing, distributing, dispensing, possessing, or use of controlled substances in the workplace must report that fact within five days of the conviction to the Director of Human Resources and Labor Relations. If your job relates to, or is funded by a Federal grant or contract, the City is required to notify the Federal Government of your conviction within ten (10) days.

3. APPLICANT PRE-EMPLOYMENT TESTING

All applicants will undergo drug and/or alcohol testing following a conditional offer of employment, but prior to final hiring and assignment. Refusal to undergo a test, or a positive test, will result in the City withdrawing its conditional offer of employment. In addition, adulteration of a specimen or a drug or alcohol test will be considered as a refusal to undergo a test.

4. FOR CAUSE TESTING

Drug and/or alcohol testing may be conducted on any employee at any time the City has reasonable suspicion there is cause to believe an employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

- a. Observation of drugs or alcohol on or about the employee's person or in the employee's vicinity;
- b. Observation of conduct on the part of the employee that suggests that the employee is impaired or is under the influence of drugs or alcohol;

- c. Receipt of a report of drug or alcohol use by an employee while at work;
- d. Information that an employee has tampered with drug or alcohol testing at any time;
- e. Negative job performance patterns by the employee; or
- f. Excessive or unexplained absenteeism or tardiness.

The supervisor will verbally inform the employee of the reason for the test. Additionally, a written record of the situation leading to the drug or alcohol test will be created and signed by the supervisor(s) within 24 hours of the event. A copy of the report will be forwarded to the Human Resources and Labor Relations Department.

5. POST-ACCIDENT TESTING

Post-Accident drug and/or alcohol testing may be conducted on an employee where there has been damage to City property or equipment while the employee was at work or the employee or another person has sustained an injury while at work. The post-accident test will be administered while the employee is still on duty or as close as possible. No employee required to take a post-accident alcohol or drug test may use any alcohol or drugs of any kind following the accident until the employee undergoes the post-accident testing.

6. RANDOM TESTING

The City of Flint will randomly test employees for compliance with its drug-free workplace policy. As used in this policy, "random testing," means a method of selection of employees for testing, performed by an outside third party. The selection will result in an equal probability that any employee from a group of employees will be tested. Furthermore, the City of Flint has no discretion to waive the selection of an employee selected by this random selection method.

The City may, at various times, randomly select members of the following employment groups, at its discretion, for unannounced random testing for drugs or alcohol:

- a. Police officers
- b. Firefighters
- c. Safety-Sensitive Employees: Persons engaged in activities that directly affect the safety of the public.
- d. Employees whose work requires possession of a CDL.

7. SCHEDULED PERIODIC TESTING

The City of Flint reserves the right to conduct periodic testing on a regularly scheduled basis for employees in designated departments, classifications or workgroups.

8. RETURN TO DUTY TESTING

When an employee has a confirmed positive test result, or has been sent to a drug dependency program at the request of the City of Flint as a condition of continued

employment, the employee will be required to be tested at least six (6) times in the first twelve (12) months following the employee's return to active duty. Return to Duty tests must be conducted under direct supervision.

9. SUBSTANCES COVERED BY DRUG AND ALCOHOL TESTING

Employees will be tested for their use of commonly abused controlled substances, which include amphetamines, barbiturates, benzodiazepines, opiates, cannabinoids*, cocaine, methadone, methaqualone, phencyclidine (PCP), propoxyphene and chemical derivatives of these substances.

Employees must advise testing lab employees of all prescription drugs taken in the past month before the test and be prepared to show proof of such prescriptions to testing lab personnel.

** Despite Michigan law, marijuana for medical or recreational use is a Drug Enforcement Administration listed Schedule I controlled substance and therefore is prohibited.*

10. MARIJUANA USE PROHIBITED

The State of Michigan has enacted legislation allowing for the recreational and medical use of marijuana. Despite Michigan law, marijuana for medical or recreational use is a Drug Enforcement Administration listed Schedule I controlled substance. Therefore, the marijuana use remains prohibited when engaged in activities governed by Federal law specifically, the U.S. Department of Transportation (DOT) Drug and alcohol testing regulations.

The City of Flint, as an employer, is required to ensure the safety and protection of the citizens served by its employees. Therefore, the enactment of the Medical Marijuana Act (MMA) and recreational marijuana usage legislation does not override existing policies concerning the following:

- The City of Flint Alcohol & Controlled Substance Testing Policies and Procedures for Employers with Commercial Driver's License (CDL) or City policies affiliated with DOT Federal Transit Administration Regulations;
- Negligent entrustment of City vehicles;
- Driving while impaired or yielding positive test results post-accident, including the operation of City vehicles or a private vehicle while conducting City business;
- Any employee engaged in conduct or action prohibited by the MMA;
- Smoking marijuana in public;
- Possession of marijuana at schools or correctional facilities;
- Operating a vehicle under the influence of marijuana;
- Selling marijuana during hours of employment, at any City work site and/or on City property;
- Being in possession of marijuana while on City premises or on duty; and
- Working while under the influence of marijuana.

11. TESTING METHODS AND PROCEDURES

All testing will be conducted by a licensed independent medical laboratory, which will follow testing standards established by the state or federal government. Testing will be conducted on a urine sample provided by the employee to the testing laboratory under procedures established by the laboratory to ensure privacy of the employee, while protecting against tampering/alteration of the test results.

Employees will be considered to be engaged at work for the time spent in taking any tests and will be compensated for such time at their regular rate.

The City of Flint will pay for the cost of the testing, including the confirmation of any positive test result by gas chromatography. The testing lab will retain samples in accordance with state law, so an employee may request a retest of the sample at his or her own expense if the employee disagrees with the test result.

12. REFUSAL TO UNDERGO TESTING

Employees who refuse to submit to a test are subject to disciplinary action, up to and including immediate discharge.

13. POSITIVE TEST

If an employee tests positive on an initial screening test, the employee will be temporarily suspended while the confirmation test is being conducted. On receipt of the confirmation test, the employee will be subject to disciplinary action, up to and including discharge. Discipline selected by the City of Flint will depend on a variety of factors, including, but not limited to, the prior work record of the employee, the length of prior employment, the prior accident and attendance record of the employee, the circumstances that led to the testing, and the proposals by the employee to address the problem.

14. RIGHT TO EXPLAIN TEST RESULTS

All employees and applicants have the right to meet with the testing laboratory personnel, and with the City of Flint, to explain their test results. These discussions should be considered confidential, except information disclosed in such tests will be communicated to personnel within the City of Flint Human Resources and Labor Relations department or within the lab who need to know such information to make proper decisions regarding the test results or regarding the employment of the individual.

15. RIGHT TO REVIEW RECORDS

Employees have a right to obtain copies of all test results from the testing laboratory, or from the City of Flint. When an employee disagrees with the test results, the individual may request the testing laboratory repeat the test. Such repeat testing will be at the expense of the individual, unless the repeat test overturns the original report of the lab, in which case the City of Flint will reimburse the employee for the costs incurred for the retest.

16. CONFIDENTIALITY REQUIREMENTS

All records concerning test results will be kept in medical files that are maintained separately from the personnel file of the employee.

Testing laboratories may conduct testing only for substances included on the disclosure list provided to the individual, and may not conduct general testing related to the medical conditions of the individual that are unrelated to drug use.

17. RETESTING

Employees may request a retest of their positive test results within five (5) working days after notification by the City of Flint of such positive test result. This retest is at the expense of the individual, unless the original test result is called into question by the retest.

Where the employee or applicant believes the positive test result was affected by taking lawful or prescribed substances, the individual may be suspended without pay pending receipt of confirming information to substantiate the claims of the individual. Normally, the individual will be provided no more than five (5) business days in which to provide this additional information.

Once City of Flint has determined whether there is evidence to indicate the test results are incorrect, the City of Flint will advise the individual of its decision.

18. TREATMENT, TERMINATION AND REHIRE

Employees who test positive for any drug(s) listed on the disclosure list have two (2) choices. One, the employee may agree to enter an authorized treatment program approved by the City of Flint, and agree to subsequent retesting for a period of two (2) years after returning from treatment. Or two, the employee will be terminated immediately and will not be considered for rehire until he or she can show he or she has remained drug-free for a period of two years or more.

19. RESPONSIBILITIES OF INDIVIDUALS

In order to comply with the provisions of this policy, each employee assumes the following responsibilities:

- a. *Working under the Influence of Performance Impairing Medication:* Employees who have been prescribed legal medications that might affect the safe performance of their duties are required to notify their supervisors prior to performing any hazardous or dangerous tasks.
- b. *Reporting to Work or Working While Impaired:* Employees may not report to work and may not continue to work while impaired by any restricted substance identified in this policy.
- c. *Reporting Violations:* The services provided by certain employees are performed, at times, under hazardous and dangerous conditions. Thus,

employees are encouraged to come forward and report any violation of this policy to management. This information may be instrumental in the prevention of serious accidents and injuries on the job.

Any questions concerning this policy, its interpretation or application should be directed to the Human Resources and Labor Relations Department.

Policy Enacted: 2004

Policy Revision: November 20, 2006

Policy Revision: December 4, 2018

ORDINANCE NO. _____

An ordinance to amend the Code of the City of Flint by amending Chapter 46, Utilities, Article V, Wastewater Disposal Regulations, Division 1, Use of Storm Sewers, by adding new Sections 46-125 through 46-150.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF FLINT:

Sec. 1. That the Code of the City of Flint shall be amended by amending Chapter 6, Utilities, Article V, Wastewater Disposal Regulations, Division 1, Use of Storm Sewers, by adding new Sections 46-125 through 46-150, to read in their entirety as follows:

ARTICLE V. WASTEWATER DISPOSAL REGULATIONS

DIVISION 1. USE OF STORM SEWERS

§46-125 TITLE

THIS ORDINANCE SHALL BE KNOWN AS THE "CITY OF FLINT STORMWATER MANAGEMENT ORDINANCE" AND MAY BE SO CITED.

§46-126 Findings

THE CITY OF FLINT FINDS THAT:

WATER BODIES, ROADWAYS, STRUCTURES, AND OTHER PROPERTY WITHIN, AND DOWNSTREAM OF THE CITY OF FLINT ARE AT TIMES SUBJECTED TO FLOODING;

FLOODING IS A DANGER TO THE LIVES AND PROPERTY OF THE PUBLIC AND IS ALSO A DANGER TO THE NATURAL RESOURCES OF THE CITY OF FLINT AND THE REGION;

LAND DEVELOPMENT ALTERS THE HYDROLOGIC RESPONSE OF WATERSHEDS, RESULTING IN INCREASED STORM WATER RUNOFF RATES AND VOLUMES, INCREASED FLOODING, INCREASED STREAM CHANNEL EROSION, AND INCREASED SEDIMENT TRANSPORT AND DEPOSITION;

STORM WATER RUNOFF PRODUCED BY LAND DEVELOPMENT CONTRIBUTES TO INCREASED QUANTITIES OF WATER-BORNE POLLUTANTS;

INCREASES OF STORM WATER RUNOFF, SOIL EROSION, AND NON-POINT SOURCE POLLUTION HAVE OCCURRED AS A RESULT OF LAND DEVELOPMENT;

INCREASED STORM WATER RUNOFF RATES AND VOLUMES, AND THE SEDIMENTS AND POLLUTANTS ASSOCIATED WITH STORM WATER RUNOFF FROM FUTURE DEVELOPMENT PROJECTS WITHIN THE CITY OF FLINT WILL, ABSENT REGULATION AND CONTROL, ADVERSELY AFFECT THE CITY OF FLINT'S WATER BODIES AND WATER RESOURCES;

STORM WATER RUNOFF, SOIL EROSION, AND NON-POINT SOURCE POLLUTION CAN BE CONTROLLED AND MINIMIZED BY THE REGULATION OF STORM WATER RUNOFF FROM DEVELOPMENT;

THE STANDARDS, CRITERIA AND PROCEDURES CONTAINED IN THIS ORDINANCE ADDRESS THE DELETERIOUS EFFECTS OF STORM WATER RUNOFF;

THESE STANDARDS ARE NECESSARY FOR THE PRESERVATION OF THE PUBLIC HEALTH, SAFETY AND WELFARE AND THE PROTECTION OF WATER BODIES IN THE CITY OF FLINT.

THE CONSTITUTION AND LAWS OF THE STATE OF MICHIGAN AUTHORIZE LOCAL UNITS OF GOVERNMENT TO PROVIDE STORMWATER MANAGEMENT SERVICES AND SYSTEMS THAT WILL CONTRIBUTE TO THE PROTECTION AND PRESERVATION OF THE PUBLIC HEALTH, SAFETY AND WELFARE, AND TO THE PROTECTION OF THE STATE'S NATURAL RESOURCES.

PROPERTY OWNERS INFLUENCE THE QUANTITY, CHARACTER AND QUALITY OF STORM WATER FROM THEIR PROPERTY IN RELATION TO THE NATURE OF THE ALTERATIONS MADE TO PROPERTY.

§46-127 PURPOSE

IT IS THE PURPOSE OF THIS ORDINANCE TO ESTABLISH STORM WATER MANAGEMENT REQUIREMENTS AND CONTROLS TO ACCOMPLISH, AMONG OTHERS, THE FOLLOWING OBJECTIVES:

(A) TO REDUCE ARTIFICIALLY INDUCED FLOOD DAMAGE;

(B) TO MINIMIZE STORM WATER RUNOFF RATES AND VOLUMES FROM IDENTIFIED NEW LAND DEVELOPMENT;

(C) TO MINIMIZE THE DETERIORATION OF EXISTING NATURAL

WATERCOURSES, CULVERTS AND BRIDGES, AND OTHER STRUCTURES;

(D) TO ENCOURAGE WATER RECHARGE INTO THE GROUND WHERE GEOLOGICALLY FAVORABLE CONDITIONS EXIST;

(E) TO MINIMIZE AND CONTROL STORM AND SURFACE WATER POLLUTANT LEVELS;

(F) TO PROTECT THE INTEGRITY OF STREAM CHANNELS FOR THEIR BIOLOGICAL FUNCTIONS, AS WELL AS FOR DRAINAGE AND OTHER PURPOSES;

(G) TO MINIMIZE THE IMPACT OF DEVELOPMENT UPON STREAM BANK AND STREAMBED STABILITY;

(H) TO REDUCE EROSION FROM DEVELOPMENT OR CONSTRUCTION PROJECTS; AND

(I) TO REDUCE STORM WATER RUNOFF RATES AND VOLUMES, SOIL EROSION, AND WATER POLLUTION, WHEREVER PRACTICABLE, FROM LANDS THAT WERE DEVELOPED WITHOUT STORM WATER MANAGEMENT CONTROLS MEETING THE PURPOSES AND STANDARDS OF THIS ORDINANCE.

(J) TO REDUCE THE ADVERSE IMPACT OF CHANGING LAND USE ON WATER BODIES AND, TO THAT END, THIS ORDINANCE ESTABLISHES STANDARDS TO PROTECT WATER BODIES FROM DEGRADATION RESULTING FROM CHANGING LAND USE WHERE THERE

ARE INSUFFICIENT STORM WATER MANAGEMENT CONTROLS.

§46-128 APPLICABILITY, EXEMPTIONS AND GENERAL PROVISIONS

(A) THIS ORDINANCE SHALL APPLY TO USE OF THE CITY OF FLINT MUNICIPAL SEPARATE STORM SEWER SYSTEM, ALSO KNOWN AS THE FLINT MS4.

(B) THIS ORDINANCE SHALL ALSO APPLY TO ANY EARTH CHANGE (I) GREATER THAN OR EQUAL TO 1 ACRE (≥ 1 AC.) IN CONNECTION WITH NEW DEVELOPMENT OR REDEVELOPMENT PROJECTS, AND (II) LESS THAN 1 ACRE (≤ 1 ACRE) IN CONNECTION WITH NEW DEVELOPMENT OR REDEVELOPMENT PROJECTS THAT ARE PART OF A LARGER COMMON PLAN FOR DEVELOPMENT OR SALE.

(C) THIS ORDINANCE SHALL NOT APPLY TO THE FOLLOWING:

(1) THE INSTALLATION OR REMOVAL OF AN INDIVIDUAL MOBILE HOME WITHIN A MOBILE HOME PARK. THIS EXEMPTION SHALL NOT BE CONSTRUED TO APPLY TO THE CONSTRUCTION, EXPANSION, OR MODIFICATION OF A MOBILE HOME PARK OR TO THE FEES PAYABLE BY AN INDIVIDUAL MOBILE HOME UNDER §46-149.

(2) LANDSCAPING AND FARM PLANTING, TILLING, PLOWING AND HARVESTING. EARTH DISTURBANCES THAT ARE NOT ACTUAL FARMING AND LANDSCAPING ARE NOT EXEMPT FROM THIS ORDINANCE.

§46-129 DEFINITIONS

FOR THE PURPOSE OF THIS ORDINANCE, THE FOLLOWING WORDS AND PHRASES SHALL MEAN:

(A) BEST MANAGEMENT PRACTICES (BMPS) - NON-STRUCTURAL AND STRUCTURAL PREVENTIVE ACTIONS, OTHER ACTIONS, MANAGEMENT, CONTROLS AND DESIGNS THAT FURTHER THE PURPOSES OF THIS ORDINANCE. BMPS INCLUDE SCHEDULES OF ACTIVITIES, PROHIBITIONS OF PRACTICES, MAINTENANCE PROCEDURES AND OTHER MANAGEMENT PRACTICES TO PREVENT OR REDUCE POLLUTION OF THE WATERS OF THE STATE. EXAMPLES OF NON-STRUCTURAL BMPS INCLUDE, BUT ARE NOT LIMITED TO, BUFFERS ALONG WATER BODIES, MINIMIZATION OF THE DISTURBANCE OF SOILS AND VEGETATION, AND RESTRICTIONS ON DIRECTLY CONNECTED IMPERVIOUS SURFACE AREAS. EXAMPLES OF STRUCTURAL BMPS INCLUDE, BUT ARE NOT LIMITED TO, WET PONDS, EXTENDED DETENTION OUTLET STRUCTURES, FILTRATION VIA GRASSED SWALES, SAND FILTERS, UNCOVERED GROUND FILTER STRIPS, INFILTRATION BASINS AND INFILTRATION TRENCHES.

(B) BUILDING OPENING - ANY OPENING OF A SOLID WALL SUCH AS A WINDOW OR DOOR, THROUGH WHICH FLOODWATERS COULD PENETRATE.

(C) CITY - THE CITY OF FLINT, MICHIGAN, A MUNICIPAL CORPORATION.

(D) CITY DIRECTOR - THE DIRECTOR OF UTILITIES OF THE CITY OR OTHER PERSON OR PERSONS DESIGNATED BY THE DIRECTOR OF UTILITIES TO EXERCISE CONTROL OVER THE CITY'S STORM SEWERS AND MATTERS RELATING TO THE CITY MS4.

(E) CITY ENFORCEMENT OFFICER - ANY EMPLOYEE OF THE WATER POLLUTION CONTROL DIVISION OF THE DEPARTMENT OF UTILITIES OF THE CITY OF FLINT HOLDING THE TITLE OF WATER POLLUTION CONTROL SUPERVISOR, ASSISTANT WATER POLLUTION CONTROL SUPERVISOR, ENVIRONMENTAL COMPLIANCE SUPERVISOR, ENVIRONMENTAL COMPLIANCE INSPECTOR, SENIOR ENVIRONMENTAL COMPLIANCE ANALYST, ENVIRONMENTAL COMPLIANCE ANALYST, OR WATER QUALITY SUPERVISOR.

(F) CITY WATER POLLUTION CONTROL SUPERVISOR (CWPCS) – THE SUPERVISOR OF THE DEPARTMENT OF UTILITIES OF THE CITY OR OTHER PERSON OR PERSONS DESIGNATED BY THE CWPCS OR BY THE CITY ADMINISTRATOR TO EXERCISE CONTROL OVER THE CITY MS4.

(G) CONSTRUCTION SITE STORM WATER RUNOFF - STORM WATER RUNOFF FROM A DEVELOPMENT SITE DURING OR FOLLOWING AN EARTH CHANGE.

(H) DETENTION - A SYSTEM WHICH IS DESIGNED TO CAPTURE STORM WATER AND RELEASE IT OVER TIME THROUGH AN OUTLET STRUCTURE AT A CONTROLLED RATE.

(I) DEVELOP OR DEVELOPED OR DEVELOPMENT - THE INSTALLATION OR CONSTRUCTION OF IMPERVIOUS SURFACES ON A DEVELOPMENT SITE THAT REQUIRE, PURSUANT TO STATE LAW OR LOCAL ORDINANCE, CITY APPROVAL OF A SITE PLAN, PLAT, SITE CONDOMINIUM, SPECIAL LAND USE, PLANNED UNIT DEVELOPMENT, REZONING OF LAND, LAND DIVISION APPROVAL, PRIVATE ROAD APPROVAL OR OTHER APPROVALS REQUIRED FOR THE DEVELOPMENT OF LAND OR THE ERECTION OF BUILDINGS OR STRUCTURES; PROVIDED, HOWEVER, THAT FOR PURPOSES OF ARTICLE V, DIVISION 1 ONLY, DEVELOPED OR DEVELOPMENT SHALL NOT INCLUDE THE ACTUAL CONSTRUCTION OF, OR AN ADDITION, EXTENSION OR MODIFICATION TO, AN INDIVIDUAL SINGLE-FAMILY OR A TWO-FAMILY DETACHED RESIDENTIAL USE DWELLING OR APPURTENANCES TO THE SAME, IF THE EARTH CHANGE IS LESS THAN ONE ACRE, AND IF THE CITY DIRECTOR FINDS THAT SUCH CONSTRUCTION, ADDITION, EXTENSION OR MODIFICATION WILL NOT RESULT IN ADVERSE STORM WATER RUNOFF.

(J) DEVELOPER - ANY PERSON PROPOSING OR IMPLEMENTING THE DEVELOPMENT OF LAND.

(K) DEVELOPMENT SITE - ANY LAND THAT IS BEING OR HAS BEEN DEVELOPED, OR THAT A DEVELOPER PROPOSES FOR DEVELOPMENT.

(L) DISCHARGE - THE DIRECT OR INDIRECT INTRODUCTION (INCLUDING INFILTRATION) OF POLLUTANTS, GROUNDWATER,

WASTEWATER OR STORM WATER (WHETHER OR NOT IT IS CONTAMINATED AND WHETHER OR NOT IT CONTAINS POLLUTANTS) INTO THE CITY MS4 WHICH IS EITHER INTENTIONAL OR UNINTENTIONAL.

(M) DISCHARGER - ANY PERSON OR ENTITY WHO DISCHARGES.

(N) DRAIN - ANY DRAIN AS DEFINED IN THE DRAIN CODE OF 1956, AS AMENDED, BEING MCL 280.1, ET. SEQ., OTHER THAN AN ESTABLISHED COUNTY OR INTERCOUNTY DRAIN.

(O) DRAINAGE - THE PASSIVE OR ACTIVE COLLECTION AND CONVEYANCE OF WASTEWATER, GROUNDWATER, STORM WATER AND/OR SURFACE WATER.

(P) DRAINAGEWAY - THE AREA WITHIN WHICH SURFACE WATER OR GROUND WATER IS CARRIED FROM ONE PART OF A LOT OR PARCEL TO ANOTHER PART OF THE LOT OR PARCEL OR TO ADJACENT LAND.

(Q) EARTH CHANGE - ANY HUMAN ACTIVITY WHICH REMOVES GROUND COVER, CHANGES THE SLOPE OR CONTOURS OF THE LAND, DISTURBS THE GROUND SURFACE, OR EXPOSES THE SOIL SURFACE TO THE ACTIONS OF WIND AND RAIN. EARTH CHANGE INCLUDES, BUT IS NOT LIMITED TO, ANY EXCAVATING, SURFACE GRADING, FILLING, LANDSCAPING, OR REMOVAL OF VEGETATIVE ROOTS.

(R) EPA - THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

(S) EXEMPTED DISCHARGES - DISCHARGES AS SPECIFIED IN §46-143(C)-(D), OF THIS ORDINANCE.

(T) FLOOD OR FLOODING - A CONDITION OF PARTIAL OR COMPLETE INUNDATION OF NORMALLY DRY LAND AREAS.

(U) FLOOD PROTECTION ELEVATION (FPE) - THE BASE FLOOD ELEVATION PLUS ONE (1) FOOT AT ANY GIVEN LOCATION. THE BASE FLOOD ELEVATION IS THE COMPUTED ELEVATION TO WHICH FLOOD WATERS ARE ANTICIPATED TO RISE DURING THE BASE (1% ANNUAL CHANCE) EVENT.

(V) GRADING - ANY STRIPPING, EXCAVATING, CONTOURING, FILLING, AND STOCKPILING OF SOIL OR ANY COMBINATION THEREOF.

(W) HAZARDOUS SUBSTANCE - ANY SUBSTANCE AS DEFINED IN PART 201 OF THE MICHIGAN NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, ACT 451 OF 1994, AS AMENDED.

(X) ILLICIT CONNECTION - ANY METHOD OR MEANS FOR CONVEYING AN ILLICIT DISCHARGE INTO THE CITY MS4, OTHER THAN INFILTRATION.

(Y) ILLICIT DISCHARGE - ANY DISCHARGE TO THE MS4 THAT DOES NOT CONSIST ENTIRELY OF (I) DISCHARGES IN COMPLIANCE WITH THE TERMS OF AN NPDES PERMIT HELD BY THE DISCHARGER, (II) EXEMPTED DISCHARGES, OR

(III) UNCONTAMINATED STORM WATER, OR A COMBINATION OF THESE. UNCONTAMINATED STORM WATER IS STORM WATER WHICH DOES NOT CONTAIN POLLUTANTS WHICH ARE PRESENT ABOVE BACKGROUND CONCENTRATIONS REPRESENTATIVE OF THE AREA HAD A DISCHARGE OR RELEASE OF POLLUTANTS NOT OCCURRED.

(Z) IMPERVIOUS SURFACE – IMPERVIOUS MEANS A SURFACE AREA WHICH IS COMPACTED OR COVERED WITH MATERIAL THAT IS RESISTANT TO OR IMPEDES PERMEATION BY WATER, INCLUDING BUT NOT LIMITED TO, MOST CONVENTIONALLY SURFACED STREETS, ROOFS, SIDEWALKS, PATIOS, DRIVEWAYS, PARKING LOTS, AND ANY OTHER OILED, GRAVELED, GRADED, OR COMPACTED SURFACES.

(AA) MS4 – MUNICIPAL SEPARATE STORM SEWER SYSTEM.

(BB) MS4 PERMIT - A PERMIT ISSUED UNDER §46-134 AND OTHER APPLICABLE PROVISIONS OF THIS ORDINANCE.

(CC) MDEQ - MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY.

(DD) MUNICIPAL SEPARATE STORM SEWER SYSTEM. THE SYSTEM OF CONVEYANCES USED FOR COLLECTING AND TRANSPORTING STORM WATER OWNED BY THE CITY AND WHICH DISCHARGES TO SURFACE WATER OF THE STATE OR TO ANOTHER ENTITY'S MUNICIPAL SEPARATE STORM SEWER SYSTEM, BUT NOT INCLUDING (1) ANY

FACILITIES INTENDED TO BE USED FOR COLLECTING AND TRANSPORTING SANITARY OR OTHER WASTE WATER OR (II) ANY PRIVATELY OWNED SEWERS.

(EE) NATURAL WATERCOURSE – A WATERCOURSE THAT HAS NOT BEEN ALTERED ARTIFICIALLY IN A SIGNIFICANT MANNER.

(FF) NON-STORM WATER – WATER OTHER THAN STORM WATER.

(GG) NON-STORM WATER USE CHARGE – NON-STORM WATER USE CHARGE IS THE CHARGE APPLICABLE TO ANY NON-STORM WATER USE OF THE STORM WATER SYSTEM, AS DEFINED BY THE CITY DIRECTOR.

(HH) NPDES - NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM.

(II) PERSON - AN INDIVIDUAL, FIRM, PARTNERSHIP, ASSOCIATION, PUBLIC OR PRIVATE CORPORATION, PUBLIC AGENCY, INSTRUMENTALITY, OR ANY OTHER LEGAL ENTITY.

(JJ) PLANNING BOARD/COMMISSION - MEANS A CITY PLANNING COMMISSION CREATED UNDER THE MICHIGAN ZONING ENABLING ACT, 2006 PA 110, MCL 125.3101 ET. SEQ.

(KK) POLLUTANT - ANY DREDGED SPOIL, SOLID WASTE, VEHICLE FLUIDS, YARD WASTES, ANIMAL WASTES, AGRICULTURAL WASTE PRODUCTS, SEDIMENT, INCINERATOR RESIDUE, SEWAGE, GARBAGE, SEWAGE SLUDGE, MUNITIONS, CHEMICAL WASTES,

BIOLOGICAL WASTES, RADIOACTIVE MATERIALS, HEAT, WRECKED OR DISCARDED EQUIPMENT, ROCK, SAND, CELLAR DIRT, AND INDUSTRIAL, MUNICIPAL, COMMERCIAL AND AGRICULTURAL WASTE, ANY OTHER CONTAMINANT OR OTHER SUBSTANCE DEFINED AS A POLLUTANT UNDER THE CLEAN WATER ACT, AND ANY HAZARDOUS SUBSTANCE.

(LL) PROPERTY OWNER - ANY PERSON HAVING LEGAL OR EQUITABLE TITLE TO PROPERTY.

(MM) RETENTION - A SYSTEM WHICH IS DESIGNED TO CAPTURE STORM WATER AND CONTAIN IT BEFORE AND UNTIL IT INFILTRATES THE SOIL OR EVAPORATES OR IS DISCHARGED IN COMPLIANCE WITH AN MS4 PERMIT.

(NN) RUNOFF - MEANS THE WATER FLOW THAT OCCURS (I) WHEN SOIL IS INFILTRATED TO FULL CAPACITY AND EXCESS WATER FROM RAIN, SNOW/ICE MELT, OR OTHER SOURCES FLOWS OVER THE LAND SURFACE OR (II) OVER AND FROM AN IMPERVIOUS SURFACE.

(OO) SITE PLAN - MEANS A PLAT, A SITE DEVELOPMENT PLAN, CONSTRUCTION DRAWINGS, A BUILDING PERMIT, AND ANY OTHER PERMITS THAT NEED TO BE PREPARED BY A DEVELOPER AND APPROVED BY THE CITY BEFORE DEVELOPMENT CAN OCCUR.

(PP) STATE OF MICHIGAN WATER QUALITY STANDARDS - THE WATER QUALITY STANDARDS

PROMULGATED PURSUANT TO PART 31 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, AS AMENDED.

(QQ) STORM DRAIN - A SYSTEM OF OPEN OR ENCLOSED CONDUITS AND APPURTENANT STRUCTURES INTENDED TO CONVEY OR MANAGE STORM WATER, STORM WATER RUNOFF, GROUND WATER AND DRAINAGE.

(RR) STORM WATER - RAIN WATER AND SNOW/ICE MELT.

(SS) STORM WATER PLAN - WRITTEN NARRATIVES, SPECIFICATIONS, DRAWINGS, STANDARDS, OPERATING PROCEDURES, OR ANY COMBINATION OF THESE WHICH CONTAIN INFORMATION REGARDING THE MANAGEMENT OF STORM WATER.

(TT) STORM WATER RUNOFF FACILITY - THE METHOD, STRUCTURE, AREA, SYSTEM, OR OTHER EQUIPMENT OR MEASURES WHICH ARE DESIGNED TO RECEIVE, CONTROL, STORE, CAPTURE, CONTAIN, CONVEY OR TREAT STORM WATER.

(UU) STORM WATER MANAGEMENT PROGRAM - MEANS ONE OR MORE ASPECTS OF STORM WATER MANAGEMENT UNDERTAKEN FOR THE PURPOSE OF COMPLYING WITH APPLICABLE FEDERAL, STATE AND LOCAL LAW AND REGULATION OR THE PROTECTION OF THE PUBLIC HEALTH, SAFETY, AND WELFARE RELATED TO STORM WATER RUNOFF.

(VV) STORM WATER SYSTEM - MEANS ROADS, STREETS, CATCH BASINS, CURBS, GUTTERS, DITCHES, STORM SEWERS AND APPURTENANT FEATURES, LAKES, PONDS, CHANNELS, SWALES, STORM DRAINS, CANALS, CREEKS, CATCH BASINS, STREAMS, GULCHES, GULLIES, FLUMES, CULVERTS, SIPHONS, RETENTION OR DETENTION BASINS, DAMS, FLOODWALLS, LEVEES, PUMPING STATIONS, AND OTHER LIKE FACILITIES, AND NATURAL WATERCOURSES AND FEATURES LOCATED WITHIN THE GEOGRAPHIC LIMITS OF THE CITY OF FLINT WHICH ARE DESIGNED OR USED FOR COLLECTING, STORING, TREATING OR CONVEYING STORM WATER OR THROUGH WHICH STORM WATER IS COLLECTED, STORED, TREATED OR CONVEYED, OR ANY OTHER PHYSICAL MEANS BY WHICH STORM WATER MANAGEMENT IS ACHIEVED.

(WW) STREAM - A RIVER, STREAM OR CREEK WHICH MAY OR MAY NOT BE SERVING AS A DRAIN, OR ANY OTHER WATER BODY THAT HAS DEFINITE BANKS, A BED, AND VISIBLE EVIDENCE OF A CONTINUED FLOW OR CONTINUED OCCURRENCE OF WATER.

(XX) SURFACE WATERS OF THE STATE - ALL OF THE FOLLOWING, BUT NOT INCLUDING DRAINAGE WAYS AND PONDS (DETENTION AND RETENTION PONDS OR LAGOONS) USED SOLELY FOR STORM WATER AND/OR WASTEWATER CONVEYANCE, TREATMENT, OR CONTROL:

- THE GREAT LAKES AND THEIR CONNECTING WATERS**
- ALL INLAND LAKES**

- RIVERS**
- STREAMS**
- IMPOUNDMENTS**
- OPEN DRAINS**
- OTHER SURFACE BODIES OF WATER WITHIN THE CONFINES OF THE STATE**
- WETLANDS**

§46-130 STORM WATER MANAGEMENT PROGRAM

THE CITY DIRECTOR MAY ADOPT, AMEND, OR EXTEND A STORM WATER MANAGEMENT PROGRAM FROM TIME TO TIME. ANY SUCH ADOPTION, AMENDMENT, OR EXTENSION SHALL BE APPROVED BY RESOLUTION OF THE CITY COUNCIL.

§46-131 CHARGES FOR NON-STORM WATER DISCHARGES

THE CITY DIRECTOR MAY IMPOSE FEES FOR THE USE OF THE STORM WATER SYSTEM FOR NON-STORM WATER DISCHARGES PERMITTED BY THE CITY OF FLINT UNDER §46-134 OF THIS ORDINANCE. CHARGES SHALL BE PROPORTIONATE TO THE CAPACITY OF THE STORM WATER SYSTEM THAT IS USED BY THE NON-STORM WATER FLOW THAT WOULD OTHERWISE BE AVAILABLE FOR STORM WATER, AND ANY ADDITIONAL CHARGES RELATED TO PREPARING, MONITORING, AND ENFORCING ANY PERMITS RELATED TO NON-STORM WATER DISCHARGES.

§46-132 OTHER CHARGES

CHARGES FOR OTHER SERVICES PROVIDED BY THE CITY OF FLINT SHALL BE ON A TIME AND MATERIALS BASIS, INCLUDING DIRECT AND INDIRECT COSTS, AS ESTABLISHED BY THE CITY DIRECTOR. THE CITY DIRECTOR MAY ALSO SET CHARGES FOR THE FAIR SHARE RECOVERY OF THE COST, INCLUDING DIRECT AND INDIRECT COSTS, FROM DISCHARGERS FOR THE IMPLEMENTATION AND OPERATION OF ANY OF THE FOLLOWING:

(A) MONITORING, INSPECTION AND SURVEILLANCE PROCEDURES;

(B) REVIEWING ACCIDENTAL DISCHARGE PROCEDURES AND CONSTRUCTION;

(C) DISCHARGE PERMIT APPLICATIONS FOR STORM WATER AND NON-STORM WATER;

(D) ANNUAL CHARGES FOR MULTI-YEAR PERMITS, AND

(E) OTHER CHARGES AS THE CITY DIRECTOR MAY DEEM NECESSARY TO CARRY OUT THE REQUIREMENTS OF THIS ORDINANCE.

§46-133 REGULATIONS

(A) THE CITY DIRECTOR MAY ADOPT REGULATIONS IMPLEMENTING THIS ORDINANCE. THESE REGULATIONS MAY INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING TOPICS:

(1) THE DESIGN, OPERATION, MAINTENANCE, AND MAINTENANCE OF THE STORM WATER SYSTEM AND FOR CONNECTIONS TO THAT SYSTEM.

(2) CONTROL OF THE QUALITY AND QUANTITY OF STORM WATER FROM INDUSTRIAL SITES BY ESTABLISHING MANAGEMENT PRACTICES, DESIGN AND OPERATING CRITERIA.

(3) PROCEDURES FOR UPDATING BILLING DATA BASED UPON CHANGES IN PROPERTY BOUNDARIES, OWNERSHIP, AND STORM WATER RUNOFF CHARACTERISTICS.

(4) POLICIES ESTABLISHING THE TYPE AND MANNER OF SERVICE DELIVERY THAT WILL BE PROVIDED BY THE UTILITY.

(5) REGULATIONS GOVERNING THE RESOLUTION OF STORM WATER MANAGEMENT ISSUES AMONG SEVERAL PROPERTY OWNERS WITHIN THE DISTRICT.

(6) ENFORCEMENT POLICIES AND PROCEDURES.

(B) THESE REGULATIONS SHALL TAKE EFFECT THIRTY (30) DAYS AFTER BEING FILED WITH THE CITY CLERK UNLESS MODIFIED OR DISAPPROVED BY THE CITY COUNCIL. REGULATIONS WHICH ARE MODIFIED BY CITY COUNCIL TAKE EFFECT THIRTY (30) DAYS AFTER THE MODIFICATION.

§46-134 MS4 PERMITS

(A) NON-STORM WATER DISCHARGES:

(1) AN MS4 PERMIT IS REQUIRED FROM THE CITY DIRECTOR FOR A PERSON TO DISCHARGE NON-STORM WATER INTO THE MS4 EXCEPT AS EXEMPTED OR OTHERWISE ALLOWED UNDER THIS ORDINANCE.

THE CITY DIRECTOR MAY REQUIRE EACH PERSON THAT IS REQUIRED TO OBTAIN AN MS4 PERMIT FOR NON-STORM WATER TO APPLY FOR AN MS4 PERMIT ON THE FORM PRESCRIBED BY THE CITY DIRECTOR. AN MS4 PERMIT MAY BE ISSUED FOR A PERIOD NOT TO EXCEED FIVE (5) YEARS. THE PERMIT SHALL BE SUBJECT TO MODIFICATION OR REVOCATION FOR FAILURE TO COMPLY OR PROVIDE SAFE ACCESS OR PROVIDE ACCURATE REPORTS OF THE DISCHARGE CONSTITUENTS AND CHARACTERISTICS. PERMITS ARE ISSUED TO SPECIFIC PERSONS FOR SPECIFIC OPERATIONS AND ARE NOT ASSIGNABLE TO ANOTHER PERSON WITHOUT THE PRIOR WRITTEN APPROVAL OF THE CITY DIRECTOR. MS4 PERMITS ARE NOT TRANSFERABLE TO ANOTHER LOCATION. ANYONE SEEKING AN MS4 PERMIT TO DISCHARGE NON-STORM WATER INTO THE STORM WATER SYSTEM MUST DO THE FOLLOWING:

(A) FILE A WRITTEN STATEMENT WITH THE CITY DIRECTOR SETTING FORTH THE NATURE OF THE ENTERPRISE, THE AMOUNT OF WATER TO BE DISCHARGED WITH ITS PRESENT OR EXPECTED BACTERIAL, PHYSICAL, CHEMICAL, RADIOACTIVE OR OTHER PERTINENT CHARACTERISTICS;

(B) PROVIDE A PLAN MAP OF THE BUILDING, WORKS OR COMPLEX WITH EACH OUTFALL TO THE SURFACE WATERS, SANITARY SYSTEM, STORM SEWER, NATURAL WATERCOURSE OR GROUND WATERS NOTED, DESCRIBED AND THE DISCHARGE STREAM IDENTIFIED; AND

(C) SAMPLE, TEST AND FILE REPORTS WITH THE CITY DIRECTOR AND THE APPROPRIATE

FEDERAL, STATE AND COUNTY AGENCIES ON APPROPRIATE CHARACTERISTICS OF DISCHARGES ON A SCHEDULE, AT LOCATIONS, AND ACCORDING TO METHODS APPROVED BY THE CITY DIRECTOR.

(1) THE CITY DIRECTOR IS AUTHORIZED TO OBTAIN INFORMATION CONCERNING INDUSTRIAL PROCESSES OR OTHER PROCESSES AND ACTIVITIES WHICH HAVE A DIRECT BEARING ON THE KIND AND SOURCE OF THE DISCHARGE TO THE STORM WATER SYSTEM. THE DISCHARGER MAY REQUEST THAT CERTAIN INFORMATION, IF IT CAN ESTABLISH TO THE SATISFACTION OF THE CITY DIRECTOR THAT RELEASE OF THE INFORMATION WOULD REVEAL TRADE SECRETS OR WOULD OTHERWISE PROVIDE AN ADVANTAGE TO COMPETITORS, BE KEPT CONFIDENTIAL BY THE CITY, EXCEPT THAT DISCHARGE CONSTITUENTS WILL NOT BE CONFIDENTIAL INFORMATION.

(2) AT THE PERMITTEE'S EXPENSE, THE CITY DIRECTOR SHALL CARRY OUT INDEPENDENT SURVEILLANCE AND FIELD MONITORING, IN ADDITION TO THE SELF-MONITORING REQUIRED IN THE MS4 PERMIT TO ASCERTAIN WHETHER THE PERMIT TERMS ARE BEING MET.

(3) THE METHOD OF DETERMINING FLOW OF DISCHARGE TO THE STORM WATER SYSTEM SHALL BE APPROVED BY THE CITY DIRECTOR.

(B) DEVELOPING LAND AND EARTH CHANGES

(1) NO PERSON SHALL DEVELOP LAND OR CONDUCT AN EARTH CHANGE SUBJECT TO §46-128(B) (I) UNLESS THAT PERSON OBTAINS AND COMPLIES WITH AN MS4 PERMIT FROM THE CITY AND THAT PERSON OBTAINS APPROVAL FROM THE CITY OF A STORM WATER PLAN FOR THE DEVELOPMENT SITE, OR (II) UNLESS SUCH EARTH CHANGE OR DEVELOPMENT SITE IS EXEMPTED UNDER THIS ORDINANCE FROM THE REQUIREMENT TO OBTAIN AN MS4 PERMIT.

(2) THE CITY DIRECTOR MAY ISSUE AN MS4 PERMIT TO A DEVELOPER, WHICH MAY IMPOSE TERMS AND CONDITIONS IN ACCORDANCE WITH THIS ORDINANCE, PROVIDED THAT THE DEVELOPER:

A. SUBMITS DETAILED INFORMATION ABOUT THE DEVELOPER, DEVELOPMENT SITE, PROPOSED DISCHARGES AND/OR EARTH CHANGES, AND ANY OTHER INFORMATION REQUIRED BY THE CITY DIRECTOR IN AN MS4 PERMIT APPLICATION, NOT LESS THAN ONE HUNDRED EIGHTY (180) DAYS PRIOR TO COMMENCEMENT OF DEVELOPMENT.

B. SUBMITS, ALONG WITH THE MS4 PERMIT APPLICATION, A STORM WATER PLAN FOR POST-CONSTRUCTION STORM WATER MANAGEMENT AND BMP IMPLEMENTATION, IN ACCORDANCE WITH THE DESIGN AND PERFORMANCE STANDARDS SET FORTH IN §46-135 AND §46-136, FOR REVIEW AND APPROVAL BY THE CITY DIRECTOR. THE STORM WATER PLAN SHALL ALSO COMPLY WITH §46-131. THE STORM WATER PLAN SHALL INCLUDE ONE OF THE FOLLOWING BMPs:

A PERMANENT ON-SITE STORM WATER RUNOFF FACILITY THAT INCLUDES ON-SITE DETENTION OF STORM WATER RUNOFF AND A DIRECT CONNECTION FOR ALL STORM WATER RUNOFF THAT WILL BE DISCHARGED FROM AND THROUGH THE DEVELOPMENT SITE; OR

A PERMANENT ON-SITE STORM WATER RUNOFF FACILITY WITH A RESTRICTED OUTLET DESIGNED TO RESULT IN NO NET INCREASE IN STORM WATER RUNOFF VOLUME OR RATE ONTO ANY ADJACENT PROPERTY.

C. PAYS THE STORM WATER PERMIT APPLICATION REVIEW FEE.

D. PAYS OR POSTS THE APPLICABLE FINANCIAL GUARANTEE.

E. PROVIDES, ALONG WITH THE MS4 PERMIT APPLICATION, COPIES OF ALL PROPOSED OR EXISTING EASEMENTS NECESSARY TO IMPLEMENT THE APPROVED STORM WATER PLAN AND TO OTHERWISE COMPLY WITH THIS ORDINANCE INCLUDING, BUT NOT LIMITED TO, §46-135. ALL EASEMENTS SHALL BE ACCEPTABLE TO THE CITY IN FORM AND SUBSTANCE AND SHALL BE RECORDED WITH THE GENESEE COUNTY REGISTER OF DEEDS NO LATER THAN FIVE (5) DAYS AFTER THE MS4 PERMIT IS ISSUED.

F. PROVIDES, ALONG WITH THE MS4 PERMIT APPLICATION, A MAINTENANCE AGREEMENT FOR ROUTINE, EMERGENCY, AND LONG-TERM MAINTENANCE OF ALL STORM WATER

RUNOFF FACILITIES WHICH MEETS THE REQUIREMENTS OUTLINED IN §46-147(C).

(1) A PERSON WHO IS REQUIRED TO HAVE AN MS4 PERMIT FOR A DISCHARGE UNDER (1) OF THIS SECTION SHALL APPLY FOR THE MS4 PERMIT ON A FORM PROVIDED BY THE CITY. THE APPLICATION FORM SHALL REQUIRE INFORMATION CONCERNING THE DISCHARGE WHICH INCLUDES BUT IS NOT LIMITED TO:

(A) THE PROPERTY FROM WHICH THE DISCHARGE WILL ORIGINATE OR AT WHICH IT WILL OCCUR.

(B) THE STRUCTURES AND CONNECTIONS TO THE MS4.

(C) A DESCRIPTION OF THE EXPECTED COMPOSITION OF THE DISCHARGE, INCLUDING INFORMATION REGARDING POLLUTANTS IN THE DISCHARGE.

(D) A DESCRIPTION OF THE AREAS AND IMPROVEMENTS AT THE PROPERTY WHICH WILL BE IN CONTACT WITH THE WATER THAT COMPRISES THE DISCHARGE.

(E) THE BMPS, IF ANY, THAT THE DISCHARGER HAS IMPLEMENTED OR WILL IMPLEMENT.

(F) THE EXPECTED VOLUMES AND FLOW RATES OF THE DISCHARGE.

§46-135 DISCHARGER STORM WATER PLAN

THE DISCHARGER STORM WATER PLAN SHALL DESCRIBE MINIMUM DESIGN STANDARDS FOR STORM WATER DISCHARGE RELEASE RATES AND ON-SITE RETENTION, DETENTION OR OTHER METHODS TO CONTROL THE QUALITY, RATE AND VOLUME OF RUNOFF DISCHARGED INTO THE MS4. THE DISCHARGER STORM WATER PLAN SHALL IDENTIFY AND CONTAIN ALL OF THE FOLLOWING:

(A) THE LOCATION OF THE DEVELOPMENT SITE AND WATER BODIES THAT WILL RECEIVE RUNOFF, THE DRAINAGE DISTRICT IDENTIFICATION, ZONING, AERIAL IMAGERY, SOILS AND FLOODPLAIN MAPS, TRAFFIC AND UTILITY INFORMATION FOR THE DEVELOPMENT SITE.

(B) THE EXISTING AND PROPOSED NATURAL FEATURES OF THE DEVELOPMENT SITE, INCLUDING THE VEGETATION, TOPOGRAPHY, AND ALIGNMENT AND BOUNDARY OF THE NATURAL DRAINAGE COURSES, WITH CONTOURS HAVING A MAXIMUM INTERVAL OF TWO (2) FEET (USING USGS DATUM). THE INFORMATION SHALL BE SUPERIMPOSED ON THE PERTINENT GENESEE COUNTY SOIL MAP.

(C) THE DEVELOPMENT DRAINAGE AREA TO EACH POINT OF DISCHARGE FROM THE DEVELOPMENT.

(D) CALCULATIONS FOR THE EXISTING AND FINAL PEAK DISCHARGE RATES (BASED ON DESIGN CRITERIA).

(E) CALCULATIONS FOR ANY FACILITY OR STRUCTURE SIZE AND CONFIGURATION.

(F) A DRAWING SHOWING ALL PROPOSED STORM WATER RUNOFF FACILITIES WITH EXISTING AND FINAL GRADES, AS WELL AS STORM WATER EASEMENTS.

(G) THE SIZES AND LOCATIONS OF UPSTREAM AND DOWNSTREAM CULVERTS SERVING THE MAJOR DRAINAGE ROUTES FLOWING INTO AND OUT OF THE DEVELOPMENT SITE. ANY SIGNIFICANT OFF-SITE AND ON-SITE DRAINAGE OUTLET RESTRICTIONS OTHER THAN CULVERTS MUST BE NOTED ON THE DRAINAGE MAP.

(H) AN IMPLEMENTATION PLAN FOR CONSTRUCTION AND INSPECTION OF ALL STORM WATER RUNOFF FACILITIES NECESSARY TO THE OVERALL STORM WATER PLAN, INCLUDING A SCHEDULE OF THE ESTIMATED DATES OF COMPLETING CONSTRUCTION OF THE STORM WATER RUNOFF FACILITIES SHOWN ON THE PLAN AND AN IDENTIFICATION OF THE PROPOSED INSPECTION PROCEDURES TO ENSURE THAT THE STORM WATER RUNOFF FACILITIES ARE CONSTRUCTED IN ACCORDANCE WITH THE APPROVED STORM WATER PLAN.

(I) DRAWINGS, PROFILES, AND SPECIFICATIONS FOR THE CONSTRUCTION OF THE STORM WATER RUNOFF FACILITIES (BMP) REASONABLY NECESSARY TO ENSURE THAT RUNOFF WILL BE DRAINED, STORED, OR OTHERWISE CONTROLLED IN ACCORDANCE WITH THIS ORDINANCE.

(J) A MAINTENANCE AGREEMENT, IN FORM AND SUBSTANCE

ACCEPTABLE TO THE CITY DIRECTOR, FOR ENSURING MAINTENANCE OF ANY PRIVATELY-OWNED STORM WATER RUNOFF FACILITIES. THE MAINTENANCE AGREEMENT SHALL INCLUDE THE DEVELOPER'S WRITTEN COMMITMENT TO PROVIDE ROUTINE, EMERGENCY, AND LONG-TERM MAINTENANCE OF THE FACILITIES AND, IN THE EVENT THAT THE FACILITIES ARE NOT MAINTAINED IN ACCORDANCE WITH THE APPROVED STORM WATER PLAN. THE AGREEMENT SHALL AUTHORIZE THE CITY TO MAINTAIN ANY ON-SITE STORM WATER RUNOFF FACILITY AS REASONABLY NECESSARY, AT THE DEVELOPER'S EXPENSE (SEE ARTICLE VII).

(K) THE NAME OF THE ENGINEERING FIRM AND THE REGISTERED PROFESSIONAL ENGINEER THAT DESIGNED THE STORM WATER PLAN AND THAT WILL INSPECT FINAL CONSTRUCTION OF THE STORM WATER RUNOFF FACILITIES.

(L) ALL DESIGN INFORMATION MUST BE COMPATIBLE FOR CONVERSION TO STANDARD GIS SHAPE FILES.

(M) ANY OTHER INFORMATION NECESSARY FOR THE CITY DIRECTOR TO VERIFY THAT THE STORM WATER PLAN COMPLIES WITH THE CITY DESIGN AND PERFORMANCE STANDARDS FOR DRAINS AND STORM WATER MANAGEMENT SYSTEMS.

§46-136 PERFORMANCE AND DESIGN STANDARDS

A DISCHARGER STORM WATER PLAN DEVELOPED, AS SET FORTH IN §46-135, SHALL ALSO CONFORM WITH THE FOLLOWING STANDARDS.

§46-137 MS4 APPLICATION REVIEW FEES

(A) MINIMUM TREATMENT VOLUME STANDARD: THE MINIMUM TREATMENT VOLUME STANDARD SHALL BE ONE (1) INCH OF RUNOFF FROM THE ENTIRE SITE. TREATMENT METHODS SHALL BE DESIGNED ON A SITE-SPECIFIC BASIS TO ACHIEVE EITHER A MINIMUM OF EIGHTY (80) PERCENT REMOVAL OF TOTAL SUSPENDED SOLIDS (TSS) AS COMPARED WITH UNCONTROLLED RUNOFF OR THE LIMITATION OF DISCHARGE CONCENTRATIONS OF TSS TO NO MORE THAN EIGHTY (80) MILLIGRAMS PER LITER. A MINIMUM TREATMENT VOLUME STANDARD IS NOT REQUIRED WHERE SITE CONDITIONS ARE SUCH THAT TSS CONCENTRATIONS IN STORM WATER DISCHARGES WILL NOT EXCEED EIGHTY (80) MILLIGRAMS PER LITER.

(B) CHANNEL PROTECTION CRITERIA: THE CHANNEL PROTECTION CRITERIA SHALL BE ESTABLISHED TO MAINTAIN POST-DEVELOPMENT SITE RUNOFF VOLUME AND PEAK FLOW RATE AT OR BELOW EXISTING LEVELS FOR ALL STORMS UP TO THE 2-YEAR, 24-HOUR EVENT. "EXISTING LEVELS" SHALL MEAN THE RUNOFF VOLUME AND PEAK FLOW RATE OF THE LAST LAND USE PRIOR TO THE PLANNED NEW DEVELOPMENT OR REDEVELOPMENT. EVALUATION OF THIS STANDARD SHALL BE MADE BY THE APPLICANT AND REVIEWED BY THE CWPCS.

(C) OTHER ALTERNATIVE PUBLISHED AND GENERALLY ACCEPTED TREATMENT STANDARDS APPROVED BY THE CITY DIRECTOR, WHICH ARE APPROVED BY THE MDEQ AND INCLUDED IN THE CITY NPDES PERMIT FOR THE MS4.

(A) ALL EXPENSES AND COSTS INCURRED BY THE CITY DIRECTLY ASSOCIATED WITH PROCESSING, REVIEWING AND APPROVING OR DENYING AN MS4 PERMIT APPLICATION SHALL BE PAID (OR REIMBURSED) TO THE CITY FROM THE FUNDS IN A SEPARATE ESCROW ACCOUNT ESTABLISHED BY THE DEVELOPER, AS PROVIDED IN SUBSECTION (B). THE CITY MAY DRAW FUNDS FROM A DEVELOPER'S ESCROW ACCOUNT TO REIMBURSE THE CITY FOR EXPENSES INCURRED BY THE CITY RELATING TO THE APPLICATION. SUCH REIMBURSABLE EXPENSES INCLUDE, BUT ARE NOT LIMITED TO, EXPENSES RELATED TO THE FOLLOWING:

(1) SERVICES OF THE CITY ATTORNEY DIRECTLY RELATED TO THE APPLICATION.

(2) SERVICES OF THE CWPCS DIRECTLY RELATED TO THE APPLICATION INCLUDING INSPECTIONS FEES.

(3) SERVICES OF OTHER INDEPENDENT CONTRACTORS WORKING FOR THE CITY WHICH ARE DIRECTLY RELATED TO THE APPLICATION.

(4) ANY ADDITIONAL PUBLIC HEARINGS, REQUIRED MAILINGS AND LEGAL NOTICE REQUIREMENTS NECESSITATED BY THE APPLICATION.

(B) AT THE TIME A DEVELOPER APPLIES FOR AN MS4 PERMIT, THE DEVELOPER SHALL DEPOSIT WITH THE CITY TREASURER, AS AN ESCROW DEPOSIT, AN INITIAL AMOUNT AS

DETERMINED BY RESOLUTION OF THE CITY COUNCIL FOR SUCH MATTERS AND SHALL PROVIDE ADDITIONAL AMOUNTS AS REQUESTED BY THE CITY DIRECTOR IN SUCH INCREMENTS AS ARE SPECIFIED IN SAID RESOLUTION. ANY EXCESS FUNDS REMAINING IN THE ESCROW ACCOUNT AFTER THE APPLICATION HAS BEEN FULLY PROCESSED, REVIEWED, AND THE FINAL CITY DIRECTOR'S DENIAL OR APPROVAL AND ACCEPTANCE OF THE DEVELOPMENT HAS OCCURRED WILL BE REFUNDED TO THE DEVELOPER WITH NO INTEREST TO BE PAID ON THOSE FUNDS. AT NO TIME PRIOR TO THE CITY DIRECTOR'S FINAL DECISION ON AN APPLICATION SHALL THE BALANCE IN THE ESCROW ACCOUNT FALL BELOW THE REQUIRED INITIAL AMOUNT. IF THE FUNDS IN THE ACCOUNT ARE REDUCED TO LESS THAN THE REQUIRED INITIAL AMOUNT, THE DEVELOPER SHALL DEPOSIT INTO THE ACCOUNT THE ADDITIONAL AMOUNT NEEDED TO RESTORE THE ACCOUNT TO THE REQUIRED AMOUNT BEFORE THE APPLICATION REVIEW PROCESS WILL BE CONTINUED. ADDITIONAL AMOUNTS MAY BE REQUIRED TO BE PLACED IN THE ESCROW ACCOUNT BY THE DEVELOPER FOR THE PURPOSES DESCRIBED IN THIS SECTION 46-137, AT THE DISCRETION OF THE CITY DIRECTOR TO MAINTAIN THE INITIAL AMOUNT AND THE AMOUNT OF ANY EXPECTED REIMBURSABLE COSTS.

§46-138 FINANCIAL ASSURANCE

(A) THE CITY DIRECTOR SHALL NOT APPROVE AN MS4 PERMIT FOR A DEVELOPER UNTIL THE DEVELOPER SUBMITS TO THE CITY DIRECTOR, IN A FORM AND AMOUNT SATISFACTORY TO THE CITY DIRECTOR, A LETTER OF CREDIT OR OTHER FINANCIAL

ASSURANCE FOR THE TIMELY AND SATISFACTORY CONSTRUCTION OF ALL STORM WATER RUNOFF FACILITIES AND SITE GRADING IN ACCORDANCE WITH THE APPROVED STORM WATER PLAN. UPON CERTIFICATION BY A REGISTERED PROFESSIONAL ENGINEER THAT THE STORM WATER RUNOFF FACILITIES HAVE BEEN COMPLETED IN ACCORDANCE WITH THE APPROVED STORM WATER PLAN INCLUDING, BUT NOT LIMITED TO, THE PROVISIONS CONTAINED IN §46-141, THE CITY DIRECTOR MAY RELEASE THE LETTER OF CREDIT, OR OTHER FINANCIAL GUARANTEE UPON FINAL CITY DIRECTOR ACCEPTANCE AND APPROVAL OF SUCH STORM WATER RUNOFF FACILITIES CERTIFICATION.

(B) THE LETTER OF CREDIT OR OTHER FINANCIAL GUARANTEE MAY BE ACCESSED BY THE CITY WHEN:

(1) VIOLATION OF THIS ORDINANCE HAS OCCURRED,

(2) CORRECTIVE ACTION HAS NOT BEEN COMPLETED BY THE DEVELOPER WITHIN 30 DAYS OF NOTIFICATION OF THE VIOLATION PROVIDED BY THE CITY.

(C) EXCEPT AS PROVIDED IN SUBSECTION (E), THE AMOUNT OF THE FINANCIAL ASSURANCE SHALL BE AS DETERMINED BY THE CITY COUNCIL IN A RESOLUTION OF FEES FOR CITY SERVICES TO SATISFY §46-149, UNLESS THE CITY DETERMINES THAT A GREATER AMOUNT IS APPROPRIATE, IN WHICH CASE THE BASIS FOR SUCH DETERMINATION SHALL BE PROVIDED TO THE DEVELOPER IN WRITING. IN

DETERMINING WHETHER AN AMOUNT GREATER THAN THE AMOUNT ESTABLISHED BY RESOLUTION OF CITY COUNCIL IS APPROPRIATE, THE CITY DIRECTOR SHALL CONSIDER THE SIZE AND TYPE OF THE DEVELOPMENT, THE SIZE AND TYPE OF THE ON-SITE STORM WATER SYSTEM, AND THE NATURE OF THE OFF-SITE STORM WATER RUNOFF FACILITIES THE DEVELOPMENT WILL UTILIZE.

(D) THE LETTER OF CREDIT OR OTHER FINANCIAL ASSURANCE WILL NOT BE ALLOWED BY THE DEVELOPER TO EXPIRE UNTIL THE MAINTENANCE AGREEMENT FOR STORM WATER FACILITIES ESTABLISHED BY THE DEVELOPER HAS BEEN SIGNED BY THE DEVELOPER AND THE CITY.

(E) A MAINTENANCE BOND SHALL BE PROVIDED TO THE CITY BY THE DEVELOPER. THE MAINTENANCE BOND SHALL BE PROVIDED FOR A PERIOD OF TWO YEARS COMMENCING FROM THE DATE OF THE FINAL APPROVAL OF THE STORM WATER PLAN.

(F) THE CITY DIRECTOR MAY REDUCE OR WAIVE THE AMOUNT OF THE FINANCIAL ASSURANCE FOR A DEVELOPMENT THAT WILL NOT INCREASE THE PERCENTAGE OF IMPERVIOUS SURFACE OF THE DEVELOPMENT SITE BY MORE THAN TEN PERCENT (10%).

(G) THIS ORDINANCE SHALL NOT BE CONSTRUED OR INTERPRETED AS RELIEVING A DEVELOPER OF ITS OBLIGATION TO PAY ALL COSTS ASSOCIATED WITH ON-SITE PRIVATE

STORM WATER RUNOFF FACILITIES AS WELL AS THOSE COSTS ARISING FROM THE NEED TO MAKE OTHER STORM WATER IMPROVEMENTS IN ORDER TO REDUCE A DEVELOPMENT'S IMPACT ON A DRAIN.

§46-139 CERTIFICATE OF OCCUPANCY

NO CERTIFICATE OF OCCUPANCY FOR A DEVELOPMENT SHALL BE ISSUED BY THE CITY UNTIL STORM WATER RUNOFF FACILITIES HAVE BEEN COMPLETED IN ACCORDANCE WITH THE APPROVED STORM WATER PLAN; PROVIDED, HOWEVER, THE CITY MAY ISSUE A CERTIFICATE OF OCCUPANCY IF AN ACCEPTABLE LETTER OF CREDIT OR OTHER FINANCIAL ASSURANCE HAS BEEN SUBMITTED TO THE CITY DIRECTOR, FOR THE TIMELY AND SATISFACTORY CONSTRUCTION OF ALL STORM WATER RUNOFF FACILITIES AND SITE GRADING IN ACCORDANCE WITH THE APPROVED STORM WATER PLAN.

§46-140 NO CHANGE IN APPROVED FACILITIES

(A) STORM WATER RUNOFF FACILITIES, AFTER CONSTRUCTION AND APPROVAL, SHALL BE MAINTAINED BY THE DEVELOPER IN GOOD CONDITION, IN ACCORDANCE WITH THE APPROVED STORM WATER PLAN, AND SHALL NOT BE SUBSEQUENTLY ALTERED, REVISED OR REPLACED EXCEPT IN ACCORDANCE WITH THE APPROVED STORM WATER PLAN, OR IN ACCORDANCE WITH AMENDMENTS OR REVISIONS IN THE PLAN APPROVED BY THE CITY.

(B) THE CITY DIRECTOR MAY TAKE CORRECTIVE ACTION IF ALTERATIONS TO APPROVED STORM

WATER FACILITIES OCCUR AND THE CITY MAY RECOVER FROM THE RESPONSIBLE PARTY ALL OF THE CITY'S COSTS ASSOCIATED WITH THE CORRECTIVE ACTION.

§46-141 TERMS AND CONDITIONS OF MS4 PERMITS

IN GRANTING AN MS4 PERMIT, THE CITY DIRECTOR MAY IMPOSE SUCH TERMS AND CONDITIONS, SUCH AS REQUIREMENTS FOR POLLUTION MONITORING, PREVENTION, CONTROL AND REPORTING, AS ARE REASONABLY NECESSARY TO IMPLEMENT THE PURPOSES OF THIS ORDINANCE. A PERSON HAVING SAID PERMIT SHALL COMPLY WITH SUCH TERMS AND CONDITIONS.

§46-142 STORM WATER SYSTEM, FLOODPLAIN AND OTHER STANDARDS, SOIL EROSION CONTROL

(A) THE CITY IS NOT RESPONSIBLE FOR PROVIDING DRAINAGE FACILITIES ON PRIVATE PROPERTY FOR THE MANAGEMENT OF STORM WATER ON SAID PROPERTY. IT SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER TO PROVIDE FOR, AND MAINTAIN, PRIVATE STORM WATER RUNOFF FACILITIES SERVING THE PROPERTY AND TO PREVENT OR CORRECT THE ACCUMULATION OF DEBRIS THAT INTERFERES WITH DRAINAGE.

(B) ALL STORM WATER RUNOFF FACILITIES SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE

AND LOCAL ORDINANCES, AND RULES AND REGULATIONS.

§46-143 ILLICIT DISCHARGES/ CONNECTIONS, AND EXEMPTIONS

(A) NO PERSON SHALL MAKE OR ALLOW AN ILLICIT DISCHARGE OR HAVE AN ILLICIT CONNECTION.

(B) THE CITY DIRECTOR MAY REQUIRE DISCHARGERS TO IMPLEMENT BMPS TO PREVENT OR REDUCE THE DISCHARGE OF POLLUTANTS INTO THE CITY MS4.

(C) THE FOLLOWING DISCHARGES AND FLOWS ARE EXEMPTED DISCHARGES AND SHALL NOT REQUIRE AN MS4 PERMIT UNDER §46-135(A) PROVIDED THEY ARE NOT IDENTIFIED AS SIGNIFICANT CONTRIBUTORS TO VIOLATIONS OF STATE WATER QUALITY STANDARDS:

(1) POTABLE WATER SUPPLY LINE FLUSHING

(2) LANDSCAPE IRRIGATION

(3) DIVERTED STREAM FLOWS

(4) UNCONTAMINATED GROUNDWATER INFILTRATION TO STORM DRAINS

(5) PUMPED UNCONTAMINATED GROUND WATER, EXCEPT FOR GROUNDWATER CLEANUPS SPECIFICALLY AUTHORIZED BY NPDES PERMITS

(6) DISCHARGES OF POTABLE WATER

(7) FOUNDATION DRAIN WATER

(8) AIR CONDITIONING CONDENSATE WATER

(9) INDIVIDUAL RESIDENTIAL CAR WASHING WATER

(10) DECHLORINATED SWIMMING POOL WATERS FROM SINGLE, TWO, OR THREE FAMILY RESIDENCES

(11) SWIMMING POOL WATER FROM A SINGLE-FAMILY RESIDENCE

(12) RESIDUAL CITY STREET WASH WATER

(13) DISCHARGES FROM EMERGENCY FIREFIGHTING ACTIVITIES.

(D) DISCHARGES AUTHORIZED BY AN NPDES PERMIT ARE NOT ILLICIT DISCHARGES.

A SPECIAL PROVISION APPLIES TO GROUNDWATER WHICH MAY INFILTRATE THE MS4 AT A PROPERTY COMMONLY REFERRED TO AS "CHEVY IN THE HOLE" WHICH IS OWNED BY THE CITY. THE CITY ENTERED INTO AN AGREEMENT, ORDER ON CONSENT, AND COVENANT NOT TO SUE THE CITY OF FLINT, MI WITH THE UNITED STATES DEPARTMENT OF JUSTICE AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ON OCTOBER 16, 2012, AND A COVENANT NOT TO SUE THE CITY OF FLINT, MI WITH THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

ON AUGUST 8, 2012, BOTH OF WHICH ADDRESS CONTAMINATION AT THAT PROPERTY THAT EXISTED AT THE TIME THE CITY ACQUIRED THAT PROPERTY ("EXISTING CONTAMINATION") AND BOTH OF WHICH ARE REFERRED TO HERE AS THE GOVERNMENT AGREEMENTS. NOTHING IN THIS ORDINANCE SHALL AFFECT THE VALIDITY, SCOPE AND EFFECT OF THE GOVERNMENT AGREEMENTS.

§46-144 INTERFERENCE WITH NATURAL OR ARTIFICIAL DRAINAGEWAY

NO PERSON MAY STOP, FILL, DAM, CONFINE, PAVE, ALTER THE COURSE OF, OR OTHERWISE INTERFERE WITH ANY PART OF THE MS4 OR ANY NATURAL OR CONSTRUCTED DRAIN IN THE CITY IN A MANNER THAT WILL ADVERSELY AFFECT THE MS4, OR DRAINAGE WAY IN THE CITY WITHOUT FIRST SUBMITTING A STORM WATER PLAN TO THE CITY DIRECTOR AND RECEIVING APPROVAL OF THAT PLAN WHICH PROVIDES FOR SUCH ACTION BY THAT PERSON. ANY DEVIATION FROM THE APPROVED PLAN IS A VIOLATION OF THIS ORDINANCE. THIS SECTION SHALL NOT PROHIBIT, HOWEVER, NECESSARY EMERGENCY ACTION SO AS TO PREVENT OR MITIGATE DRAINAGE THAT WOULD BE INJURIOUS TO THE ENVIRONMENT, THE PUBLIC HEALTH, SAFETY, OR WELFARE. APPROVAL BY THE CITY OF SUCH PLAN DOES NOT OBLVIATE THE NEED TO OBTAIN PERMITS OR APPROVALS FROM OTHER GOVERNMENT AGENCIES.

§46-145 INSPECTION, MONITORING, REPORTING, AND RECORDKEEPING

(A) INSPECTIONS:

(1) AUTHORIZED REPRESENTATIVES OF THE CITY EXHIBITING PROPER CREDENTIALS AND IDENTIFICATION SHALL BE PERMITTED AT ALL REASONABLE TIMES, AND AT ANY TIME IN AN EMERGENCY, TO ENTER ANY DISCHARGER'S PROPERTY WITHOUT DELAY FOR THE PURPOSES OF INSPECTION, OBSERVATION, MEASUREMENT, SAMPLING, AND TESTING IN CONNECTION WITH THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE.

(2) WHILE ON THE PROPERTY OF THE DISCHARGER, THE AUTHORIZED REPRESENTATIVE OF THE CITY SHALL OBSERVE ALL REASONABLE SAFETY RULES APPLICABLE TO THE PREMISES ESTABLISHED BY THE DISCHARGER THAT ARE COMMUNICATED BY THE DISCHARGER TO THE CITY REPRESENTATIVE AT THE TIME OF ENTRY AND DURING THE VISIT, IF PRACTICABLE. THE AUTHORIZED REPRESENTATIVE OF THE CITY IS NOT REQUIRED TO OBSERVE SUCH SAFETY RULES IN AN EMERGENCY. THE DISCHARGER SHALL ADVISE THE CITY REPRESENTATIVE OF HEALTH AND SAFETY HAZARDS AND PRECAUTIONARY MEASURES NECESSARY TO PROTECT THE HEALTH AND SAFETY OF THE CITY REPRESENTATIVE WHILE ON THE DISCHARGER'S PREMISES. THE CITY DIRECTOR MAY ORDER ANY DISCHARGER TO PROVIDE WRITTEN INFORMATION REGARDING SUCH HEALTH AND SAFETY HAZARDS AND PRECAUTIONARY MEASURES. IF REQUIRED BY THE DISCHARGER, THE CITY REPRESENTATIVE INTENDING TO ENTER A DISCHARGER'S PROPERTY SHALL BE PROVIDED WITH AN ESCORT BY THE DISCHARGER TO ACCOMPANY THE CITY REPRESENTATIVE WHILE ON

THE DISCHARGER'S PROPERTY. THE DISCHARGER SHALL PROVIDE THE ESCORT WITHIN A REASONABLE TIME AFTER ARRIVAL AT THE DISCHARGER'S PROPERTY. IN THE EVENT OF AN EMERGENCY, OR IF THE DISCHARGER DOES NOT PROVIDE AN ESCORT WITHIN A REASONABLE TIME THE CITY REPRESENTATIVE IS NOT REQUIRED TO WAIT FOR SUCH AN ESCORT BEFORE PROCEEDING WITH THE ENTRY AND OTHER ACTIVITIES ON THE DISCHARGER'S PROPERTY. IF THE CITY REPRESENTATIVE PROCEEDS WITHOUT SUCH AN ESCORT ON THE BASIS OF AN EMERGENCY OR ON THE BASIS THAT THE DISCHARGER DID NOT PROVIDE AN ESCORT WITHIN A REASONABLE TIME UNDER THE CIRCUMSTANCES, THEN THE CITY SHALL PROVIDE SUCH DISCHARGER WITH A WRITTEN EXPLANATION OF THE SITUATION.

(3) INSPECTION BY STATE OR FEDERAL REPRESENTATIVES PURSUANT TO LAW SHALL NOT RELIEVE A DISCHARGER FROM INSPECTION BY CITY REPRESENTATIVES, AND INSPECTION BY CITY REPRESENTATIVES SHALL NOT RELIEVE ANY DISCHARGER FROM COMPLIANCE WITH LAWFUL INSPECTION BY STATE AND FEDERAL REPRESENTATIVES.

(B) STORM WATER MONITORING FACILITIES: THE CITY DIRECTOR MAY REQUIRE, BY ORDER OR BY AN MS4 PERMIT, THAT A DISCHARGER OF STORM WATER PROVIDE AND OPERATE EQUIPMENT OR DEVICES FOR THE MONITORING OF STORM WATER, SO AS TO PROVIDE FOR INSPECTION, SAMPLING, AND FLOW MEASUREMENT OF THE DISCHARGE. THE CITY DIRECTOR MAY REQUIRE A DISCHARGER TO PROVIDE AND OPERATE SUCH EQUIPMENT AND

DEVICES IF IT IS NECESSARY OR APPROPRIATE FOR THE INSPECTION, SAMPLING AND FLOW MEASUREMENT OF DISCHARGES IN ORDER TO DETERMINE WHETHER ADVERSE EFFECTS FROM OR AS A RESULT OF SUCH DISCHARGES MAY OCCUR OR TO DETERMINE VOLUME OF STORM WATER. ALL SUCH EQUIPMENT AND DEVICES FOR THE INSPECTION, SAMPLING AND FLOW MEASUREMENT OF DISCHARGES SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH APPLICABLE LAWS, ORDINANCES AND REGULATIONS. ALL MONITORING RESULTS SHALL BE REPORTED TO THE CITY DIRECTOR PROMPTLY AFTER THEY ARE RECEIVED BY THE DISCHARGER.

(C) ACCIDENTAL DISCHARGES: ANY DISCHARGER WHO ACCIDENTALLY DISCHARGES INTO THE MS4, ANY WATER OR POLLUTANTS OTHER THAN A DISCHARGE PERMITTED OR ALLOWED UNDER THIS ORDINANCE OR AN EXEMPTED DISCHARGE SHALL INFORM THE CITY DIRECTOR IMMEDIATELY. IF SUCH INFORMATION IS GIVEN ORALLY, A WRITTEN REPORT CONCERNING THE DISCHARGE SHALL BE FILED WITH THE CITY DIRECTOR WITHIN FIVE (5) DAYS. THE WRITTEN REPORT SHALL SPECIFY:

(1) THE COMPOSITION OF THE DISCHARGE AND THE CAUSE THEREOF.

(2) THE EXACT DATE, TIME, AND ESTIMATED VOLUME OF THE DISCHARGE.

(3) ALL MEASURES TAKEN TO CLEAN UP THE ACCIDENTAL DISCHARGE, AND ALL MEASURES PROPOSED TO BE TAKEN TO REDUCE AND PREVENT ANY RECURRENCE.

(4) THE NAME AND TELEPHONE NUMBER OF THE PERSON MAKING THE REPORT, AND THE NAME OF A PERSON WHO MAY BE CONTACTED FOR ADDITIONAL INFORMATION ON THE MATTER.

(D) RECORD KEEPING REQUIREMENT: ANY PERSON SUBJECT TO THIS ORDINANCE SHALL RETAIN AND PRESERVE FOR NO LESS THAN THREE (3) YEARS ANY AND ALL BOOKS, DRAWINGS, PLANS, PRINTS, DOCUMENTS, MEMORANDA, REPORTS, CORRESPONDENCE AND RECORDS, INCLUDING RECORDS ON MAGNETIC OR ELECTRONIC MEDIA AND ANY AND ALL SUMMARIES OF SUCH RECORDS, RELATING TO MONITORING, SAMPLING AND CHEMICAL ANALYSIS OF ANY DISCHARGE OR RUNOFF FROM ANY PROPERTY.

§46-146 ADMINISTRATION AND ENFORCEMENT

(A) POWERS OF THE CITY DIRECTOR: THE CITY DIRECTOR IS HEREBY EMPOWERED TO:

(1) SUPERVISE AND PERFORM THE IMPLEMENTATION OF THIS ORDINANCE;

(2) INSTITUTE ACTIONS AGAINST ALL PERSONS VIOLATING THIS ORDINANCE, INCLUDING JUDICIAL PROCEEDINGS TO ENJOIN, ABATE, AND PROSECUTE VIOLATIONS OF THIS ORDINANCE;

(3) REVIEW AND APPROVE OR DISAPPROVE STORM WATER PLANS;

(4) MAKE INSPECTIONS AND TESTS OF EXISTING AND NEWLY

INSTALLED, CONSTRUCTED, RECONSTRUCTED, OR ALTERED BMPS TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS ORDINANCE;

(5) INVESTIGATE COMPLAINTS OF VIOLATIONS OF THIS ORDINANCE; MAKE INSPECTIONS AND OBSERVATIONS OF DISCHARGES; AND RECORD SUCH INVESTIGATIONS, COMPLAINTS, INSPECTIONS, AND OBSERVATIONS;

(6) ISSUE ORDERS REQUIRING COMPLIANCE WITH THIS ORDINANCE, INCLUDING ORDERS TO IMMEDIATELY CEASE AN ILLICIT DISCHARGE OR REMOVE AN ILLICIT CONNECTION OR TO DO SO WITHIN A TIME CERTAIN;

(7) DETERMINE AND ASSESS CIVIL ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THIS ORDINANCE;

(8) DETERMINE CHARGES FOR COMPENSATORY DAMAGES;

(9) RECOMMEND TO THE CITY ATTORNEY OF THE CITY THE INSTITUTION OF JUDICIAL PROCEEDINGS TO COMPEL COMPLIANCE WITH THE PROVISIONS OF THIS ORDINANCE OR ANY DETERMINATION OR ORDER WHICH MAY BE PROMULGATED OR ISSUED PURSUANT TO THIS ORDINANCE;

(10) DENY MS4 PERMITS FOR DISCHARGERS THAT DO NOT MEET THE REQUIREMENTS OF THIS ORDINANCE OR THAT WOULD CAUSE THE CITY TO VIOLATE ITS MS4 NPDES PERMIT; AND SET CONDITIONS ON NEW, INCREASED, OR CHANGED DISCHARGES TO THE CITY MS4;

(11) UNDERTAKE OR CAUSE TO BE UNDERTAKEN ANY NECESSARY OR ADVISABLE PROTECTIVE MEASURES SO AS TO PREVENT VIOLATIONS OF THIS ORDINANCE OR TO AVOID OR REDUCE THE EFFECTS OF NONCOMPLIANCE HERewith;

(12) PERFORM OTHER ACTIONS NECESSARY OR ADVISABLE FOR THE MANAGEMENT AND OPERATION OF THE CITY MS4 AND THE ENFORCEMENT OF THIS ORDINANCE AND OTHER LAWS AND REGULATIONS APPLICABLE TO THE MS4.

(B) ORDERS:

(1) WHENEVER THE CITY DIRECTOR DETERMINES THAT A PERSON HAS VIOLATED OR MAY VIOLATE THIS ORDINANCE, THE CITY DIRECTOR MAY ORDER THE PERSON TO TAKE ACTION OR REFRAIN FROM CERTAIN ACTIONS AS APPROPRIATE UNDER THE CIRCUMSTANCES.

(2) THE FOLLOWING ORDERS MAY BE ISSUED BY THE CITY DIRECTOR:

(A) IMMEDIATE CEASE AND DESIST. AN ORDER TO IMMEDIATELY CEASE AND DESIST DISCHARGING WHICH PRESENTS OR MAY PRESENT IMMINENT OR SUBSTANTIAL ENDANGERMENT TO THE HEALTH OR WELFARE OF PERSONS OR THE ENVIRONMENT OR WHICH CONSTITUTES AN ILLICIT DISCHARGE. SUCH ORDER SHALL BE FINAL AND IN EFFECT UPON ISSUANCE;

(B) CEASE DISCHARGE WITHIN A TIME CERTAIN. AN ORDER TO CEASE A DISCHARGE BY A

CERTAIN TIME AND DATE. THE ORDER MAY ALSO CONTAIN SUCH CONDITIONS AS DEEMED APPROPRIATE BY THE CITY DIRECTOR. NON-PAYMENT OF MS4 PERMIT FEES, NON-COMPLIANCE WITH ANY TERM OF AN MS4 PERMIT, AND ILLICIT DISCHARGES ARE EXAMPLES OF SUFFICIENT CAUSE FOR AN ORDER TO CEASE DISCHARGE WITHIN A TIME CERTAIN.

(C) ORDER TO PERFORM. AN ORDER REQUIRING A DISCHARGER SUBJECT TO THIS ORDINANCE TO PERFORM ANY REQUIRED ACTION OR TO COMPLY WITH ANY PROVISION OF THIS ORDINANCE, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(1) INSTALL MONITORING EQUIPMENT;
SAMPLING OR

(2) SUBMIT SAMPLES;

(3) SUBMIT REPORTS;

(4) ALLOW ACCESS FOR INSPECTION, SAMPLING, TESTS, MONITORING, AND INVESTIGATIONS;

(5) INSTALL, OPERATE, AND MAINTAIN BMPS;

(6) DEVELOP AND IMPLEMENT PROCEDURES, CONSTRUCT STRUCTURES, OR INSTALL EQUIPMENT FOR PREVENTING AND APPROPRIATELY RESPONDING TO ACCIDENTAL DISCHARGES;

(7) REDUCE OR ELIMINATE A DISCHARGE OR

POLLUTANTS IN A DISCHARGE OR A CHARACTERISTIC OF A DISCHARGE;

(8) CONTROL, RECOVER, OR MITIGATE THE EFFECTS OF POLLUTANTS ACCIDENTALLY OR INTENTIONALLY DISCHARGED TO THE CITY MS4 OR WHICH COULD POTENTIALLY BE DISCHARGED TO THE CITY MS4.

(9) CONDUCT INVESTIGATIONS AND STUDIES (I.E., ENVIRONMENTAL MONITORING, ENVIRONMENTAL RISK ASSESSMENTS, HYDRO-GEOLOGICAL STUDIES, AND THE LIKE) TO DETERMINE THE EFFECTS OR RISKS ASSOCIATED WITH ACTUAL, POTENTIAL, OR PAST DISCHARGES; THE ACTUAL OR POSSIBLE ROUTE(S) OF ENTRY OF ACTUAL OR SUSPECTED DISCHARGES (I.E., THROUGH UNDERGROUND PIPES OR BY INFILTRATION); THE EXTENT OF ENVIRONMENTAL CONTAMINATION WHICH IS OR WHICH MAY BE CAUSING A DISCHARGE; OR SUCH OTHER SIMILAR PURPOSE AS THE CITY DIRECTOR MAY DETERMINE; AND TO SUBMIT REPORTS DOCUMENTING THE FINDINGS OF SUCH INVESTIGATIONS OR STUDIES.

(10) PAY A COMPENSATORY DAMAGE CHARGE.

(11) PAY MS4 FEES.

(3) STOP WORK ORDER. AN ORDER TO PREVENT FURTHER OR CONTINUING VIOLATIONS OR ADVERSE EFFECTS.

(4) CONTENT OF ORDERS. ANY ORDER ISSUED BY THE CITY DIRECTOR SHALL GENERALLY STATE THE FACTUAL BASIS AND REASONS FOR

ITS ISSUANCE, THE REQUIRED ACTION, AND THE TIME WITHIN WHICH SUCH ACTION SHALL BE TAKEN. NO SUCH ORDER SHALL BE DEEMED INSUFFICIENT FOR INCONSEQUENTIAL ERRORS AND OMISSIONS IN THE FACTS OR REASONS FOR THE ORDER. IF ANY DISCHARGER DEEMS THE INFORMATION IN THE ORDER INSUFFICIENT, IT MAY REQUEST ADDITIONAL INFORMATION. MULTIPLE ORDERS MAY BE ISSUED SIMULTANEOUSLY, SEPARATELY, OR IN COMBINATION AS A SINGLE ORDER BY THE CITY DIRECTOR WITH RESPECT TO A SINGLE DISCHARGER OR PERSON.

(5) CONSENT ORDERS. A DISCHARGER OR A PERSON AND THE CITY MAY ENTER INTO AN ORDER BY CONSENT AND SUCH ORDER IS ENFORCEABLE BY THE CITY IN THE SAME MANNER AS ANY OTHER ORDER ISSUED BY THE CITY OF FLINT UNDER THIS ORDINANCE.

(6) DISCONNECTION. THE CITY DIRECTOR MAY PHYSICALLY DISCONNECT A DISCHARGER FROM THE CITY MS4 IF THE DISCHARGER VIOLATES ANY PROVISION OF AN ORDER, INCLUDING AN IMMEDIATE CEASE AND DESIST ORDER.

(C) NOTICES OF VIOLATION

(1) THE CITY DIRECTOR MAY ISSUE A NOTICE OF VIOLATION WITH OR WITHOUT AN ORDER AGAINST ANY DISCHARGER WHO IS OR HAS BEEN IN VIOLATION OF THIS ORDINANCE OR WHO IS OR HAS BEEN IN VIOLATION OF AN MS4 PERMIT.

(2) THE NOTICE OF VIOLATION OR THE ORDER SHALL BE SERVED UPON THE DISCHARGER OR

PERSON EITHER BY PERSONAL DELIVERY, FIRST CLASS MAIL ADDRESSED TO SUCH DISCHARGER OR PERSON, ELECTRONIC MAIL, TELECOPY, TELEPHONE, OR OTHER MEANS, INCLUDING ORALLY. IF SERVICE IS MADE ORALLY, BY TELEPHONE, OR BY ELECTRONIC MAIL, A FOLLOW-UP HARDCOPY NOTICE SHALL BE SENT BY THE CITY DIRECTOR.

(3) THE NOTICE OF VIOLATION SHALL CONTAIN THE FOLLOWING INFORMATION:

(A) DATE OF ISSUANCE;

(B) DATE(S), TIME(S), AND PLACE(S) OF THE VIOLATION; THE NATURE OF THE VIOLATION; THE POLLUTANTS OR WATER DISCHARGED; AND THE VOLUME OF SUCH DISCHARGE, TO THE EXTENT THAT SUCH INFORMATION IS KNOWN AND APPLICABLE;

(C) REFERENCE TO THE PERTINENT SECTION OF THIS ORDINANCE OR MS4 PERMIT UNDER WHICH THE VIOLATION IS CHARGED;

(D) REFERENCE TO SECTION OF THIS ORDINANCE ESTABLISHING PENALTIES FOR THE VIOLATION;

(E) POTENTIAL PENALTIES, FINES, AND COMPENSATORY DAMAGE CHARGES;

(F) THE RIGHT OF THE ALLEGED VIOLATOR TO PRESENT TO THE CITY DIRECTOR WRITTEN EXPLANATIONS, DEFENSES, INFORMATION, OR OTHER MATERIALS

IN ANSWER TO THE NOTICE OF VIOLATION;

(D) INFORMAL CONFERENCE:

(1) AN INFORMAL CONFERENCE WITH THE CITY DIRECTOR MAY BE REQUESTED IN WRITING WITHIN TWENTY (20) DAYS BY ANY DISCHARGER OR PERSON AGGRIEVED BY A NOTICE OF VIOLATION, ORDER, COMPENSATORY CHARGE, ACTION ON OR REGARDING AN MS4 PERMIT BY THE CITY. THIS SUBSECTION DOES NOT APPLY TO MUNICIPAL CIVIL INFRACTION CITATIONS AND MUNICIPAL CIVIL INFRACTION NOTICES AS DEFINED IN CHAPTER 1, § 1-12, OF THE ORDINANCES OF THE CITY OF FLINT. THE REQUEST FOR AN INFORMAL CONFERENCE SHALL BE SUBMITTED TO THE CITY DIRECTOR. THE PURPOSE OF THE INFORMAL CONFERENCE IS TO REACH A SETTLEMENT AGREEABLE TO THE DISCHARGER OR PERSON AND THE CITY. THE INFORMAL CONFERENCE SHALL BE HELD WITHIN TWENTY (20) DAYS AFTER THE DISCHARGER SUBMITS THE WRITTEN REQUEST FOR THE INFORMAL CONFERENCE TO THE CITY DIRECTOR. THE CITY DIRECTOR MAY PARTICIPATE IN THE CONFERENCE OR APPOINT A DESIGNEE TO PARTICIPATE. NEITHER THE CITY DIRECTOR NOR HIS OR HER DESIGNEE SHALL BE REQUIRED TO REACH A CONCLUSION OR PROVIDE A DECISION AS A RESULT OF THE CONFERENCE. A DISCHARGER OR PERSON IS REQUIRED TO REQUEST OR PARTICIPATE IN AN INFORMAL CONFERENCE BEFORE SEEKING JUDICIAL REVIEW. OTHER PERSONS FROM THE CITY AND REPRESENTATIVES OF THE DISCHARGER OR PERSON MAY ATTEND AND PARTICIPATE IN THE INFORMAL CONFERENCE.

(2) IF AN IMMEDIATE CEASE AND DESIST ORDER IS THE SUBJECT OF A REQUEST FOR AN INFORMAL CONFERENCE, THE INFORMAL CONFERENCE SHALL BE HELD AS SOON AS POSSIBLE, BUT NOT LATER THAN TWENTY (20) DAYS AFTER THE REQUEST IS SUBMITTED.

(E) APPEAL BOARD:

(1) THE CITY WASTEWATER APPEALS BOARD (CWAB) SHALL CONSIST OF THE CITY ATTORNEY, THE ENVIRONMENTAL COMPLIANCE INSPECTOR, AND THE CITY DIRECTOR. IF THERE IS A VACANCY IN ANY OF THESE THREE OFFICES, THE CITY ADMINISTRATOR SHALL APPOINT AN EMPLOYEE OF THE DEPARTMENT OR FUNCTIONAL GROUP WHERE THE VACANCY OCCURRED TO SERVE AS THE CWAB MEMBER ON A TEMPORARY BASIS UNTIL SUCH VACANCY IS FILLED. IF POSSIBLE, THE TEMPORARY APPOINTEE SHALL COMPLETE ANY PENDING APPEALS THAT ARISE DURING THE DURATION OF THE TEMPORARY APPOINTMENT. THE CITY ATTORNEY MAY DESIGNATE AN ASSISTANT CITY ATTORNEY TO SIT ON THE CWAB. IF THE CITY CHANGES THE TITLE OR FUNCTION OF THE FOREGOING POSITIONS, THEN THE CWAB WILL HAVE AS MEMBERS THE THREE (3) CITY EMPLOYEES WITH FUNCTIONS MOST CLOSELY RELATED TO THOSE POSITIONS. EACH OF THOSE THREE MEMBERS SHALL HAVE ONE VOTE IN ANY MATTER DECIDED BY THE CWAB.

(2) AT THE REQUEST OF A DISCHARGER OR PERSON OR ON THEIR OWN INITIATIVE, THE CWAB MAY RETAIN A PERSON WITH EXPERTISE IN THE GENERAL SUBJECT MATTER OF THE

APPEAL (“SPECIAL EXPERT MEMBER”) TO PROVIDE ADVICE TO THE CWAB. THE SPECIAL EXPERT MEMBER SHALL HAVE NO VOTE IN THE PROCEEDINGS. IF THE SPECIAL EXPERT MEMBER IS REQUESTED BY THE DISCHARGER OR PERSON, THE DISCHARGER OR PERSON MAY SUGGEST ONE OR MORE PERSONS TO SERVE AS A SPECIAL EXPERT MEMBER AND SHALL DESCRIBE THEIR QUALIFICATIONS, BUT THE CWAB SHALL HAVE SOLE DISCRETION IN CHOOSING THE SPECIAL EXPERT MEMBER. ALL COSTS, FEES, AND EXPENSES ASSOCIATED WITH CHOOSING, SELECTING, AND RETAINING A SPECIAL EXPERT MEMBER REQUESTED BY THE DISCHARGER OR PERSON SHALL BE PAID BY THE DISCHARGER OR PERSON. THE CWAB MAY REQUIRE THE DISCHARGER OR PERSON TO PAY THESE COSTS IN ADVANCE. THE CITY SHALL BEAR THE COST OF ANY SPECIAL EXPERT MEMBER RETAINED ON THE INITIATIVE OF THE CWAB. THE CWAB, AT ITS DISCRETION, MAY AGREE TO SHARE ANY PERCENTAGE OF THE COST OF RETAINING A SPECIAL EXPERT MEMBER. NO PERSON SHALL SERVE AS A SPECIAL EXPERT MEMBER WHO HAS, WITHIN THE PRECEDING FIVE (5) YEARS, BEEN AN EMPLOYEE OF THE DISCHARGER OR PERSON OR THE CITY, UNLESS AGREED TO BY BOTH THE DISCHARGER OR PERSON AND THE CITY.

(F) APPEALS:

(1) A DISCHARGER OR PERSON MAY APPEAL TO THE CWAB ANY NOTICE OF VIOLATION, ORDER, COMPENSATORY CHARGE, ACTION ON OR REGARDING AN MS4 PERMIT BY THE CITY, (BUT NOT A MUNICIPAL CIVIL INFRACTION NOTICE AS DEFINED IN CHAPTER 1, § 1-12, OF THE ORDINANCES

OF THE CITY OF FLINT) BY FILING A WRITTEN REQUEST WITH THE CITY DIRECTOR WITHIN TWENTY (20) DAYS AFTER THE LATER OF:

(A) TEN (10) DAYS AFTER THE COMPLETION OF THE INFORMAL CONFERENCE;

(B) THE DATE THE NOTICE OF VIOLATION, ORDER, NOTICE OF COMPENSATORY CHARGE, ACTION ON OR REGARDING AN MS4 PERMIT BY THE CITY IS SERVED UPON SUCH DISCHARGER OR PERSON.

(2) THE WRITTEN REQUEST SHALL DESCRIBE THE MATTER APPEALED, A SUMMARY OF THE DISCHARGER'S OR PERSON'S POSITION, A COPY OF THE NOTICE OR OTHER DOCUMENT FROM THE CITY UPON WHICH THE APPEAL IS BASED, AND ANY REQUEST BY THE DISCHARGER OR PERSON FOR A SPECIAL EXPERT MEMBER.

(3) THE CITY DIRECTOR SHALL PROMPTLY FORWARD THE WRITTEN REQUEST FOR APPEAL TO THE CITY ATTORNEY WHO SHALL NOTIFY THE OTHER MEMBERS OF THE CWAB. THE CWAB MAY REJECT ANY WRITTEN REQUEST FOR APPEAL WHICH IS NOT TIMELY AND DOES NOT CONFORM TO THE REQUIREMENTS OF THIS SUBSECTION. UPON RECEIPT OF A TIMELY AND CONFORMING WRITTEN REQUEST FOR APPEAL, THE CWAB SHALL SET A TIME FOR THE CITY AND THE DISCHARGER OR PERSON TO APPEAR BEFORE THE CWAB TO PRESENT EVIDENCE AND ARGUMENTS IN SUPPORT OF THEIR POSITIONS. THE DISCHARGER OR PERSON AND THE CITY MAY PRESENT WITNESSES AND DOCUMENTARY EVIDENCE TO THE

CWAB. WITNESSES SHALL BE SWORN AND SHALL BE SUBJECT TO CROSS-EXAMINATION. THE PROCEEDINGS OF THE CWAB SHALL BE RECORDED. THE RULES OF EVIDENCE OF THE COURTS OF THE STATE OF MICHIGAN SHALL NOT BE STRICTLY APPLIED BY THE CWAB BUT SHALL BE A GUIDE FOR THE CWAB IN DETERMINING WHICH EVIDENCE TO ADMIT OR EXCLUDE AND WHAT WEIGHT TO GIVE THE EVIDENCE ADMITTED. ON RECEIPT OF A REQUEST FOR AN APPEAL, THE CWAB SHALL ESTABLISH A TIMETABLE FOR THE PROCEEDINGS AND SHALL PROMPTLY RENDER A WRITTEN DECISION STATING ITS FINDINGS OF FACT AND CONCLUSIONS SUPPORTING ITS DECISION.

(4) IF THE DISCHARGER OR PERSON REQUESTS A TRANSCRIPT OF THE PROCEEDINGS, THE DISCHARGER OR PERSON SHALL PAY THE COST OF PREPARING THE TRANSCRIPT AND SHALL PROVIDE A COPY TO THE CITY. THE DISCHARGER OR PERSON AND THE CITY SHALL PAY THEIR OWN COSTS OF THE CWAB PROCEEDING, INCLUDING BUT NOT LIMITED TO ATTORNEY FEES, EXPERT WITNESSES (EXCEPT THAT THE COSTS FOR SPECIAL EXPERT MEMBERS SHALL BE PAID AS SET FORTH IN SUBSECTION (E)(2) OF THIS SECTION), OTHER WITNESSES, DOCUMENTS, AND TESTS. THE DISCHARGER OR PERSON REQUESTING THE APPEAL TO THE CWAB SHALL PAY A FEE AS ESTABLISHED FROM TIME TO TIME BY RESOLUTION OF THE CITY COUNCIL AND KEPT ON FILE BY THE CITY CLERK. IF THE CWAB FINDS THAT THE DISCHARGER OR PERSON FILED A FRIVOLOUS APPEAL, OR IN BAD FAITH, WHICH HAS NO REASONABLE BASIS IN FACT OR LAW, THE CWAB MAY ASSESS THE DISCHARGER OR PERSON FOR ALL OF

THE COSTS OF THE CWAB AND THE CITY IN CONNECTION WITH THE APPEAL AND THE DISCHARGER OR PERSON SHALL PAY THE SAME WITHIN THIRTY (30) DAYS.

(5) THE PARTIES MAY BE REPRESENTED BY ATTORNEYS IN ALL PROCEEDINGS BEFORE THE CWAB.

(G) JUDICIAL REVIEW: APPEAL FROM A FINAL DECISION OF THE CWAB SHALL BE TO THE GENESEE COUNTY CIRCUIT COURT. JUDICIAL REVIEW SHALL BE LIMITED TO THE RECORD FROM THE CWAB PROCEEDINGS, UNLESS THE COURT ALLOWS ADDITIONAL MATERIAL. THE DECISION OF THE CWAB SHALL BE UPHeld IF IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS NOT CONTRARY TO LAW. THE DISCHARGER OR PERSON SHALL BE REQUIRED TO EXHAUST ALL ADMINISTRATIVE REMEDIES AVAILABLE UNDER SUBSECTION (E) OF THIS SECTION BEFORE SEEKING JUDICIAL REVIEW.

(H) STAYS: IF A DISCHARGER OR PERSON MAKES A TIMELY REQUEST FOR AN INFORMAL CONFERENCE UNDER SUBSECTION (D) OF THIS SECTION OR FOR AN APPEAL TO THE CWAB UNDER SUBSECTION (E) OF THIS SECTION, THE ORDER, COMPENSATORY DAMAGE CHARGE, OR ACTION ON OR REGARDING AN MS4 PERMIT, WHICH IS THE SUBJECT OF A REQUEST FOR AN INFORMAL CONFERENCE OR APPEAL TO THE CWAB, SHALL BE STAYED UNTIL A FINAL DETERMINATION IS REACHED. THE FOLLOWING SHALL NOT BE STAYED, EXCEPT BY ORDER OF A COURT OF LAW:

(1) AN IMMEDIATE CEASE AND DESIST ORDER;

(2) AN ORDER OR ACTION ON OR REGARDING AN MS4 PERMIT THAT INVOLVES AN EMERGENCY SITUATION, A THREAT TO PUBLIC HEALTH OR SAFETY, A THREAT TO PROPER OPERATION OF THE MS4, OR A THREAT TO THE ENVIRONMENT.

(I) CONTINUING VIOLATIONS: EACH DAY ON WHICH A VIOLATION OF THIS ORDINANCE, AN MS4 PERMIT, OR AN ORDER OCCURS SHALL BE A SEPARATE VIOLATION. EVERY VIOLATION OF EACH SECTION OF THIS ORDINANCE SHALL BE A SEPARATE VIOLATION.

(J) PENALTIES, FINES, AND REMEDIES:

(1) CIVIL JUDICIAL RELIEF. THE CITY DIRECTOR, THROUGH THE CITY ATTORNEY, MAY PURSUE AN ACTION AT LAW OR IN EQUITY TO ENJOIN, ABATE, OR PROSECUTE ANY VIOLATION OF THIS ORDINANCE, AN MS4 PERMIT, OR AN ORDER. THE CITY DIRECTOR MAY SEEK TEMPORARY OR PERMANENT INJUNCTIVE RELIEF, DAMAGES, COMPENSATORY DAMAGE CHARGES, CIVIL PENALTIES UNDER SUBSECTION (J)(2) OF THIS SECTION, AND SUCH OTHER RELIEF AS A COURT MAY ORDER.

(2) CIVIL PENALTIES. IN AN ACTION BROUGHT BY THE CITY AGAINST A DISCHARGER OR PERSON FOR VIOLATION OF THIS ORDINANCE, AN MS4 PERMIT, OR AN ORDER, A COURT MAY IMPOSE A CIVIL PENALTY OF UP TO \$5,000 PER DAY PER VIOLATION. IN CALCULATING THE AMOUNT OF THE PENALTY, THE COURT SHALL CONSIDER

THE FREQUENCY OF THE VIOLATION; THE IMPACT ON THE MS4, HUMAN HEALTH, AND THE ENVIRONMENT; THE MAGNITUDE AND DURATION OF THE VIOLATION; THE ECONOMIC BENEFIT TO THE DISCHARGER OR PERSON FROM THE VIOLATION; THE COMPLIANCE HISTORY OF THE DISCHARGER OR PERSON; AND OTHER FACTORS DEEMED APPROPRIATE BY THE COURT.

(3) CUMULATIVE REMEDIES. THE IMPOSITION OF A SINGLE CIVIL PENALTY, CIVIL FINE, CRIMINAL FINE, ORDER, DAMAGE, OR COMPENSATORY DAMAGE CHARGE UPON A DISCHARGER OR PERSON FOR A VIOLATION OF THIS ORDINANCE, AN MS4 PERMIT, OR AN ORDER SHALL NOT PRECLUDE THE IMPOSITION BY THE CITY OR BY A COURT OF ADDITIONAL SANCTIONS AND REMEDIES WITH RESPECT TO THE SAME VIOLATION EXCEPT THAT A DISCHARGER OR PERSON SHALL NOT HAVE BOTH A CIVIL PENALTY UNDER SUBSECTION (J)(2) OF THIS SECTION AND A CIVIL FINE UNDER SUBSECTION (J)(4) OF THIS SECTION IMPOSED ON IT FOR THE SAME VIOLATION.

(4) MUNICIPAL CIVIL INFRACTION; CIVIL FINE. THE CITY DIRECTOR AND CITY ENFORCEMENT OFFICERS ARE AUTHORIZED PERSONS AND AUTHORIZED LOCAL OFFICIALS TO ISSUE A MUNICIPAL CIVIL INFRACTION CITATION OR A MUNICIPAL CIVIL INFRACTION NOTICE FOR ANY VIOLATION OF THIS ORDINANCE, AN MS4 PERMIT, OR AN ORDER ISSUED UNDER THIS ORDINANCE, EXCEPT FOR VIOLATIONS PUNISHABLE UNDER SUBSECTION (L) OF THIS SECTION. THE MUNICIPAL CIVIL INFRACTION CIVIL FINE FOR ANY VIOLATION OF THIS ORDINANCE, AN MS4 PERMIT, OR AN

ORDER ISSUED UNDER THIS ORDINANCE SHALL BE UP TO \$5,000 PER VIOLATION PER DAY. IN CALCULATING THE AMOUNT OF THE MUNICIPAL CIVIL INFRACTION CIVIL FINE, THE CITY DIRECTOR, THE CITY ENFORCEMENT OFFICER, OR THE COURT, AS APPLICABLE, SHALL CONSIDER THE FREQUENCY OF VIOLATION BY THE DISCHARGER OR PERSON, THE IMPACT ON THE MS4 AND ON HUMAN HEALTH AND THE ENVIRONMENT OF THE VIOLATION, THE MAGNITUDE AND DURATION OF THE VIOLATION, THE ECONOMIC BENEFIT TO THE DISCHARGER OR PERSON GAINED BY THE VIOLATION, THE COMPLIANCE HISTORY OF THE DISCHARGER OR PERSON, AND OTHER FACTORS DEEMED APPROPRIATE BY THE COURT, THE CITY DIRECTOR, OR THE CITY ENFORCEMENT OFFICER, AS APPLICABLE. THE PROVISIONS OF CHAPTER 1, §§ 1-12 AND 1-19 SHALL APPLY TO MUNICIPAL CIVIL INFRACTION CITATIONS AND MUNICIPAL CIVIL INFRACTION NOTICES ISSUED UNDER THIS ORDINANCE.

(5) COMPENSATORY DAMAGES. IN ADDITION TO PROSECUTION AND THE IMPOSITION OF PENALTIES AND FINES FOR VIOLATIONS, A DISCHARGER OR PERSON VIOLATING THIS ORDINANCE, AN MS4 PERMIT, OR AN ORDER SHALL BE SUBJECT TO ONE OR MORE COMPENSATORY DAMAGE CHARGES IN ACCORDANCE WITH THIS ORDINANCE.

(K) VIOLATION CONSTITUTES A PUBLIC NUISANCE: VIOLATIONS OF THIS ORDINANCE, A PERMIT, OR AN ORDER ARE A PUBLIC NUISANCE.

(L) CRIMINAL VIOLATIONS:

(1) VIOLATIONS - GENERALLY. ANY DISCHARGER OR PERSON WHO WILLFULLY OR INTENTIONALLY VIOLATES ANY PROVISION OF THIS ORDINANCE OR ANY ORDER ISSUED UNDER THIS ORDINANCE OR AN MS4 PERMIT ISSUED HEREUNDER SHALL, UPON CONVICTION, BE GUILTY OF A MISDEMEANOR, PUNISHABLE AS PROVIDED IN § 1-7 OF THE CODE. EACH DAY OF VIOLATION IS A SEPARATE OFFENSE.

(2) FALSIFYING INFORMATION. ANY DISCHARGER OR PERSON WHO KNOWINGLY MAKES ANY FALSE STATEMENTS, REPRESENTATIONS, OR CERTIFICATIONS IN ANY APPLICATION, RECORD, REPORT, PLAN, OR OTHER DOCUMENT FILED OR REQUIRED TO BE MAINTAINED PURSUANT TO THIS ORDINANCE, OR AN MS4 PERMIT OR AN ORDER ISSUED UNDER THIS ORDINANCE, OR WHO FALSIFIES, TAMPERS WITH, OR KNOWINGLY RENDERS INACCURATE ANY MONITORING DEVICE OR METHOD REQUIRED UNDER THIS ORDINANCE SHALL, UPON CONVICTION, BE GUILTY OF A MISDEMEANOR PUNISHABLE AS PROVIDED IN § 1-7 OF THE CODE. EACH DAY OF VIOLATION IS A SEPARATE OFFENSE.

(M) VANDALISM AND TRESPASS: ANY PERSON WHO VIOLATES SUBSECTIONS (1) AND (2) IN THIS SUBSECTION SHALL BE GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED AS PROVIDED IN § 1-7 OF THE CITY CODE. THE NOTICE PROVISIONS OF §46-146(C) SHALL NOT APPLY TO THIS SUBSECTION.

(1) NO PERSON SHALL MALICIOUSLY, WILLFULLY, OR

NEGLIGENTLY BREAK, DAMAGE, DESTROY, UNCOVER, DEFACE, OR TAMPER WITH ANY STRUCTURE, APPURTENANCE, OR EQUIPMENT WHICH IS A PART OF THE CITY MS4.

(2) NO PERSON SHALL PARTIALLY OR FULLY ENTER OR OTHERWISE ACCESS ANY STRUCTURE, APPURTENANCE, OR EQUIPMENT WHICH IS A PART OF THE CITY MS4, EXCEPT AS SPECIFICALLY AUTHORIZED BY THE CITY DIRECTOR.

(N) LIEN FOR CHARGES AND FEES: ANY CHARGE, FEE, COST, OR OTHER AMOUNT REQUIRED TO BE PAID UNDER THIS ORDINANCE WHICH IS NOT PAID WHEN DUE, SHALL BE A LIEN UPON THE PREMISES. THE AMOUNT MAY BE CERTIFIED TO THE TAX ASSESSOR AND COLLECTED IN THE SAME MANNER THAT OTHER SPECIAL ASSESSMENTS ARE COLLECTED UNDER THE CHARTER OR BY ANY OTHER LAWFUL MEANS.

(O) RECOVERY OF COSTS AS COMPENSATORY DAMAGES: ANY DISCHARGER OR PERSON VIOLATING ANY OF THE PROVISIONS OF THIS ORDINANCE, OR WHO DISCHARGES OR CAUSES A DISCHARGE PRODUCING A DEPOSIT OR OBSTRUCTION, OR CAUSES DAMAGE TO OR IMPAIRS THE CITY MS4 OR ITS OPERATION OR OTHERWISE CAUSES THE CITY TO INCUR ADDITIONAL OR NON-ROUTINE COSTS, SHALL BE LIABLE TO THE CITY FOR ANY EXPENSE, LOSS, OR COSTS OF THE DAMAGE CAUSED BY SUCH VIOLATION OR DISCHARGE, ALL OF WHICH ARE COMPENSATORY DAMAGES.

§46-147 STORM WATER EASEMENTS AND MAINTENANCE AGREEMENTS

(A) APPLICABILITY OF REQUIREMENTS: THE REQUIREMENTS OF THIS SECTION CONCERNING STORM WATER EASEMENTS AND MAINTENANCE AGREEMENTS SHALL APPLY TO ALL PERSONS REQUIRED TO SUBMIT A STORM WATER PLAN TO THE CITY DIRECTOR FOR REVIEW AND APPROVAL.

(B) STORM WATER MANAGEMENT EASEMENTS: A DEVELOPER SHALL PROVIDE ALL STORM WATER MANAGEMENT EASEMENTS NECESSARY TO IMPLEMENT THE APPROVED STORM WATER PLAN AND TO OTHERWISE COMPLY WITH THIS ORDINANCE IN FORM AND SUBSTANCE REQUIRED BY THE CITY DIRECTOR AND SHALL RECORD SUCH EASEMENTS UPON APPROVAL OF THE STORM WATER PLAN BY THE CITY DIRECTOR. THE EASEMENTS SHALL ASSURE ACCESS TO THE DEVELOPMENT SITE FOR PROPER INSPECTION AND MAINTENANCE OF STORM WATER RUNOFF FACILITIES AND SHALL PROVIDE ADEQUATE EMERGENCY OVERLAND FLOW-WAYS.

(C) MAINTENANCE AGREEMENTS:

(1) THE PURPOSE OF THE MAINTENANCE AGREEMENT IS TO PROVIDE THE MEANS AND ASSURANCE THAT MAINTENANCE OF BMPS SHALL BE IMPLEMENTED.

(2) A MAINTENANCE AGREEMENT SHALL BE SUBMITTED TO THE CITY DIRECTOR BY A DEVELOPER AS PART OF THE DEVELOPER'S STORM WATER PLAN, AND SHALL BE SUBJECT TO APPROVAL AS PART OF THE STORM

WATER PLAN. A MAINTENANCE PLAN SHALL BE INCLUDED IN THE MAINTENANCE AGREEMENT.

(3) THE MAINTENANCE AGREEMENT SHALL INCLUDE A PLAN FOR ROUTINE, EMERGENCY AND LONG-TERM MAINTENANCE OF ALL STORMWATER BMPS IN THE STORM WATER PLAN, WITH A DETAILED ANNUAL ESTIMATED BUDGET FOR THE INITIAL THREE YEARS, AND SHALL REQUIRE WRITTEN NOTICE TO THE CITY OF MAINTENANCE BY THE PARTY RESPONSIBLE FOR MAINTENANCE. THE AGREEMENT SHALL PROVIDE THAT SUCH NOTICE WILL BE GIVEN TO THE CITY AT LEAST FOURTEEN (14) DAYS IN ADVANCE OF COMMENCING THE MAINTENANCE WORK. THE MAINTENANCE AGREEMENT SHALL BE IN RECORDABLE FORM AND SHALL BE BINDING ON ALL SUBSEQUENT OWNERS OF LAND SERVED BY THE BMPS AND SHALL BE RECORDED IN THE OFFICE OF THE GENESEE COUNTY REGISTER OF DEEDS IMMEDIATELY AFTER THE APPROVAL BY THE CITY OF THE MAINTENANCE AGREEMENT. IF THERE HAS BEEN A MATERIAL FAILURE, AS DETERMINED BY THE CITY DIRECTOR, TO UNDERTAKE MAINTENANCE AS REQUIRED UNDER THE MAINTENANCE AGREEMENT, THE CITY DIRECTOR MAY HIRE A PERSON WITH QUALIFICATIONS AND EXPERIENCE IN THE SUBJECT MATTER TO UNDERTAKE THE REQUIRED MAINTENANCE, IN WHICH EVENT THE PROPERTY OWNER SHALL BE OBLIGATED TO ADVANCE OR REIMBURSE PAYMENT (AS DETERMINED BY THE CITY DIRECTOR FOR ALL COSTS AND EXPENSES ASSOCIATED WITH SUCH MAINTENANCE, TOGETHER WITH A REASONABLE ADMINISTRATIVE FEE. THE MAINTENANCE AGREEMENT SHALL

CONTAIN A PROVISION WHICH SETS FORTH THIS REQUIREMENT.

§46-148 ESTABLISHMENT OF COUNTY DRAINS

PRIOR TO FINAL APPROVAL, ALL STORM WATER MANAGEMENT FACILITIES FOR PLATTED SUBDIVISIONS SHALL BE ESTABLISHED AS COUNTY DRAINS, AS AUTHORIZED IN SECTION 433, CHAPTER 18 OF THE MICHIGAN DRAIN CODE (P.A. 40 OF 1956, AS AMENDED) FOR LONG-TERM MAINTENANCE.

§ 46-149 MS4 PERMIT FEES

(A) ANNUAL FEES: THE CITY DIRECTOR MAY ASSESS AN ANNUAL MS4 PERMIT FEE OF \$200 FOR EACH CONNECTION TO THE CITY MS4 TO DISCHARGERS PERMITTED TO DISCHARGE TO THE CITY MS4 UNDER § 46-134.

(B) MS4 PERMIT FEES: PERSONS REGULATED UNDER MS4 PERMITS, SHALL PAY A PERMIT APPLICATION OR RE-APPLICATION FEE OF \$100, A PERMIT RENEWAL FEE OF \$100, AND A PERMIT TRANSFER FEE (IN THE EVENT OF A TRANSFER OF THE MS4 PERMIT) OF \$100 TO THE CITY. IN ADDITION TO THESE FEES, SUCH PERSONS SHALL REIMBURSE THE CITY FOR ANY AND ALL OTHER EXPENSES THE CITY INCURS ARISING FROM: (A) PROCESSING INCOMPLETE, INCORRECT, OR OTHERWISE UNACCEPTABLE MS4 PERMIT APPLICATIONS; (B) ESTABLISHING CASE-SPECIFIC RESTRICTIONS ON DISCHARGES TO THE CITY MS4; (C) SAMPLING AND ANALYZING DISCHARGES TO THE CITY MS4 AND INSPECTING PERMITTEE'S FACILITIES;

(D) ENFORCING MS4 PERMITS;
(E) PRODUCING AND MAILING COPIES OF MS4 PERMITS; AND (F) OTHER ACTIVITIES IN CONNECTION WITH ISSUING, ADMINISTERING, MS4 PERMITS.

§46-150 OTHER MATTERS

INTERPRETATION: WORDS AND PHRASES IN THIS ORDINANCE SHALL BE CONSTRUED ACCORDING TO THEIR COMMON AND ACCEPTED MEANINGS, EXCEPT THAT WORDS AND PHRASES DEFINED IN §46-129 SHALL BE CONSTRUED ACCORDING TO THE RESPECTIVE DEFINITIONS GIVEN IN THAT SECTION. TECHNICAL WORDS AND TECHNICAL PHRASES THAT ARE NOT DEFINED IN THIS ORDINANCE BUT WHICH HAVE ACQUIRED PARTICULAR MEANINGS IN LAW OR IN TECHNICAL USAGE SHALL BE CONSTRUED ACCORDING TO SUCH MEANINGS.

CATCH-LINE HEADINGS: THE CATCH-LINE HEADINGS OF THE SECTIONS, SUBSECTIONS AND PARAGRAPHS OF THIS ORDINANCE ARE INTENDED FOR CONVENIENCE ONLY, AND SHALL NOT BE CONSTRUED AS AFFECTING THE MEANING OR INTERPRETATION OF THE TEXT OF THE SECTIONS, SUBSECTIONS AND PARAGRAPHS TO WHICH THEY MAY REFER.

SEVERABILITY: THE PROVISIONS OF THIS ORDINANCE ARE HEREBY DECLARED TO BE SEVERABLE, AND IF ANY PART OR PROVISION OF THIS ORDINANCE SHOULD BE DECLARED INVALID OR UNENFORCEABLE BY ANY COURT OF COMPETENT JURISDICTION, SUCH INVALIDITY OR UNENFORCEABILITY SHALL NOT AFFECT ANY OTHER PART OR PROVISION OF THE ORDINANCE.

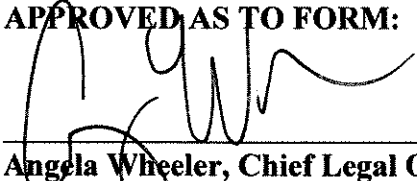
OTHER ORDINANCES: THIS ORDINANCE SHALL BE IN ADDITION TO OTHER ORDINANCES OF THE CITY AND SHALL NOT BE DEEMED TO REPEAL OR REPLACE OTHER ORDINANCES OR PARTS THEREOF EXCEPT TO THE EXTENT THAT SUCH REPEAL IS SPECIFICALLY PROVIDED FOR IN THIS ARTICLE.

Sec. 2. This ordinance shall become effective on the _____ day of _____, 2019, A.D.

Adopted this _____ day of _____, 2019, A.D.

Dr. Karen W. Weaver, Mayor

Inez M. Brown, City Clerk

APPROVED AS TO FORM:


Angela Wheeler, Chief Legal Officer

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190323

ORDINANCE NO. _____

An Ordinance to amend the Flint City Code of Ordinances by amending Chapter ____, Article ____, _____, to add Section ____, Ethics and Accountability Board By-laws.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF FLINT:

Sec. 1. That the Flint City Code of Ordinances shall be amended by amending Chapter ____, _____, Article ____, _____, to add Section ____, Ethics and Accountability Board By-laws, which shall read in its entirety as follows:

SECTION 1: DEFINITIONS

FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING WORDS AND PHRASES SHALL HAVE THE MEANING RESPECTIVELY ASCRIBED TO THEM BY THIS SECTION:

(a) **CONFIDENTIAL INFORMATION** MEANS INFORMATION THAT HAS BEEN OBTAINED BY A PUBLIC SERVANT IN THE COURSE OF ACTING AS A PUBLIC SERVANT, THAT IS NOT AVAILABLE TO MEMBERS OF THE PUBLIC PURSUANT TO THE MICHIGAN FREEDOM OF INFORMATION ACT, BEING MCL 15.231 ET SEQ. OR PURSUANT TO OTHER LAW, REGULATION, POLICY OR PROCEDURE RECOGNIZED BY LAW, AND THAT THE PUBLIC SERVANT IS UNAUTHORIZED TO DISCLOSE, INCLUDING:

(1) ANY WRITTEN INFORMATION, WHETHER IN DOCUMENT OR IN ELECTRONIC FORM, WHICH COULD BE EXEMPTED FROM DISCLOSURE PURSUANT TO STATE

LAW OR TO OTHER PERTINENT LAW, REGULATION, POLICY OR PROCEDURE RECOGNIZED BY LAW, UNLESS THE PUBLIC SERVANT DISCLOSING THE INFORMATION IS PERMITTED BY SUCH AUTHORITY TO MAKE DISCLOSURE; AND

(2) ANY NON-WRITTEN INFORMATION WHICH, COULD BE EXEMPTED FROM DISCLOSURE PURSUANT TO STATE LAW OR TO OTHER PERTINENT LAW, REGULATION, POLICY OR PROCEDURE RECOGNIZED BY LAW, UNLESS THE PUBLIC SERVANT DISCLOSING THE INFORMATION IS PERMITTED BY SUCH AUTHORITY TO MAKE DISCLOSURE; AND

(3) INFORMATION WHICH WAS OBTAINED IN THE COURSE OF OR BY MEANS OF A WRITTEN OR ELECTRONIC RECORD OR ORAL REPORT OF A LAWFUL EXECUTIVE OR CLOSED SESSION, WHETHER OR NOT THE DISCLOSURE OF THE INFORMATION WOULD VIOLATE STATE LAW, UNLESS THE PUBLIC SERVANT DISCLOSING THE INFORMATION IS AUTHORIZED BY STATE LAW TO MAKE DISCLOSURE, OR UNLESS THE PUBLIC SERVANT DISCLOSING THE INFORMATION HAS BEEN PROPERLY AUTHORIZED TO MAKE DISCLOSURE PURSUANT TO AN APPLICABLE LAW, REGULATION, POLICY OR PROCEDURE, EXCEPT THAT WHEN SUCH INFORMATION IS AVAILABLE THROUGH CHANNELS WHICH ARE OPEN TO THE PUBLIC, THIS PROVISION DOES NOT PROHIBIT PUBLIC SERVANTS FROM DISCLOSING THE AVAILABILITY OF THOSE CHANNELS.

(b) DECISION MEANS:

(1) A DETERMINATION, ACTION, VOTE, OR OTHER DISPOSITION UPON A MOTION, PROPOSAL, OR RECOMMENDATION. BY THE ETHICS AND ACCOUNTABILITY BOARD

(c) WILLFUL NEGLECT OF DUTY MEANS THE INTENTIONAL FAILURE OF A PUBLIC SERVANT TO PERFORM THE DUTIES OF HIS OR HER OFFICE.

SECTION 2: DISCLOSURE REQUIREMENTS

(1) IMPROPER USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION IS PROHIBITED.

EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, AN ETHICS AND ACCOUNTABILITY BOARD MEMBER SHALL NOT KNOWINGLY USE OR DISCLOSE CONFIDENTIAL INFORMATION TO THIRD PARTIES CONCERNING THE PROPERTY, GOVERNMENT OR AFFAIRS OF THE CITY OR ANY OFFICE, DEPARTMENT OR AGENCY THEREOF, WHICH IS NOT AVAILABLE TO MEMBERS OF THE PUBLIC AND GAINED BY REASON OF HIS OR HER OFFICIAL DUTIES.

(2) LIMITATIONS ON PARTISAN POLITICAL ACTIVITY BY BOARD MEMBERS.

(a) WHILE A MEMBER OF THE ETHICS AND ACCOUNTABILITY BOARD, A BOARD MEMBER SHALL DISCLOSE ANY PARTICIPATION IN SUPPORT OF A CANDIDATE FOR ELECTION AND ANY CANDIDACY FOR OFFICE MADE BY THE BOARD MEMBER TO THE BOARD AND TO THE CITY CLERK

PURSUANT TO FLINT CITY CHARTER SECTION 1-602(D)(1)(c).

(b) PARTICIPATING IN CAMPAIGN ACTIVITIES OR THE MEMBER'S CANDIDACY FOR AN ELECTIVE OFFICE MAY DISQUALIFY THE BOARD MEMBER'S PARTICIPATION IN A MATTER BEFORE THE BOARD.

(c) THIS DETERMINATION MAY BE MADE BY THE INDIVIDUAL BOARD MEMBER TO RECUSE HIM OR HERSELF OR BY A VOTE OF THE BODY.

(3) INFORMATION PROVIDED TO BOARD TO REMAIN CONFIDENTIAL.

(4) MEMBERS OF THE ETHICS AND ACCOUNTABILITY BOARD OR ANY PUBLIC SERVANT WHO HAVE ACCESS TO ANY CONFIDENTIAL INFORMATION THAT IS RELATED TO THE FUNCTIONS OR ACTIVITIES OF THE BOARD ARE PROHIBITED FROM DIVULGING SUCH INFORMATION TO ANY PERSON WHO IS NOT AUTHORIZED TO POSSESS THE INFORMATION.

(5) VIOLATION OF THIS PROVISION IS SUBJECT TO FLINT CITY CHARTER SECTION 1-603 FORFEITURE OF OFFICE AND REMOVAL FOR CAUSE.

SECTION 3: COMPLAINTS

(1) COMPLAINT; CONTENTS THEREOF; LIMITATION OF ACTION.

(a) ANY PERSON MAY FILE A COMPLAINT WITH THE ETHICS AND ACCOUNTABILITY BOARD WHERE THE PERSON BELIEVES THAT A PUBLIC SERVANT MAY

HAVE COMMITTED MISCONDUCT IN OFFICE OR A DERELICTION OF DUTY AS DESCRIBED IN FLINT CITY CHARTER SECTION 3-503(D) IN CONNECTION WITH THE CHARTER, CITY OF FLINT ORDINANCES, REGULATIONS, POLICIES, PROCEDURES AND STANDARDS OF CONDUCT.

(b) A COMPLAINT SHALL BE MADE IN WRITING ON A FORM THAT IS CREATED BY THE LAW DEPARTMENT, SHALL SPECIFY THE PROVISION(S) OF THE CHARTER, CITY OF FLINT ORDINANCES, REGULATIONS, POLICIES, PROCEDURES AND STANDARDS OF CONDUCT ALLEGED TO HAVE BEEN VIOLATED AND THE FACTS ALLEGED TO CONSTITUTE THE VIOLATION, AND SHALL BE SIGNED BY THE PERSON WHO IS MAKING THE COMPLAINT AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC.

(c) SUCH A COMPLAINT SHALL BE FILED WITHIN NINETY (90) DAYS FROM THE DATE THE COMPLAINANT(S) KNEW OR SHOULD HAVE KNOWN OF THE ACTION THAT IS ALLEGED TO BE A VIOLATION OF THE CHARTER CITY OF FLINT ORDINANCES, REGULATIONS, POLICIES, PROCEDURES AND STANDARDS OF CONDUCT. AND IN NO EVENT SHALL THE ETHICS AND ACCOUNTABILITY BOARD CONSIDER A COMPLAINT WHICH HAS BEEN FILED MORE THAN ONE (1) YEAR AFTER A VIOLATION OF THIS ARTICLE OR CHARTER IS ALLEGED TO HAVE OCCURRED.

(d) UPON MAJORITY VOTE OF THE MEMBERS-ELECT, THE BOARD MAY ACCEPT A COMPLAINT OUTSIDE THE SUBMISSION GUIDELINES PROVIDED IN SUBSECTION (C).

(e) A COMPLAINT THAT HAS BEEN FILED WITHIN THE TIME PERIOD CONTAINED IN SUBSECTION (C) OF THIS SECTION AND, WHERE DISMISSED BY THE BOARD DUE TO OTHER INVESTIGATIONS OR PENDING PROCEEDINGS, SHALL BE DEEMED DISMISSED WITHOUT PREJUDICE AND MAY BE REINSTATED AND RECONSIDERED BY THE BOARD AT THE CONCLUSION OF THE OTHER PROCEEDINGS.

SECTION 4: RETALIATION AND HARASSMENT PROHIBITED.

(a) IT SHALL BE A VIOLATION FOR ANY PUBLIC SERVANT TO RETALIATE AGAINST ANY INDIVIDUAL WHO FILES A COMPLAINT WITH THE ETHICS AND ACCOUNTABILITY BOARD ON THE BASIS THE INDIVIDUAL HAS FILED A COMPLAINT.

(b) IT SHALL BE A VIOLATION FOR AN INDIVIDUAL TO USE THIS ARTICLE, OR CHARTER TO HARASS A PUBLIC SERVANT, OR CONTRACTOR, BY FILING A COMPLAINT WITH KNOWLEDGE OF ITS FALSITY OR WITH RECKLESS DISREGARD FOR ITS TRUTH OF FALSITY.

SECTION 5: COMMUNICATION WITH THE BOARD REGARDING COMPLAINTS

COMMUNICATIONS WITH THE BOARD REGARDING A COMPLAINT IS PROHIBITED IN THE ABSENCE OF THE

COMPLAINANT, RESPONDENT, OR HIS OR HER RESPECTIVE COUNSEL.

(a) AFTER A COMPLAINT HAS BEEN FILED AND DURING ITS PENDENCY BEFORE THE ETHICS AND ACCOUNTABILITY BOARD, NO MEMBER OF THE BOARD MAY COMMUNICATE REGARDING THE COMPLAINT DIRECTLY OR INDIRECTLY WITH ANY COMPLAINANT, RESPONDENT, OR HIS OR HER RESPECTIVE COUNSEL, IN THE ABSENCE OF THE OPPOSING PARTY, EXCEPT THAT:

(1) THE MEMBERS OF THE BOARD MAY DISCUSS THE COMPLAINT WITH ADMINISTRATIVE STAFF, AND MAY OBTAIN LEGAL ADVICE FROM THE LAW DEPARTMENT OR, WHEN NECESSARY, FROM OUTSIDE COUNSEL;

(2) THE MEMBERS OF THE BOARD MAY DISCUSS THE COMPLAINT AT A LAWFULLY CONDUCTED MEETING;

(b) WHERE ANY COMPLAINANT OR RESPONDENT, OR HIS OR HER RESPECTIVE COUNSEL, ATTEMPTS TO COMMUNICATE WITH A MEMBER OF THE ETHICS AND ACCOUNTABILITY BOARD REGARDING A PENDING COMPLAINT IN THE ABSENCE OF THE OPPOSING PARTY, THE BOARD MEMBER SHALL REPORT THE SUBSTANCE OF THE COMMUNICATION TO THE BOARD ON THE PUBLIC RECORD AT THE NEXT REGULARLY SCHEDULED MEETING OF THE BOARD.

SECTION 6: DISPOSITION OF COMPLAINTS.

(a) THE ETHICS AND ACCOUNTABILITY BOARD SHALL DISPOSE OF A COMPLAINT WITHIN NINETY (90) CALENDAR DAYS AFTER ITS RECEIPT. HOWEVER, IF THE COMPLAINT IS ALREADY UNDER INVESTIGATION AND REVIEW BY ANOTHER DEPARTMENT, BODY, OR COURT OF LAW, OR THERE ARE EXTENUATING CIRCUMSTANCES PREVENTING THE INVESTIGATION FROM PROCEEDING, THE BOARD MAY EXTEND ITS TIME TO RESPOND TO A SPECIFIC COMPLAINT BY NOT MORE THAN NINETY (90) ADDITIONAL DAYS.

(b) THE BOARD SHALL CONTACT THE HUMAN RESOURCES/LABOR RELATIONS AND LAW DEPARTMENTS TO VERIFY IF AN INVESTIGATION AND/OR LITIGATION ARE ALREADY IN PROGRESS PRIOR TO COMMENCING ITS INVESTIGATION.

(c) IN THE EVENT THE BOARD EXTENDS ITS TIME TO RESPOND TO A COMPLAINT, THE BOARD SHALL NOTIFY, IN WRITING, THE COMPLAINANT(S), AND RESPONDENT OF THE EXTENSION AND OF THE SPECIFIC REASONS THEREFORE.

(d) AFTER GIVING DUE CONSIDERATION TO A COMPLAINT, THE ETHICS AND ACCOUNTABILITY BOARD SHALL TAKE ANY ACTION OR COMBINATION OF ACTIONS, UPON MAJORITY VOTE, WHICH THE BODY DEEMS APPROPRIATE IN ORDER TO DISPOSE OF A COMPLAINT INCLUDING, BUT NOT

LIMITED TO, ONE OR MORE OF THE FOLLOWING:

(1) DISMISS THE COMPLAINT STATING THE REASONS IN WRITING.

- (i) CONDUCT ITS OWN INVESTIGATION WITH RESPECT TO ANY ALLEGED VIOLATION; OR
- (ii) SUBMIT THE COMPLAINT TO THE OMBUDSPERSONS OFFICE FOR INVESTIGATION
- (iii) ; OR

(1) PROVIDE RECOMMENDATIONS FOR POLICY CHANGES WHEN A PATTERN AND PRACTICE OF MISCONDUCT IS IDENTIFIED OR

(2) ISSUE AND ADVISORY OPINION , PUBLIC REPORT OR RECOMMEND FOR REMEDIAL ACTIONS TO THE APPROPRIATE GOVERNMENTAL OR JUDICIAL UNIT INCLUDING PURSUIT OF RECOMMENDATIONS FOR LEGAL REMEDIES.

(3) DETERMINE, ON ITS OWN OR UPON REQUEST OF THE PARTY WHO HAS HAD THE COMPLAINT FILED AGAINST HIM OR HER, WHETHER THE COMPLAINT WAS FILED

WITH KNOWLEDGE OF ITS FALSITY OR WITH RECKLESS DISREGARD FOR ITS TRUTH OR FALSITY.

(e) WHERE A HEARING IS HELD THE BOARD SHALL ISSUE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO WHETHER A VIOLATION OF THIS ARTICLE OR CHARTER HAS OCCURRED. IN ITS DECISION, THE BOARD MAY MAKE ITS RECOMMENDATIONS.

SECTION 7: VIOLATIONS OF ARTICLE OR CHARTER; BOARD PERMITTED TO MAKE PUBLIC ADMONITION AND TO REFER FINDINGS.

(a) IN THE EVENT THE ETHICS AND ACCOUNTABILITY BOARD DETERMINES A VIOLATION OF THE CITY OF FLINT CHARTER, CITY OF FLINT ORDINANCES, REGULATIONS, POLICIES, PROCEDURES AND STANDARDS OF CONDUCT. HAS OCCURRED, THE BOARD MAY ADOPT A RESOLUTION OF PUBLIC ADMONITION AGAINST AN ELECTIVE OFFICER, OR AN APPOINTEE, REGARDING THE VIOLATION. IN ADDITION, WHERE, BASED UPON AN INVESTIGATION ARISING FROM A COMPLAINT, THE ETHICS AND ACCOUNTABILITY BOARD DETERMINES THERE MAY BE GROUNDS FOR FURTHER INVESTIGATION FOR POSSIBLE FORFEITURE OF OR REMOVAL FROM OFFICE UNDER APPLICABLE LAW, THE MATTER MAY BE REFERRED BY THE BOARD TO THE CITY COUNCIL FOR CONSIDERATION OF

FORFEITURE OR REMOVAL PROCEEDINGS.

(b) IN THE EVENT THE ETHICS AND ACCOUNTABILITY BOARD DETERMINES A VIOLATION OF THE CITY OF FLINT CHARTER, CITY OF FLINT ORDINANCES, REGULATIONS, POLICIES, PROCEDURES AND STANDARDS OF CONDUCT HAS OCCURRED, THE BOARD MAY ADOPT A RESOLUTION OF PUBLIC ADMONITION AGAINST A PUBLIC SERVANT OTHER THAN AN ELECTIVE OFFICER, OR AN APPOINTEE, REGARDING THE VIOLATION. IN ADDITION, WHERE THE ETHICS AND ACCOUNTABILITY BOARD DETERMINES A VIOLATION OF THE CITY OF FLINT CHARTER, CITY OF FLINT ORDINANCES, REGULATIONS, POLICIES, PROCEDURES AND STANDARDS OF CONDUCT BY SUCH PUBLIC SERVANT MAY PRESENT GROUNDS FOR DISCIPLINARY ACTION, THE MATTER MAY BE REFERRED BY THE BOARD TO SUCH PUBLIC SERVANT'S SUPERVISOR WITH A RECOMMENDATION THAT THE PUBLIC SERVANT'S CONDUCT BE REVIEWED FOR DISCIPLINARY ACTION.

(c) WHERE THE ETHICS AND ACCOUNTABILITY BOARD FINDS THAT A PUBLIC SERVANT MADE A DECISION IN VIOLATION OF THE CITY OF FLINT CHARTER, CITY OF FLINT ORDINANCES, REGULATIONS, POLICIES, PROCEDURES AND STANDARDS OF CONDUCT, THE BOARD MAY RECOMMEND TO THE MAYOR, THE CITY COUNCIL, THE CITY CLERK, THE APPOINTEE, THE

VOTING BODY, OR OTHER PUBLIC SERVANT THAT SUCH DECISION BE REVIEWED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE 2018 FLINT CITY CHARTER AND THIS ORDINANCE. UPON SUCH RECOMMENDATION, THE DECISION MAY BE REVIEWED BY THE MAYOR, THE CITY COUNCIL, THE CITY CLERK, THE APPOINTEE, THE VOTING BODY, OR OTHER PUBLIC SERVANT IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE 2018 FLINT CITY CHARTER, THIS ORDINANCE, AND ANY OTHER APPLICABLE LAWS.

- (d) NO REPORT OR RECOMMENDATION THAT CRITIZES AN OFFICIAL ACT SHALL BE ANNOUNCED UNTIL EVERY AGENCY OR PERSON AFFECTED IS ALLOWED REASONABLE OPPORTUNITY TO BE HEARD WITH COUNSEL.
- (e) THE INVOCATION OF ONE (1) SUBSECTION OF THIS SECTION DOES NOT PRECLUDE THE APPLICATION OF ANY OTHER SUBSECTION OF THIS SECTION OR OF ANY OTHER APPLICABLE LAWS OR POLICIES.

Sec. 2. This ordinance shall become effective this _____ day of _____ 2019.

Adopted this _____ day of _____, A.D., 2019.

Karen W. Weaver, Mayor

Inez M. Brown, City Clerk

APPROVED AS TO FORM:

Angela Wheeler, City Attorney