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By: Warren Price, Director of  
Public Service

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2nd Reading 11/15/10  
3rd Reading 11/22/10  
PASSED: 11/22/10

Recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_

Recd. 11/15/10 @ 6:40pm CST

**ORDINANCE NO. 225/2010**

AN ORDINANCE AMENDING CHAPTER 961, STORM WATER MANAGEMENT, OF PART NINE - STREETS, UTILITIES AND PUBLIC SERVICES CODE, OF THE CODIFIED ORDINANCES OF THE CITY OF CANTON

WHEREAS, in September, 2009, the city of Canton adopted Chapter 961 of the Codified Ordinances which established standards and policies for storm water management, pursuant to compliance requirements of the National Pollutant Discharge Elimination System (NPDES) Phase II Storm Water Program; and

WHEREAS, since the adoption of said storm water management program, there has become a need to provide clarification to certain definitional terms and to provide clarification to the designation of authority and responsibility for the administration and compliance of the provisions of said storm water management program;

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

Section 1. Subsections (u) and (mm) to Section 961.02, Definitions, of the Codified Ordinances are amended to read as follows:

(u) "Non-Structural Storm Water Best Management Practice" means a storm water best management practice that is not designed or constructed to meet certain drawdown times but still provides storm water quality treatment, such as, but not limited to, preservation, riparian areas, buffer zones, open spaces, "green concepts", "smart growth concepts", certain policies and ordinances that minimize impervious surfaces and/or direct development away from water resources, operation and maintenance

procedures, general good housekeeping practices, etc., or as otherwise identified or described in the current Ohio EPA Permit for Storm Water Discharges Associated with Construction Activity under the NPDES.

(mm) "Structural Storm Water Best Management Practice" means a storm water best management practice that must be designed and built to meet certain drawdown times to provide treatment of storm water runoff through storage, filtration, or infiltration. Examples include extended detention basins, bioretention cells, sand filters, vegetated filter strips, water quality swales, infiltration trenches, etc., or as otherwise identified or described in the current Ohio EPA Permit for Storm Water Discharges Associated with Construction Activity under the NPDES.

Section 2. Subsections (d) and (e) to Section 961.04, Designation of Storm Water Authority, Powers, and Duties, of the Codified Ordinances are amended to read as follows:

(d) Representatives of the City Engineering Department, City Health Department, City Fire Department or other authorized City department or government agency, shall have the right to enter upon any land for the purposes of making an inspection or acquiring information, in accordance with other provisions of this Chapter, to determine whether or not the property conforms to the requirements of this Chapter.

(e) The Director of Public Service or designee, on behalf of the City of Canton, is authorized to contract, in whole or in part, with the Canton City Health Department or other governmental agency, or to designate the City Engineering Department or other City department for the enforcement of this Chapter, in accordance with other provisions of this Chapter.

Section 3. Subsection (b) to Section 961.05, Adoption of "City of Canton Storm Water Management Manual," of the Codified Ordinances is amended to read as follows:

(b) The City Engineer is authorized to amend, supplement, or revise the "City of Canton Storm Water Management Manual". The City of Canton Storm Water Management Manual, shall be made available in the Office of the City Engineer, and may be updated and expanded from time to time, at the discretion of the City Engineering Department, based on improvements in engineering, science, monitoring, local maintenance experience, and federal or state regulations.

Section 4. Section 961.08, Conflicts, of the Codified Ordinances is amended to read as follows:

The requirements of this Chapter should be considered minimum requirements, and where any provision of this Chapter imposes restrictions

different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment, as determined by the Director of Public Service or designee, shall be considered to take precedence.

Section 5. Section 961.12, Administrative Inspection Warrant, of the Codified Ordinances is amended to read as follows:

The Director of Public Service or designee may apply to any court of record within his jurisdiction for an administrative inspection warrant pursuant to Ohio R.C. 2933.21(F), under any of the following circumstances:

- (a) If any inspection required pursuant to law is refused, hindered or thwarted by the owner or the agent of the owner; or
- (b) If in the opinion of the Director of Public Service or designee an inspection is necessary to determine the existence of articulable physical conditions which are or may become hazardous to the public health, safety or welfare of any person or persons; or
- (c) The Director of Public Service or designee has reason to believe that hazardous or dangerous conditions exist, that there are conditions existing which constitute a violation of this Chapter, or reason to believe that there is non-compliance or lack of maintenance of previously imposed storm water management requirements.

Section 6. Section 961.13, Enforcement, of the Codified Ordinances is amended to read as follows:

- (a) Notice of Violation of Regulations.
  - (1) Upon commencing or completion of an activity subject to these regulations, if upon inspection, the Director of Public Service or designee determines that conditions exist in violation of the existing regulations, the matter may be referred to the designated City Department or entity for further enforcement action pursuant to the applicable part of this Chapter.
  - (2) Upon determination that a person has violated a prohibition or failed to meet a requirement of this Chapter, the designee may order compliance by written Notice of Violation. Such notice must specify the violation and shall be hand delivered and/or sent by

registered mail to the owner/operator of the facility, and shall contain:

- A. The name and address of the owner or the applicant or the responsible person.
- B. The address or other description of the site upon which the violation is occurring.
- C. A statement specifying the nature of the violation.
- D. A description of the remedial measures necessary to bring the action or inaction into compliance with this Chapter and the date for the completion of such remedial action. Remedial measures may include, but are not limited to, the following, as applicable:
  - 1. The performance of monitoring, analyses, and reporting;
  - 2. The elimination of illicit discharges or illegal connections;
  - 3. That violating discharges, practices, or operations cease and desist;
  - 4. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
  - 5. The implementation of source control or treatment BMP's; or
  - 6. The necessary maintenance or reconstruction to be in substantial compliance with the approved plans (if applicable) or otherwise to the satisfaction of the Director of Public Service or designee.
- E. A statement describing potential enforcement, penalties, and/or other costs that may be assessed against the person to whom the notice of violation is directed.
- F. A statement that the determination of violation may be appealed to the Director of Public Service by filing a written notice of appeal within

five (5) business days after the notice of violation.

The written notice of appeal shall state the specific issue or issues which are the subject of the appeal and the grounds for the appeal. The Director of Public Service shall schedule and conduct a hearing within 30 days after the filing of the notice of appeal and notify the appealing party and such other parties as the Director deems necessary to properly adjudicate the matter in writing of the hearing date, time and place. The appealing party shall have the right to submit a written statement, to appear at the hearing in person, or to be represented by an attorney or other representative. The decision by the Director of Public Service following the hearing shall be provided in writing to the appealing party within ten (10) days from the date of the hearing.

- (3) If abatement of a violation and/or restoration of affected property are required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to remediate or restore within the established deadline, the City has the right to perform said remediation or restoration, assess the costs of such work to the responsible person, party, or entity, and initiate any other legal action and administrative penalty for enforcement in accordance with the provisions of this Chapter.
- (4) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.

(b) Administrative Hearing.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the City of Canton shall schedule an administrative hearing to determine reasons for non-compliance and to determine the next enforcement activity. Notice of the administrative hearing shall be hand delivered and/or sent via registered mail. This Administrative Hearing will be heard by the Director of Public Service or his designee.

(c) Stop Work Order.

Whenever the provisions of this Chapter are not complied with for current activities or projects under construction that are subject to the requirements of the City of Canton Storm Water Management Manual, the Director of Public Service or designee may issue a Stop Work Order against the property owner or his representative. Such Stop Work Order cannot be removed except by written notice of the Director of Public Service or designee after satisfactory evidence has been supplied that the violation has been corrected.

(d) Injunctive Relief.

It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this Chapter and/or the Board of Health pursuant to Ohio R.C. 3709.211. If an owner/operator has violated or continues to violate the provisions of this Chapter, the City of Canton may petition for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.

Section 7. Subsection (a) to Section 961.15, Civil Proceedings, of the Codified Ordinances is amended to read as follows:

(a) In addition to all other enforcement and compliance measures, whenever the Director of Public Service or designee or any other officer having the right of enforcement of these standards and regulations is satisfied that any provision he has the right to enforce has been violated or is about to be violated in any respect, or that any order or direction made in pursuance of the enforcement of these standards and regulations has not been complied with, or is being disregarded, and whenever he is satisfied that civil proceedings are necessary for the enforcement thereof, or to prevent further violation or harm or threat of harm to the health, safety and welfare of persons or property, he may apply to the Law Director who is hereby authorized to institute civil proceedings. Such civil proceedings shall be brought in the name of the City. However, nothing in this section and no action taken thereunder shall be held to exclude such criminal proceedings as may be authorized under the Ohio Revised Code, or any of the laws in force to exempt anyone violating this Chapter or any part of such laws from any penalty which may be incurred.

Section 8. Section 961.16, Violations, of the Codified Ordinances is amended to read as follows:

(a) No person, being the owner or having control of any property, shall violate any standard, regulation, provision, amendment or supplement of this Chapter or the City of Canton Storm Water Management Manual, or fail to obey any lawful order of the Director of Public Service or designee issued in pursuance thereof. Each day during which such person continues to violate any regulation, provision, amendment or supplement of this Chapter shall be deemed a separate offense.

(b) No architect, engineer, contractor, building subcontractor or other person shall assist in the violation of any regulation, provision, amendment, or supplement of this Chapter, or of any certificate, order, or permit issued hereunder.

(c) No person shall interfere with the Director of Public Service or designee acting in the performance of their duties pursuant to this Chapter.

Section 9. Section 961.17, Permit and Inspection Fee Schedule, of the Codified Ordinances is amended to read as follows:

The City Engineer shall adopt and maintain a schedule of itemized costs for the issuance of permits and inspections required to administer the provisions of this Chapter. The fee schedule, as adopted and/or hereafter amended shall be made available in the Office of the City Engineer.

Section 10. Subsection (c) to Section 961.19, Notification of Release or Suspected Release of Illicit Discharges into MS4, of the Codified Ordinances is amended to read as follows:

(c) If any person has information of any deliberate, accidental, or negligent release of hazardous material into the MS4, said person shall notify the fire department within fifteen (15) minutes after such known or suspected release.

Section 11. Subsection (a) to Section 961.99, Penalty, of the Codified Ordinances is amended to read as follows:

(a) Any person violating any provision of this Chapter shall be subject to the following schedule of administrative penalties:

<u>Violation</u>	Penalty of not more than:
Failure to comply with compliance standards provided in Notice of Violation issued by appropriate Storm Water Authority (plus other penalties, as applicable)	\$500
Deliberate illicit discharge to City's MS4	\$1,000
Negligent illicit discharge to City's MS4	\$500
Failure to notify Fire Department of hazardous material discharge to City's MS4 within time frame established	\$500
Illegal connection to City's MS4	\$1,000

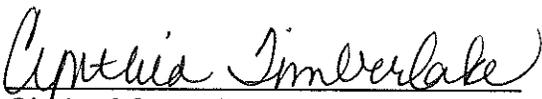
Section 12. All ordinances or parts of ordinances inconsistent with this ordinance are repealed; however, any ordinance or part thereof the repeal of which is contrary to the Ohio statutes is specifically reserved and such ordinance or portion is not repealed.

Section 13. This ordinance shall take effect from and after the earliest period allowed by law.

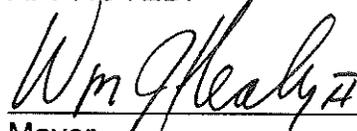
PASSED: *November 22, 2010*

  
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President of Council

ATTEST: *November 22, 2010*

  
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Cynthia Immerdale  
Clerk of Council

APPROVED:

  
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Wm J. Healy  
Mayor