



CITY OF OTSEGO

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Commissioner Gilmer, supported by Commissioner Withee, moved the adoption of the following ordinance:

**CITY OF OTSEGO
ALLEGAN COUNTY, MICHIGAN
ORDINANCE NO. 162**

**AN ORDINANCE TO AMEND THE OTSEGO CITY CODE OF ORDINANCES TO
PROVIDE FOR STORMWATER MANAGEMENT AND TO REPEAL ALL
ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH**

THE CITY OF OTSEGO ORDAINS:

CHAPTER 60, STORMWATER MANAGEMENT

ARTICLE 1: GENERAL PROVISIONS

Chapter 60, "Stormwater Management", Sections 60-1 through 60-72, is hereby adopted and shall now read:

Sec. 60-1. Intent and Purpose.

The purpose of this Chapter is to:

(a) Protect the public health, safety and welfare of City residents and to protect property values, quality of life, and natural systems relating to stormwater runoff control and management. The City finds it a matter of public concern and benefit to protect water bodies and properties within the City and to reduce the future need for public expenditures relating to flooding, water quality, and stormwater system maintenance. Both the quality and quantity of stormwater runoff are a matter of public concern.

(b) Establish minimum stormwater management requirements and controls to accomplish, among others, the following objectives:

(1) To provide environmental protection to the waters of the state consistent with the State and Federal Clean Water Acts;

(2) To regulate the contribution of pollutants to the drainage system and natural water bodies by stormwater discharges by any person (as defined in this Chapter);

(3) To prohibit illicit discharges and connections to the drainage system and natural water bodies;

(4) To remove existing pollutants into stormwater and the degradation that persons may introduce to the environment;

(5) To require permits for connections to the municipal separate storm sewer system (“MS4”);

(6) To establish legal authority of the City to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter; and,

(c) Provide appropriate legal and equitable remedies for failure to comply with this Chapter.

Sec. 60-2. Statutory authority; enforcement; Stormwater Protection Administrator.

(a) This Chapter is adopted in accordance with the Home Rule Cities Act, as amended being MCL 117.1 et seq.; the Drain Code of 1956, as amended being MCLA § 208.1 et seq.; the Land Division Act, as amended, being MCLA § 560.101 et seq.; the Revenue Bond Act, as amended, being MCLA § 141.101 et seq.; the Michigan Natural Resources and Environmental Protection Act, as amended, being MCLA §324.101 et. Seq.; the Federal Water Pollution Control Act (also known as the Clean Water Act), as amended, being 33 U.S.C. § 1342(p) and CFR Parts 9, 122 and 124; and other applicable state and federal laws, as amended.

(b) The City shall administer, implement and enforce the provisions of this Chapter. Any powers granted or duties imposed upon the City may be delegated in writing by the City Commission of the City of Otsego to persons or entities acting in the beneficial interest of or in the employ of the City. That person shall be known as the Stormwater Protection Administer.

Sec. 60-3. Findings.

The City finds that stormwater regulation and management is a matter of public health, safety and welfare because:

(a) Water Bodies, roadways, structures, and other real and personal property within, and downstream of the City are at times subjected to flooding.

(b) Flooding is a danger to the persons and property and also pose a danger to the natural resources of the City and the region.

(c) Changes in land use alter the hydrologic response of watersheds resulting in increased stormwater runoff rates and volumes, which increases the potential for flooding, stream channel erosion, and sediment transport and deposition.

(d) Stormwater runoff produced by changes in land use contributes to increased quantities of water-borne pollutants.

(e) Illicit discharges contain pollutants that can significantly degrade the stream and Lake Michigan and water resources of the City, thus threatening the health, safety and welfare of the public.

(f) Illicit discharges enter the drainage system through either direct connections (e.g. wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g. infiltration into the storm drain system or spills connected by drain inlets).

(g) Establishing measures for controlling illicit discharges and connections contained in this Chapter and implementing the same will address many of the deleterious effects resulting from illicit discharges.

(h) Any illicit discharge to the drainage system or a receiving body of water, caused by or permitted to exist by any person, and in violation of any of the provisions of this Chapter is a threat to public health, safety and welfare, and is declared and deemed a nuisance.

Sec. 60-4. Applicability and general provisions.

This Chapter shall apply to all stormwater discharges or runoff from any developed and undeveloped premises or sites within the City and entering into a drainage system, drains under the jurisdiction of the Allegan County Drain Commissioner, or receiving bodies of water.

Sec. 60-5. Definitions.

For the purpose of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section unless the context in which they are used specifically indicates otherwise.

(a) AUTHORIZED ENFORCEMENT AGENCY. The Stormwater Protection Administrator, or any person or agencies designated to act as the authorized enforcement agency by the City Commission of the City of Otsego to enforce this provisions of this Chapter.

(b) BEST MANAGEMENT PRACTICES (BMP). Any structural devices or facilities, or vegetative or managerial (i.e. nonstructural) practices that are used to treat, prevent or reduce water pollution or pollutants entering the MS4, drain or drainage system or waterways. BMPs may include, but shall not be limited to, stormwater treatment, temporary seeding of exposed soils, detention and retention basins for stormwater control, and those practices described in the Michigan Department of Environmental Quality Guidebook of BMPs for Michigan watersheds. Equivalent practices and design criteria for structural devices or facilities to accomplish the purposes of this Chapter (including, but not limited to, devices or facilities that minimize stormwater runoff and prevent the discharge of pollutants) shall be determined by the City Engineer and, when applicable, the standards and rules of the Allegan County Drain Commissioner.

(c) CLEAN WATER ACT. Shall mean, the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., as amended, and all applicable regulations promulgated thereunder.

(d) DETENTION BASIN. A structure or facility that may be vegetative or artificial, which stores stormwater on a temporary basis and releases it at a controlled rate. A detention basin may drain completely after a storm event, or it may be a pond with a fixed minimum water elevation between runoff events.

(e) DISCHARGE. The introduction, intentionally or unintentionally, directly or indirectly, of any liquid, substance, pollutant or other material into drain, drainage system, watercourse or watershed.

(f) DISCHARGER. Any person who directly or indirectly discharges stormwater from any premises, site or property to a drain, drainage system or receiving body of water.

- (g) DISCHARGE RATE OF FLOW. The discharge rate of flow or volume of water passing a given point, and expressed as cubic feet per second (“cfs”).
- (h) DISCHARGE PERMIT. A permit issued by the owner of the municipal separate storm sewer system (MS4), drain or drainage system, to a discharger.
- (i) DISTURBED AREA. An area of land subject to the removal of vegetative cover or earthmoving activities.
- (j) DRAIN or DRAINAGE SYSTEM. Any natural and human made facilities, measures, areas and structures, that serve to convey, catch, hold, filter, store and/or receive stormwater or groundwater, either on a temporary or permanent basis. Storm drain or storm sewer means a channel, pipe or sewer which carries storm and surface waters and drainage, infiltration and inflow waters, and wastewaters authorized in writing by the state, the city and any other governmental office or entity of competent jurisdiction. Drain or Drainage System, may include a drain established under the Michigan Drain Code, 1956 PA 40, MCL 280.1 et seq., as amended, water body or floodplain.
- (k) DRAINAGE. The collection, conveyance or discharge of groundwater or surface water.
- (l) EARTH CHANGE. Any human activity which removes ground cover, changes the slope or contours of the land, or exposes the soil surface to the actions of water, storm water, wind and ice. Earth change includes but not limited to, any excavating, surface grading, filling, landscaping, or removal of vegetative roots.
- (m) EPA. The U.S. Environmental Protection Agency
- (n) FLOODPLAIN. The area, usually low lands, adjoining the channel of a river, stream or watercourse or lake or other body of standing water that has been or may be covered by stormwater.
- (o) GRADING. Any stripping, excavating, filling, and stockpiling of soil or any combination thereof and the land in its excavated or filled condition.
- (p) HAZARDOUS MATERIALS. Any solid, liquid, semisolid or gaseous substance or material that because of its quantity, quality, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or serious incapacitating but reversible illness, or may pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of, or otherwise managed.
- (q) ILLICIT CONNECTION. Any method or means or conduit for conveying an illicit discharge into a drain, drainage system, watercourse, or receiving body of water.
- (r) ILLICIT DISCHARGE. Any discharge to a drain, drainage system, watercourse or receiving body of water that does not consist entirely of stormwater runoff, that is not allowed by the terms of an NPDES permit, or that is not an allowable discharge as defined by this Chapter. Illicit discharges include, but are not limited to, discharges of pollutants, hazardous materials, toxic materials, wastewater, and sediment.

(s) INFILTRATION. The percolation and movement of water downward into and through the soil column. The rate of this movement is expressed in inches per hour.

(t) MDEQ. Michigan Department of Environmental Quality or successor agency of the State of Michigan.

(u) MS4. Municipal Separate Storm Sewer System, as defined by federal and state laws.

(v) NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT. A permit issued by the EPA or a state agency under authority delegated pursuant to the Clean Water Act that allows the discharge of pollutants to waters of the United States or waters of the State.

(w) NONSTORMWATER DISCHARGE. Any discharge to the drainage system or a water body that is not composed entirely of stormwater and may constitute an illicit discharge.

(x) OFFSITE FACILITY. Any portion of a stormwater management system which is located off the development site which it serves.

(z) 100-YEAR STORM EVENT. The 100-year storm is a storm event that has a 1% chance of occurring in any given year.

(aa) PERFORMANCE STANDARD. The technical standard or set of standards as determined and approved by the City Commission in response to state and federal regulatory requirements, changed scientific knowledge, or similar changed conditions and/or enhanced knowledge.

(bb) PERSON. Any person, individual, partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine and the singular shall include the plural where indicated by context.

(cc) POLLUTANT. Includes, but is not limited to, the following: any dredged spoil, solid waste, vehicle fluids, yard wastes, animal wastes, agricultural waste products, sediment, incinerator residue, sewage, wastewater, garbage, sewage sludge, munitions, chemical wastes, biological wastes, radioactive materials, hazardous materials, toxic materials, wrecked or discharged equipment, rock, sand, cellar dirt and industrial, municipal, commercial and agricultural waste, or any other contaminant or other substance defined as a pollutant under the Clean Water Act; or as defined in Chapter 78 Article II of the City of Otsego Code of Ordinances. "Pollutant" also includes properties or characteristics of water, including, but not limited to, pH, heat, TSS, turbidity, color, BOD, COD, toxicity and odor.

(dd) PREMISES. Any building, structure, lot, parcel of land or portion of land, or property, whether improved or unimproved, including adjacent sidewalks and parking strips.

(ee) PRIMARY DRAINAGE SYSTEM. Facilities, structures, and areas which convey, store, or receive runoff from storms up to a 10-year frequency.

(ff) PROPERTY OWNER. Any person having legal or equitable title to property or premises or any person having or exercising care, custody or control over any property or premises.

(gg) RECEIVING BODY OF WATER. Any watercourse, wetland or waters of the state into which surface waters are directed, either naturally or artificially.

(hh) RETENTION BASIN. A holding area for stormwater, either natural or constructed, which does not have an outlet to a drain or receiving body of water. Water is removed from retention basins through infiltration and evaporation processes, and may or may not have a permanent pool of water.

(ii) RUNOFF or STORMWATER RUNOFF. The portion of precipitation resulting from rainfall, snowmelt or other natural event or process, which does not infiltrate or percolate into the ground, but rather moves over the land, eventually reaching a drain, receiving body of water, or low area.

(jj) SECONDARY DRAINAGE SYSTEM. Facilities, structures, and areas which convey, store or receive runoff from storms up to 100-year storm event without causing serious damage to adjacent properties.

(kk) SEDIMENT. Any solid particulate matter, both mineral and organic, which has been moved from the site of origin by erosion, is being transported by water, is in suspension in water, or has been deposited in a drain or receiving body of water.

(ll) SITE. Any tract, lot, or parcel of land or combination of tracts, lots, or parcels, which compose an area proposed for development or earth change.

(mm) SOIL EROSION or EROSION. The stripping of soil and weathered rock from land creating sediment for transportation by water, wind or ice, and enabling formation of new sedimentary deposits.

(nn) WATER QUALITY STANDARDS. All applicable state rules, regulations, and laws pertaining to water quality, including the provisions of Section 3106 of Part 31 of 1994 P.A. 451, as amended.

(oo) STORMWATER FACILITY. Methods, structures, BMPs, areas, or related items, which are used to control, store, receive, infiltrate, or convey runoff.

(pp) STORMWATER MANAGEMENT PLAN. Drawings, maps and written information prepared by registered engineer, registered landscape architect or registered surveyor which describe the way in which accelerated soil erosion or stormwater flows are proposed to be controlled, both during and after construction, and having as its purpose to ensure the objectives of the Chapter are achieved.

(qq) STORMWATER POLLUTION PREVENTION PLAN. A document that describes the BMPs and activities to be implemented by a person to identify sources of pollution or contamination at a site, and the actions to eliminate or reduce pollutant discharges to stormwater, a drain or drainage system, watercourse, or receiving body of water body, to the maximum extent practicable.

(rr) TOXIC MATERIAL. Any pollutant or combination of pollutants that is or can potentially be harmful to the public health or the environment, including without limitation those listed in 40 CFR 401.15 as toxic under the provisions of the Clean Water Act or listed in the Critical

Materials Register promulgated by the Michigan Department of Environmental Quality, or as otherwise provided by local, state or federal laws, rules or regulations.

(ss) WASTEWATER. Any water or other liquid, other than uncontaminated stormwater, discharged from a property or premises. The term includes any water that has in any way been used and degraded or physically or chemically altered.

(tt) WATERCOURSE. Any waterway or receiving body of water having reasonably well defined banks, including rivers, streams, creeks and brooks, whether continually or intermittently flowing; and lakes and ponds, as shown on the official maps of the Michigan Department of Natural Resources and Allegan County Drain Commissioner.

(uu) WATERSHED. An area in which there is a common receiving body of water into which stormwater ultimately flows, otherwise known as a drainage area.

(vv) WETLAND. Land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation and/or aquatic life, and is commonly known as a bog, swamp or marsh, as defined by state law.

Sec. 60-6 – 60-9. Reserved

ARTICLE 2: PROHIBITIONS AND ALLOWABLE DISCHARGES

Sec. 60-10. Prohibited discharges.

(a) It shall be unlawful for any person to discharge, or cause to be discharged, to a drain, drainage system or receiving body of water, directly or indirectly, any substance or material, including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater or an allowable discharge. This prohibition includes any illicit discharge by any person to a drain, drainage system, watercourse or receiving body of water.

(b) Any person discharging stormwater shall effectively prevent pollutants from being discharged with the stormwater, except in accordance with BMPs.

(c) The authorized enforcement agency is authorized to require dischargers to implement pollution prevention measures, using stormwater pollution prevention plans and BMPs, as determined necessary by the authorized enforcement agency to prevent or reduce the discharge of pollutants to a drain, drainage system, watercourse or receiving body of water.

(d) The discharge of pollutants prohibitions contained in this Article shall not apply to any non-stormwater discharge allowed under an NPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the EPA or MDEQ, provided the discharger is in full compliance with all requirements of the NPDES permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted by the authority having legal jurisdiction, for any discharge to the drain, drainage system, watercourse or receiving body of water.

Sec. 60-11. Prohibited illicit connections.

(a) It is unlawful for any person or discharger to construct, use, maintain or to allow the construction, use, maintenance or continued use of an illicit connection.

(b) This prohibition expressly includes, without limitation, any illicit connections existing prior to the effective date of this Chapter, and regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

Sec. 60-12. Allowable discharges.

The following non-stormwater discharges are permissible, provided they do not result in a violation of State of Michigan water quality standards, and provided that they are undertaken in compliance with any applicable or required BMPs and/or permit:

- (a) Water supply line flushing.
- (b) Landscape irrigation runoff.
- (c) Diverted stream flows.
- (d) Rising groundwater.
- (e) Uncontaminated groundwater infiltration to storm drains.
- (f) Uncontaminated pumped groundwater.
- (g) Discharges from potable water sources.
- (h) Foundation drains.
- (i) Air-conditioning condensate.
- (j) Irrigation water.
- (k) Springs.
- (l) Water from crawl space pumps.
- (m) Footing drains and basement sump pumps.
- (n) Lawn watering runoff.
- (o) Waters from noncommercial car washing.
- (p) Flows from riparian habitats and wetlands.
- (q) Residual street wash water.
- (r) Discharges or flows from emergency firefighting activities.
- (s) Single-family, residential swimming pool discharges provided the pool waters have been de-chlorinated to less than 0.5 parts per million chlorine, and further, provided the discharge does not occur during times of rain events.
- (t) Dye testing using MDEQ approved dyes, so long as authorized by a DEQ Rule 97 Certificate of Approval, and preceded by a written notification to and approval from the Stormwater Protection Administrator.

Sec. 60-13. Storage of hazardous or toxic materials in drainageway.

Except as permitted by law, it shall be unlawful for any person to store or stockpile within a drainageway any pollutants, hazardous materials or toxic materials, unless adequate protection or containment has been provided so as to prevent any such materials from entering a drain, drainage system, watercourse or receiving body of water.

Sec. 60-14 – 60-19. Reserved.

ARTICLE 3: INSPECTION, MONITORING, REPORTING AND RECORDKEEPING

Sec. 60-20 Inspection and sampling; Notice to Property Owner or Discharger.

(a) Upon written notice to the property owner or discharger, properly identified representatives of the authorized enforcement agency shall have the right to enter or access property served by an MS4, drain, drainage system, watercourse or receiving body of water, at all hours necessary for the purposes of inspecting, investigating, or monitoring storm water measures, facilities, or systems, and may obtain samples from a discharger's property or premises as necessary to determine compliance with the requirements of this Chapter. The inspection, investigation or monitoring, may include, but is not limited to, smoke or dye testing, televising pipes, examination or the copying of records that are required by this Chapter to be maintained by the property owner or discharger.

(b) The City shall give written notice to the property owner or discharger. The notice shall be delivered to the property owner or discharger, or mailed to the last known post office address of the property owner or discharger. The notice shall contain a statement setting for the requirements of this Chapter and the purpose of the inspection, investigation or monitoring storm water measures, facilities, or systems that serve the premises or site, to determine compliance with the requirements of this Chapter.

Sec. 60-21. Stormwater-monitoring facilities.

Upon written notice to a discharger, the authorized enforcement agency may require a discharger to provide and operate equipment or devices for the monitoring of stormwater runoff from the premises or site, and provide for inspection, sampling and flow measurement of each discharge to an MS4, drain, a drainage system, watercourse or receiving body of water. All such equipment and devices for the inspection, sampling and flow measurement of discharges shall be installed and maintained at the discharger's expense in accordance with applicable laws, ordinances and regulations.

Sec. 60-22. Accidental discharges.

Any discharger who accidentally discharges into a MS4, drain or drainage system or a water body any substance other than stormwater or an allowable discharge shall immediately notify the authorized enforcement agency of the discharge. If the notification is given orally, a written report concerning the discharge shall be filed with the authorized enforcement agency within five days. The written report shall specify all of the following:

(a) The composition of the discharge and the cause thereof.

(b) The exact date, time and estimated volume of the discharge, all measures taken or proposed to be taken to mitigate any known or potential adverse impacts of the discharge, and all measures proposed to be taken to reduce and prevent any recurrences.

(c) All measures taken to clean up the discharge, all measures taken or proposed to be taken to mitigate any known or potential adverse impacts of the discharge, and all measures proposed to be taken to reduce and prevent any recurrences.

(d) The names and telephone numbers of the individual making the report and, if different, the individual who may be contacted for additional information regarding the discharge.

Sec. 60-23. Recordkeeping requirement.

Any discharger that violates the requirements of this Chapter, or is subject to monitoring under this Chapter, shall retain and preserve for no less than five (5) 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 stormwater runoff from any property or premises connected with the violation or subject to monitoring.

Sec. 60-24 – 60-29. Reserved.

ARTICLE 4: PERFORMANCE AND DESIGN STANDARDS

Sec. 60-30. Responsibility to implement BMPs.

The owner or operator of property or premises used for any multiple-family dwellings, mobile home parks, planned unit development, plat, site condominium, office, commercial or industrial purposes (regardless of parcel size) shall provide, at the property owner's or operator's own expense, stormwater facilities or other protective measures, to prevent an accidental discharge of pollutants from entering into a MS4, drain, drainage system or receiving body of water. Further, any person responsible for the premises that is, or may be, the source of an illicit discharge, may be required to implement, at his or her expense, additional BMPs to prevent the continued discharges of pollutants to the MS4, drain, drainage system or receiving body of water.

Sec. 60-31. Performance Standards.

A property owner or discharger shall comply with the following performance standards related to stormwater management plans and facilities:

(a) Stormwater management areas and facilities, whether on-site or off-site, shall be designed, constructed, and maintained to prevent flooding and protect water quality. In order to be approved, all stormwater management plans must meet the following performance standards:

(1) Runoff leaving the site shall be controlled to a non-erosive velocity, both during and after construction.

(2) Minimum Treatment Volume. A minimum treatment volume is established to provide pollutant removal (pre-treatment) for prevalent precipitation events. The minimum treatment volume standard shall be one inch of runoff from the entire site. Use of the US

Geological Service (USGS) runoff curve number method is the preferred means to calculate site runoff. Treatment methods shall be designed on a site-specific basis to achieve a minimum 80 percent removal of total suspended solids (TSS), as compared with uncontrolled runoff, or discharge concentrations of TSS not to exceed 80 milligrams per liter (mg/l). A minimum treatment volume standard is not required where site conditions are such that TSS concentrations in stormwater discharges will not exceed 80 mg/l.

(3) Channel Protection Criteria. Channel protection criteria is established to protect stream channel bed and banks from excessive flows. The channel protection criteria is 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" means the runoff flow volume and rate for the last land use prior to the planned new development or redevelopment.

(4) Flood Control. A flood control performance standard is required to ensure stormwater entering the City MS4 is \leq than the existing (pre-development) conditions and on-site retainage is properly designed to protect neighboring properties. The City Engineer or designee will review each site plan for approval to determine if the proposed discharge meets industry standards and is appropriate for the specific site.

(5) Riparian Buffers. A riparian buffer shall be provided for lands adjacent to streams and rivers and wetlands which are contiguous to these natural features. Riparian buffers shall also be required for noncontiguous wetlands if the full extent of the wetland as a natural feature is five (5) acres or greater. The riparian buffer shall serve as a natural conservation area, where the principle BMP is vegetative filtering and the conservation of trees, shrubs and herbaceous vegetation. The riparian buffer is a stormwater management measure to control soil loss and reduce water quality degradation caused by nutrients, animal wastes, toxics, sediment and runoff. The riparian buffer shall begin at the edge of the stream bank of the active channel or the wetland boundary. The riparian buffer shall be composed of two distinct management zones in order to proscribe both permitted and restricted uses that provide progressive best management practices for stormwater quality protection.

- a. Zone 1 - Stream Side Protection. Zone 1 begins at the edge of the streambank or wetland and extends 25 feet up gradient and perpendicular to the protected natural feature. Zone 1 shall contain undisturbed natural vegetation. Allowable uses within this zone are restricted to flood control structures, utility right of ways, foot paths, and road crossings where permitted. Highly restricted vegetative trimmings and removal of woody brush/trees is allowed to provide a limited view shed of the protected natural feature.
- b. Zone 2 - Outer Zone. The Outer Zone (Zone 2) begins at the outer limit of the Stream Side Protection Zone (Zone 1) and extends 25 feet. Allowable uses within the Outer Zone are biking or hiking paths, approved stormwater management facilities, approved recreational facilities, and removal of mature tree cover. Shrub and herbaceous ground cover are to be protected from disturbance.

- c. Permitted Activities. The following actions are permitted within Zones 1 and 2, provided the activity is undertaken in accordance with recognized BMPs. Other regulatory restrictions may apply, such as actions that may require separate federal, state or local permit or permit-by-rule provisions.
 - (i) Stream restoration projects conducted with advice and guidance of the MDEQ.
 - (ii) Removal of individual trees that are in danger of falling, causing damage to structures, or causing blockage of the stream.
 - (iii) Timber cutting techniques approved by state agencies, under advice and guidance, for purposes of forest management due to pest infestation, disease or threat from fire.
 - (iv) Riparian buffers are intended to grow into their vegetative target state naturally, however active methods to enhance successional process, reforestation or to ensure preservation and propagation of the buffer are allowed.

- d. The width of each Zone may need to be increased if steep slopes are within close proximity of the protected natural feature. Guidelines of the US Geological Service may be used to determine the required equivalent length of vegetative filter capacity needed for slopes in excess of 15%.

(b) Stormwater storage facilities which protect water quality and prevent adverse flooding on-site and off-site shall be required for all sites. In order to improve the quality of stormwater runoff and reduce the discharge of sediment into wetlands, watercourses, roadways, structures and other property within, and downstream of the City of Otsego, the following techniques (1) through (6); and standards (7) through (9) shall be used:

- (1) Infiltration of runoff provided that soils and groundwater conditions are suitable.
- (2) Retention basins with a fixed minimum water elevation between runoff events (e.g. wet ponds)
- (3) Detention basins which drain completely after a storm event (e.g. dry basins) but which discharge stormwater to wetlands or constructed basins which trap sediment carried by stormwater runoff.
- (4) Detention basins which hold stormwater for more than 24 hours before completely draining to become a dry basin (Extended detention basins).
- (5) Detention basins with a positive outlet shall be designed to hold runoff from a 10-year storm event, as a minimum. Retention basins without a positive outlet shall be designed to hold runoff from a 100-year storm event.
- (6) The banks of detention basins shall not exceed a 1:5 slope unless a fence is constructed.
- (7) Natural watercourses shall not be dredged, cleared of vegetation, deepened, widened, straightened, stabilized or otherwise altered without approval from the Michigan Department of Natural Resources and Allegan County Drain Commissioner.

(8) Discharge of runoff from commercial and industrial sites which may contain oil, grease, toxic chemicals, or other polluting materials shall be prohibited unless approval has been obtained from the Michigan Department of Natural Resources and Allegan County Drain Commissioner.

(9) The use of stormwater management areas and vegetated buffer areas as open space, recreation, and conservation areas shall be encouraged.

(c) Pipes, conduits, ditches, or other conveyance facilities shall not discharge directly to the following receiving waters without providing the minimum treatment volume and channel protection criteria:

(1) Any natural watercourses, including lakes, ponds, rivers and streams.

(2) Wetlands with unique or natural wildlife or habitat characteristics as defined by a professional wetlands delineation specialist, biologist or ecologist.

(3) Wetlands which are within a 500 foot distance of any natural lake or pond
Wetlands which are within a 100 foot distance of any river or stream.

(d) Discharges from stormwater conveyance facilities shall be routed through swales, vegetated buffer strips, stormwater basins, hydrologically isolated wetlands, and other facilities designed to decrease runoff velocity and volume, allow for natural infiltration, allow suspended solids to settle, and remove pollutants.

(e) If wetlands are proposed for stormwater detention, runoff must be diffused to non-erosive velocities before it reaches the wetlands.

(f) Operation and maintenance. All structural and vegetative BMPs installed as a performance standard for stormwater management shall include a plan for maintaining maximum performance through long-term operation and maintenance (O&M). The plan shall include a schedule for O&M procedures and recordkeeping provisions such as periodic inspections.

(g) Record retention. Inspections and other records pertaining to the O&M of BMPs for stormwater water quality protection shall be maintained by the property owner and retained for a minimum of five years.

(h) No stormwater management plan shall be approved where the City of Otsego Planning Commission determines that the action will or is likely to pollute, impair or destroy air, water or other natural resources, and where there is no feasible and prudent alternative consistent with the reasonable requirements of the public health, safety and welfare.

Sec. 60-32. Design Standards.

The City shall maintain design standards on file at the City office. If specific BMP design standards are not on file, designs for such BMPs shall be in accordance with acceptable engineering practices and current design manuals.

Sec. 60-33. "Hot Spots" Properties.

If the subject property is a potential "Hot Spot" area with the potential for significant pollutant loading or with the potential for contaminating public water supply (wells), the property

owner may be required to implement additional site-specific requirements as prescribed by the authorized enforcement agency, to address the contaminate(s) of concern. Example of typical “hot spots” areas included, but not limited to gas stations, commercial vehicle maintenance and repair, auto recyclers, recycling centers, and scrap yards.

Sec. 60-34. Contaminated Properties.

If the premises or site containing soil or groundwater contamination, the property owner may be required to implement additional site-specific requirements as prescribed by the authorized enforcement agency to address the contamination and stormwater discharges from the premises. The property owner or the property owner’s representative shall contact the Kalamazoo District MDEQ Office Remediation and Redevelopment staff prior to approval of a site plan for direction regarding all state environmental regulations and requirements pertaining to site specific requirements. A property owner shall provide documentation and supporting material to the City regarding any and all MDEQ requirements prior to site plan approval. The City shall not approve a site plan for premises or sites containing soil or groundwater contamination that does not comply with MDEQ requirements for stormwater discharges.

Sec. 60-35-60.39. Reserved.

ARTICLE 5: STORMWATER MANAGEMENT PLAN AND POST CONSTRUCTION

Sec. 60-40. Stormwater Management Plan.

(a) No building, grading, or sediment control permit shall be issued until a satisfactory stormwater management plan or a waiver thereof, shall have undergone a review and been approved by the City after determining that the plan or waiver is consistent with the requirements of this Chapter. After review of the stormwater management plan, and modifications to that plan as deemed necessary by the City, a final stormwater management plan must be submitted to the City for approval. The final stormwater management plan shall at a minimum include the following:

(1) Contact Information: The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.

(2) Topographic Base Map: 1”=200’ topographic base map of the site which extends a minimum of 100 feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown.

(3) Calculations: Hydrologic and hydraulic design calculations for the pre development and post development conditions for the design storms.

(4) Soils Information: If a stormwater BMPs depends on the hydrologic properties of soils (e.g. infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil sites shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the BMPs.

(5) Maintenance and Repair Plan: The design and planning of all stormwater management facilities shall include detailed maintenance and repair procedures to ensure their continued function. These plans will identify the parts or components of a BMP that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

(6) Landscaping Plan: The property owner or applicant must present a detailed plan for management of vegetation at the site after construction is finished. Including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is presented.

(7) Stormwater Best Management Practices Operations & Maintenance Agreement: Proof of a recorded Stormwater Best Practices Operations & Maintenance Agreement binding on all subsequent owners of land served by BMPs to ensure maintenance and repair in accordance with the specifications of this Chapter shall be provided to the City. The agreement shall provide for access to the BMP and the premises at reasonable times for periodic inspection by City to ensure that the BMP is maintained in proper working condition to meet City stormwater requirements. The agreement shall be recorded by City at the expense of the permit holder or property owners.

Sec. 60-41. Maintenance and Repair of Stormwater BMPs.

(a) All property owners or dischargers subject to this Chapter, must ensure that BMPs are properly operated, inspected and maintained:

(1) Maintenance Covenants: Maintenance of all BMPs shall be ensured through the creation of a formal maintenance covenant that must be reviewed and approved by the City, and recorded prior to the approval of the stormwater management plan. As part of the covenant, a maintenance schedule shall be prepared detailing the frequency of maintenance and cleanouts to ensure proper functioning of the BMPs. The covenant shall also include plans for periodic inspections to ensure proper performance of the BMPs between scheduled cleanouts.

(2) Requirements for Maintenance Covenants: All BMPs must undergo, at the minimum, an annual inspection to document maintenance and repairs needed to ensure compliance with the requirements of this Chapter. These needs may include, but are not limited to, removal of silt, litter, and other debris from all stormwater treatment and conveyance facilities including ponds, infiltration basins, raingardens, catch basins, inlets, and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance or repairs identified by the City must be corrected by the property owner or person responsible within 30 days, and as determined by the City, the inspection and maintenance requirements may be modified as deemed necessary by the City to ensure proper functioning of the BMPs.

(3) Inspection of BMPs: Inspection programs may be established on any reasonable basis, including but not limited to; routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical

discharge to cause violations of State or Federal water or sediment quality standards or the NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in stormwater BMPs, and evaluating the condition of stormwater BMPs.

(4) Right of Entry for Inspection, Investigation, or Monitoring: When any new stormwater BMP is installed on private property, or when any new connection is made between private property and a public stormwater management facility, sanitary sewer or combined sewer, the property owner shall grant to the City the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection, investigation or monitoring. This includes the right to enter the property when City has a reasonable basis to believe that a violation of this Chapter is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this Chapter.

(5) Records of Installation and Maintenance and Repair Activities: Parties responsible for the operation and maintenance of BMPs shall submit to the City Clerk an annual maintenance and inspection report including all records of the installation and of all maintenance and repairs conducted. The property owner or discharger shall retain the records for a minimum of five (5) years. These records shall be made available to City during inspection of the facility and at other reasonable times upon request.

Sec. 60-42 – 60-49. Reserved.

ARTICLE 6: ENFORCEMENT

Sec. 60-50. Enforcement and Violation.

(a) It is a violation of this Chapter by any person or discharger that:

(1) Knew or should have known that a pollutant or substance was discharged contrary to any provision of this Chapter or contrary to any notice, order, permit, decision or determination promulgated, issued or made by the authorized enforcement agency under this Chapter; or

(2) Intentionally makes a false statement, representation or certification in an application for or form pertaining to a permit, or in a notice, report or record required by this Chapter or in any other correspondence or communication, written or oral, with the authorized enforcement agency regarding matters regulated by this Chapter; or

(3) Intentionally falsifies, tampers with or renders inaccurate any sampling or monitoring device or record required to be maintained by this part.

(b) Any person or discharger convicted of a violation of any provision of this Chapter, is subject to the fines and penalties as set forth in Chapter 1, Sections 1-14 and 1-15 of the Otsego City Code.

Sec. 60-51. Failure to comply; completion.

(a) The authorized enforcement agency may, after giving notice and opportunity for compliance as provided in 60-51(b), to enter the premises or site, and correct any violation of this Chapter or damage or impairment to the MS4, drain or drainage system caused by an illicit discharge, and to assess the person or property for all costs to repair, replace or remediate the damage or impairment to the MS4, drain, drainage system, watercourse or receiving waters. The costs reimbursable under this section shall be in addition to fees, amounts or other costs and expenses required to be paid to the authorized enforcement agency under other sections of this Chapter.

(b) If the property owner or discharger fails or refuses to comply with the requirements of this Chapter, the city shall give written notice to the property owner or discharger. The notice shall be delivered to the property owner or discharger, or mailed to the last known post office address of the property owner or discharger. A notice of violation shall contain a statement:

(1) Setting forth the nature of the violation or requirements of this Chapter;

(2) That the property owner or discharger has five (5) days from the date of the notice to correct the violation;

(3) That, if the property owner or discharger fails to correct the violation, the City will enter the premises or site, and correct the violations of this Chapter or damage or impairment to the MS4, drain or drainage system caused by an illicit discharge, and assess the person or property for all costs and fees, associated with the repairs, replacement or remediation of the damage or impairment to the MS4, drain, drainage system, watercourse or receiving waters.

(4) That if the property owner or discharger fails reimburse the City for the costs and fees a lien shall be filed against the property to secure all costs and fees associated with the repairs, replacement or remediation of the damage or impairment to the MS4, drain, drainage system, watercourse or receiving waters, then City may place a lien on the premises or take other legal action seeking reimbursement of costs.

(5) That refusal or failure to correct violations of this Chapter, is a municipal civil infraction which shall, upon a determination of responsibility, is subject to the fines and penalties as set forth in Chapter 1, Sections 1-14 and 1-15 of the Otsego City Code.

Sec. 60-52. Emergency measures; cost recovery.

If an emergency condition exists, as determined by the authorized enforcement agency, such that emergency remedial measures are necessary in order to respond to an unlawful discharge, illicit discharge, or nuisance to protect public safety, health and welfare, or to prevent loss of life, injury or damage to property, the authorized enforcement agency may carry out or arrange for all such emergency remedial measures to abate the unlawful discharge, illicit discharge, or nuisance. Property owners and dischargers shall be responsible for all costs of the authorized enforcement agency in responding to the emergency and implementation of remedial measures as a result of a violation of this Chapter, and shall promptly reimburse the City for all of such costs.

Sec. 60-53. Cost recovery for damage to drainage system.

(a) Any person who discharges to a MS4, drain, drainage system or receiving body of water, including, but not limited to, any person who causes or creates a discharge that violates any

provision of this Chapter, produces a deposit or obstruction or otherwise damages or impairs a drainage system, or causes or contributes to a violation of any federal, state or local law governing the City, shall be liable to and shall fully reimburse the City for all expenses, costs, losses or damages (direct or indirect) payable or incurred by the City as a result of any such discharge, deposit, obstruction, damage, impairment, violation, exceedance or noncompliance. The costs that must be reimbursed to the City shall include, but not limited to, all of the following:

(1) All costs incurred by the City in responding to the violation or discharge, including expenses for any cleaning, repair or replacement work, and the costs of sampling, monitoring and treatment, as a result of the discharge, violation, exceedance or noncompliance.

(2) All costs to the City of monitoring, surveillance and enforcement in connection with investigating, verifying and prosecuting any discharge, violation, exceedance or noncompliance.

(3) The full amount of any fines, assessments, penalties and claims, including natural resource damages, levied against the City or any City representative by any governmental agency or third party as a result of a violation of applicable laws or regulations that is caused by or contributed to by any discharge, violation, exceedance or noncompliance.

(4) The full value of any City staff time (including any required overtime), consultant and engineering fees, and actual attorney's fees and defense costs (including the City legal counsel and any special legal counsel) associated with responding to, investigating, verifying and prosecuting any discharge, violation, exceedance or noncompliance, or otherwise enforcing the requirements of this Chapter.

Sec. 60-54. Collection of costs; Single-Premise Assessments.

Costs incurred by the City pursuant to §§ 60-51, 60-52, 60-53 and 60-55A will be invoiced to the property owner. Any cost not collected within 6 months thereafter shall become a Special Assessment on the property or premises, which shall be enforceable in accordance with Chapter 62 of the City Charter. The failure by any person to pay amounts required to be reimbursed to the City as provided by this Chapter shall constitute an additional violation of this Chapter.

Sec. 60-55. Suspension of access to drainage system.

(a) Suspension due to illicit discharges in emergency situations. The authorized enforcement agency may, without prior notice, suspend access to the MS4, drain, or drainage system to any property or premises when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment or to the health or welfare of persons or to the MS4, drain, or drainage system or a receiving body of water. If the property or premises owner fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the drainage system or the environment or to minimize danger to persons, and bill the property or premises owner for the costs incurred by the City.

(b) Suspension due to the detection of illicit discharge. Any person discharging to the MS4, drain or drainage system in violation of this Chapter may have their access to the system

terminated, if the authorized enforcement agency determines that such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a discharger of the proposed termination of access. It shall be unlawful for any person to reinstate access to the MS4, drain or drainage system to a property or premises terminated pursuant to this section without the prior written approval of the authorized enforcement agency.

Sec. 60-56. Appeals.

(a) Any person who has been cited for a violation of this Chapter or has been ordered to take action to comply with the provisions of this Chapter may appeal in writing to the City Commission of the City of Otsego not later than 30 days after the action or decision being appealed. Such appeal shall identify the matter being appealed and the basis for the appeal. The City Commission shall consider the appeal and make a decision whereby it affirms, rejects or modifies the action being appealed. In considering any such appeal, the City Commission may consider the recommendations of the authorized enforcement agency and the comments of other persons having knowledge or expertise regarding the matter. In considering any such appeal, the City Commission may grant a temporary variance from the terms of this Chapter so as to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

(1) The application of the ordinance provisions being appealed will present or cause unnecessary hardship for the property or premises owner appealing; provided, however, that unnecessary hardship shall not include the need for a property or premises owner to incur additional reasonable expenses in order to comply with the part; and,

(2) The granting of the relief requested will not prevent accomplishment of the goals and purposes of this Chapter, nor result in less effective management of stormwater runoff.

Sec. 60-57. Judicial Relief

The City may institute legal proceedings in a court of competent jurisdiction to seek all appropriate relief for violations of this Chapter or of any permit, order, notice or agreement issued or entered into under this Chapter. The action may seek temporary or permanent injunctive relief, damages, penalties, costs and any other relief at law or equity that a court may order. The City may also seek collection of fines, penalties and any other amounts assessed and due to the City that remain unpaid.

Sec. 60-58. Civil Infraction.

Any violation of this Ordinance shall be considered a civil infraction, subject to a fine of not more than \$500.00 together with costs as provided for by ordinance. Each day a violation exists shall be deemed a separate violation. A citation charging such a violation may be issued by the City Ordinance Enforcement Officer, or his or her designee.

Sec. 60-59. Remedies not exclusive.

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

Sec. 60-60. Cumulative remedies.

The imposition of a single penalty, fine, order, damage or surcharge upon any person for a violation of this Chapter or of any permit, order, notice or agreement issued or entered into under this Chapter shall not preclude the imposition by the City, the authorized enforcement agency, or a court of competent jurisdiction of a combination of any or all of those sanctions and remedies or additional sanctions with respect to the same violation, consistent with applicable limitations on penalty amounts under state or federal laws or regulations. A criminal citation and prosecution of a criminal action against a person shall not be dependent upon and need not be held in abeyance during any civil, judicial or administrative proceeding, conference or hearing regarding the person.

Sec. 60-61 – 60-69. Reserved.

ARTICLE 7: INTERPRETATION

Sec. 60-70. Interpretation of words and phrases.

Words and phrases in this Chapter shall be construed according to their common and accepted meanings, except those words and phrases that are defined in Sec. 60-5 shall be construed according to the respective definitions given in that section. Technical words and technical phrases not defined in this Chapter, but which have acquired particular meanings in law or in technical usage, shall be construed according to such meanings.

Sec. 60-71. Catch-line headings.

The catch-line headings of the Chapters and sections of this Chapter are intended for convenience only and shall not be construed as affecting the meaning or interpretation of the text of the Chapters or sections to which they may refer.

ARTICLE 8

Sections 60-72 -60-99 are hereby reserved.

ARTICLE 9

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

ARTICLE 10

Any and all sections, terms, provisions and/or clauses herein shall be deemed independent and severable. Should any court or competent jurisdiction hold any section, term, provision or clause void and/or invalid, all remaining sections, terms, provisions and/or clauses not held void and/or invalid shall continue in force and effect.

ARTICLE 11

This Ordinance shall take effect September 24, 2018.

YEAS: Commissioners: Cyndi Trobeck, Jim Misner, Tom Gilmer, Nick Breedveld,
and Stacey Withee.

NAYS: Commissioners: None.

ABSTAIN: Commissioners: None.

ABSENT: Commissioners: None.

ORDINANCE ADOPTED.

CERTIFICATION

I certify that this is a true and complete copy of an ordinance adopted by the City Commission of the City of Otsego at a Regular Meeting held on Tuesday, September 4, 2018.

Dated: September 4, 2018



Angela M. Cronen, City Clerk

Introduced: August 20, 2018
Adopted: September 4, 2018
Published: August 30, 2018
Effective: September 20, 2018